

Rama Nand and Others

Vs

State of Himachal Pradesh

Criminal Appeal No. 17 of 1975

(R. S. Sarkaria, R.S. Pathak JJ)

06.01.1981

JUDGMENT

R. S. SARKARIA, J. –

1. This appeal by special leave is directed against a judgment, dated June 7, 1974, of the High Court of Himachal Pradesh, whereby it upheld the conviction of Rama Nand accused under Section 302, Penal Code, and that of the co-accused Shish Ram and Kali Datt under Section 201, Penal Code, and also the sentences awarded to each of them by the learned Sessions, Judge, Mandi. The prosecution story, as it emerged from the record, was as follows :

2. Sumitra, deceased, aged 19 years, was the daughter of Som Krishan (PW 33). Rama Nand, appellant is her husband and Shish Ram, appellant 2, is her father-in-law while Kali Datt appellant 3, is the young brother of Rama Nand.

3. Sumitra's father wishes to see his daughter highly educated, and employed in Government service and married to a suitable, highly educated person, settled in life. Sumitra had passed Higher Secondary Examination and wanted to pursue her studies further according to the wishes of her father.

4. About two years before Sumitra's reported death, Shish Ram appellant approached Som Krishan (PW 33) and persuaded him to give Sumitra in marriage to his son, Rama Nand. While negotiating this matrimonial alliance, Shish Ram told Som Krishna that his son was suitably employed in a Government job in the office of the Deputy Commissioner, Kasumpti. He further falsely represented to Som Krishna that his son, Rama Nand was a graduate. Believing this representation to be true, Som Krishna about 1 1/2 or 2 years before Sumitra's murder in question, married her to Rama Nand. Before this marriage, it was settled by Som Krishna with Shish Ram and Rama Nand accused that even after her marriage, Sumitra would continue to pursue further studies and take up employment as a teacher. After the marriage, her father got his daughter, Sumitra, employed as a teacher in village Nursery School of Chanyana which was situated near her parent's village. While teaching at Chanyana, she continued to reside with her parents. She used to visit village Jherwin occasionally to be in the society of her husband who also used to come to Jherwin from Kasumpti. The accused persistently demanded that Sumitra should give up her employment at Chanyana, and start residing permanently and continuously in her matrimonial home at Jherwin. Sumitra tenaciously refused to do so. Rama Nand wrote several letters to Sumitra urging her to give up her adamant attitude. These letters furnish evidence of a strong motive for Rama Nand to put an end to the life of Sumitra.

5. Rama Nand was employed as a Clerk in the Office of the Deputy Commissioner, Kasumpti. On May 12, 1972, he came to Jherwin from Kasumpti, He had earlier written to his wife, Sumitra, strongly urging her to come to Village Jherwin. On May 13, 1972, Sumitra came to Rama Nand's house at Jherwin and stayed with him in his room on the night between May 13 and 14, 1972. The other rooms of the house were in occupation of the other members of Shish Ram's family. Thereafter, on May 14, 1972, she disappeared from the house of the accused. The accused gave out that Sumitra had gone towards the Sutlej river on the pretext of attending to the call of nature; that thereafter her salwar and shoes were found on the bank of the river, which indicated that she had jumped into the river and committed suicide. After pretending to make a search for her body in the river and nearabout, Shish Ram on May 16, 1972, went to Police Station, Karsog at 5.30 p.m. and lodged a report (Ex. PAQ). It was recorded by Head Constable Nand Lal. After recording it in the Rozanamacha, the Head Constable read it in the presence of one Inder Pal to the informant, who, after hearing the same to be correct, signed it in Hindi and his companion Inder lal signed it in English. As this report, according to the prosecution, shows that an attempt was made by Shish Ram accused to lay a false trail and manufacture false clues as to the cause of the death of Sumitra and to screen the offence, it is necessary to reproduce the material parts of that report (rendered into English), hereunder :

