

State of Uttar Pradesh

Vs

Samman Dass

Criminal Appeal No. 17 of 1971

(J. M. Shelat, R. Khanna JJ)

11.01.1972

JUDGMENT

KHANNA, J. -

1. Samman Dass alias Samman Lal, aged 19 years, was convicted by Sessions Judge, Faizabad under Section 302, I.P.C., for causing the death of his wife Putlibai by throttling her and was sentenced to death. On appeal as well as in the reference made to it for the confirmation of the death sentence, the Allahabad High Court set aside the conviction of the accused and acquitted him. The State of Uttar Pradesh has filed this appeal by special leave against the above judgment of the High Court.

2. The accused was married to Putlibai, who was nearabout of the same age as the accused, on May 14, 1968. Putlibai was the daughter of Gurmukh Das (PW 8) of Azamgarh, while the accused is the son of Shobbamal of Faizabad. The accused lived with his parents in quarter No. 1831 in Ram Nagar Colony of Faizabad. More than 300 families of Sindhis live in this locality. The non-Sindhis occupy only a couple of houses. There are a number of blocks of buildings in the colony. Each of those his uncle Parumal and the wife of Parumal, who is sister of the mother of the accused, also lives in his quarter.

3. The accused had been engaged to Putlibai about a year before the marriage. According to the prosecution case, about 5 or 6 months after the engagement the accused went to the house of Gurmukh Das in Azamgarh to see Putlibai. After having a look at Putlibai the accused came to Faizabad and stated that he would not marry Putlibai as she was not of fair complexion. When Gurmukh Das (PW 8) learnt that the accused had refused to marry his daughter, he convened a panchyat. The father of the accused then became agreeable to marry the accused with Putlibai. The marriage accordingly took place on May 14, 1968. After the marriage Putlibai came to Faizabad and lived with the accused in his parents quarter for about two and a half months. Gurmukh Das, father of Putlibai, it is stated, then came and took her to his house. Putlibai after that came to the house of her husband of October 15, 1968.

4. The death anniversary of Sain Kanwar Ram, a Sindhi saint, was celebrated by the Sindhis in Ram Nagar Colony of Faizabad on the night between October 17 and 18, 1968. The singing of the devotional songs continued up to 10 a.m. on October 18, in an open maidan in the Ram Nagar Colony. The said maidan is at about a distance of 90 paces from the quarter of the accused. Most of the Sindhis of Ram Nagar Colony attended the celebrations. The prasad was distributed at about 10 a.m. on the close of the celebrations.

5. The case of the prosecution is that Bhagwan Das (PW 1), who is brother of maternal grandfather of Putlibai, after taking Prasad took a riksha and started going to his grocery shop in Mohalla Chowk, Faizabad. When Bhagwan Das passed in front of the quarter of the accused, he heard shrieks. Bhagwan Das then shouted as to what the shrieks were about. Bhagwan Das also went to the front door of the quarter of the accused and knocked there. On hearing the shouts of Bhagwan Das, Choith Ram (PW 2), Ayal Das alias Aimal (PW 6), Shobhraj (PW 7) and one Kirpal Das also joined Bhagwan Das. Bhagwan Das, Choith Ram, Ayal Das and Shobhraj all live in that locality. Choith Ram and Shobhraj were passing through the lane at that time after taking Prasad. Ayal Das, who too had taken Prasad, was taking water at a place about 40/50 paces away from the quarter of the accused when Ayal Das heard shouts. The front door of the quarter of the accused was found bolted from inside and there was no response to the knocking at the door. Bhagwan Das and others who had joined him then went to the back door of the quarter of the accused and knocked at the back door. The back door which opens in a very narrow lane was also found bolted from inside. There was no response even to the knocking at the back door. Bhagwan Das and his companions then thought of going again to the front door of the quarter. When Bhagwan Das and his companions reached near a well at a distance of 10 paces from the back door of the house of the accused, they heard the noise of someone jumping. They then looked back and saw the accused who jumped over the back wall of his quarter. The accused wanted to run away but Bhagwan Das and his four companions caught hold of the accused and did not allow him to escape in spite of his entreaties. The accused appeared worried at that time and there was redness in his eyes.

