

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 85 OF 2000.

Maruthi Tirmuli presently  
lodged at Central Jail,  
Aguada.

... Appellant.

Versus

State of Goa.

... Respondent.

Mr. S.N. Joshi, Advocate under Legal Aid Scheme.

Mr. A.P. Lawande, Public Prosecutor for the Respondent  
State.

Coram: P.V. KAKADE AND P.V. HARDAS, JJ.

Date of reserving the Judgment: 16.10.2002.

Date of pronouncing the Judgment: 30.10.2002.

J U D G M E N T (PER HARDAS, J.)

The appellant stands convicted for an offence punishable under Section 302 of the Indian Penal Code and is sentenced to suffer imprisonment for life and to pay a fine of Rs. 5,000/-, in default to undergo rigorous imprisonment for six months and under Section 436 of the Indian Penal Code is sentenced to suffer rigorous imprisonment for two years, by the Judgment of IInd Additional Sessions Judge, South Goa, Margao, in Sessions Case No. 11 of 1998, dated 31st August 2000. The present appeal has been filed challenging the aforesaid conviction and sentence.

2. The facts necessary for the decision of the appeal are set out hereunder:-

On 8th June 1998 at about 15.40 hours, information was received from one Kalyan Kudchodkar (P.W.14) that a dead body of a female was seen floating in a well near Prashant Theatre. The said information was noted down by Head Constable Mohan Naik (P.W.22) and was conveyed to P.W.29 Mahesh Gaonkar, who, in the year 1998, was attached to the Curchorem Police Station as a P.S.I.. P.W.29 P.I. Gaonkar then registered an unnatural death, vide U.D. No. 6/98, under Section 174 of Criminal Procedure Code and proceeded with the staff to the scene of the offence. He requested the fire-brigade personnel to assist in the removal of the dead body from the well and, accordingly, the dead body was taken out of the well. During the process of taking out the dead body from the well, four other dead bodies including one of a female and three children were noticed. The dead bodies were identified as one of Miss Sunita Naik, Mrs. Yellawwa Thirumali, Nirmala Naik, Rekha Naik and Chandrakant Naik. These bodies were identified by one Mrs. Satyava Naik. P.W.29 P.I. Gaonkar conducted the scene of offence panchanama, which is at Exhibit P.W.2/A in the presence of P.W.2 Dasrat Harmalkar. P.W.28 U.R. Dessai conducted the inquest panchanamas, which are at Exhibit P.W.28/A Colly and at Exhibit P.W.12/A. The dead bodies were sent for post mortem examination and letter at Exhibit P.W.7/H was sent requesting for performing post mortem on the dead

bodies. The said letter was received by P.W.7 Dr. Avinash Pujari, who conducted the post mortem on the five dead bodies. P.W.7 Dr. Pujari conducted the post mortem on the dead body of Sunita. The report of the post mortem is at Exhibit P.W.7/A. The post mortem report in respect of the dead body of Chandrakant is at Exhibit P.W.7/B. The post mortem report in respect of Rekha is at Exhibit P.W.7/C and in respect of Smt. Yellawwa is at Exhibit P.W.7/D. P.W.7 Dr. Pujari opined that the cause of death was asphyxial due to drowning in water. P.W.7 Dr. Pujari while conducting the post mortem on the body of Nirmala noticed the following injuries:-

- "1. Contusion red fresh 6 x 4 cms. on scalp deep situated on the top of the vertex i.e., scalp/head on biparietal area of midline.
2. Contusion red fresh 10 x 8 cms. into scalp deep on the back of skull over occipital area.
3. Abrasion red fresh 1.0 x 0.5 cms. on forehead right side at outer end of eyebrow.
4. Abrasion red fresh 1 x 1 cms. on face right side below outer end of lower eye lid.
5. Abrasion red fresh 2 x 1 cms. on right side cheek maxillary area.
6. Abrasion red fresh 0.5 x 0.5 cms. on the tip of nose in midline.
7. Linear abrasion red fresh 1.5 x 0.2 cms. on the 2 cms. above the lip and 1.5 cms. away from ala of left nostrils.

