

A

JAIPAL

v.

STATE OF HARYANA

OCTOBER 1, 2002

B

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

C

Evidence Act, 1872—Circumstantial evidence—Murder—Husband charged with murder of wife by administering poison—Conviction based on circumstantial evidence—Appreciation of—Held, there were fatal omissions by the police in not protecting the place of incident as well as samples of vomit, thereby depriving valuable and clinching evidence—Merely because of foul smell from the mouth of the deceased, a case of poisoning could not be concluded—In the facts and circumstances of the case, it is not safe to draw an inference that accused had administered poison to the deceased wife.

D

Motive—Circumstances—Proof of—Discussed.

E

Accused-appellant and the deceased-wife could not pull on well and there arose differences leading to strained relationship between them. Wife initiated proceedings for maintenance under Section 125 Cr.P.C. and husband unsuccessfully filed a suit for dissolution of marriage. Though husband preferred an appeal, he compromised with his wife with the intervention of elders. Accordingly, wife was required to join him. Since she did not do so, husband persuaded his brother-in-law to send her back. On the fateful day, sister-in-law (PW3) of accused-husband brought his wife and in privacy they had conversation for about half an hour while PW3 was sitting outside. When PW3 heard the voice of the deceased complaining of uneasiness, she rushed inside the room. Husband gave a tablet to the wife to cure her. Subsequently, wife started vomiting further. PW3 took her to a private hospital. Accused-appellant also reached there. She was shifted to Government hospital where she died on the same day.

F

G

On the basis of the statement of PW3 recorded in the hospital, FIR was lodged and a case was registered against husband of the deceased. Trial Court found appellant guilty of offence under Section 302 IPC and convicted him for murder by poisoning his wife. On appeal, the judgment was confirmed by the High Court. Hence this appeal.

H

Allowing the appeal, the Court

A

HELD: 1.1. Trial Court and the High Court have placed reliance on the evidence of PW3, sister-in-law of the deceased, PW4, father of the deceased and medical evidence along with FSL report for the purpose of concluding availability of three incriminating circumstances (i) motive on the part of the accused for causing the death of his own wife, (ii) opportunity available to the accused for administering poison to the deceased, and (iii) death of the victim having been caused by poisoning. These three circumstances taken together, are enough, in the opinion of the Trial Court and the High Court to fasten the guilt on the accused.

B

[723-A-C]

C

1.2. Medical officer has stated that liver and kidneys, membranes of brain and lungs of the deceased were congested; fluid was coming out from the larynx and trachea. These symptoms alone are not enough to hold that it could have been a case of poisoning. In spite of the availability of such facts the Medical Board was not in a position to opine on the cause of death and preferred to await for the report of Forensic Science Lab. examination. [723-D, E]

D

1.3. Medical Officer admitted during his cross-examination that celphos tablet if kept open in a room it will fill the room with smell. It is the characteristic of celphos poison emitting pungent smell which renders it improbable to be administered deceitfully and that is why this poison is not generally used in cases of homicidal death. Celphos once administered or consumed spreads rapidly in the body and kidney, liver, spleen, heart and lungs are affected by the poison. [723-G, H]

E

Medical jurisprudence & Toxicology (Twenty-Second Edition), pp. 197-198; and 'Toxicology—Acute Aluminium Phosphide Poisoning in Northern India' a paper written by Dr. Mitra Basu and Prof. S.B. Siwach, Current Medical journal, Vol.1, No.5, July 1995, referred to.

F

1.4. PW10, a doctor, who was the first to attend the deceased, stated that the symptoms which he noted present in the deceased could be the symptoms in the case of food poisoning, virus infection and gastroenteritis. Another doctor of Navjeevan Hospital, who had also seen the deceased, was of the opinion that it was on account of smell coming out from the mouth of the patient that he suspected it to be a case of poisoning. However, his statement was not recorded by police during investigation.

G

H

A The letter under which he referred the deceased to Civil Hospital did not mention the fact of any smell coming out from her mouth. Assuming the statement of the doctor as right even then such foul smell would come in the case of virus infection or gastroenteritis as well. Thus, merely from foul smell it cannot be doubtlessly concluded to be a case of celphos poisoning or poisoning. [725-G, H; 726-A-B]

B

2.1. There have been doubts about the genuineness of the samples of vomit which have been seized. There were fatal omissions on the part of the police in protecting the two places where valuable and clinching evidence as to the cause of death could have been available and the fatal delay in collecting the samples. [726-C]

C

2.2. The vomitus has been seized from the place situated at a distance of 150 yards from the house of the accused while according to PW3 the deceased had vomited at a place just about 25 feet from the house. It is difficult to reconcile the two depositions as to the distance. Further, in a village it is highly doubtful that vomitus would remain lying untampered and intact for the period of more than 16 hours overnight and on a thoroughfare. From the presence of aluminium phosphide in the sample of vomitus, in the facts and circumstances of the case, it is not safe to infer that the deceased having been administered aluminium phosphide because a safe link between the vomitus samples and the deceased is not established.