6. At the asking of Bhagwan Das, it is alleged, Choith Ram, PW 2, went inside the quarter of the accused by scaling over the wall which is about 7 feet high. Choith Ram then opened the back door. Bhagwan Das along with the companions went inside the quarter of the accused and found Putlibai lying dead on a cot in one of the rooms of the quarter. The door of this room was slightly open. No one else was present in the quarter at that time. Just then there was a knock at the front door of the quarter. It was opened by Choith Ram. The mother of the accused who had also gone to take Prasad then came inside the quarter. On seeing the dead body of the deceased, the mother of the accused started crying. Shobhamal, the father of the accused, whose shop is situated in Sabzi Mandi, came after about one and a half hour. On the arrival of Shobhamal, Bhagwan Das told him everything. Shobhamal then wanted to lift the dead body of Putlibai for consigning it in the river but he was told by Choith Ram and others that they would not allow the dead body to be removed till the arrival of the parents of Putlibai. Bhagwan Das, in the meanwhile, directed one Gurmukh Das, brother of Choith Ram, to go in a taxi to Azamgarh and bring the parents of Putlibai.

7. At about 3 p.m. it is stated, Shobhamal, father of the accused, stated that there was no idea in keeping the dead body for a long time and that if Bhagwan Das and others had any suspicion, a doctor could be sent for. Bhagwan Das and his companions then told Shobhamal to call the doctor. Shobhamal thereupon deputed one Bhagumal to call a doctor. Bhagumal then went and contacted Dr. Hansraj Singhal (PW 4) at the latter's residence at about 4 p.m.

8. Dr. Singhal, it is alleged, then went to his clinic and from there took his diagnostic bag and thereafter came to the quarter of the accused. The doctor found the dead body of Putlibai lying on a cot. The colour of her face was blue. The face was swollen and the eyes were slightly open. Pupils were dilated and non-reacting to light. The mouth was slightly open and there were finger marks on the left and right side of her neck. There were also marks of some abrasions on both the elbows besides a contusion on the right palm. As Dr. Singhal was concerned only with the question as to whether the death of the deceased was normal or was the result of some foul play, he did not make a more detailed examination of the dead body. Dr. Singhal came to the conclusion that the death of

Putlibai was not natural but was due to throttling. The doctor told this thing to Bhagumal. The doctor added that the police should be informed and that otherwise he would himself inform the police on reaching his clinic. After saying this the doctor left the quarter. After the doctor had gone for a distance of about two furlongs he thought of enquiring the name of the deceased, her husband and the particulars of the address. He consequently returned to the quarter of the accused and after getting the necessary information, went to his clinic. Before reaching the clinic, the doctor also telephoned to the police station about the death of Putlibai from a shop near his clinic.

9. In the meanwhile, immediately after Dr. Singhal had left the quarter of the accused, Bhagwan Das (PW 1) got a report written by Dayal Das (PW 10). The report was then signed by Bhagwan Das and was taken to police station, Kotwali at a distance of about two miles from the place of occurrence. The report was handed over at the police station at 5 p.m. Mohd. Amin (PW 9), head clerk in the police station, then prepared a formal F.I.R. on the basis of the report of Bhagwan Das. A copy of the first information report was sent to Sub Inspector, Ram Gulam Chaudhari who was present in station Fatehganj. The Sub-Inspector then went to the quarter of the accused and reached there at about 6 p.m. The Sub-Inspector took the accused, who had been secured at the spot, in his custody. The dead body of the deceased was found by the Sub-Inspector lying on a cot. After preparing the necessary documents, the Sub-Inspector sent the dead body to the mortuary.

10. Post mortem examination on the dead body of Putlibai was performed by Dr. Vijay Pal (PW 3) at 11.45 a.m. on October 19, 1968. In the opinion of Dr. Vijay Pal the death of Putlibai deceased was due to asphyxia caused by throttling.

11. After necessary investigations, a challan was put in against the accused.

12. In his statement under Section 342, Code of Criminal Procedure before the committing magistrate the accused denied the prosecution allegations and stated that on the day of occurrence, he had gone to his father's shop at 9 a.m. He was called from that shop at 9.30 a.m. after being told that the condition of his wife was serious. The accused then wanted to call a doctor but the doctor was not available. According to the accused he was falsely involved in this case at the instance of Bhagwan Das and Parumal who did not want that he should marry Putlibai.