8. 3 minute abrasions 0.2 x 0.2 cms. 0.5 cms. apart on left side chin below angle of mouth.
9. Abrasion on chin under surface more marked on the left side red fresh 3 x 1.5 cms. on chin.
10. Frictional grazed abrasion red fresh 2 x 1.5 cms. on the bottom mandible left side 5 cms. away from chin.
11. Frictional grazed abrasion red fresh 3 in number on chest front external area.
12. Frictional grazed abrasion red fresh 4 x 3 cms. on right shoulder top outer aspect.
13. Frictional grazed abrasion red fresh 2 x 1.5 cms. on left shoulder top back.
14. Abrasion 5 in no. 1 x 1 cms. on the back of right elbow.
15. Frictional grazed abrasion 5 x 2 cms. on upper thigh right outer aspect obliquely downwards.
16. 4 linear abrasions (1) upper and outer quadrant of left nipple. 4 x 0.2 cms. two 2.5 x 0.2 cms.
17. post mortem nibbling of both nipples."

In respect of injuries 1 to 15 Dr. Pujari opined that they were ante mortem in nature. In respect of injury no. 16 the opinion was that it is pari mortem and injury no. 17 was post mortem. On external examination Dr. Pujari noticed that there was pooling of blood effect in the layers of scalp underneath external injuries 1 and 2. Dr. Pujari opined that deceased Nirmala died due to drowning in water. The post mortem

report in respect of Nirmala is at Exhibit P.W.7/E..

3. On 9th February 1998 P.W.1 Constantino Mendes lodged a complaint Exhibit P.W.1/A expressing her suspicion that the accused had set fire to the hut occupied by Nirmala and had compelled all the 5 persons to commit suicide. On the basis of this complaint an offence was registered vide Crime No. 14/98 under Sections 436 and 306 of the Indian Penal Code. On 11th February 1998 the accused was arrested and an arrest panchanama vide Exhibit P.W.5/A was drawn in the presence of P.W.5 Damodar Bende. The clothes on the person of the accused were attached. These clothes are M.O.3 shirt of the accused, M.O.4 pant of the accused and M.O.5 a towel which was placed by the accused on his shoulder. In the pocket of the pant of the accused a key M.O.6 was found, which was attached. During investigation it transpired that deceased Nirmala was the niece of the accused. The accused is alleged to have made a discovery memorandum on 13th February 1998 in the presence of P.W.8 Krishnanath Naik and had agreed to point out the well where he had thrown his clothes. The said memorandum and recovery panchanama is at Exhibit P.W.8/A. With the assistance of P.W.24 Shivaji Fadte, who was then working as a fireman, the clothes of the accused M.O.10 pant and M.O.11 shirt were recovered. The accused is also alleged to have made another

discovery memorandum pointing out the place where he had thrown the clothes worn by the deceased Nirmala. This statement was made in the presence of P.W.10 Divakar Naik on 11th February 1998. With the assistance of the fire-brigade personnel the clothes of deceased Nirmala were recovered from the well, they are handkerchief with three coins (M.O.6), Sari (M.O.7), petticoat (M.O.8) and a pair of slippers. After arrest the accused had been referred to P.W.11 Dr. Antonio Colaco, who had found two injuries on the person of the accused. The report of Dr. Colaco is at Exhibit P.W.11/A.