E

[726-H; 727-A-B]

2.3. On the state of the evidence, as it exists, it cannot be concluded positively that aluminium phosphide (celphos) was administered to the deceased. This finding has also to be read in the light of very pertinent statement made by PW3. According to her, while the accused and the deceased were busy talking in the inner room, the witness was sitting just outside in the outer room. When she entered in the inner room the deceased complained of feeling uneasy. She never stated that she was administered anything by the accused or anything given by the accused was consumed by the deceased or that anything which the deceased was made to consume by the accused was the cause of her feeling of uneasiness. On the contrary, it was in the presence of PW3 accused offered to give the deceased a tablet which could remove the feeling of uneasiness.

F

G

[727-C-D]

2.4. It also sounds unnatural, and therefore doubtful, if the accused would administer any poisonous tablet to the deceased by calling her to

H

his house and at a point of time either when PW3 was sitting just outside the room or when she was present inside the room. The presence of smell in the room, if any celphos tablet had remained in open, it would not have escaped the attention of PW3. But she does not depose the presence of any smell in the room having been felt by her. [727-F, G] A

3.1. Clear motive for the accused to cause the death of the deceased cannot be spelt out. The parties had separated and then reconciled. The accused was inclined to resume the conjugality of marriage. That is why he had insisted on his brother-in-law that his wife should join him. The deceased came to the accused accompanied by her sister-in-law. The husband and wife were talking to each other in the close presence of the wife's sister-in-law. There was no dispute or altercation between the two. It can not be held that the accused had a clear motive for administering poison to the deceased. That apart, merely because the accused could have had a motive for causing the death of his wife, it would not by itself be enough to sustain the finding of guilt against him. [728-C-E] B C

3.2. There is no evidence adduced by the prosecution to hold that the accused had the poison in his possession prior to the time of the incident. Moreover, celphos is chalkish white while the tablet which is said to have been given by the accused to the deceased was blue and white. In all probability it could not have been celphos. [728-F, G] D

Bhupinder Singh v. State of Punjab, AIR (1988) SC 1011 and *Anant Chintaman Lagu v. The State of Bombay*, AIR (1960) SC 500, relied on. E

3.3. No abnormality had been found in the conduct of the accused. He is an educated person, a teacher. If only he had administered any poison to the deceased he would not have gone to the private clinic and Government hospital where poisoning as a cause of death would be immediately known or at least strongly suspected by the doctor attending on the victim. Rather the accused wanted to be in the company of the deceased and to have her treated. He attended on her at Navjsevan Hospital and took her to Civil Hospital. [729-F, G] F G

3.4. It is also noteworthy that the deceased had complained to PW3 of feeling some uneasiness even prior to her having been administered a tablet by the accused. In all probability the deceased had consumed something before coming to meet the accused or may be she had suffered food poisoning or virus infection which could be innocuous. [729-H; 730-A, B] H

A 4.1. The tablet said to have been administered by the accused to the deceased was at about 12.30 p.m. Soon PW3 took the deceased to Navjeevan Hospital. The distance between the house of the accused and Navjeevan Hospital is about two kilometers. The two ladies went to the hospital in a rickshaw. However, they reached the hospital sometime between 3 and 4 p.m. They could not have taken so long in reaching
 B Navjeevan Hospital from the house of the accused. [730-B, C]

C 4.2. The correspondence between the police and the doctors suggests that the police was insisting on the doctors, who constituted the Medical Board, giving an opinion that the deceased had died on account of celphos having been administered to her. The doctors initially resisted endorsing the police suggestion and sought for a clarification from the Forensic Science Laboratory. The opinion given by FSL was also non-committal one and yet the doctors changed their opinion in their supplementary report that the deceased had died because of aluminium phosphide (celphos) poison. Though any positive finding is not recorded in that regard
 D yet it is observed that the father of the deceased as also the brother-in-law of the deceased being police personnel of a place nearby to the place of the incident, probably they had successfully prevailed over the doctors who yielded into giving an opinion which would implicate the accused.

[730-F-H; 731-A]

E 5. Dealing with a case of circumstantial evidence the Court has to be circumspect. The High Court and the Trial Court have unwittingly fallen into the same dangerous trap which the Constitution Bench* has cautioned to be guarded against. The prosecution has utterly failed in proving such chain of circumstantial evidence as would fasten the guilt
 F on the accused leaving no room for doubt. [732-A, B]

**Raghav Prapanna Tripathi and Ors. v. State of Uttar Pradesh*, AIR (1963) SC 74, followed.

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 705 of 2001.

From the Judgment and Order dated 3.10.2000 of the Punjab and Haryana High Court in Crl. A. No. 80 of 1999.

