

A

STATE OF HIMACHAL PRADESH

v.

RAJIV JASSI

(Criminal Appeal No. 771 of 2005)

B

MAY 06, 2016

[V. GOPALA GOWDA AND ARUN MISHRA, JJ.]

C

Penal Code, 1860: s.302 – Conviction based on circumstantial evidence and imposition of life imprisonment – Murder of pregnant wife by administering poison – Conviction by trial court, set aside by appellate court – State’s appeal against acquittal – Held: Accused failed to explain the injuries on the person of the victim-deceased including swelling on the womb when admittedly he was in the company of the deceased – Injury on the front part of body was strong circumstance to show that deceased was subjected to violence before she succumbed due to poisoning – There was overwhelming evidence indicating that the behaviour of the accused towards the deceased was not proper and he used to frequently beat her – The conduct of accused in not opening the door when neighbours came hearing the shrieks of deceased and in not taking her to hospital also pointed towards guilt of the accused – Neighbours stated that on being asked what had happened, deceased raised the hand towards the accused – Moreover, there was evidence to show purchase of Nivan poison by accused few days before the incident – The conduct of the accused and gesture of the victim at the crucial time as projected in the case, medical evidence, evidence as to purchase of poison unerringly point towards the guilt of the accused – Order of conviction passed by trial court was based upon proper appreciation of evidence, the circumstances found established by trial court has been unnecessarily doubted and brushed aside lightly by the High Court – Order of conviction restored.

D

E

F

G

Sentence/Sentencing: Plea of leniency – Murder of pregnant wife – Plea that son aged 17 years old residing with the accused – Held: That cannot be a ground so as to show any leniency in such kind of offence, particularly when the accused had not cared and caused death of his wife who was pregnant, carrying 8 months child whose foetus was recovered from her womb – He had kicked the

H

womb also – In the circumstances, accused is not entitled to any lenient treatment. A

Allowing the appeal, the Court

HELD: 1. The High Court unnecessarily doubted the post mortem report which recorded as many as seven injuries. The said nature of the injuries indicated that they could not have been caused by convulsions. The High Court unnecessarily doubted the deposition of the autopsy surgeon who clearly opined that the nature of injuries indicated positively the administration of poison forcibly to the victim. Such injuries could be caused while administering poison forcibly when victim was trying to save herself from that. In the cross-examination, the doctor PW-2, has also stated that it could not be a suicidal case. However, on a suggestion being made to PW-2 and PW-3 that it could be a case of voluntary consumption of poison by the victim to commit suicide, obviously the doctors were not able to deny the said suggestion as they were not eye witnesses. Moreover they were not supposed to be an arbiter on this issue whether the victim had taken the poison herself. Their objective opinion stood writ large that considering the nature of injuries it could be a case of forcible poisoning and in the process accused had caused injuries while deceased had struggled. Thus the approach of High Court cannot be said to be of objective assessment of evidence. [Para 14] [480-H; 481-A-E] B C D E

2. The accused was admittedly in the company of the deceased. It was for him to explain so many injuries found on the person of the deceased as to how they were caused including swelling in womb. He totally failed to explain them. It was not stated by him that the injuries were caused to the deceased due to convulsions. It was not stated by him that she ever fell down during convulsions, if any. The injuries on her lips, chin, throat and neck etc. as held by the trial court, were caused while administering the poison forcibly is a strong circumstance against the accused which cannot be brushed aside lightly. Injuries were on the front part of the body which indicated that the deceased was subjected to violence before she succumbed due to poisoning. Section 106 of the Evidence Act requires a person having special knowledge of the fact to explain the same. Failure to explain H

A that the deceased was unconscious position coupled with other evidence is a grave circumstance which militates against such a person. [Para 15] [481-F-H; 482-A-B]

3. There was overwhelming evidence on record indicating that the behavior of the accused towards the deceased was not proper and he was turned out of the house by landlord at Chail. The previous landlord of the accused clearly stated that under the influence of liquor, accused used to frequently beat the victim and quarreled with her due to that he had asked the accused to vacate the house. Thereafter the accused had shifted in the nearby house in which the incident has taken place. The statements of PWs.6 and 11 also indicated that there was consistent ill-treatment and incidents of beating and thrashing caused to the victim by the accused. There was nothing to doubt the statement of brother of the deceased namely PW-8 who was also given beating on the night of the incident. PW-8 stated that the accused had given kick-blows on the abdomen of the victim while she was carrying in her womb pregnancy of 8 months, and the factum of pregnancy stood proved by the post mortem report that the foetus aged 8 months was recovered from the womb of the victim. PW-3 found abdominal swelling of the victim while conducting the autopsy which was obviously caused by the kick blow given by the accused. The statement of PW-8 found medical corroboration. There was nothing to doubt the statement of PW-8 that the accused had also caused injury to him in the form of multiple scratches over neck and face. PW-1 has proved the injuries found on the person of PW-8 and has proved the injury report. The High Court has erred in holding otherwise. [Para 16] [482-C-G]