13. In this statement under Section 342 of the Code of Criminal Procedure in the Court of Sessions, the accused admitted that he had been married to Putlibai deceased on May 14, 1968, and that they had been living together in the quarter of the accused along with the parents of the accused as well as his uncle and aunt. The accused further admitted that he had been engaged to Putlibai before his marriage but denied that he had refused to marry her. The allegation about the gathering of a panchyat too was denied by the accused. The accused admitted that Putlibai came to the quarter of the accused on October 15, 1968. The fact that there was celebration by the Sindhis living in the locality, of the death anniversary of Sain Kanwar Ram on the night between October 17 and 18, 1968, was also admitted by the accused, but according to him, the Prasad was distributed at 6 or 7 a.m. The prosecution allegations about the hearing of shrieks from his quarter as well as about his jumping over the back wall was denied by the accused. The accused likewise denied the allegation that he was secured by Bhagwan Das and others. The accused added that Bhagwan Das, Choith Ram and father of Choith Ram, were inimical to him because they did not want Putlibai to marry the accused. According to the accused, on the day of occurrence he had gone to his father's shop at about 9 a.m. Thereafter he came to the place of occurrence at about 11 or 11.30 a.m. on being told that the condition of his wife was serious.

14. In defence five witnesses were examined on behalf of the accused.

15. The purport of the defence evidence was that on the day of occurrence at 10.30 or 11 a.m. the aunt of the accused called Tikam Das (DW 2), who is the cousin of the mother of the accused and lives in the neighbourhood, and told him to go to shop of the father of the accused and inform him about the serious condition of the Putlibai, deceased. Tikam Das then went to the shop of the father of the accused and met the accused and his father there and conveyed the message to them. Evidence was also led to show that the accused called two doctors and sent a telegram about the death of the deceased to his sister's husband.

16. The learned Sessions Judge on consideration of the evidence found that the following facts had been proved by the prosecution :

"1. The accused was the only person in the quarter and, therefore, with the deceased immediately before, at the time of and immediately after her murder.

2. Instead of getting out of the quarter in the usual way, he scaled the rear wall and jumped into the back lane immediately after the murder of the deceased.

3. When he was caught as soon as he jumped, he was non-plussed, his eyes were red-shot and he begged to be let off which exhibited his guilty conscience."

17. Reference was further made to the fact that the accused had failed to explain as to why he has jumped from the back wall of his quarter and had tried to run away. It was also pointed out that the accused had made false denials and put forth false plea of alibi. The above circumstances, in the opinion of the Sessions Judge, were consistent only with the guilt of the accused. The defence evidence produced by the accused was found to be not worthy of credence and was rejected. In the result the accused was convicted for the murder of Putlibai and was sentenced to death.

18. When the matter came up before the High Court, the learned judges held that the prosecution had successfully established that the accused had a motive for the murder of Putlibai. In the opinion of the learned judges, the circumstances in which the death of Putlibai had occurred must have created a strong suspicion against the accused. He was consequently involved in this case. The learned judges seem to have taken the view that the first information report was not lodged at the time when it purports to have been made. It was also observed that the only witness who appeared to be independent was PW Shobhraj. His statement was found to be not true because the witness had given the distance of his quarter from that of the accused as 50 paces, while, according to another witness, the distance was 150 paces. In the result, conviction of the accused was set aside and he was acquitted.

19. We have heard Mr. Unyal on behalf of the appellant and Mr. Chari on behalf of the accused-respondent, and are of the opinion that the High Court set aside the conviction of the accused on grounds which are wholly untenable. There can be no manner of doubt that Putlibai deceased was throttled to death. The evidence of Dr. Vijay Pal (PW 3), who performed post-mortem examination on the dead body of Putlibai deceased shows that he found the following ante mortem injuries on the dead body of the deceased Putlibai :

"Finger marks were present in front of the neck. These marks looked like brownish and dry. On the left side of the neck, in front, upper and outer part, thumb mark was present which measured 1" X 1/4" and the upper part of which was 1/2" below the

mandible. On the right side of the neck, in front upper and outer part 4 finger marks were present in oblique directions downwards and outwards one below the other measuring 1" X 1/2", 3/4" X 1/2", 1/2" X 1/2" and 1/4" X 1/4"; the upper most mark was 1/2" below the mandible.

20. Besides the above injuries, there was a contusion on the right thinner eminence and two abrasions on the elbows. Extravascular blood was present in the sub-cutaneous tissues of the neck under the finger marks in the adjacent muscles of the neck. There was fracture of the corner of bladder, the spleen and the kidneys were congested. Dr. Vijay Pal accordingly come to the conclusion that the death was due to asphyxia caused by throttling. The doctor added that the time of the death of the deceased could be about 10.30 a.m. on October 18, 1968.