H U.N. Bachawat, Ranbir Singh Yadav, Alok Bachawat and Ajay Kumar, for the Appellant.

J.P. Dhanda Mrs. Raj Rani Dhanda and Sunder Khattri, for the Respondents. A

The Judgment of the Court was delivered by

R.C. LAHOTI, J. The accused-appellant stands convicted under Section 302 IPC for murdering by poisoning his own wife Prakash Devi and sentenced to undergo imprisonment for life, also to pay a fine of Rs. 5000 and in default to further undergo R.I. for 2 years. The case rests on circumstantial evidence. B

Prakash Devi died an unnatural death on 7.8.1997 at about 4.30 p.m. About 15 years before his death she was married with the accused. The couple lived happily and peacefully for about 3-4 years. In 1986 they developed some differences leading to bickerings and strained relationship in marriage. The appellant was serving as a school teacher. It is alleged that he needed some money to construct a house and Sheotaj, PW4 the father of Prakash Devi employed as Sub-Inspector of Police, had obliged the son-in-law by giving a sum of Rs. 50,000 of his own and another sum of Rs. 30,000 through his son. This obligation too failed to restore matrimonial harmony in the couple. The wife initiated proceedings for recovery of maintenance under Section 125 Cr.P.C. while the husband filed a suit seeking dissolution of marriage by decree of divorce. On 14.3.1997 the husband, i.e., the accused-appellant lost in his suit. He preferred an appeal in the High Court. On 16.7.1997 the matter was compromised with the intervention of elders of the village. As per settlement the wife was to join the husband which she failed to do. C D E

The prosecution further alleges that some 3 or 4 days prior to the death of Prakash Devi her brother Virender Singh had come to Narnaul where the accused met him and directed him to send Prakash Devi to join with him. F

On 7.8.1997 Smt. Beena, wife of Virender Singh (PW-3), accompanied by Prakash Devi, reached the house of the accused situated in a locality known as 'Housing Board' Nasibpur at about 12.00 or 12.30 p.m. The accused was present in the house. Smt. Beena was asked by the accused to sit in the outer room telling her that he wanted to speak to Prakash Devi in privacy. Prakash Devi was taken by the accused in the inner room of the house. The husband and wife were in conversation for about half-an-hour when Smt. Beena heard the voice of Prakash Devi complaining of uneasiness. She went inside the inner room. The accused told Prakash Devi that he had some G H

A tablets with him which could be given to her to come out of her feeling of
uneasiness. Then he gave one tablet to Prakash Devi. After consuming the
tablet Prakash Devi felt more uneasy and vomited. Smt. Beena took Prakash
Devi to Narnaul on a rickshaw. She vomited once again outside the house.
She also said that she might not survive and requested for calling the accused
so as to see him. Smt. Beena accompanied by Parkash Kaur reached Navjeevan
B Hospital at Narnaul. The accused also reached there on a scooter. The accused
assured Smt. Beena of taking care of Prakash Devi whereupon Smt. Beena
left for her home at Dongra Ahir. Having informed her family members, she
once again came to Navjeevan Hospital, Narnaul, accompanied by her brothers-
in-law Sardara and Siri Chand. Navjeevan Hospital is run by Dr. Parveen
C Choudhary, a private medical practitioner at whose instance the accused had
shifted Prakash Devi to Civil Hospital, Narnaul. In fact, Dr. Parveen Chaudhary
did not admit Prakash Devi and as he suspected the case to be one of poisoning
referred her straightaway to Civil Hospital. He remembered Prakash Devi
having been brought to him between 3 and 4 p.m on that day. Smt. Beena
and her brothers-in-law reached Civil Hospital but only to find Prakash Devi
D dead.

Rajender Singh, Sub-Inspector of P.S. Narnaul had come to the hospital
in connection with investigation of some other offence. There Smt. Beena
met him and informed him of the incident which had taken place. Rajender
E Singh recorded the statement of Smt. Beena at 9.30 p.m. and forwarded the
same to P.S. Narnaul whereat, at 9.40 p.m. the statement of Smt. Beena was
registered as FIR and the investigation commenced.

Prakash Devi, on reaching the Civil Hospital, was attended to at about
4.00 p.m. by Dr. Ajay Ram (PW-10) in casualty department of the hospital.
F He sent an information (Exhibit PO) to the police informing the police of
Prakash Devi having been admitted in the hospital. The police reached the
hospital and sought for opinion of Dr. Ajay Ram if Prakash Devi was in a
position to make any statement. Dr. Ajay Ram found Prakash Devi's condition
not fit for making any statement. Prakash Devi expired at 4.50 p.m. intimation
whereof was given by him to the police. Dr. Ajay Ram gave Prakash Devi
G a stomach wash as it was suspected to be a case of poisoning, gastric lavage
was taken in a bottle, sealed and handed over to the police. According to Dr.
Ajay Mann the patient Prakash Devi was not fully conscious when brought
to the hospital yet she was in a position to reply to some of the queries put
to her. She did not give the history of poisoning. However, she was vomiting
H and she had also vomited on the floor of the hospital though the vomited

material was not preserved as sample.