4. Yet another circumstance which casts a grave doubt on the accused is that he was fully aware that the condition of the victim was precarious and she was struggling for life due to organo phosphorous poisoning. In spite of that initially when the neighbours came hearing the shrieks of the victim, he did not open the door immediately and opened the door only after five minutes. Even if same is ignored, there was absolutely no reason for the accused to state to the neighbours when they asked him to take victim to hospital that nothing had happened to the victim and it was his family affair and she would be all right very soon.

He intentionally delayed taking the victim to the hospital and it was only when the Police came that victim was taken to the hospital. In case the accused was innocent he would have taken the victim to the hospital immediately and would not have declined the request of the neighbours and delayed her taking to the hospital and ought not to have waited for arrival of the police. The High Court erred in holding that accused accompanied victim to hospital as such that circumstance is in his favour. Thus the conduct of the accused of not taking the victim to the hospital points a finger of doubt upon him. The overall circumstances unerringly point towards the guilt of the accused. Accused was well-aware that the victim was suffering from organo phosphorous poisoning, the bottle was also lying open. There was a bad odour of 'nuvan' poison in the room. Domestic articles and luggage were scattered in the room and the child was found crying. PW-10 clearly stated that on being asked what had happened, she raised her hand towards the accused, her husband. Similar was the statement of PW-8 and PW-9. [Paras 17, 18] [482-H; 483-A-F]

5. Apart from that, the High Court has discarded the evidence of PW-13, who is an independent witness. He has stated that 14-15 days before the accused had purchased Nuvan poison from his shop for a consideration of Rs.50/- on the pretext of killing flies etc. The trial court held that in summers there was no necessity to purchase a deadly poison for killing the flies. Accused intended to kill the victim and purchased the poison to cause the end of life of victim. The High Court did not believe the statement of PW-13 on the ground that the accused being a doctor and posted at different places could have purchased a better poison of sophisticated nature from elsewhere, he would not have created the evidence against him. The High Court brushed aside the evidence of purchase of Nuvan for no good reason. Sometime the facts are stranger than fiction. There was absolutely nothing to doubt the statement of PW-13 for purchase of said Nuvan poison and when it was found in the house, it was purchased either by the victim or the accused. There was nothing to doubt that it was purchased by the accused and it was found in the room and due to this poison only the victim succumbed to death. The fact of giving salty water by the accused to the victim by itself is not enough to absolve him of the guilt. Apart from

A that the administering of poison forcibly was supported by medical
evidence in the form of injuries which were found on the front
side shows sign of struggle by deceased to save herself in the
said process. These injuries could not have been caused by
convulsions and the overall conduct of the accused and the
gesture of the deceased in pointing her hand towards her husband
B as the person responsible for her condition, delay caused by the
accused in taking the victim to the hospital knowing fully well
the kind of deadly poison organo phosphorous unerringly points
towards his guilt and the chain of circumstances is complete.
[Paras 19, 20] [483-H; 484-A-F]

C 6. Four circumstances are to be examined before recording
a conviction. (i) There was a clear motive for the accused to
administer poison to the deceased, (ii) the deceased died of
poison said to have been administered, (iii) that the accused had
poison in his possession and (iv) that he had an opportunity to
D administer the poison to the deceased. The prosecution alleged
that the husband administered the poison to her whereas defence
took the plea that there was a strong possibility of her having
been ill-treated, being sensitive and impressible, she might have
committed suicide out of depression and frustration arising from
an emotional upsurge. The said tests stand satisfied in the instant
E case and the prosecution has proved the case beyond periphery
of doubt. The conduct of the accused and gesture of the victim at
the crucial time as projected in the case, medical evidence,
evidence as to purchase of poison unerringly point towards the
guilt of the accused. [Para 21] [484-G-H; 485-A-B]

F 7. The plea of respondent-accused that the child now 17
years old and is residing with the accused, as such a lenient view
should be taken cannot be a ground so as to show any leniency in
such kind of offence, particularly when the accused had not cared
and caused death of his wife who was also a doctor and at the
G same time she was pregnant, carrying 8 months male child whose
foetus was recovered from her womb. He had kicked the womb
also that is why swelling in womb was found. In the circumstances,
accused is not entitled to any lenient treatment as it can only be
within legal parameters. The High Court gravely erred in
reversing the well-reasoned judgment of conviction and order of
H sentence recorded by the trial court. [Paras 22, 23] [485-C-E]