21. According to the prosecution case, the death of Putlibai deceased was caused by the accused, while the accused has denied this allegation. The Sessions Judge accepted the prosecution evidence in this respect, but the same was found by the High Court to be not such as could warrant a conviction of the accused.

22. In order to prove the case against the accused, the prosecution examined Bhagwan Das (PW 1), Choith Ram (PW 2), Ayal Das (PW 6) and Shobhraj (PW 7). According to Bhagwan Das PW1, he heard shrieks when he passed in front of the quarter of the accused at about 10.30 a.m. on the day of occurrence. The witness then shouted as to what the matter was about and was immediately joined by the other three witnesses and Kirpal Das. The witness then knocked at the front door as well as at the back door of the quarter of the accused but got no response. Just then, the witness and his companions saw the accused jumping over the rear wall of his quarter in the back lane. The accused was then secured and was not allowed to escape in spite of his entreaties. Choith Ram PW then entered the quarter by scaling over the back wall and opened the door. When Bhagwan Das and his companions went inside, they found Putlibai lying dead on the cot. Bhagwan Das also deposed about the report lodged by him with the police after Dr. Singhal had declared that Putlibai had been throttled to death.

23. The above evidence of Bhagwan Das is corroborated by the evidence of Choith Ram (PW 2), Ayal Das (PW 6) and Shobhraj (PW 7). The evidence of the above mentioned four witnesses was found by the learned Sessions Judge to be convincing and reliable. After having been taken through that evidence, we see no cogent ground to take a view different from that of the Sessions Judge. It is no doubt true that Bhagwan Das PW is the brother of Bangamal, maternal grandfather of Putlibai deceased and that sister of Choith Ram PW is married to Bangamal. It is also true that Ayal Dass PW is a cousin of Gurmukh Das, father of Putlibai. The relationship of the above mentioned three witnesses to Putlibai deceased would, in our opinion, be not a sufficient ground for discrediting their testimony. It is well known that the close relatives of a murdered person are most reluctant to spare the real assailant and falsely involve another person in place of the assailant. Had Putlibai been killed by some other person, the natural conduct of the above mentioned three witnesses, who were related to Putlibai on her parents' side, would have been to offer sympathy to Samman Dass accused and help him in the apprehension of the real culprit, rather than to falsely involve him in the murder of his wife. There is no cogent evidence on the record to show that any of the above mentioned three witnesses had any animus against the accused. The accused, no doubt, took the plea that the above mentioned witnesses were against his marriage with Putlibai, but that suggestion has been denied by these witnesses.

24. Apart from the evidence of the aforesaid three witnesses, we have the evidence of Shobhraj PW.

Shobhraj is a wholly disinterested witness, and we see no cogent ground whatsoever as to why his evidence be not accepted. The fact that according to Shobhraj his quarter was at a distance of about 50 paces from the quarter of the accused, while according to Bhagwan Das PW the quarter of Shobhraj is at distance of 150 paces from that of the accused, would not go to show that Shobhraj is not, as held by the High Court, a truthful witness. The difference in the estimate of the distance of the quarter of the accused from that of Shobhraj is not of great significance because nothing hinges on that distance. According to Shobhraj, he arrived at the scene of occurrence not from his quarter but from the place where the celebrations of Sain Kanwar Ram were being held. The aforesaid place is at a distance of less than 100 paces from the quarter of the accused.

25. The view of the High Court that the first information report was not lodged at the police station at the time, viz., 5 p.m., at which it purports to have been lodged, is based upon mere conjecture. According to Bhagwan Das PW, immediately after Dr. Singhal had declared at about 4.30 p.m. that Putlibai had been throttled to death, he (Bhagwan Das) got written report from Dayal Das (PW 10) and signed it. The report was then sent to the police station. The evidence of Bhagwan Das in this respect is corroborated by Dayal Das PW. We have then the evidence of Mohd. Amin (PW 9). Mohd. Amin was head clerk in police station Kotwali in those days. According to Mohd. Amin, the report was handed over to him at the police station at 5 p.m. on October 18, 1968. The witness then prepared the formal first information report. An entry was also made in the general diary of the police station at that time. The witness further sent special report regarding this case at 5.20 p.m. on that very day. Nothing was brought out in cross examination to shake the evidence of Mohd. Amin. Apart from the fact that no reason has been shown as to why the evidence of Bhagwan Das and Mohd. Amin be not accepted regarding the time at which the first information report was lodged at the police station, we find that there was not even a remote suggestion in the cross examination of Mohd. Amin that the formal first information report was not prepared at the police station at the time, viz., 5 p.m. at which it purports to have been prepared. In the absence of any material pointing to the inference that the formal first information report was not prepared at 5 p.m. the High Court, in our view, acted erroneously in holding, on the basis of a pure surmise, that the first information report had not been lodged at the police station at 5 p.m.