A

Post mortem on the dead body of Prakash Devi was performed by Dr. S.N. Sharma (PW-1). As it was a suspected case of poisoning, a board was constituted for conducting the post mortem. Dr. S.N. Sharma, Medical Officer was assisted by Dr. Alka Bishnoi, Assistant Medical Officer. The post mortem was conducted at 10 AM on 8.8.1997 i.e. the next day of the death. On internal examination it was found that the membranes of the brain were congested. Froth from the larynx and trachea was coming out. Both the lungs were congested. Samples of blood from heart, of frothy fluid coming out from the mouth, and pharynx and esophagus were taken and preserved. In the stomach about 100 ml. of semi-digested fluid was present. The mucosa was congested and showed puncture form haemorrhage and at places it was ulcerated. The stomach as a whole was preserved. Parts of the small and large intestines and parts of liver, spleen and kidneys were preserved. All these samples, duly sealed, were handed over to the police for being sent to Chemical Examiner. The Medical Board did not express any opinion on the cause of death. The opinion was reserved to be expressed on the receipt of the report from the Chemical Examiner.

B

C

D

All the samples which were collected and preserved for chemical examination were forwarded to Forensic Science Laboratory of the State of Haryana situated at Madhuban, Karnal. Vide letter dated 16.12.1997, the Deputy Director-cum-Assistant Chemical Examiner of FSL, opined as under:

E

- (1) Greyish stained cotton's pad stated to be vomit of the deceased taken from the floor and the piece of wet cloth along with wet earth stated to be 'vomit stained earth' taken from the spot give an indication of the presence of aluminium phosphide (celphos);
- (2) No common poisoning could be detected in:
 - (i) Stomach with contents in liquified form and emitting foul smell;
 - (ii) Parts of small and large intestine with its contents in liquified form and emitting foul smell;
 - (iii) Parts of liver, spleen and kidneys in liquified form and emitting foul smell;
 - (iv) Blood from heart;
 - (v) Saline preservative; and

F

G

H

A (vi) Gastric lavage of the deceased.

On receipt of the report from FSL the same was shown to Dr. S.N. Sharma who initially sought for some clarification from FSL. The FSL responded by saying that viscera/stomach wash etc. of the deceased were screened for the detection of common poisoning only and the same was found to be absent.

- B** Nothing could be said about non-common poison being ordinarily inaccessible. After the above said clarification from FSL, on 15.1.1998 the Medical Board consisting of Dr. S.N. Sharma and Dr. Mrs. Alka Vishnoi opined - In view of the Aluminium Phosphide (celphos) detected in two samples, opinion of the casualty Medical Officer - case of suspected poisoning - and details as per indoor bed head ticket and post mortem report, they were of the opinion that deceased Prakash Devi had died because of Aluminium Phosphide (Celphos) poisoning.

- Here we revert back to tracing the investigation how it proceeded. We have already noted that the police had become active before 5 PM on 7.8.1997 on receiving an information from Dr. Ajay Mann that a patient was admitted in the hospital as a suspected case of poisoning. The police had reached the hospital and also was keen on recording the statement of Prakash Devi. However, that could not be done. In any case, the statement of Smt. Beena was recorded by a Senior Officer of the local police station at 9.40 p.m. and treated as First Information Report under Section 154 of Cr.P.C. whereupon
- D** a cognizable offence under Section 302 IPC was registered. No steps were taken by the police for picking up the samples from, or for preserving intact, the place of occurrence and the places where the deceased is said to have vomited which was necessary to do for collecting and preserving the most crucial evidence. This omission of the police becomes more serious and assumes significance in the background that inquest was held on 7.8.1997
- E** itself around 9.30 p.m. It is also very significant to note that in the inquest report which is in a printed proforma, in the column entitled 'apparent cause of death' it is written "Celphos tablet having been administered". A little later we will deal with this observation and make our comments thereon.

- F**
- G** Be that as it may, the police reached the house of the accused-appellant early morning the next day at about 8.00 a.m. According to Rajender Singh, S.I. (PW-7), the house of accused Jaipal was lying locked. The key was collected from the house of a neighbour, the name and particulars whereof are not known. On opening the house sample of vomited material was collected from one place which was inside the room. Another sample was collected
- H** from a place outside the house and situated at a distance of about 150 yards

from the house. However, according to Smt. Beena (PW-3) the place where Prakash Devi had vomited for the second time was situated at a distance about 25 ft. from the house of the accused.