.... my daughter-in-law Smt. Sumitra Devi aged about 18/19 years, was married about 1 1/2 years ago, to my son Rama Nand who is employed in the Office of D. C., Kasumpti as a Clerk. Sumitra Devi herself was employed as a Mistress in Nursery School, Chanyana and was residing with her parents. Whenever my son used to come home on leave, she also used to visit her house at such time. Similarly my son Rama Nand had come on leave to his house on May 12, 1972 and in the evening of May 13, 1972 my daughter-in-law, Smt. Sumitra Devi had also come to her house. As usual, because of Sunday holiday, in the morning on May 14, 1972 myself, my daughter-in-law and other members of the family were planting chilly seedlings in the fields near our house. My son (Rama Nand) was lying in bed on account of stomach trouble. After plantation work, at about 9/10 a.m. my daughter-in-law, Smt. Sumitra Devi along with Sheela Devi aged about 7 years, who is daughter of my brother, had gone downward on the pretext of easing herself. After some time, Sheela returned home and reported that she had been turned back from the way by her aunt, Sumitra Devi, who had gone ahead towards the river side. For some time it was believe that she might have gone to answer the call of nature. The river is about 2 furlongs from my house towards downside. When sufficient time passed and she did not return home, then calls were given hither and thither and search was also started but her whereabouts could not be known. After a thorough search on the Sutlej river bank, the salwar and shoes of Smt. Sumitra were found which Smt. Sumitra was wearing at the time of her gone that side. This created a suspicion that she might have committed suicide by jumping into the river. She was searched at the river bank as also in the nearby villages ... but her dead body was not found, nor any clue of her going is available. Smt. Sumitra was married in a good family and her character was also good, her relations with her husband were cordial. No quarrel on that day or prior to that, took place between her and my son, nor is there any reason for her disappearance. I have come to report, which may be recorded. After locating her alive or dead, separate report will be lodged.

Daulat Ram, Station House Officer (PW 38) then visited the scene of occurrence on May 13, 1972. He was not satisfied about the correctness of the information given by Shish Ram, accused. He,

therefore, got a case under Section 364, Penal Code, registered.

6. Shish Ram accused produced before him the salwar (Ex. P-14) and shoes (Ex. P-15/12) which, according to Shish Ram's report, belonged to Sumitra deceased and were found lying on the river bank. The investigator also prepared a rough sketch of the spot where these clothes and shoes were stated to have been found.

7. Som Krishan upon receiving the information, suspected that her daughter had been murdered at the instance of Rama Nand and others. Som Krishna reached the spot and made enquiries. Rama Nand and Shish Ram accused were arrested by the Investigating Officer on June 5, 1972. The Investigating Officer took into possession the locket-chain (Ex. P-1) and the watch (Ex P-2) belonging to the deceased from the room which was in the occupation of Rama Nand, in the presence of Kanshi Ram and Hira Mani and prepared the Memo (Ex. P-A) in this behalf. Rama Nand accused, whilst in police custody, produced Sumitra's clothes (Ex. P-5 to Ex. P-10) which were taken into possession by the Investigator in the presence of Mastu and Hari Ram, witnesses (vide Ex. P.Y.). These clothes, according to the prosecution, were the same which Sumitra was wearing when she arrived at the house of Rama Nand accused on May 13, 1972.

8. On June 5, 1972, a legless and armless dead body in a highly decomposed state was found at a distance of four kilometers downstream on the bank of the river Sutlej near village Randaul. Kali Datt appellant was found near that skeleton in the early hours of June 5, 1972. He dragged the skeleton from the river up to some distance. It appeared that dogs etc. had eaten away the flesh. A part of the skull was found intact, while the remaining part of it was lying at some distance. On receiving information, Som Krishan (PW 33) and his brother's wife, Laxmi (PW 2), came and identified the skeleton to be that of Sumitra. There was some flesh on the buttock portion and there was a mark on it. Accordingly to the identifying witness, this mark was that of a burn which Sumitra had received during her infancy. One of the teeth found in the mandible was carious, while another tooth was jutting out. Daulat Ram got the dead body measured from shoulder to the cut portion of the thighs by Mehar Chand. The measurement came to 2'4". Daulat Ram prepared the inquest report (Ex. P/F) which was attested by Kundan witness. He sent the dead body along with the inquest report (Ex. PF) to Simla for post mortem examination. The dead body reached the hospital at 1 p.m. on June 7, 1972. There, they directed the police to take the dead body to Ripon Hospital. Consequently, at 2 p.m., the dead body was made over to the Duty Doctor at the Ripon Hospital. The post mortem examination was conducted by Dr J. R. Sharma (PW 14) on the following day. The post mortem report was handed over to the police by the doctor on June 21, 1972. A few components of the skeleton, including the mandible, were sent to the Dental Surgeon, Dr R. S. Pathania (PW 15) and Radiologist, Dr M. L. Ahuja (PW 16) for examination and opinion. These doctors, however, opined that the mandible belonged to a child of not more than 10 years of age. The components of the skeleton were, also, sent to Dr O. P. Bhargawa (PW 31), Professor of Anatomy in the Medical College of Simla. His opinion about the age of the deceased was also the same. The doctors could not determine the sex of the skeleton.