26. We are also not impressed by the argument that the police acted on the telephonic intimation received from Dr. Singhal. According to Dr. Singhal, he sent the telephonic intimation after 5 p.m., while the report of Bhagwan Das had been lodged at the police station at 5 p.m. Dr. Singhal's evidence shows that after examining the dead body of Putlibai at about 4.30 p.m., he proceeded in a riksha to his clinic. After he had gone for a distance of two furlongs, he thought of getting details about the name of the deceased, her husband's name and address. He accordingly returned to the quarter of the accused and got the necessary particulars. After that, he again proceeded towards his clinic, but his riksha was held up at the railway level crossing because the gate at the crossing remained closed for 10 minutes. In the circumstances, we find no reason to reject the prosecution evidence that the police acted upon the report lodged by Bhagwan Das PW.

27. Coming to the question as to whether there was a delay in lodging the report, we find that the evidence on record shows that after Putlibai had been found dead, the father of the accused showed inclination to consign her dead body to the river. Bhagwan Das then insisted that the dead body of Putlibai should not be disposed of till the arrival of her parents. He was accordingly called and he stated, after examining the dead body, that the deceased had been throttled to death. Immediately thereafter, Bhagwan Das got the report written from Dayal Das and lodged it at the police station. In our opinion, there was no inordinate delay in lodging the report. It is obvious that Bhagwan Das did not lodge the report till such time as he was certain that the death of Putlibai deceased was not

natural but was due to violence. The present was not a case wherein the deceased had been killed by some sharp-edged weapon or a fire-arm, or wherein the body of the deceased had been found lying in a pool of blood. In such a case, there can be no doubt about the death being not natural. In cases, however, of death caused by poisoning or throttling, a layman cannot be very sure of the cause of death, and we find nothing improbable in the conduct of Bhagwan Das PW in not lodging the report till he learnt from Dr. Singhal that death of the deceased was due to throttling.

28. Bhagwan Das, Choith Ram, Ayal Das and Shobhraj PWs reside in the locality wherein the occurrence took place. The fact that no one from the quarters adjoining that of the accused has been examined by the prosecution would not, in our opinion, introduce an infirmity in the prosecution case. The evidence of Bhagwan Das shows that the adjoining quarters were closed at the time of the occurrence, as most of the people in the locality had gone to attend the celebrations of Sain Kanwar Ram.

29. Argument was advanced by Mr. Chari that it would not be a natural act of the accused to have made the murderous assault on his wife at about 10.30 a.m. when the people were moving in the lane in front of his quarter. In this respect we find that the accused chose the moment when no one else was present in the house. The fact that no one was present there to witness the actual murder of the deceased might well have been considered by the accused to be an opportune time. Different individuals act differently in a given situation, and we find nothing improbable in the act of the accused in committing the murder of his wife at about 10.30 a.m. on the day of occurrence.

30. It has also been submitted by Mr. Chari that there was no sufficient motive for the accused to murder his wife. In this respect we find that the evidence of Choith Ram (PW 2) shows that the accused had told him that he did not like Putlibai. We have then the evidence of Bhagwan Das PW as well as that of Gurmukh Das PW, father of Putlibai, that when it was learnt that the accused was reluctant to marry Putlibai, Gurmukh Das convened a panchyat. The accused was thereafter married to Putlibai. The evidence on record, thus, reveals that the accused was forced to marry Putlibai in spite of his dislike, because of the convening of the panchyat. It cannot, in the circumstances, be said that the accused had no motive to cause the death of his wife. The learned judges of the High Court too took the view that the accused had a motive to cause the death of the deceased. In any case, motive is not very material when the other evidence clearly points to the guilt of the accused.

