Ram Gopal

Vs

State of Maharashtra

Criminal Appeal No. 143 of 1971

(A.N. Ray, D.G. Palekar JJ)

29.11.1971

JUDGMENT

PALEKAR, J. -

1.The appellant Ram Gopal is sentenced to death for the murder of one Zingrooji Sitaram by poisoning. This sentence was passed by the learned Sessions Judge, Nagpur and was confirmed by the High Court of Bombay (Nagpur Bench). The appellant has come to this Court by special leave.

2. The deceased Zingrooji Sita Ram who was about 60 years old at the time of his death was living in a house in the Telipura locality, Itwari Nagpur. He had a wife named Tulsabai who bore him four children. After selling his land at Dharampuri, a place in Ramtek Tehsil, he purchased a plot near Kamal Talkies in Kadhi Bazar locality of Nagpur, for Rs. 6,750/- about 9 years before the offence. He purchased it in the name of his wife Tulsabai and after erecting a temporary shed thereon, leased it out to a tenant by name Abhiman Mahar. After some time, the tenant was evicted and then the deceased installed a fodder cutting machine in that shed.

3. Appellant Ram Gopal deals in fodder and thus developed contacts with the deceased. He was living at that time near the Panchpaoli Police Station for about a year before the offence. He became friendly with the deceased. The accused is a family man with a wife, one daughter and three sons. The appellant frequently visited the house of the deceased.

4. The deceased Zingrooji wanted cash for the education of his sons and to finance his business. He put up the plot, purchased by him, for sale and the appellant offered to purchase it for Rs. 10,000/-. On December 5, 1967 Tulsabai, at the instance of the deceased, executed a registered sale deed for Rs. 10,000/- in the Office of the Sub-Registrar Nagpur. The document showed that the amount of consideration of Rs. 10,000/- had been already received. After the execution of the sale deed, the necessary mutations were made in the Municipal and Improvement Trust records in favour of the appellant and possession was delivered to the appellant immediately. The appellant constructed a Kacha house over the plot and started living therein with his family.

5. It is the case of the prosecution that although the sale deed showed that the amount of consideration had been paid, that was not a correct statement of facts. The appellant had not paid anything but had promised to pay the amount within six weeks of the execution of the sale deed. The deceased kept on pressing the appellant to pay, but the appellant put him off on one pretext or the other.

6. It was further alleged for the prosecution that on October 7, 1968 the appellant promised

Zingrooji to pay the amount on the next day and so he called him to his residence in the morning at about 8.00 a.m. Accordingly, after telling his wife that he was going to the appellant's house for fetching the amount, the deceased left the house at about 7.30 a.m. He called his son Gajanan to accompany him but as Gajanan had some other work the deceased left the house alone. The distance between the house of the deceased and that of the appellant is about a mile. The way to the appellant's house lies along the house of one Jangloo. The deceased met Jangloo and told him about his mission. He also requested Jangloo to accompany him to the appellant's house asking him that he may remain somewhere on the road side while the deceased himself went to the house of the appellant for receiving the money. After they reached the house, Jangloo remained outside taking care not to be conspicuous and the deceased entered the courtyard of the appellant, which had a fence of bamboo slits. There was a khatla (cot) in the courtyard on which the deceased took his seat. The appellant was in the house and he was seen having conversation with the deceased. In a short while the appellant went inside and returned sometime later. His wife came out with a cup placed in a saucer which she gave to the appellant who handed over the same to the deceased. Apparently, it was a cup of tea. No sooner had the deceased drained the contest of the cup and kept it on the floor, he started feeling giddy and restless. He then rolled on the cot. Immediately the appellant brought water in an aluminium tumbler and gave it to the deceased. Only some portion of the contents of the number went down the throat of the deceased and some spilled out of his mouth. Immediately thereafter the appellant picked up his bicycle and after telephoning to the Police Station, went to the Police Station. The message given by the appellant on the phone was received at about 9.00 a.m. by the Head Constable incharge of Panchpaoli Police Station and was duly recorded in the Station Diary. Immediately another Head Constable Ganeshlal Ramlal accompanied by the appellant left for the house of the appellant. There he saw the deceased lying on the cot in a moribund condition. Ganeshlal Ramlal immediately arranged to send Zingrooji to the Hospital. But by the time they reached the Hospital, Zingrooji was dead. His death was reported immediately to the Police Station.