9. On August 24, 1972, a paranda (cotton head-tail), alleged to be of Sumitra deceased was recovered from the jungle of Ghangar. Some human hair were found entangled in the paranda. These hair were sent for comparison with the hair of the deceased found embedded in her dupatte. The forensic expert opined that the two sets of hair belonged to one and the same person.

10. After investigation, the four accused, namely, Rama Nand, his father Shish Ram, his brother Kali Datt and Shish Ram's brother Kesar Chand, were sent up before a magistrate who committed

them for trial to the Court of Session. At the trial, in his examination under Section 342, CrPC, Rama Nand admitted that after her marriage Sumitra got employments as a teacher. He, however denied the prosecution allegation that he and his father were opposed to her employment as a teacher. He expressed ignorance as to whether there was any settlement between his father, Shish Ram, and Som Krishan Shastri, father of Sumitra, that she would continue her studies even after the marriage and would be free to take up service as her career. He added that his matrimonial alliance with Sumitra was not negotiated and settled in his presence. He admitted that the letters dated December 13, 1971, December 16, 1971 and May 9, 1972 (the English rendering of which is marked Ex. PAH, Ex. PAB, and Ex. PC, respectively) were written by him to Sumitra, and that the letter (Ex. PAJ) dated October 14, 1971, was written by him to his father-in-law, Som Krishna Shastri (PW 33). He further admitted that on May 13, 1972, Sumitra Krishan Shastri (PW 33). He further admitted that on May 13, 1972, Sumitra came to his house in village Jherwin from her parents' place, and that she was then wearing the golden chain (Ex. P-1), wrist-watch (Ex. P-2), dupatta (Ex. P-5), suit (Ex. P-6 and Ex. P-7), socks (Exs. P-8 and P-9), banian (Ex. P-10) and was carrying the basket (Ex. P-11) and umbrella (Ex. P-12). He, however, added that when the (Sumitra) reached home on May 13, 1972, with the article mentioned above, she was wearing pink ribbon on her head and not any thread-bunch like Ex. P-4). Question No. 9 put to him was : "It is in prosecution evidence that on May 14, 1972 Sumitra was not seen at your house or in the village at Jherwin at all or thereafter. What have you to say ?" He replied : "On May 14, 1972 morning at about, say up to 11 a.m. she was working in the field at Jherwin and thereafter she was not seen there and later on I was arrested and so I cannot say about her whereabouts." He admitted that his father, Shish Ram had lodged the report (Ex. PAQ) in the Police Station, Karsog. When the circumstances appearing in the prosecution evidence, "that after the occurrence on May 16, 1972, he (Rama Nand) went away to Simla from Jherwin and returned home three or four days thereafter" was put to Rama Nand, he replied : "It is wrong. I went to Simla on May 17, 1972 evening and returned on 19th morning." He denied that he and his father implored Som Krishna Shastri that he should save them from the police at Jherwin. When the negative circumstances appearing in evidence, to the effect that the salwar (Ex. P-14) was not of Sumitra, was put to him, he shown the salwar (Ex. P-14) was that of Sumitra; and that his father had shown the salwar (Ex. P-14) indicating that his daughter-in-law, Sumitra had gone in the river when he (Rama Nand) was weeping. In reply to the last question, Rama Nand narrated more or less the same story which was given by them (accused) to the police in the report, PAQ. Among other things, he stated : "It was found on the river side that her salwar (Ex. P-14) and shoes (Ex. P-15) were lying by the river bank giving indication that she had jumped into the river. Then we were in mourning and the villagers also verified that Sumitra was seen going to the river."