The Trial Court and the High Court have placed reliance on the evidence of Smt. Beena (PW-3), the sister-in-law of the deceased and Sheotaj (PW-4), the father of the deceased and medical evidence read along with FSL report for the purpose of concluding availability of three incriminating circumstances:- (1) motive on the part of the accused for causing the death of Prakash Devi, (2) opportunity available to the accused for administering poison to the deceased, and (3) Prakash Devi's death having been caused by poisoning. These three circumstances taken together, are enough, in the opinion of the Trial Court and the High Court to fasten the guilt on the accused.

We will take up the third piece of circumstantial evidence as the first and see whether it has been established that the death of Prakash Devi was caused by administering aluminium phosphide (celphos) or by poisoning.

We have grave doubts if at all Prakash Devi's death was caused by poisoning. Dr. S.N. Sharma has stated that liver and kidneys of the deceased were congested. Membranes of the brain were congested. Lungs were congested. Frothy fluid was coming out from the larynx and trachea. These symptoms alone could not have persuaded Dr. Sharma to hold that it could have been a case of poisoning. In spite of the availability of such facts the Medical Board was not in a position to opine on the cause of death. It was thought fit to await for the report of forensic science lab examination. He has clearly stated that it is only on the findings made available by pathology of viscera, kidneys, spleen, liver, stomach and blood which would reveal whether there was poisoning. He admitted that the cause for congestion of several organs as mentioned in the post mortem report could be due to other reasons as well. That is why, he had sought for clarification from the FSL so as to ascertain if the patient could have died due to some other poison inasmuch as aluminium phosphide poisoning was absent from the viscera.

Dr. Sharma admitted during his cross-examination that aluminium phosphide has a smell. If celphos table is kept open in a room it will fill the room with smell. It is this characteristic of celphos poison emitting pungent smell which renders it improbable to be administered deceitfully and that is why this poison is not generally used in cases of homicidal death. Celphos once administered or consumed spreads rapidly in the body and kidney, liver, spleen, heart and lungs are affected by the poison. The presence of such

A poison having been consumed would be revealed by pathological findings.

Dr. Sharma's opinion, as expressed during his deposition, has authoritative support. Modi in *Medical Jurisprudence & Toxicology* (Twenty-Second Edition) states (at pp.197-198) that Aluminium Phosphide (Celphos) is used as a fumigant to control insects and rodents in food grains and fields.

B In reported cases of poisoning, symptoms which have been found are burning pain in the mouth, throat and stomach, vomiting mixed with blood, dyspnoea, rapid pulse, subnormal temperature, loss of co-ordination, convulsions of a clonic nature and death. In the solid form, it acts as corrosive in the mouth and throat as it precipitates proteins. In postmortem appearance, the tongue, mouth and oesophagus are oedematous and corroded. The mucous membrane of the stomach is corrugated, loosened or hardened and is stained red or velvety. The intestines are inflamed.

C According to Modi symptoms and signs of poisoning by aluminium phosphide are similar to poisoning by zinc phosphide (p.197, *ibid*). The chief symptoms after the administration of zinc phosphide are a vacant look, frequent vomiting with retching, tremors and drowsiness followed by respiratory distress at death. Zinc phosphide acts as a slow poison and is decomposed by hydrochloric acid in the stomach with the liberation of phosphine which acts as a respiratory poison. Being a very fine powder zinc phosphide adheres firmly to the crypts in the mucous membrane of the stomach, and a very small quantity only in the stomach even after vomiting is sufficient to cause death by slow absorption.

D Phosphine released from zinc phosphide (rat poison) and from aluminium phosphide, is mainly used as a fumigant to control insects and rodents in food grains and fields. Liberated from the metal phosphides by the action of water or acids, gaseous phosphine exerts more potent pesticidal action, for it penetrates to all areas otherwise inaccessible for pesticide application. Pathological findings from phosphine inhalation are pulmonary hyperemia and oedema. It causes both fatty degeneration and necrosis of liver. (p.174, *ibid*)

E Our attention was invited, as was done in the High Court and the Trial Court, to a paper entitled 'Toxicology - Acute Aluminum Phosphide Poisoning in Northern India' written by Dr. Mitra Basu and Prof. S.B. Siwach, Head, Deptt. of Medicine, Post Graduate Institute of Medical Sciences, Rohtak and published in *Current Medical Journal*, Vol.I, No.5, July 1995. The authenticity of this article has not been doubted by the High Court nor questioned either

in the High Court or in this Court. The learned authors have noticed the aluminium phosphide having emerged as a major health problem in northern India when these cases first started coming in 1984 and hardly any literature being available earlier on this malady. In Post-Graduate Institute of Medical Sciences, Rohtak about 2000 cases were reported which were all suicidal.