7. Head Constable Ganeshlal who had remained behind after sending the deceased to the Mayo Hospital examined the spot and the surroundings where the deceased was found lying unconscious. Ganeshlal noticed vomit of the deceased near the cot. He, therefore, made a panchnama and collected the vomit for analysis. The appellant produced the tumbler in which he had served water to the deceased. There was some water still left in it. The tumbler and the water were attached for analysis.

8. P.S.I. Dongre noticed at about 11.00 a.m. that there was an entry in the Station diary regarding the accidental death of Zingrooji. He, therefore, went to the Mayo Hospital for conducting the inquest of the dead body. By that time, Head Constable Ganeshlal prepared the panchnama of the scene of offence and the articles seized by him. At the time of inquest, poisoning was suspected and so the body was delivered to the Medical Officer for post-mortem. P.S.I. Dongre thereafter went to the house of the appellant for the search of poison. The house was searched. Nothing incriminating was found except a few pieces of paper with traces of some whitish substance. These pieces showed traces of Sodium Nitrate, which however, was not the substance used as poison in this case.

9. Dr. Humancy who performed the postmortem examination suspected death by poison. He, therefore, preserved the viscera in two bottles one labelled "stomach and its contents" and the other labelled "liver, spleen, kidney and small intestines". The viscera was sent to the Chemical Analyser Mr. Sakharam Tukaram Sarote, Assistant Chemical Analyser who made an analysis of the contents. The results of the analysis were described as follow :

"Kerosene oil was organo chloro compound which may be from an insecticide were

detected."

10. The case for the prosecution was that the appellant had administered some insecticide in Kerosene oil either through the tea or the water given to the deceased and it was as a result of the poisonous insecticide that Zingrooji had died. The prosecution further alleged that the appellant had administered this poison because the deceased was pressing him for the money.

11. The appellant pleaded not guilty. He admitted that between 8.00 a.m. and 9.00 a.m. the deceased had come to his house and was sitting on the khatla in his courtyard. At that time the deceased appeared to be slightly intoxicated. Within about 5 to 10 minutes, the deceased vomitted and appeared to collapse. The deceased asked for water to wash his mouth and so a tumbler of water was given to him. The deceased tried to wash his mouth with the water but was unsteady and shaky. The water fell on his clothes and immediately the deceased dropped down on the cot. Thereafter the appellant went to the Police Station and made his report.

12. The High Court which substantially agreed with the findings of the learned Sessions Judge, found the following circumstances established :

(1) That the deceased had a grievance against the appellant because he had not paid the consideration for the sale deed and while the deceased was pressing him for the money the appellant was merely giving him empty promises.

(2) That the appellant had called him that morning for the purpose of collecting money.

(3) That the deceased was hale and hearty and had not taken any food or drink before he left his house and reached the house of the appellant at about 8.00 a.m. or sometime later.

(4) That at about 8.30 a.m. the appellant offered the deceased a cup with a saucer the contents of which were swallowed by the deceased.

(5) After the deceased drank the contents from the cup, the deceased became restless and started rolling on the cot. Soon thereafter he became unconscious.

(6) According to medical evidence an organo chloro compound may cause death from between 20 minutes to four hours. The deceased had died on the way to Mayo Hospital a little after 9.30 a.m.

(7) The contents of the visecra showed that it contained organo chloro compound which is a deadly poison.

(8) That conduct of the appellant immediately after the deceased became unconscious was as follows -

(a) the appellant set up the theory of suicide in his report to the Police;

(b) the appellant did not share with the deceased the contents of the cup and saucer; and

(c) while he did not produce the cup and saucer, the appellant only produced a tumbler with water.

13. It is contended before us on behalf of the appellant that the High Court has misread and misapprehended the evidence and consequently there has been a grave miscarriage of justice. It is

submitted, therefore, that the findings of the High Court are liable to be reviewed by this Court.