11. Shish Ram accused admitted that Sumitra had come to their house at Jherwin on May 13, 1972 and had disappeared on May 14, 1972. He admitted having lodged the report (Ex. PAQ) in the Police Station Karsog. He admitted that he had produced the salwar (Ex. P-14) and shoes (Ex. P-15) before the police during investigation. He also maintained that the salwar (Ex. P-14) belonged to Sumitra. He denied that he and his co-accused were threatening to teach Sumitra and her father the lesson of life for keeping Sumitra employed against their wishes at Chanyana. He repeated the substance of the story which he had earlier stated in the report (Ex. PAQ), and reiterated that since Sumitra's salwar and shoes were found on the river bank, she has either jumped into the river or tun away somewhere.

12. The learned Additional Sessions Judge by his judgment, dated December 1, 1973, convicted Rama Nand under Section 302, Penal Code, and sentenced him to rigorous imprisonment for life. He further convicted Kali Datt and Shish Ram accused under Section 201, Penal Code, and

sentenced each of them to one year's rigorous imprisonment and a fine of Rs. 500. Kesar Chand accused was given the benefit of doubt and acquitted. The appeal by the convicted persons was dismissed by the High Court as per its judgment, dated June 7, 1974. Hence this appeal by special leave. The conviction of the appellants is based entirely on circumstances evidence.

13. In convicting Rama Nand, appellant under Section 302, Penal Code, for the murder of his wife, Sumitra, the courts below have concurrently relied upon those circumstances which, according to them, had been established by the prosecution.

(1) Rama Nand accused had a strong motive to murder his wife, Sumitra.

(2) Sumitra was last seen alive with Rama Nand, appellant in the family house at Jherwin on the night between May 13 and 14, 1972. The other two co-accused were also present in the same house.

(3)(a) Rama Nand and the other co-accused falsely gave out that she had committed suicide by jumping into the river. They 'planted' a salwar and a pair of shoes on the bank of the Sutlej and gave out that they belonged to the deceased, and Shish Ram lodged a false report with the police to the effect that she had committed suicide by jumping into the river. The salwar and the shoes, which had been 'planted' there to manufacture false clues by the accused, did not belong to Sumitra, and the accused have falsely asserted that these articles belong to the deceased.

(b) The story given out by the accused persons that up to 11 a.m. on May 14, 1972, Sumitra was planting chillies along with Sheela and other members of the family of the accused, was false.

(4) The gold chain (Ex. P-1) and the watch (Ex. P-2) which Sumitra used to wear on her person all the 24 hours, and the clothes (Ex. P-5 to P-10) which she had on her person and the basket (Ex. P-11) and umbrella (Ex. P-12) which she was carrying when on the evening of May 13, 1972 she came to the house of the accused at Jherwin, were recovered from the house of the accused.

(5) Some days after the occurrence, one paranda was found from the jungle near this village. There was a bunch of hair in the plated tail of this paranda. The tail appeared to have been cut. These hairs sticking in the paranda and those found entangled in the dupatta of the deceased were according to the Forensic Expert of one and the same person.

(6) A legless decomposed corpse was recovered from the Sutlej near village Randol in a mutilated condition. From a burnt mark on the flesh sticking to the buttock of the corpse it was identified as that of Sumitra, deceased.

14. The High Court further held that even if any doubt remained with regard to the identity or recovery of the corpus delicti, the telling circumstances otherwise complete the chain of evidence to establish beyond doubt that Sumitra had been murdered and the charges had been established against the accused as held by the trial Court. In the result it dismissed the appeal of the accused respondents.

15. Shri Hardayal Hardy, learned counsel appearing for the appellants, contends that these

circumstances have not been satisfactorily established. He has placed great emphasis on the evidence of the medical experts, according to which the mutilated corpse found at Randol was that of a child, aged about 8 or 9 years. It is submitted that the dead body found was not that of Sumitra deceased, and as a result, the courts below were not justified in holding that the death of Sumitra had been established by the prosecution.