We may briefly sum up the opinion of the learned authors from their published paper. Phosphine gas (active ingredient of ALP) causes sudden cardiovascular collapse; most patients die of shock, cardiac arrhythmias, acidosis and Adult Respiratory Distress Syndrome (ARDS). Aluminium phosphide is available in the form of chalky white tablets. When these tablets are taken out of the sealed container, they come in contact with atmospheric moisture and the chemical reaction takes place liberating phosphene gas (PH₃) which is the active ingredient of ALP. This gas is highly toxic and effectively kills all insects and thus preserves the stored grains. When these tablets are swallowed, the chemical reaction is accelerated by the presence of hydrochloric acid in the stomach and within minutes phosphine gas dissipates and spreads into the whole body. The gas is highly toxic and damages almost every organ but maximal damage is caused to heart and lungs. Sudden cardiovascular collapse is the hallmark of acute poisoning. Patients come with fast thready or impalpable arterial pulses, unrecordable or low blood pressure and icy cold skin. Somehow these patients remain conscious till the end and continue to pass urine despite unrecordable blood pressure. Vomiting is a prominent feature associated with epigastric burning sensation. The patients will be smelling foul (garlic like) from their breath and vomitus. Many of them will die within a few hours. Those who survive for some time will show elevated juglar venous pressure, may develop tender hepatomegaly and still later Adult Respiratory Distress Syndrome (ARDS), renal shut down and in a very few cases toxic hepatic jaundice. The active ingredient of ALP is phosphine gas which causes extensive tissue damage. A spot clinical diagnosis is possible in majority of cases of ALP poisoning. However, ALP on account of its very pungent smell (which can drive out all inmates from house if left open) can not be taken accidentally.

Dr. Ajay Mann (PW-10) who was the first to attend on Prakash Devi stated that the symptoms which he noted present in Prakash Devi could be the symptoms in the case of food poisoning, virus infection and gastroenteritis. Dr. Parveen Chaudhary of Navjeevan Hospital to whom Prakash Devi was carried by Smt. Beena and who had seen her between 3 to 4 p.m. on the fateful day was of the opinion that it was on account of smell coming out

A from the mouth of the patient that he suspected it to be a case of poisoning. However, his statement was not recorded by police during investigation. The letter under which he referred Prakash Devi to Civil Hospital did not mention the fact of any smell coming out from the mouth of Prakash Devi. Assuming that Dr. Parveen Chadudhary is right in stating that some foul smell was coming out from the mouth of Prakash Devi, seen in the light of the statement of Dr. Ajay Mann, it is clear that such foul smell would come even in the case of virus infection or gastroenteritis and merely from foul smell it cannot be doubtlessly concluded to be a case of celphos poisoning or poisoning.

C We have doubts about the genuineness of the samples of vomit said to have been seized from two places i.e. inside the house and outside the house. We have already pointed out the fatal omission on the part of the police in protecting the two places where valuable and clinching evidence as to the cause of death could have been available and the fatal delay in collecting the samples. Though, the house of the accused is situated in a locality inhabited by people and not in a secluded place yet the two witnesses to the seizure memo of the samples are - Virender Singh, husband of Smt Beena (PW-3) and brother of the deceased, and one police employee namely Balbir Singh, ASI. It was suggested by the defence, during the cross-examination of Dr. S.N. Sharma, that the samples of vomit would give positive findings regarding aluminium phosphide (celphos) if it was sprinkled over the vomit before lifting the samples.

F The Trial Court has disbelieved the recovery of vomitus from the two places by the Investigating Officer. In the opinion of the Trial Court the evidence relating to such seizure of vomitus was not trustworthy for two reasons: firstly, it is not mentioned in the FIR or in the statement of Smt. Beena (PW-3) that aluminium phosphide was administered by the accused to the deceased, and secondly, it is also not mentioned either in the FIR or in the police statement of Smt. Beena (PW-3) that the deceased had vomited inside the house. The Trial Court has also commented adversely on the lapse on the part of the Investigating Officer in not promptly seizing the samples of vomitus. The High Court has also doubted the recovery and seizure of vomitus from the room in view of this material fact finding omission in the FIR amongst other relevant factors. Though the High Court was inclined to place reliance on the seizure of vomitus from the place situated outside the house. However that recovery too has its own infirmities. As we have already noticed the vomitus has been seized from place situated at a distance of 150 yards from the house of the accused while according to Smt. Beena the

deceased had vomited at a place just about 25 feet from the house. It is difficult to reconcile the two depositions as to the distance. Secondly, in a village it is highly doubtful that vomitus would remain lying untampered and intact for the period of more than 16 hours overnight and on a thoroughfare. From the presence of aluminium phosphide in the sample of vomitus, in the facts and circumstances of the case it is not safe to infer the deceased having been administered aluminium phosphide because a safe link between the vomitus samples and the deceased is not established. Sample of vomitus from the hospital was not taken for whatever reasons.