14. The case depends entirely upon circumstantial evidence. In Hanumant v. The State of Madhya Pradesh (1952 SCR 1091 : AIR 1952 SC 343), this Court had occasion to consider how circumstantial evidence should be dealt with. After pointing out that in such cases there is always the danger that conjecture or suspicion may take the place of legal proof, the court recalled the warning addressed by Baron Alderson to the jury in Reg. v. Hodge ((1838) 2 Law 227). The mind was apt to take a pleasure in adopting circumstances to one another, and even in straining them a little, if need be, to force them to from parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete. And then the court proceeded to observe :

> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

15. Further, this Court, in Dharambir Singh v. The State of Punjab (Criminal Appeal 98 of 1958, decided on November 4, 1958), dealing with a case of poisoning observed that where the evidence is circumstantial the fact that the accused had motive to cause death of the deceased, though relevant, is not enough to dispense with the proof of certain facts which are essential to be proved in such cases. Three questions arise in such cases, namely (firstly), did the deceased die of the poison in question ? (secondly), had the accused the poison in question in his possession ? and (thirdly), had the accused an opportunity to administer the poison in question to the deceased ? It is only when the motive is there and these facts are all proved that the court may be able to draw the inference, that the poison was administered by the accused to the deceased resulting in his death.

16. We shall first deal with the motive part of the accused. On this part of the case, there is the evidence of Tulsabai, PW 1, Ansuyabai, PW 2, Jangloo, PW 3 and Govindrao Ghavghave, PW 7. The sale deed dated December 5, 1967 is at Ex. 5. The consideration of Rs. 10,000/- was admittedly not paid before the Sub-Registrar at the time of the registration. But the sale deed specifically mentions that the amount had been received at the time of the execution of the deed by the vendor Tulsabai. Contrary to this recital in the sale deed, the case is put forward that the amount had not been received at all. It is alleged by Tulsabai in her evidence that on the night of the sale deed when she asked her husband Zingroo whether he received the sale price of the plot, her husband told her that the accused promised to pay one and half month later and he was going to get that money from his father-in-law. Tulsabai spoke about this to Ghavghave, PW 7 who was her neighbour and relation. Ghavghave expressed surprise that they should have transferred the plot without receiving the consideration amount. He, therefore, advised the deceased Zingroo to take immediate action for the recovery of the price. No action, was however, taken,. We are merely told that Zingroo was demanding the amount from time to time but he was being put off on one pretext or the other. Some sort of evidence was produced to show that the appellant was not really so financially sound at to collect Rs. 10,000/- and pay them. That evidence would make it more probable that the sale deed

would not be executed without receiving the consideration. Neither party was rich enough. The plot was required to be sold because Zingrooji wanted money for the education his children and for financing either his own or his wife's business. It could not be also said that the appellant was so intimate with Zingrooji that he could have that much of confidence in him as to execute the sale deed without receiving the price. They had known each other only for a year before the event and though it may be that they knew each other in the course of the trade, there is nothing to show that Zingrooji would have blind confidence in the appellant. It is further to be noted that at the time of the registration of the document Tulsabai was not only accompanied by her husband but also an Advocate. Immediately after executing the sale deed even he mutations were effected in favour of the appellant and possession delivered. If the consideration had not been received, at least delivery of possession could have been delayed. There is, therefore, considerable doubt as to whether there is substance in the evidence that the amount of the sale price had not been received. The High Court does not appear to have been very much satisfied about he alleged non payment, but thought that the deceased had a grievance that he had not been paid. For this reliance was placed on the evidence of Ansuyabai, PW 2 whose fodder cutting machine was not far way from the house of the appellant. Only an open piece of land divides the two. She says that she had seen Zingrooji frequently coming to the appellant and he had told her that he had not received the price of the plot from the appellant. She also says that the appellant Ram Gopal had also told her that he had not paid the price of the plot to the deceased. One doubts whether the appellant would tell her that he had not paid the price. Suggestions have been made in the cross-examination that she was not on good terms with the appellant and though the suggestions have been denied, the detailed manner in which she has tried to support the prosecution case against the appellant on every point makes her evidence suspect. Jangloo the other witness, as it will be seen later on, is not also reliable witness. According to him the source of his knowledge that the amount of sale deed had not been paid, was Zingrooji himself. It is on the evidence of such witnesses that the High Court came to the conclusion that Zingrooji had a grievance that he had not been paid. We do not see how if he had already been paid, he could have a grievance. Such a grievance being absolutely unfounded cannot be regarded as probably existing. Ghavghave, we know, had advised Zingrooji and his wife to take immediate action for recovery. But not even so much as a notice of demand was sent by them though Zingrooji died 10 months later. On the other hand, we have evidence to show that apart from Zingrooji making any claim against the appellant, the appellant was making a demand of Rs. 1,500. When the inquest panchnama was held on October 8, 1968 a registered letter in an envelope was found in the left side pocket of the shirt of the deceased. The letter is Ex. 25 and the envelope is Ex. 26. The letter is dated August 25, 1968 and seems to have been delivered to the deceased on September 26, 1968 that is to say about 10 or 12 days before the alleged offence. In this letter the appellant accuses Zingrooji and his relations of goondaism and makes the following demand :