C.S.D. Swami v. The State AIR 1960 SC 7: 1960 SCR 461; *P.N. Krishna Lal & Ors. v. Govt. of Kerala & Anr.* 1995 Supp (2), SCC 187: 1994 (5) Suppl. SCR 526 ; *Sidhartha Vashisht @ Manu Sharma v. State (N.C.T. of Delhi)* AIR 2010 SC 2352: 2010 (4) SCR 103 – relied on.

A

Sharad Birdhichand Sarda v. State of Maharashtra AIR 1984 SC 1622:1985 (1) SCR 88 – referred to.

B

Case Law Reference

1960 SCR 461 Relied on. Para 15

1994 (5) Suppl. SCR 526 Relied on. Para 15

2010 (4) SCR 103 Relied on. Para 15

1985 (1) SCR 88 Referred to. Para 21

C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 771 of 2005

D

From the Judgment and Order dated 09.08.2004 of the High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 10 of 2002

Suryanarayana Singh Sr. Addl. Adv., Ms. Pragati Neekhra, Adv., with him for the Appellant.

E

Ms. Jaspreet Gogia, Adv., for the Respondent.

The Judgment of the Court was delivered by

ARUN MISHRA, J. 1. The State is in appeal as against the reversal of the judgment of the trial court acquitting the respondent for commission of the offence under section 302 IPC by committing murder of his wife by way of administering poison. The respondent was imposed life imprisonment and fine of Rs.5,000 by the trial court which has been reversed by the appellate court.

F

2. The prosecution case in brief is that the respondent Dr. Rajiv was married to Dr. Suman Lata, daughter of Ram Kishan, PW9. The marriage was performed on 25.4.1998. The incident took place on 26.5.2000. At the relevant time deceased was posted as Dental Surgeon at Civil Hospital, Chail, district Solan; whereas the accused was posted as Medical Officer in Primary Health Centre, Gharuan in district Ropar, State of Punjab.

G

H

A 3. Prosecution has alleged that the relationship between the
deceased and the accused became estranged due to demand of dowry
and excessive drinking habit of accused. Under the influence of liquor
he used to beat the deceased. On 23.5.2000 Anil Kumar, PW 8 brother
visited the deceased at Chail and stayed with her. In the intervening
night of 25th and 26th May, 2000 the accused reached Chail where
B deceased was residing. He was drunk and started abusing, kicking and
beating the deceased. When Anil Kumar tried to intervene he was also
beaten by the accused and was turned out of the house. On 26.5.2000 at
about 3 a.m., Surender Kumar, PW 5 came out for urination when he
heard the shrieks and cries of the deceased and extreme weeping of her
C child. The deceased was crying "Give me salty water. I do not want to
die." Surender Kumar went to the house of the deceased. It was closed
from inside. He informed Ved Prakash, PW 4 Ex-President of Chail
Gram Panchayat as well as Om Prakash PW 7. All three of them went
to the house of the deceased. Ved Prakash knocked the door of the
D house which was bolted from inside. None opened the door for sometime,
after about 5 minutes door was opened by the accused. On entering the
room, PWs.4, 5 and 7 smelt poisonous odour in the room. The articles in
the room were scattered. The deceased was lying on the bed having
bruises and contusions on her face. Water was splashed on the bed as
well as on the floor of the room. The clothes of the deceased were also
E drenched. PW 5 asked the accused to take the deceased to the hospital
immediately. However the accused replied that there was no necessity
therefor and that deceased would be all right very soon.

4. Prosecution has alleged that in the meantime Dayal Singh, PW
6, Anil Kumar, PW-8 and Shiv Kumar, PW-10 also arrived. They noticed
F the condition of the room and also the precarious and deteriorating
condition of the deceased. When they asked the accused what had
happened, he retorted that it was his private life and they need not bother.
The accused refused to take the deceased to the hospital on the pretext
that nothing had happened and he himself being a doctor could look after
her. PWs.6, 8 and 10 also smelt poisonous odour in the room. Deceased
G was crying that she did not want to die and she be saved. On being
asked what had happened, she raised her hand towards the accused.
Om Prakash, PW-7 informed the police at about 4.30 a.m. On that Biru
Ahmad, PW-17 entered the information in the daily diary and proceeded
towards the spot. He found the deceased lying on the bed in an
H unconscious position. Dr. O.P. Choudhary, PW-2, examined the deceased

at about 6 a.m. and noted the patient was semi-conscious with history of consumption of poisonous substance. He also noted (i) contusion reddish in colour over the lateral side of the right eye brow with swelling present of the size of 7 cm. x 5 cm. and (ii) both lips were swollen. It was also noted that complete examination of the body could not be done because patient was in serious condition. B.P. was not recordable and Pupils bilateral circular, pin point not reacting to light.