16. On the other hand, the learned counsel for the State has argued in support of the judgment of the High Court.

17. It is well settled that where the inference of guilt of an accused person is to be drawn from circumstantial evidence only, those circumstances must, in the first place, be cogently established. Further, those circumstances should be of a definite tendency pointing towards the guilt of the accused, and in their totality, must unerringly lead to the conclusion that within all human probability, the offence was committed by the accused and none else.

18. The first circumstance which has been found to be established by the courts below against the appellants is that he had "a very strong motive" to commit the murder of Sumitra. To substantiate this fact, the prosecution produced four letters written by Rama Nand appellant. These are : Ex. PAJ, Ex. PAH, Ex. PAB/1 and Ex. PC. The accused also tendered in evidence the letter (Ex. DA) dated November 14, 1971 written by Som Krishan to Sumitra.

19. As already mentioned, Rama Nand accused has admitted that the letters (Ex. PAJ, PAH, PAB/1 and PC) were written by him. Ex. PAJ purports to have been written by him from village Jherwin on October 14, 1971. In this letter, Rama Nand very clearly informed his father-in-law that his father Shish Ram was not in favour of Sumitra taking up service and residing away from the accused's house at Jherwin. In this letter, Rama Nand urged his father-in-law that the latter should either come to Jherwin along with Sumitra or send her alone. This letter also indicate that Sumitra was persisting in taking up service elsewhere against the wishes of the accused persons.

20. Chronologically, the next letter is Ex. DA, dated November 14, 1971. It is addressed by Som Krishna to his daughter, Sumitra. In this letter, the father informs the daughter that he had obtained her appointment letter and she would be required to join by the 17th to start the Nursing School at Balwari. He wanted her to come to his house to take up the appointment. In this letter, he also wishes her daughter to convey to Rama Nand appellant and his brother, Kesav Chand (acquitted accused) that they should agree to Sumitra's taking up this employment and that they should further bring round Shish Ram by reminding him that they had earlier consented to her taking up service. This letter further indicates that Sumitra was much distressed because of the hostile attitude adopted by her 'in-law' towards her. To console her, the father wrote : "Don't worry. Whatever God does is good. Have self-confidence and do not repent on any failure."

21. The third letter, dated December 13, 1971 (Ex. PAH), written by Rama Nand to Sumitra, shows that the opposition of the appellant, his father Shish Ram and brothers to Sumitra's taking up service away from the matrimonial home, had passed from the serious to the sardonic stage. It starts with the words : "Wish you happy luxury!" Read in accord with the tenor of the letter, it conveys a biting ironical taunt. These words were capable of being construed as conveying an innuendo that she was merry-making de hors the matrimonial home in an extramarital way. May be, the appellant was doubting her fidelity. He informs her that he had visited Jherwin in the hope that he would join her there, but this hope did not materialise. He complains against this attitude of neglect on the part of his wife when he says : "Today you have not seen to my condition, and have defamed me. To whom

should I blame ? It is the wind and to which side it blows it must do something. I was thinking to save (you) from this wind." He further reproaches and upbraids her : "You did not think over it seriously and you did not care for it or others. You have taken it as a prestige issue. I cannot do anything so long I am not heartily happy and I weep to my fate." He then warns her in a contemptuous and peremptory tone : "It would be better that you should resign your job now and come down here If you intend to raise with me, then you should agree to my words ... otherwise it will be a dog's life. You should either come to this place or to village Jherwin after resigning the job and from there you may come to Simla on any day. As you know, a friend in need is a friend indeed. When this is lost, one cannot take the shelter of others." He reminds her that her marriage had been solemnised with him. "To do service entirely depends upon you and me and not upon (your) father It is time to resign the service" He repeats : "It is against the respect of my family, yourself and myself that I should allow you to serve at a monthly pay Rs. 120 and only for a tenure of six months and myself to stay at Simla in the hotel." He then in stronger language commanded her to resign her job within 24 hours and come to his house direct without waiting for her resignation to be accept. He closes the letter with an ominous threat veiled as a warning : "If you do not resign the job, our relations will become strained."