> "You are informed that you had taken Rs. 1,500 on credit. I have sent a notice before to pay the interest on that amount but you refused the notice and returned. Again you are informed that in case you failed to return my amount with interest within 7 days, a civil suit will be filed and you are liable with costs."

The learned Sessions Judge has come to the conclusion that such a notice had been given by the appellant and it had been received by Zingrooji on September 26, 1968. The point of this letter is that there had been a clear break in the relations between the appellant and Zingrooji because the appellant had accused him of goondaism and had also informed him in that letter that he was sending a copy of the letter to the Police Station. In spite of receiving such a notice Zingrooji does not send a reply to the same and claim the amount which he was saying was due from the appellant. In this connection it may be further noted that Ghavghave says that just a week before his death, he

had advised the deceased that he should take legal action but on that occasion also the deceased told him that the appellant would be paying his money. Apparently this talk must have taken place after the appellant's notice had been received by Zingrooji. Having regard, therefore, to the very indifferent manner in which Tulsabai and Zingrooji were pursuing their claim to the sale price, one doubts very much whether there is any truth in the allegation that the sale price had not been received by Tulsabai. In any case, if motive as a circumstance is put forward in a criminal case, it must like any other incriminating circumstance be fully established. It is not possible to hold having regard to the probabilities of the case that the motive alleged by the prosecution is fully established.

17. Even assuming that the amount had not been paid by the appellant, we do not think that it can be a motive for the crime. The claim, if true, would not disappear with Zingrooji's death. The sale deed was executed by Tulsabai and she could always make the claim against the appellant. There was no obvious advantage in doing away with Zingrooji, because Tulsabai and her grown up children were quite capable of making a demand as they have actually done after the death of Zingrooji.

18. The evidence with regard to the alleged administration of poison has left many gaps in the case. There is no evidence whatsoever that the appellant had any organo chloro compound in his possession. In Taylor's Principles and Practice of Medical Jurisprudence Vol. II Twelfth Edition we have a section on Chloro compounds at pages 451 to 453. It appears that many chloro compounds have been synthesized as insecticides and pesticides. the more common disinfectors are : (1) D.D.T. (2) Gammexane Lindane (3) Benzene Hexachloride, (4) Pentachlorophenol, (5) Aldrin, (6) Chlordan, (7) Dieldrin, (8) Endrin etc. It is said that these insecticides and pesticides are easily available in the market. As the book notes, all these are strong stomach and contact poisons to insects. They are not highly poisonous to man though they can be absorbed readily through the skin. Acute poisoning may occur when a chloro compound like D.D.T. is taken in considerable dosage by mouth, especially when dissolved in certain organic solvents. In sublethal dosage gastro-enteritis and vague nervous symptoms develop rapidly and pass of with equal rapidity irrespective of treatment. It is further noted that in lethal dosage, as in suicides or in children drinking concentrates by accident, death can follow within an hour - in convulsions. The learned author further observes : "It is possible, therefore, to absorb a fatal dose suicidally but it is not likely to occur accidentally, or to be used with intent to murder. A number of cases have occurred in which substances of this class have been administered with intent to injure or annoy".