5. PW-2 administered the initial treatment. He carried out Gastric lavage first with saline solution and then with ordinary tap water. Thereafter he referred the deceased to I.G.M.C. Hospital, Shimla at about 7 a.m. for expert opinion and further treatment. Deceased died at IGMC Hospital, Shimla on the same day in the evening of 26.5.2000 which was informed to the police. Post mortem was conducted by Dr. Piyush Kapila, PW-3 in association with Dr. V.K. Mishra, Assistant Professor, Forensic Medicine. As to the cause of death it was opined that the deceased had died due to asphyxia secondary to the organo phosphorus poison. Following ante-mortem injuries were found on the person of the deceased :

“(i) 10 cm x 6 cm bruise on the right periorbital area with swelling of right eye lid with two contentric nail scratches abrasions, one on forehead and other on upper eye lid. Bluish in colour.

(ii) 9 cm x 4 cm big contusion, bluish in colour, on intraorbital area and cheek on left side.

(iii) ½ cm x ½ cm contusion on the inner side of lower lip towards left side mid line with respect to left lateral incisor (lower). Blue in colour.

(iv) 8 cm x 7 cm abraded contusion over chin and submental area in midline. Bluish in colour.

(v) 11 cm x 5 cm multiple small abrasions over neck and right of upper chest in front 3 cm lateral to sterno calvicular joint.

(vi) 10 cm x 4 cm contusion in infra-axillary area in mid axillary line. Blue in colour.

(vii) 7 cm x 5 cm large purple coloured pach over dorsum of right hand with multiple needle prick marks (latrogenic).”

In addition it was found in the post mortem report that there was a dead male foetus 40 cm. in length with head circumference of 29 cm. with

A body weight of 1300 gms. present in the uterus of the deceased and he calculated the age of foetus as 8 months.

6. On 27.5.2000 Anil Kumar, PW-8 lodged a report at the Police Station mentioning the harassment caused by the accused to the deceased for dowry. It was mentioned that he talked with in-laws and was informed that the accused was coming to Chail in the evening. In the midnight at about 12, accused reached Chail in his Santro car. He was under the influence of liquor and was carrying a bottle of liquor in his hand and started abusing them and gave a kick-blow on the abdomen of the deceased who was pregnant. When he tried to stop, accused pounced upon them due to which he received scratches and swelling on face. Then his sister asked him to leave. Thereafter he went to the house of his friend Bablu. Later on two/three persons came. They called Bablu and enquired about him and told that the condition of his sister was not good. Then he rushed to the residential quarter of his sister and found accused Rajiv who opened the door and the condition of his sister was precarious. His sister was having a son aged 13 months. He suspected that his brother-in-law Rajiv had forcibly administered poison with intention to kill his sister. Death had occurred due to mal-treatment by the accused and action be taken against him.

7. The investigation revealed that 14-15 days before the occurrence the accused had purchased organo phosphorus sold under the trade name of "NUVAN" from Sanjay Kumar, PW-13, a shopkeeper at Chail on the pretext that he required the same to kill the flies. It was also alleged by the prosecution that on the fateful day accused forcibly administered poison to the deceased in order to kill her. During the course of administration of poison deceased struggled as such sustained injuries on her face, lips and neck. Deceased was being harassed and treated with cruelty on account of demand of dowry by the accused and his parents. Chargesheet was filed under sections 302, 304-B, 314 and 498A read with section 120-B IPC.

8. The accused abjured the guilt and pleaded innocence. The prosecution in the course of trial examined 18 witnesses. Accused in his statement under section 313 Cr.PC did not deny the factum of the deceased having died due to poison. It was stated by him that the deceased had disclosed to him that she had consumed some drugs and had asked him to give her salty water. Deceased was under convulsion due to some drug. He had given her water to vomit. He had taken the

deceased firstly to Primary Health Centre at Chail and then to I.G.M.C. Hospital at Shimla. Deceased was a sensitive lady. His relationship with the deceased was cordial. He examined 3 witnesses in defence. A

9. The trial court acquitted the parents, however convicted the respondent husband for commission of the offence under section 302 IPC. B