4. P.W.29 P.I. Gaonkar in the presence of P.W.6 Avinash Parulekar drew a panchanama of the opening of the lock to the room of deceased Nirmala with the key, which was found in the possession of the accused. The said panchanama is at Exhibit P.W.6/A. It was found that the key (M.O.6) fitted the lock put on the door of the room of Nirmala. The lock, which was seized, is M.O.13. Meanwhile on 16th February 1998 the accused had made a disclosure statement vide Exhibit P.W.9/A in the presence of P.W.9 Sunil Pandu Naik that he would point out the place where he had kept the bag belonging to deceased Nirmala. The said bag was recovered from the house of the accused and the said plastic bag is M.O.14. The muddemal property was sent to the Chemical Analyser and the report of the Chemical Analyser is at Exhibit

P.W.29/A. The report of the burning of the room of deceased Nirmala was received by P.W.25 Babu Panedkar, which is at Exhibit P.W.25/A. P.W.19 Ramchandra Ashreth, who was working in the Electricity Department, had found that there was no electrical connection to the room of Nirmala and, therefore, opined that fire was not as a result of electrical short circuit. P.W.21 Desmond Cardozo has drawn the sketch of the burnt house as well as of the well from where the dead bodies were recovered. The sketch is at Exhibit P.W.21/A. The prosecution has also relied on the panchanama of the scene of offence, that is, well, which is at Exhibit P.W.4/A, drawn in the presence of P.W.4 Santosh Naik. The sketch map is at Exhibit P.W.4/B. From the well M.O.1 a torn blouse, which was floating in the water and M.O.2 an underwear were attached. Part of the blouse, which was on the person of deceased Nirmala, was attached in the presence of P.W.12 Raju Naik by a panchanama which is Exhibit P.W.12/B after the inquest panchanama vide Exhibit P.W.12/A on the body of Nirmala was drawn.

5. The learned trial Judge, vide Exhibit 5, framed a charge against the appellant/accused for an offence punishable under Section 302 of the Indian Penal Code for having committed the murder by intentionally throwing into the well (1) Yellawwa aged 65 years, (2)

Yellawwa @ Nirmala aged 25 years, (3) Sunita aged 6 years, (4) Chandrakant aged 4 years and (5) Rekha aged 2 years. The accused was also charged for an offence punishable under Section 436 of the Indian Penal Code for having set fire to the room of Nirmala, which was used by her as a dwelling place. The accused denied the charges and claimed to be tried. The prosecution in support of its case examined 30 witnesses. The learned trial Court after appreciating the evidence of the prosecution came to the conclusion that the prosecution had established the offences against the accused beyond reasonable doubt and convicted and sentenced the accused as aforestated.

6. The learned trial Court in paragraph 42 of its Judgment has held that the following circumstances are proved against the accused:-

"a) That a couple of days prior to the incident the accused had expressed his intention and threat to cause death of Nirmala and her family members (antecedent conduct).

b) The accused was last seen in the company of Nirmala and the other deceased.

c) That the accused had given false and misleading information to Satyava, the mother of the deceased Nirmala and also to Gangava (subsequent conduct).

d) The accused was found in possession of the keys of the house of Nirmala.

e) The clothes i.e. saree, petticoat,



handkerchief and slippers of Nirmala were recovered from the well at the instance of the accused.

f) The clothes of the accused which were worn by him when he was last seen with the deceased, were recovered from another well at the instance of the accused.

g) The polythene bag containing the household articles purchased by Nirmala was recovered from the hut of the accused as per the information given by the accused."

On the basis of these circumstances so proved by the prosecution, the learned trial Court came to the conclusion that the offences had been proved against the appellant/accused.

7. Mr. Joshi, the learned counsel, who has been appointed from the Legal Aid Panel to defend the accused, has urged before us that the evidence against the appellant is of circumstantial nature and unless the circumstances so proved by the prosecution form a complete chain, the accused cannot be convicted. Mr. Joshi has also urged before us that the prosecution has not been able to establish any motive. The evidence of the witnesses in respect of seeing deceased Nirmala in the company of the appellant/accused is extremely artificial and cannot be relied upon.