22. In the next letter (Ex. PAB/1), dated December 16, 1971, Rama Nand wrote to Sumitra that he did not understand why she did not 'improve his (?) life' and why she was acting at the beck and call of others. He urged her that it would be better to live for a more. He added : "You obey me or not, you yourself will understand the significance of this when you give place to it in your mind." He sternly repeated the warning : "I once again request you to keep in mind your as also my honour, what you have to do, as the time has come. There is no example in the history of world that a girl after marriage should act on the advice of her father, which may be harmful." He again urged her : "Do not think this letter as a mere piece of paper, but each and every line in it will decide our further career You should resign your post." He again administered a warning, coupled with a threat of resorting to violence in case she did not resign her job to live with the accused permanently : "The present is the condition of China's wall as Lt. General Mr. Kaul was saying that on China Border there is no firing, no firing, no firing. But what was the result in the end, you know better ... If you honour me, your husband, then you should tender your resignation from the job forthwith." He further sternly warned her : "If you still do not come round, what would happen in future, will entirely be your responsibility and I may not be blamed for that." He ended the letter with a hostile note, repeating the threat : "I may write, what will happen in future. Entire responsibility of future solely depends upon you. It is the question of life and not of service This is time of your test. Reply this letter." The sentence, "It is the question of life and not of service" read in the context, clearly conveys to the wife a threat that the choice open to her was between "life" and "service", that is to say, she would not be left alive if she did not give up the "service". This letter unmistakably reveals that Rama Nand had worked his feelings at his wife's persistent refusal to give up service and live with him, into such a frenzied resolve that if his wife did not, as he desired, "mend" her ways, he would "end" her life.

23. Even after this letter, there appears to have been no alleviation or change in this revengeful attitude of the husband towards his wife. This is discernible from Rama Nand's last letter dated May 9, 1972 (Ex. PC) addressed to Sumitra. In this letter also, he cannot conceal his feeling of being "sick of you". He writes, "... the difference in views can make life troublesome as well can lead towards downfall as I already told you", that "to deceive any true person can only be a sin and nothing else." He appears to be giving her a last warning, a last chance to come round and come home when he writes that "time is short I will again request you that if you try to come home on Saturday, it will be good I do not feel good ... You definitely try to come, if you cannot come on

Saturday then come on Sunday, otherwise"

24. These letters vividly reveal that despite the repeated persuasions, warnings and threats proceeding from Rama Nand accused, Sumitra intransigently and persistently refuse to give up her service at Chanyana, and residence with her parents, and declined to come and live permanently in the matrimonial home at Jherwin, and as a result, how the husband's feelings of tenderness towards his wife progressively changing into regret, persecution complex, resentment, exasperation and smouldering hostility, ultimately hardened into a revengeful resolve in the mind of Rama Nand to end what he calls "a dog's life" by putting an end to the life of his spouse. We agree with the High Court that these letters reveal that Rama Nand appellant had a strong motive to murder the deceased.

25. The second circumstance was also well established. It had been admitted even by the appellant and his co-accused. The courts below have found, and rightly so, that both the limbs of circumstance (3) had also been established by evidence produced by the prosecution. Som Krishan (PW 33), father of Sumitra, had testified that when he went to Jherwin on receiving a message from the accused about the disappearance of his daughter, he was shown the Salwar (Ex. P-14) and shoes (Ex. P-15/1-2) and told that these clothes were left behind on the bank of the Sutlej river when she disappeared. PW 33 further stated that this shabby salwar (Ex. P-14) which had patches on it, did not belong to Sumitra and she never wore such a salwar; nor did the pair of shoes (Ex. P-15) belong to her. PW 33 further testified : "Then Rama Nand, Shish Ram and Kesar Chand accused implored me that they may be saved from police remand. To this I said that I was not conversant with law but you may tell the truth." This testimony of PW 33 has been accepted by the courts below. We have no reason to take a different view.