10. The trial court came to the conclusion that the circumstantial evidence brought on record contained positive proof, credible sequence of events, factual truth linking the accused with commission of offence by means of forcible administration of organo phosphorus poison to the wife. The trial court based conviction upon the following circumstances C

(i) Relied upon the statements of PWs.6 and 11 regarding consistent mal-treatment, beating and thrashing by the accused to the victim. (ii) Landlord Dayal Singh has stated that while in a state of intoxication accused used to beat the victim and quarreled with her. On that he had asked him to vacate the house. Then the accused had shifted to the house in question. (iii) Accused was maintaining his criminality consistently. The conduct of the accused on the fateful night indicates that he came to the house and started beating and hitting Anil Kumar PW-8 and his deceased sister. (iv) He kicked on the abdomen of the victim though she was pregnant. Abdominal swelling was found by the Atopsy Surgeon Dr. Piyush Kapila, PW-3. (v) On the fateful night the accused had turned out the brother of the deceased PW-8 from the house at Chail after beating him. PW-8 suffered three injuries in the form of multiple scratches over neck, chin, face and other parts of the body. (vi) the accused was present in the room of the deceased. (vii) The nature of injuries which was found on the person of the deceased were ante-mortem. All injuries were on the front portion of the body and could be caused while she was lying on the bed. Such injuries could be found in cases of smothering and strangulation and forcible administration of poison. The injuries suffered by the victim on her lips, chin, throat and neck could be caused by the accused while administering poison forcibly. (viii) The accused did not open the door immediately but opened it after considerable time of five minutes. (ix) The accused did not take the deceased to the hospital and stated that nothing had happened to her and that she would be alright very soon. It was the duty of the accused being a doctor to immediately rush her to the hospital. The accused wanted the victim to breathe her last and thus delayed taking her to the hospital. H

- A It was not a case of self-poisoning considering the nature of injuries found on the deceased. (x) The domestic articles and luggage were scattered in the room. Child was crying and his small empty bottle which contained the organo phosphorus poison was found lying there. Its cap used as stopper was also lying and a pungent poisonous odour was present in the room. (xi) When the witnesses asked what had happened to her, B the victim had raised her hand towards the accused. Thus the victim raised her accusing finger towards the culprit that is her husband. (xii) The accused had purchased the organo phosphorus from the shop of Sanjay Kumar, PW-13, 14-15 days before the date of the incident for a sum of Rs. 50/-. There was no necessity for the accused to purchase C the same to kill flies. He purchased the same with design to cause end of the life of the victim. (xiii) Considering the nature of injuries found on the body of the victim they could not have been caused by convulsion.

11. The High Court has acquitted the respondent by the impugned judgment and order on the ground that the circumstances are not of D conclusive nature. Chain of circumstances is not complete so as to unerringly point to the guilt of the accused. Though Dr. O.P. Choudhary, PW-2 stated that injuries indicated positively the administration of poisonous substance forcibly to the victim, however, he could not say whether the deceased had consumed the poison herself to commit E suicide. Similar was the statement of Dr. Piyush Kapila, PW-3. His statement was also disbelieved on the ground that he could not rule out the possibility of the victim committing suicide by herself. The first information given to the police was that the victim had consumed some poisonous substance. Initially the offence under sections 306 and 498A was registered. Dr. Chaudhary, PW-2 had noticed only two injuries on F the person of the deceased. However, the injuries increased from 2 to 6 in the post mortem report submitted by Dr. Piyush Kapila, PW-3. The possibility of the injuries could be caused by convulsions was not ruled out. Possibility of injuries caused by convulsions is strengthened from the fact that number of ante-mortem injuries had increased from the period the victim was examined initially and the post mortem was G conducted. The prosecution has failed to prove that poison was in possession of the accused. Since the trial court has not convicted the accused under section 498A or section 304-B, IPC, it could not be said that the deceased was being ill-treated or harassed with cruelty on account of dowry. The evidence of shopkeeper Sanjay Kumar, PW-13 H from whose shop accused allegedly purchased poison, is not reliable.

Accused is a medical doctor. He has knowledge of poison. He would not create evidence against him by purchasing poison from Chail itself. Accused would not choose poison like organo phosphorous i.e., 'NUVAN' a pesticide which has a pungent smell like kerosene to kill the victim. He would have purchased better poison. The accused had administered salty water in order to enable the victim to vomit. This indicates that gastric lavage was carried out by the accused to save the deceased. He had accompanied her to Chail hospital and then to hospital at Shimla. The victim did not name the accused as responsible for administering poison and there was no occasion for her merely lifting her hand towards the accused. The conduct of brother of the deceased namely Anil Kumar, PW-8 is not free from doubt. The clothes of the deceased have not been produced to show that there were stains and traces of poison. When two views are possible one favourable to the accused is required to be adopted. Hence conviction has been set aside.