19. The prosecution had examined Dr. Deshpande, PW 4 who at the time was the Professor and head of the Pharmacological Department, Medical College, Nagpur. Apart from saying that pesticides are poisons, that they are not soluble in water and that endrin is a deadly poison, he did not say much in his evidence. In his cross-examination, however, he admitted that pesticides sprayed on standing crops, or mixed for preserving grains or sprayed on orchards might leave behind some trace. He added, however, that this was his layman's surmise. This only goes to show that the Doctor had not studied in depth the nature of these poisons. When examined in the High Court under Section 428 Criminal Procedure Code he stated that organo chloro compounds when they are prepared in water, wettable or in the emulsion form can be given in milk or tea. He was not sure whether the person who takes that compound will or will not get that smell. Relying upon the Clinical Handbook on Economic Poisons (U. S. Department of Health, Education and Welfare Public Health Service), he stated that vomitting is uncommon in Endrin. He could not give his opinion whether in he case of other organo chloro compounds there would be vomitting or not. He then cited the passage from the above hand-book which related to an episode where contaminated bread has been eaten. The results noticed were mild illness involving dizziness, weakness of the legs, abdominal discomfort and nausea but usually not vomitting. It is on this passage that the

Doctor relied for his opinion that vomitting is uncommon in Endrin. He, however, admitted that if the person who was administered organo chloro compound in a liquid form and if he immediately vomits, then there would be traces of that compound in the vomit. He ask admitted that he would not be able to say exactly after what time the reaction would start because one does not have the data about the exact administration of the drug and the starting of the symptoms in human beings. Though in his earlier statement before the trial Court, he had said that he was not sure whether pesticides are soluble in kerosene, before the High Court admitted that organo chloro compound can be mixed with kerosene and other solvents. He, however, admitted that the taste of these compounds is like chlorine. It has strong smell. There was a possibility of a person who takes tea with this compound getting a smell of kerosene or chlorine which was offered in tea. In the case of endrin he added that 0.2 to 0.25 gram per kilogram of the weight of the person is sufficient to cause convulsion in a man.

20. The evidence of the Assistant Chemical Analyser Mr. Sakharam Tukaram Sarote, PW 10 is that he did not find any poison either in the tumbler which contained the water nor in the vomit scrapings. However, after analysing the viscera which had been sent to him, he found kerosene oil and organo chloro compound which in his view might be from insecticides. He produced Ex. 38 which contained the results of his detailed analysis. But the same which is couched in scientific terms does not appear to have been explained either in the trial Court or in the High Court. We asked the learned Counsel for the State if he could shed any light on the same but he was unable to do so. It may be, however, noted that Mr. Sarote in his cross-examination admitted that he had not measured the quantity of kerosene and Chloro compound found in the viscera.

21. Neither Dr. Deshpande nor Mr. Sarote impressed us as authorities on the subject of organo chloro compounds or their effects as poisons on the human system. Pesticides are very commonly used in households. Pesticides like D.D.T., Gammexane, etc. are easily available in the market and are used for various purposes, specially, in urban households. The possibility the same being found in the human system is not completely eliminated. Mr. Sarote has not measured the quantity actually found in the viscera and that in our opinion is a serious deficiency in the present case. We have already referred to Taylor's opinion that it was possible to absorb a fatal dose suicidally but it is not likely to occur accidentally, or to be used with intent to murder. The reason obviously is that the taste or the smell is so repulsive especially when taken with kerosene as solvent, that unless it is self administered as in the case of suicide it would neither be swallowed either by accident or used with intent to murder. Taylor has noted that Dr. Hill had estimated the mean lethal dose for man to be between 150 and 600 mg. per kilogramme body weight and the accepted view seems to be that it was more likely to be nearer the maximum figure, that is 600 mg. per kilogramme depending to some extent upon the solvent used. Taylor has reported the case of a market gardener's labourer who had drunk a concentrated emulsion of D.D.T. and who was found dead within an hour as in the present case. The autopsy of that labourer showed that there was 6 ounces residue found in the stomach. The reside contained 20 per cent D.D.T. in methylcyclohexanene and the amount D.D.T. swallowed was estimated at 34 g. which was the equivalent of 500 mg. per kilogramme bodyweight. Two things are apparent from this case. One is that if a person dies within about an hour of the administration of the poison, the residue would be found in the stomach at the time of autopsy secondly about 34 gms. of D.D.T. would require to be swallowed in order to cause death within one hour. Indeed constitutions very and more or less lethal dose may be necessary in particular cases for causing death. But there can be no doubt that a large quantity of poison in emulsion from would have to be imbibed before death may result. In the case with which we are dealing we have absolutely no idea as to the quantity of the poison imbibed or whether what was imbibed was sufficient to cause death. Lesser quantities, though imbibed, do not cause death and Mr. Sarote has