26. As rightly held by the courts below Sumitra was a sophisticated and educated girl. It was difficult to believe that she would do chilly plantation and wear such a patched and dirty salwar as Ex. P-14. The very story given out by the accused persons and narrated by Shish Ram in the report (Ex. PAQ) made by him to the police, and repeated by him and Rama Nand in their examination under Section 342, CrPC, to the effect - that Sumitra had after undressing and leaving behind her shoes (Ex. P-15) and salwar (Ex. P-14) on the bank of the Sutlej, committed suicide by jumping into the river - was improbable, incredible and false. Thus, circumstance (3)(a) and (b) had also been clearly and cogently established. This piece of evidence was relevant under Section 8, Evidence Act and was a definite pointer towards the guilt of the accused. Circumstance (4) appearing in the prosecution evidence, was admitted by the accused persons. Circumstance (5) also stood established. Though a feeble pointer towards the guilt of the accused, by itself it was not of a conclusive character. Circumstance (6) has been seriously controverted. The burden of the arguments of the learned counsel for the appellants in that the prosecution had miserably failed to establish that the legless decomposed body found in the river was that of Smt. Sumitra, and in such a situation, the possibility of her being alive cannot be reasonably ruled out.

27. Although the High court has held that the body recovered was that of Sumitra deceased and that the bones sent to the medical experts were not parts of the decomposed body found, but appeared to have been fraudulently replaced with the bones of a child during transmission to the medical experts, we would assume that the identity of the body found in the river was not established beyond reasonable doubt. In other words, we would take it that the corpus delicti, i.e., the dead body of the victim was not found in this case. But even on that assumption, the question remains whether the other circumstances established on record were sufficient to lead to the conclusion that within all human probability, she had been murdered by Rama Nand appellant ? It is true that one of the

essential ingredients of the offence of culpable homicide required to be proved by the prosecution is that the accused "caused the death" of the person alleged to have been killed.

28. This means that before seeking to prove that the accused is the perpetrator of the murder, it must be established that homicidal death has been caused. Ordinarily, the recovery of the dead body of the victim or a vital part of it, bearing marks of violence, is sufficient proof of homicidal death of the victim. There was a time when under the old English law, the finding of the body of the deceased was held to be essential before a person was convicted of committing his culpable homicide."I would never convict, said Sir Mathew Hale, "a person of murder or manslaughter unless the fact were proved to be done, or at least the body was found dead. "This was merely a rule of a caution, and not of law. But in those times when execution was the only punishment for murder, the need for adhering to this cautionary rule was greater. Discovery of the dead of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the corpus delicti in murder. Indeed, very many cases are of such a nature where the discovery of the dead body is impossible. A blind adherence to this old "body" doctrine would open the door wide open for many a heinous murderer to escape with impunity simply because they were cunning and clever enough to destroy the body of their victim. In the context of our law, Sir Hale's enunciation has to be interpreted no more than emphasising that where the dead body of the victim in a murder case is not found, other cogent and satisfactory proof of the homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eyewitness, or by circumstantial evidence, or by both. But where the fact of corpus delicti, i.e. 'homicidal death' is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why under Section 3, Evidence Act, a fact is said to be "proved", if the court considering the matters before it, considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculcating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned. In the instant case, circumstances (1) to (5), in their cumulative effect, are not only inconsistent with the innocence of Rama Nand appellant, but ineluctably and rationally compel the conclusion that Sumitra has died and it is Rama Nand appellant who has intentionally caused her death. Circumstance (3) involves an admission by Rama Nand and Shish Ram accused that Sumitra has met an unnatural death. The only difference between the prosecution version and the defence version is as to whether Sumitra committed suicide or had been killed by Rama Nand appellant. It has been found that the story of the suicide set up by the accused is false. The articles salwar (Ex. P-14) and the shoes (Ex. P-15) do not belong to her. They were planted by the accused to lay a false trial and to misdirect the investigation. The circumstance taken in conjunction with the others, irresistably and rationally leads to the conclusion that she has been murdered by Rama Nand appellant and her dead body has been disposed of by the appellants Shish Ram and Kali Datt.

29. For the foregoing reasons, we dismiss this appeal and maintain the convictions and sentences of the appellants.

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