A

B

C

12. It was submitted by learned counsel appearing on behalf of the appellant that the High Court has illegally reversed the judgment and order of conviction passed by the trial court. Chain of circumstances is complete and proves the guilt to the hilt. Purchase of poison by the accused stands established. It was in possession of the accused stands established. It is not disputed that the deceased died due to poisoning. The accused had treated the victim with utmost cruelty, kicking her in the womb when she was carrying 8 months' child. Nature of injuries found on deceased indicates that it was a case of forcible administering poison to the victim while she has resisted. Accused in his statement under section 313 Cr.P.C. has not explained the injuries found on the person of the deceased. Dr. Chaudhary, PW-2, has stated that he could not make full examination of the body considering the precarious condition of the deceased, thus failed to mention all ante-mortem injuries found on the person of deceased. The post mortem report which records all the ante-mortem injuries has been unnecessarily doubted. It was not possible for the doctor to answer to the suggestions whether the victim had consumed the poison herself, it was not for them to state so. What was relevant as to their opinion they had stated that the nature of injuries indicated that she was administered the poison forcibly. The conduct of the accused also indicates that he did not take the victim to the hospital immediately and delayed it. He being a doctor knew the consequences of organo phosphorus poisoning and in spite of that he did not take the victim to the hospital despite requests being made by various witnesses.

D

E

F

G

H

A The police had taken the victim to the hospital. On being enquired by the eye-witnesses what has happened, victim had raised her hand pointedly towards the accused as she was in a precarious condition. Thus the accused did not take her to hospital immediately and ensured that she dies. The various circumstances found established by the trial court, unflinchingly and unerringly pointed towards the guilt of the accused.

B
 13. On the other hand, learned counsel appearing on behalf of the respondent has submitted that two views are possible in the case. The High Court as such has rightly given the benefit to the accused. Injuries were caused to the deceased while she was having convulsions. The witness Om Prakash PW-7 has stated that the deceased was trembling and her condition was critical. She was writhing in pain, thus possibility of deceased sustaining the injuries while she was under convulsions could not be ruled out. Modi's Medical Jurisprudence indicates that one of the symptoms after taking organo phosphorous poison can be convulsion also. The gastric lavage was given by the accused which is supported by the evidence of PWs.4, 5 and 7, they have stated that the bed on which the deceased was lying was wet and water had been splashed on the bed as well as on the floor of the room. As the accused was in the process of giving gastric lavage, he took time to open the door. The deceased might have scratched her face and neck as itching and irritation which take place due to poisoning. No DNA test was conducted to prove that the nail scratches on the face of the deceased were caused by the respondent-accused. There was no motive to administer poison; that the accused was not in possession of the poison. Accused would not have purchased the poison from a person known to him. He could have selected a better type of poison to kill his wife. The accused has undergone the sentence for more than four years. The son left by the deceased is now 17 years old and is being looked after by the accused. Thus this Court should take a lenient view and no case for interference in the judgment passed by the High Court is made out.

G
 14. In our opinion the judgment and order of conviction passed by the trial court was based upon proper appreciation of evidence, the circumstances found established by trial court in the instant case have been unnecessarily doubted and brushed aside lightly by the High Court. The High Court has unnecessarily doubted the post mortem report which recorded as many as aforesaid seven injuries. There were various contusions of big size on periorbital area, intraorbital area, forehead, upper eyelid, cheek, 8 cm. x 7 cm. contusion over the chin, contusion

over the lower lip, 11 cm. x 5 cm. multiple small abrasions over neck and upper chest, 10 cm. x 4 cm. contusion in infra-axillary area. The aforesaid nature of the injuries indicates that they could not have been caused by convulsions. The accused was in the company of the victim in the same room is not disputed. Thus, it was for him to explain the injuries found on the person of deceased. Exact number of injuries had not been noted by Dr. Chaudhary PW-2 as he himself had admitted that he could not examine the entire body physically as the condition of the victim was precarious and he was busy in giving her treatment then referred her to hospital at Shimla. The victim became unconscious at the house itself. The High Court has unnecessarily doubted the deposition of the autopsy surgeon who has clearly opined that the nature of injuries indicated positively the administration of poison forcibly to the victim. Such injuries could be caused while administering poison forcibly when victim was trying to save herself from that. In the cross-examination Dr. Choudhary, PW-2, has also stated that it could not be a suicidal case. However, on a suggestion being made to the PW-2 and PW-3 that it could be a case of voluntary consumption of poison by the victim to commit suicide, obviously the doctors were not able to deny the said suggestion as they were not eye witnesses. Moreover they were not supposed to be an arbiter on this issue whether the victim had taken the poison herself. Their objective opinion stands writ large that considering the nature of injuries it could be a case of forcible poisoning and in the process accused had caused injuries while deceased had struggled. Thus the approach of High Court cannot be said to be of objective assessment of evidence.