8. Mr. Lawande, the learned Public Prosecutor on behalf of the State, has urged before us that the prosecution has been able to establish (1) that the

relations between the accused and the deceased Nirmala were strained; (2) the accused had given false information to P.W.16 Satyava, mother of Nirmala and P.W.27 Gangawa; (3) there were injuries on the person of the accused as well as the deceased which pointed out that there was a scuffle between the accused and the deceased; (4) the body of deceased Nirmala which was recovered from the well was in a completely nude condition with only M.O.12 a torn portion of the blouse on her person; (5) the clothes of deceased Nirmala were recovered on the basis of information of the accused; (6) a key was recovered from the pocket of the pant of the accused on his arrest and the key fitted the lock which was put on the door of the room of Nirmala and (7) the bag which the deceased was carrying on that day was recovered on the information of the accused from the room of the accused.

In order to appreciate the rival contentions, it is necessary to make a reference to the evidence on record.

9. The prosecution has examined P.W.1 Constantino Mendes, the landlady in whose house the accused was staying with his deceased mother Yellawwa in one room while one room was occupied by Nirmala and her deceased children. P.W.1 Constantino states that apart from the accused and the deceased Nirmala the other rooms are

occupied by one Sainaj Shaikh (P.W.3) and one Mahamad. She had constructed another room, which had been given to deceased Yellawwa alias Nirmala on rent of Rs. 150/- per month. Deceased Nirmala was staying in the said room alongwith her three children deceased Sunita, Chandrakant and Rekha. The accused had come to reside with deceased Nirmala and as he was quarrelling with her P.W.1 Constantino had told him not to stay and the accused had accordingly left. After three months of this, the accused accompanied with his deceased mother Yellawwa returned and requested P.W.1 Constantino to permit him to stay in a shed and, accordingly, the accused and his mother began to reside in the rented portion of the house of P.W.1. P.W.1 Constantino further states that on 7th February 1998 she had not gone to work as she was indisposed and at about 5.00 p.m. deceased Nirmala told her that she (Nirmala) was going to the market for selling vegetables. Deceased Nirmala did not return on that day and her three children were with P.W.1. The mother of the accused deceased Yellawwa took the three children to her room. At about 10.00 p.m. P.W.1 went to the room of deceased Yellawwa to inquire with her if Nirmala had returned but deceased Yellawwa had informed P.W.1 that deceased Nirmala had not returned. At about 12 midnight when P.W.1 went to switch off the light, she found that there was no one in the room occupied by the mother of the

accused. At about 1.30 a.m. she woke up because of some noise and saw that the room which was occupied by Nirmala was on fire. Seeing the flames, she raised cries for help and some one phoned the fire-brigade and the fire was put off. She further states that on the next day she had not seen the accused at all. She states that the accused used to quarrel with deceased Nirmala and was demanding money from her. She had, accordingly, filed a complaint on 9th February 1998 at Exhibit P.W.1/A. In the cross-examination P.W.1 admitted that in her complaint there was no reference to the accused staying with deceased Nirmala but there was reference to the accused visiting the room of Nirmala. She has admitted that the accused and deceased Nirmala were quarrelling in Kanada language and that she does not know Kanada. She has admitted that in her complaint there was no reference to deceased Nirmala going to the market but there was a reference that she had seen Nirmala going to the market. An omission was brought out that she had woken up due to some noise and saw the room occupied by Nirmala on fire. However, in the F.I.R. it is stated that she saw some light on the roof and realized that the room of Nirmala was on fire. The omission which was brought on record was hardly material. She admitted that she did not go to the police station on the next day, that is, on 8th. She denied the suggestion that the accused did not quarrel

with deceased Nirmala on the ground of money. She also denied the suggestion that she had not seen the three deceased children of Nirmala sleeping in the room of the accused with the mother of the accused.