not explained whether the solution of coarsen and chloro compound which he found was negligible or lethal. The deceased according to the High Court died of this poison, which in its opinion must have been administered to him through tea. It has not been explained as to whether if a lethal dose of chloro compound dissolved in kerosene is administered in a cup of tea the victim while drinking it would not be repelled either by its taste or smell. To add to it, there is the evidence of the victim having a vomitted immediately after drinking the tea and that vomit was sent to the Chemical Analyser for analysis. Dr. Deshpande admits that in such a case the vomit should show the presence of the chloro compound. But Mr. Sarote has stated that on an analysis of of the vomit, he did not find any poison. The High Court has brushed aside this important circumstance by saying that the vomit was not really vomit but possibly it might be a portion of the water which was given through the tumbler. According to the High Court some of it might have fallen on the ground and some on the shirt and this was described as vomit. We do not think that such view was justified. Vomit is vomit and everybody knows what it is. It is described as vomit in the panchnama and it had been sent to the Chemical Analyser. The same had been scraped from the ground on which it had fallen. A portion if this vomit had fallen on the shirt and even the Doctor who performed the post-mortem has noted in his postmortem examination that the shirt which had been sent to him was partly soiled and stained with "vomitting matter". The shirt was not sent to the Chemical Analyser probably because some part of the same vomit which was scraped from the earth had been sent. But there can be no doubt at all that the Investigating Officer and the Panaches would not describe mere water as vomit, nor would the Doctor describe what he found on the shirt as "vomitting matter". Now if the vomit did not disclose any trace of chloro compound immediately after the tea containing it was swallowed that would indeed be a very important circumstance in favour of the appellant. It would mean that the chloro compound, if any, must have been already there in the stomach before the tea was taken.

22. Even the oral evidence with regard to the administration of the tea in a cup and saucer does not appear to be convincing. The important witness is Jangloo, PW 3. He had accompanied the deceased but was watching from a distance. In his examination-in-chief, he stated that while sitting by the side of the road, he saw the daughter of the accused going out with a pot, and returning with the pot and handing it over to the appellant. He thought that it contained milk. Then the appellant went inside the house. Thereafter the deceased went inside the court-yard and sat on the Khatla (cot). The appellant came out and sat in a chair near the Khatla. When they were talking, the wife of the appellant brought a cup placed in a saucer and handed it over to the appellant. The appellant offered the same to the deceased. The deceased then drank it, which according to the witness, must have tea. Immediately, after drinking it, according to the witness, the deceased became restless and he saw the wife of the appellant fetching a tumbler of water. She gave the tumbler to the appellant who gave it in the hand of the deceased. The accused could not lift the tumbler to his mouth, it spilled over his body and the tumbler dropped from his hand. The cross-examination of this witness, however, shows that he has very much improved his story. The police has recorded his statement that same evening but in that statement, Jangloo had not stated anywhere about the serving of a cup by the appellant to he deceased. On the other hand, his case was that as soon as the deceased had occupied a seat on the bench and the appellant set in a chair nearby, appellant's wife brought a white tumbler and gave it to the appellant. The appellant offered that tumbler to the deceased but the deceased declined. Thereafter according to Jangloo in his statement before the police, two females of the house forcibly caught hold of the deceased by his hands and the appellant emptied the contest of the tumbler into the mouth of the deceased. It is rather difficult to see how the witness of this kind can at all be believed. The High Court thought that there was really no discrepancy. But with all respect, the discrepancy and contradictions are so glaring that no court can afford to ignore them. The other