31. Reference has also been made by Mr. Chari to the fact that there is no evidence about the existence of any injury on the person of the accused. It is urged that the deceased, while being throttled, must have offered resistance, and thus, there would have been an injury on the person of the accused because of that resistance. We are not impressed by this argument because resistance by the deceased resulting in injuries to the assailant is not a necessary feature of every act of throttling. Different victims can act differently and it would depend upon a variety of circumstances as to whether they were or not in a position to offer resistance. The absence of injuries on the person of the accused would not go to show that he was not the person who had throttled the deceased to death.

32. So far as the defence evidence is concerned, the same was disbelieved by the Sessions Judge. The defence evidence was also not relied upon by the High Court-ostensibly because no effort was made to rely upon that evidence. Likewise, no effort has been made in this Court to reply upon the defence evidence.

33. There is no eye witness of the actual occurrence, but on the material on record, we find that the

following circumstances have been proved against the accused -

- (1) The accused was alone with the deceased in his quarter at about 10.30 a.m. on the day of occurrence.
- (2) Shrieks were heard at that time from inside the quarter of the accused.
- (3) Both the front and the back doors of the quarter of the accused were found to be bolted from inside. Those doors were not opened in spite of shouting and knocking.
- (4) The accused soon thereafter jumped over the rear wall into the back lane. He wanted to run away but was secured by Bhagwan Das and other witnesses. The accused appeared to be upset at that time and, in spite of his entreaties, he was not allowed to go away.
- (5) Immediately thereafter, Bhagwan Das and other witnesses went inside the quarter and found Putlibai, wife of the accused, lying dead on a cot.
- (6) According to medical evidence, the deceased had been throttled to death at about 10.30 a.m. on that day.
- (7) The accused had an animus against Putlibai because he was forced to marry her in spite of the fact that he did not like her.

All the above circumstances, in our opinion, clearly point to the conclusion that the accused was the murderer of Putlibai. The above circumstances are inconsistent with his innocence.

34. Mr. Chari has referred to the case of the State of Madras v. A. Vaidyanatha Iyer, (1958 SCR 580 : AIR 1958 SC 61) wherein this Court held that the words used in Article 136 of the Constitution show that, in criminal matters, no distinction can be made as a matter of construction between a judgment of conviction and one of acquittal. This Court, it was further observed, would not readily interfere with the findings of fact given by the High Court, but if the High Court acts perversely or otherwise improperly, interference will be called for. In our opinion, the accused-respondent can derive not much assistance from the above authority because the High Court in present case reversed the finding of conviction on grounds which were wholly untenable. The view taken by the High Court is clearly unreasonable and is not warranted by the material on record. The fact that the High Court, in a reference under Section 374 of the Code of Criminal Procedure, has to appraise the evidence for itself and has to arrive at its own independent conclusion would not prevent this Court from interfering with the order of the High Court if the High Court reverses the judgment of the trial court on grounds which are manifestly fallacious and untenable.

35. This Court in an appeal under Article 136 of the Constitution does not normally re-appraise the evidence and interfere with the assessment of the evidence by the High Court. Where, however, this Court finds that grave injustice has been done by the High Court in interfering with the decision of the trial court on grounds which are plainly untenable and the view taken by the High Court is clearly unreasonable on the evidence on record, this Court would not stay its hand. There are, however, certain cardinal rules which have always to be kept in view in appeals against acquittal. Firstly, there is a presumption of innocence in favour of the accused which has to be kept in mind, especially when the accused has been acquitted by the court below; secondly, if two views of the matter are possible, a view favourable to the accused should be taken; thirdly, in case of acquittal by

the trial judge, the appellate court should take into account the fact that the trial judge had the advantage of looking at the demeanour of witnesses; and fourthly, the accused is entitled to the benefit of doubt. The doubt should, however, be reasonable and as observed recently by this Court, the doubt should be such which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy-though unwittingly it may be-or is afraid of the logical consequences, if that benefit was not given. To put it differently, it is "not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism" [see Himachal Pradesh Administration v. Shri Om Parkash Cri. Appeal 67 of 1969, decided on December 7, 1971 : (1972) 1 SCC 249 : 1972 SCC (Cri) 88].

36. We, therefore, accept the appeal, set aside the judgment of the High Court and convict the accused-respondent under Section 302, I.P.C.

37. As regards the sentence, we find that the occurrence took place more than three years ago. The accused was aged about 19 years at the time of the trial. Looking to all the circumstances, we are of the opinion that we need not award the extreme penalty in this case. We accordingly sentence the accused to undergo imprisonment for life.

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