Thus on the state of the evidence as it exists we cannot conclude positively that aluminium phosphide (celphos) was administered to the deceased. This finding has also to be read in the light of very pertinent statement made by Smt. Beena. According to her while the accused and the deceased were busy talking in the inner room, the witness was sitting just outside in the outer room. When she entered in the inner room Prakash Devi complained of feeling uneasy. She never stated that she was administered anything by the accused or anything given by the accused was consumed by the deceased or that anything which the deceased was made to consume by the accused was the cause of her feeling of uneasiness. On the contrary it was in the presence of the witness Smt. Beena that the accused offered to give the deceased a tablet which could remove the feeling of uneasiness. Such table according to Smt. Beena was of two colours; its half portion was blue and half portion was white. Such could not have been the colour of celphos tablet. If only the tablet given by the accused to the deceased was celphos it is not likely that the deceased would have consumed it inasmuch as the pungent smell of celphos would have alerted Prakash Devi and Smt. Beena and certainly the deceased would not have consumed the tablet. It also sounds unnatural, and therefore doubtful, if the accused would administer any poisonous tablet to the deceased by calling her to his house and at a point of time either when Smt. Beena was sitting just outside the room or when she was present inside the room. The presence of smell in the room, if any celphos tablet had remained in open there would not have escaped the attention of Smt. Beena. But she does not depose to the presence of any smell in the room having been felt by her.

The Forensic Scientific examination of several organs of the body of the deceased and the samples collected from the body exclude the presence of aluminium phosphide (celphos). The victim, according to the prosecution case died within about 4 hours, of the poison having been allegedly

A administered to her. Postmortem was performed within 18 hours of the time of death. None of the symptoms suggesting administration of celphos as stated by Modi and the two authors Dr. Mitra Basu and Prof. S.B. Siwach were found to be present. The manner in which aluminium phosphide acts on being ingested, the presence of powder or symptoms of damage caused by phosphine must have been detected in stomach, intestines, liver, kidney and gastric lavage. But none has been found. Merely because of the presence of foul smell it cannot be said to be a case of poison having been administered to the deceased. The finding of the Trial Court and the High Court that the deceased died because of poisoning cannot therefore be sustained.

C We are also not inclined to hold that the accused had the opportunity available to him of administering poison to the deceased. The availability of the second circumstance is also ruled out. So far as the question of motive is concerned, again, clear motive for the accused to cause the death of the deceased cannot be spelt out. The parties had separated and then reconciled. The accused was inclined to resume the conjugality of marriage. That is why D he had insisted with his brother-in-law that his wife should join him. The deceased came to the accused accompanied by her sister-in-law. The husband and wife were talking to each other in the close presence of the wife's sister-in-law. There was no dispute or altercation between the two. In our opinion the present one is not a case where it can be held that the accused had a clear motive for administering poison to the deceased. That apart, merely because E the accused could have had a motive for causing the death of Prakash Devi it would not by itself be enough to sustain the finding of guilty against him.

F There is no evidence adduced by the prosecution to hold that the accused had the poison in his possession prior to the time of the incident. The police had learnt from Smt. Beena that the accused had taken out the tablet from a box and given it to the deceased for inhaling. The investigation was not directed towards inspecting and seizing the box wherefrom the tablet was taken out. Moreover, celphos is chalkish white while the tablet which is said to have been given by the accused to the deceased was blue and white. In all probability it could not have been celphos.

G In *Sharad Birdhichand Sarda v. State of Maharashtra*, AIR (1984) SC 1622 this Court has held :

H "In the cases of murder by administration of poison the Court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction:

- (1) there is a clear motive for an accused to administer poison to the deceased. A
- (2) that the deceased died of poison said to have been administered.
- (3) that the accused had the poison in his possession,
- (4) that he had an opportunity to administer the poison to the deceased." B

We may hasten to add that the availability of the third piece of evidence as necessary to establish the case of murder by poisoning has been doubted in some of the later decisions. To wit, in *Bhupinder Singh v. State of Punjab*, AIR (1988) SC 1011 it has been held that there may be very many facts and circumstances proved against the accused which may call for tacit assumption of the factum of possession of poison with the accused, and therefore, the insistence on proof of presence of poison with the accused is neither desirable nor practicable. *Anant Chintaman Lagu v. The State of Bombay*, AIR (1960) SC 500 is a case peculiar to its own facts and this Court by a majority of 2:1 held that even in the absence of a decisive finding as to the exact cause of death and on a finding that the death of the victim was the result of the administration of some unrecognized poison or drug which would act as a poison, a finding as to guilt can be arrived at based on circumstantial evidence. It was the case of extreme cunning and pre-meditation. The conduct of the accused after the death of his wife was unusual and abnormal and was so knit together as to make a network of circumstances pointing only to his guilt. Still the majority opinion observed :

“Circumstantial evidence in this context means, a combination of facts creating a network through which there is no escape for the accused, because the facts taken as a whole do not admit of any inference but of his guilt.” F

In the present case we do not find any abnormality in the conduct of the accused. He is an educated person, a teacher. If only he had administered any poison to the deceased he would not have gone to the private clinic and government hospital where poisoning as a cause of death would be immediately known or at least strongly suspected by the doctor attending on the victim. Rather the accused wanted to be in the company of the deceased and to have her treated. He attended on her at Navjeevan Hospital and took her to Civil Hospital. G

It is also noteworthy that the deceased had complained to Smt. Beena H

A of feeling some uneasiness even prior to her having been administered a tablet by the accused. In all probability the deceased had consumed something before coming to meet the accused or may be she had suffered food poisoning or virus infection which could be innocuous.