witness is Ansuyabai PW 2. In the normal course this witness could not have seen from her house what was happening and so to account for her presence near the house of the appellant, she stated that when she was sitting near her fodder cutting machine where a truck of fodder was being unloaded, she heard a loud exchange of talk between the appellant and the deceased Zingrooji. She thought that they were quarreling with each other. So she went ahead and reached the door of the appellant's house. On coming to the door, she saw no quarrel. All that she saw was that Zingrooji was sitting on a cot and the appellant was handing over a cup placed in a saucer to the deceased. She thought it to be a cup of tea. Zingrooji drank from the cup and immediately afterwards he became shaky and started rolling on the cot. Then the appellant brought a tumbler and administered its contents to the deceased Zingrooji. Some portion of the contents of the tumbler went down the throat of the deceased and some spilled out of his mouth. If we read the whole of the evidence of this witness that leaves the impression that she is a sort of omnibus witness put up with a view to give evidence in the case on all conceivable points which are damaging to the accused. She has even spoken about the financial condition of the appellant. The witness, however, did not notice how her evidence with regard to the occasion which brought her near the appellant's house is self-contradictory. She was engaged in unloading the truck of fodder some distance away from that place. She could not have seen what was happening in the appellant's house. If the appellant was quietly offering the cup of tea and the deceased was drinking it, she could not have heard the loud exchange of words between the appellant and the deceased. So she invented the story that she heard loud exchange of talk between the appellant and the deceased from which she got the impression that they were quarreling. Even Jangloo does not say that they were quarreling. In the nature of things, if the appellant intended to quietly administer poison he would not have raised a quarrel to attract the notice of others. Therefore, the story of loud exchange of words and quarreling was deliberately invented by this woman to account for her presence at the house of the appellant. We do not think that in case of murder, we can safely accept this sort of evidence. Therefore, the story too, namely that something was given in a cup, cannot be believed. When the police came later, there is no evidence that any cup was attached. The assertion on behalf of the prosecution is that the offending cup might have been removed by the appellant or the other members of the family and possibly concealed or destroyed. This is, however, merely a conjecture. The fact is that the story of administration of poison in a cup of tea can not be regarded as proved.

23. Some reliance was placed on the conduct of the appellant after the deceased collapsed on the cot. It appears that he first telephoned to the Police Station from a neighbour's house and then went to the Police Station on a bicycle. The message he gave on the phone at 9.10 a.m. was recorded in the diary of the Station and is Ex. 43. The message says that some money of he appellant was due from Zingrooji. That some days earlier the appellant had served a notice on Zingrooji to pay the amount and that on that day at about 8.30 a.m. Zingrooji came to the appellant's house and said that he would pay him. Thereafter the appellant offered tea to Zingrooji. Zingrooji asked for water from the appellant. On the water being given, Zingrooji put some medicine in that water and the water became black and Zingrooji drank that water. He held the hand of Zingrooji but some water still remained in the pot. In other words, the prosecution relied upon this information to suggest that the appellant had suggested that the Zingrooji had committed suicide and this he must have done because he had a guilty conscience. Since we have discarded the evidence of the alleged eye witnesses, one cannot say whether this message given on the phone immediately after the deceased had collapsed, was in accordance with facts or was invented through sheer panic. The tumbler containing the water was produced before the police immediately after the complainant returned from the police station but the same did not show any traces of poison. It is not unlikely that Zingrooji had taken something in the water which the appellant at that time simply thought was a

medicine. It may also be that having seen that the man was collapsing at his door step, the appellant invented the story. However that might be, this conduct cannot be taken as an incriminating circumstance against the appellant, since the prosecution itself has failed to establish the case properly.

24. In the result, we allow the appeal, set aside the conviction and sentence and acquit the accused. He may be released forthwith unless required in any other case.

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