10. P.W.3 Sainaj Shaikh, was a neighbour of deceased Nirmala and the accused. She states that she had seen the children of deceased Nirmala and their grandmother, that is, the mother of the accused deceased Yellawwa. At 9.30 p.m. she alongwith her children had gone to see a movie on T.V. and on her return she saw that no one was in the room of deceased Yellawwa. She saw the room of deceased Nirmala locked. The door to the room of the mother of the accused was ajar. At about 1.00 a.m. she heard the cries of P.W.1 and saw the room of deceased Nirmala was on fire. The fire-brigade was called and the fire was put off. She admitted that she did not know what was the relations of the accused and deceased Nirmala but he was visiting her and used to quarrel with deceased Nirmala. She has admitted in the cross-examination that deceased Nirmala and the accused used to talk in Kanada. She has also stated that twice she had seen the accused quarrelling with deceased Nirmala. She has also admitted that she does not know when the accused started staying in the room but has admitted that whenever accused used to visit Nirmala he used to reside in her room. She has

denied the suggestion that she had not seen the accused quarrelling with deceased Nirmala.

11. The prosecution has examined P.W.16 Satyava Naik, mother of Nirmala. P.W.16 Satyava stated that her deceased daughter Yellawwa alias Nirmala was married to one Raju Naik. Because of fights with her husband, deceased Nirmala had stayed with her for three months and thereafter began to reside separately with her three children. Incidentally it may be stated that P.W.16 Satyava is the daughter of deceased Yellawwa and sister of the accused. She further states that deceased Nirmala used to sell vegetables in the Municipal Market at Curchorem. A day prior to the date of the incident, deceased Nirmala had come to see her in the market and had handed over some money to her. At about 1.00 p.m. accused had come to the market and had tried to pull the cloth bag where P.W.16 Satyava had kept the money given by Nirmala. The accused had told P.W.16 that one person had come by a car and had taken away her mother, deceased Nirmala and her three children. The accused had tried to entice P.W.16 Satyava to come with him on the pretext that he would show her the car. On the next day at about 8.00 a.m. she went to the room occupied by her daughter deceased Nirmala but found that the room was burnt. On inquiry from the landlady P.W.16 learnt that deceased Nirmala had not returned that day at all.

She learnt that some dead bodies were found in the well and went to the well which was behind a theatre. She identified the dead bodies of her mother, her daughter and her three grandchildren. She further states that the accused used to visit Nirmala and used to even sleep at her place. Initially, according to her, the relations between deceased Nirmala and the accused were cordial and, thereafter, the relationship got sour and the accused also used to beat Nirmala very often. In the cross-examination she admitted that the accused had told her that some one had taken away her mother, daughter, and the grandchildren in a Maruti car. She also admitted that the accused had told her that some one had set fire to the hut of her daughter Nirmala. She denied the suggestion that the accused had not come to the market at about 1.00 p.m. and that he had not attempted to snatch the bag containing the money. She similarly denied as false that the accused had not told her that some one had taken away the deceased in a car. Omission in respect of P.W.16 slapping the accused was pointed out.

12. The prosecution has examined P.W.27 Gangawa Mandi, who was then a fruit vendor selling fruits in the market. She states about 2 years ago she learnt that the bodies of deceased Yellawwa, Nirmala and her three children were found floating in the well. On the same

day at about 8.00 p.m. while she was preparing to go home she saw the accused passing by that side. She questioned the accused as to how his mother, niece and her children had fallen in the well. The accused replied that he did not know and told her that his mother was not well and had gone with the deity of Goddess Yelama. In the cross-examination she admitted that her statement was recorded by the police on the same day. She states that she knew the accused since last 4 to 5 years. She also admitted that when she had called out to the accused, the accused had initially pretended not to hear her and had come to her only after she had called out to him twice or thrice.

13. From the perusal of the evidence of these witnesses it is clear that the relations between the accused and the deceased were strained. The accused was always quarrelling with the deceased on account of money. The version of these witnesses is not shattered in the cross-examination and there is nothing to discredit the claim made by these witnesses. Therefore, according to us, the circumstances that the accused had given false information and that the relations between the deceased and the accused were strained are fully established by the prosecution.