15. The accused was admittedly in the company of the deceased. It was for him to explain so many injuries found on the person of the deceased as to how they were caused including swelling in womb. He has totally failed to explain them. It was not stated by him that the injuries were caused to the deceased due to convulsions. It was not stated by him that she ever fell down during convulsions, if any. The injuries on her lips, chin, throat and neck etc. as held by the trial court, were caused while administering the poison forcibly is a strong circumstance against the accused which cannot be brushed aside lightly. More so, in view of the overall conduct of the accused to be discussed hereinafter. Injuries were on the front part of the body which indicates that the deceased was subjected to violence before she succumbed due to poisoning. Section 106 of the Evidence Act requires a person having special knowledge of the fact to explain the same as required by section 106 of the Evidence

A

B

C

D

E

F

G

H

A Act, and laid down by this Court in *C.S.D. Swami v. The State* AIR 1960 SC 7, *P.N. Krishna Lal & Ors. v. Govt. of Kerala & Anr.* 1995 Supp (2) SCC 187 and *Sidhartha Vashisht @ Manu Sharma v. State (N.C.T. of Delhi)* AIR 2010 SC 2352. Failure to explain that the deceased was unconscious position coupled with other evidence is a grave circumstance which militates against such a person.

B
16. The High Court has also erred in holding that since the trial court did not convict the accused under sections 498A and 304B IPC, it could not be said that the deceased was being ill-treated or harassed with cruelty on account of dowry. As such accused is entitled to benefit of doubt. There is overwhelming evidence on record indicating that the behavior of the accused towards the deceased was not proper and he was turned out of the house by landlord at Chail. The previous landlord of the accused namely Dayal Singh has clearly stated that under the influence of liquor, accused used to frequently beat the victim and quarreled with her due to that he had asked the accused to vacate the house. Thereafter the accused had shifted in the nearby house in which the incident has taken place. The statements of PWs.6 and 11 also indicate that there was consistent ill-treatment and incidents of beating and thrashing caused to the victim by the accused. There is nothing to doubt the statement of brother of the deceased namely Anil Kumar, PW-8 who was also given beating on the night of the incident. Anil Kumar has stated that the accused had given kick-blows on the abdomen of the victim while she was carrying in her womb pregnancy of 8 months, and the factum of pregnancy stands proved by the post mortem report that the foetus aged 8 months was recovered from the womb of the victim. Dr. Piyush Kapila PW-3 found abdominal swelling of the victim while conducting the autopsy which was obviously caused by the kick blow given by the accused. The statement of Anil Kumar PW-8 finds medical corroboration. There is nothing to doubt the statement of Anil Kumar that the accused had also caused injury to him in the form of multiple scratches over neck and face. Dr. R.K. Sharma, PW-1 has proved the injuries found on the person of Anil Kumar and has proved the injury report. The High Court has erred in holding otherwise.

17. Yet another circumstance which casts a grave doubt on the accused is that though he was fully aware that the condition of the victim was precarious and she was struggling for life due to organo phosphorous poisoning. In spite of that initially when the neighbours came hearing the shrieks of the victim, he did not open the door immediately and opened

the door only after five minutes. Even if same is ignored there was absolutely no reason for the accused to state to the neighbours when they asked him to take victim to hospital that nothing had happened to the victim and it was his family affair and she would be all right very soon. He intentionally delayed taking the victim to the hospital and it was only when the Police came that victim was taken to the hospital and was examined by Dr. Chaudhary PW-2 at 6 a.m. In case the accused was innocent he would have taken the victim to the hospital immediately and would not have declined the request of the neighbours and delayed her taking to the hospital and ought not to have waited for arrival of the police and thereafter when police had taken the victim to the hospital, he accompanied her to the hospital. The High Court has erred in holding that accused accompanied victim to hospital as such that circumstance is in his favour. Whereas after causing enormous delay and accompanying police with victim appears to be an effort to save himself and to know what transpires and for giving wrong history to doctors. Thus the conduct of the accused of not taking the victim to the hospital points a finger of doubt upon him. Men may lie but the circumstances do not, is the cardinal principle of evaluation of evidence. The overall circumstances unerringly point towards the guilt of the accused. Accused was well-aware that the victim was suffering from organo phosphorous poisoning, the bottle was also lying open. There was a bad odour of 'nuvan' poison in the room. Domestic articles and luggage were scattered in the room and the child was found crying. The room indicated tell-tale signs of violence. Several witnesses i.e. Dayal Singh, PW-6, Shiv Kumar, PW-10 and Gayatri Devi, PW-11 have clearly stated about it.