B A few questions remain unanswered which we deem it proper to mention before parting. The tablet said to have been administered by the accused to the deceased was at about 12.30 p.m. Soon Smt. Beena took the deceased to Navjiwan Hospital. The distance between the house of the accused and Navjiwan hospital is about two kilometers. The two ladies went to the hospital in a rickshaw. However, they reached at the hospital sometime between 3 and 4 p.m. They could not have taken so long in reaching Navjiwan hospital from the house of the accused. Where did they remain in between?

C Nobody knew what was administered to the deceased or what she had consumed which led to her death until the doctors gave opinion on receipt of the FSL report and on their queries being answered. Yet a single track investigation with a pre-conceived notion appears to have begun from the very inception. The letter, (Exhibit PA) written on 7.8.1997 by S.I. P.S. Narnaul to the Civil Hospital requesting for autopsy to be held on the dead body of Prakash Devi mentions the death having been caused by Celphos tablet having been administered to her. The same fact is stated in the report on inquest which was held at 9.30 p.m. on 7.8.1997. The post-mortem report, which is in a pro-forma, in its preliminary part in column No.20 "information furnished by police" mentions the cause of death as 'by celphos tablet, having been administered' and still the doctors were not positive in their opinion, i.e., they did not record their approval of the suggestion made by the police. The correspondence between the police and the doctors suggests that the police was insisting on the doctors, who constituted the medical board, giving an opinion that the deceased had died on account of celphos having been administered to her. The doctors initially resisted endorsing the police suggestion and sought for a clarification from the Forensic Science Laboratory. The opinion given by FSL as late as on 24.12.1997 was also non-committal one and yet the doctors changed their opinion and said on 15.1.1998 in their supplementary report that the deceased Prakash Devi had died because of aluminium phosphide (celphos) poison. Though we are not recording any positive finding in that regard yet we cannot resist observing that the father of the deceased as also the brother-in-law of the deceased being police personnel of a place nearby to the place of the incident probably they had successfully prevailed over the doctors who yielded into giving an opinion

which would implicate the accused.

We may with advantage quote the following observation of this Court from *Smt. Phino v. State of Punjab*, AIR (1975) SC 1327, which is very apt to the case before us :

“The Chemical Examiner was repeatedly of the opinion that there was no poison content found in the viscera. Dr. Ahluwalia gave his opinion on consideration of the out-door ticket, bed-head ticket and history of the case. The symptoms of vomiting, temperature, convulsions and quick pulse were there. He opined that death of Ranjit Singh could have resulted from zinc phosphide but he could not rule out the possibility of his death due to some virus infection. He further stated when referred to Modi’s Medical Jurisprudence that zinc phosphide being a very fine powder adheres very firmly to the crypts in the mucous membrane of the stomach. It also appears from the evidence that the poison after going into the blood must have entered viscera of the deceased. No zinc powder was found adhering to the crypts in the mucous membrane of the stomach of Ranjit Singh. Death of the child was within 24 hours of the administering of the poison. In all probability if it would have been caused due to the intake of the poison by him the Chemical Examiner must have detected traces of it in the viscera. The other two children it appears had taken very little quantity of the poison and they soon recovered only by stomach wash. It is not clear from any piece of evidence in this case that the deceased child had taken a larger quantity of the poisoned gur. The possibility of his death due to any virus infection or any different cause other than the one attributable to poisoning cannot be ruled out.”

Dealing with a case of circumstantial evidence the Court has to be circumspect. A note of caution was sounded by a Constitution Bench of this Court in *Raghav Prapanna Tripathi and Ors. v. State of Uttar Pradesh*, AIR (1963) SC 74, quoting from *R. v. Hodge*, (1838) 2 Lew CC 227 :

“The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual the more likely was it, considering such matter, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous

A theories and necessary to render them complete.”

The High Court and the Trial Court have unwittingly fallen into the same dangerous trap which the Constitution Bench has cautioned to be guarded against.

B We are unhesitatingly of the opinion that the prosecution has utterly failed in proving such chain of circumstantial evidence as would fasten the guilt on the accused leaving no room for doubt. The appeal is allowed. The conviction of the accused under Section 302 IPC and the sentence passed thereon by the Trial Court and upheld by the High Court are set aside. The accused-appellant is acquitted. He shall be released forthwith if not required to be detained in any other offence.

C

S.K.S. .

Appeal allowed.