18. Shiv Kumar, PW-10, has clearly stated that on being asked what had happened, she raised her hand towards the accused, her husband. Similar is the statement of Anil Kumar, PW-8. Ram Kishan, PW-9 has also stated that the victim raised her hand towards the accused when asked as to what had happened. He could observe and feel that she had been administered poison by the accused forcibly. This last gesture of victim to raise her hand towards husband indicates that he had caused such condition. The victim was also crying to save her militates against suicidal attempt to kill herself.

19. Apart from that the High Court has discarded the evidence of Sanjay Kumar, PW-13, who is an independent witness. He has stated that 14-15 days before the accused had purchased Nuvan poison from his shop for a consideration of Rs.50/- on the pretext of killing flies etc.

A The trial court held that in summers there was no necessity to purchase a deadly poison for killing the flies. Accused intended to kill the victim and purchased the poison to cause the end of life of victim. The High Court has not believed the statement of Sanjay Kumar, PW-13 on the ground that the accused being a doctor and posted at different places could have purchased a better poison of sophisticated nature from elsewhere, he would not have created the evidence against him. The High Court has brushed aside the evidence of purchase of Nuvan for no good reason. Sometime the facts are stranger than fiction. There is absolutely nothing to doubt the statement of Sanjay Kumar for purchase of abovesaid Nuvan poison and when it was found in the house, it was purchased either by the victim or the accused. There is nothing to doubt that it was purchased by the accused and it was found in the room and due to this poison only the victim succumbed to death. The fact of giving salty water by the accused to the victim by itself is not enough to absolve him of the guilt. The injuries could not be said to be self inflicted. The accused has not stated to that effect, as such it was not necessary to go for DNA test as argued by the counsel for respondent.

20. Apart from that the administering of poison forcibly is supported by medical evidence in the form of injuries which were found on the front side shows sign of struggle by deceased to save herself in the said process. These injuries could not have been caused by convulsions and the overall conduct of the accused and the gesture of the deceased in pointing her hand towards her husband as the person responsible for her condition, delay caused by the accused in taking the victim to the hospital knowing fully well the kind of deadly poison organo phosphorous unerringly points towards his guilt and the chain of circumstances is complete.

21. This Court has considered in *Sharad Birdhichand Sarda v. State of Maharashtra* AIR 1984 SC 1622, case of murder by administering poison and dealt with mode and manner of proof in such cases. Four circumstances are to be examined before recording a conviction. (i) There was a clear motive for the accused to administer poison to the deceased, (ii) the deceased died of poison said to have been administered, (iii) that the accused had poison in his possession and (iv) that he had an opportunity to administer the poison to the deceased. The prosecution alleged that the husband administered the poison to her whereas defence took the plea that there was a strong possibility of her

H

having been ill-treated, being sensitive and impressible, she might have committed suicide out of depression and frustration arising from an emotional upsurge. The aforesaid tests stand satisfied in the instant case and the prosecution has proved the case beyond periphery of doubt. The conduct of the accused and gesture of the victim at the crucial time as projected in the case, medical evidence, evidence as to purchase of poison unerringly point towards the guilt of the accused.

22. It was also submitted by learned counsel appearing on behalf of the respondent-accused that the child now 17 years old and is residing with the accused, as such we should take a lenient view. That cannot be a ground so as to show any leniency in such kind of offence, particularly when the accused had not cared and caused death of his wife who was also a doctor and at the same time she was pregnant, carrying 8 months male child whose foetus was recovered from her womb. He had kicked the womb also that is why swelling in womb was found. In the circumstances, accused is not entitled to any lenient treatment as it can only be within legal parameters.

23. In the circumstances the High Court has gravely erred in reversing the well-reasoned judgment of conviction and order of sentence recorded by the trial court. Resultantly the appeal is allowed, the impugned judgment and order passed by the High Court is hereby set aside and that of the trial court is restored. The respondent is directed to surrender failing which he shall be taken into custody forthwith.

Devika Gujral

Appeal allowed.