14. In pursuance to the statement made by the



accused, the clothes of the accused were recovered from the well in the presence of P.W.8 Krishnanath. In pursuance to the discovery statement of the accused the plastic bag, which the deceased was carrying on that day, was recovered from the room of the accused. Importantly, on the basis of the discovery statement of the accused in the presence of P.W.10 Divakar, the clothes of deceased Nirmala were also recovered. The prosecution has examined P.W.30 Neela Kolnatki, who had accompanied deceased Nirmala on 7th February 1998, who corroborates Nirmala handing over money to P.W.16 Satyava and then Nirmala purchasing eggs, tea powder, soap and oil. She also states that while Nirmala was purchasing these articles, she had noticed the accused was standing near the shop. She has stated that Nirmala had a plastic polythene bag in her hand and she had seen the accused following Nirmala and after some time both of them walking together. In the cross-examination she has stated that she had seen the accused walking behind them and had also seen him going to the bar of Caetano. She admitted that she did not tell Nirmala that accused was following them. She denied the suggestion that the accused had not followed Nirmala on that day and she had not seen Nirmala and the accused walking together.

15. With the assistance of the learned counsel for the accused and the learned Public Prosecutor appearing

for the State we have carefully perused the evidence of P.W.8 Krishnanath, P.W.9 Sunil and P.W.10 Divakar. There is nothing in the cross-examination of these witnesses to discredit their version.

16. The prosecution has also been able to establish that the key, which was seized from the person of the accused when he was arrested, fitted the lock M.O.13, which was placed on the door of the room of deceased Nirmala. A panchanama in respect of that is at Exhibit P.W.6/A, which was drawn in the presence of P.W.6 Avinash.

17. The prosecution has relied on the fact that the accused, when he was examined by P.W.11 Dr. Colaco, had two injuries. P.W.11 Dr. Colaco states that accused had (1) abrasion with scab formation 3/4" in size situated on the proximal phalanx of the ring finger of the left hand and (2) abrasion with scab formation 1 1/2 x 1/4" on the left leg. The certificate is at Exhibit P.W.11/A. In the cross-examination P.W.11 has admitted that these injuries could be possible while the accused was working as a labourer. The injuries, therefore, on the person of the accused do not assist the prosecution case in bringing home the offence against the accused.

18. The prosecution has also relied on the circumstance that the deceased were last seen in the company of the accused. For proving this circumstance the prosecution has examined P.W.13 Anand Gadiwade, who claims that he had seen deceased Nirmala in the company of the accused. He states that he knew the accused and deceased Nirmala. He claims to have seen Nirmala going towards her house after making purchases from the shop and had seen the accused following Nirmala. After some time he had seen both of them going together. He has identified the clothes, M.Os.10 and 11, worn by the accused.

19. The prosecution has also examined P.W.17 Namdeo Naik, who claims to have seen the accused accompanied by an old lady and three small children. He has identified the old lady as the mother of the accused. He has also identified the three children as children of Nirmala. He claims to be acquainted with the husband of deceased Nirmala, as he was also working as a carpenter.

20. The prosecution has also examined P.W.26 Suhas Sanvodekar, who had seen deceased Nirmala carrying a white polythene bag in the company of the accused. He also states that he saw the accused and the lady having a heated discussion. He has given a description of the

design on the sari worn by the said lady. He has also described the clothes worn by the accused.

21. Thus, according to us, the prosecution has been able to establish that the death of the deceased was homicidal. There were injuries on the person of deceased Nirmala indicating that she had struggled. The clothes of deceased Nirmala were recovered at the instance of the accused as also the bag, which the deceased Nirmala was seen carrying on that day. After the accused was arrested, a key was recovered from the pant pocket of the accused and the key fitted the lock placed on the door of the room of deceased Nirmala. The recovery of the clothes of the accused, at his instance, does not assist the prosecution case, as the said clothes were not found to be either blood stained or torn. The evidence of last seen is certainly a weak piece of evidence. We are particularly not impressed with the evidence of P.W.26 Suhas. The evidence of P.W.26 Suhas appears to be artificial. It is humanly impossible to believe that he would recollect the design on the sari worn by the deceased, who was not at all acquainted with him. The prosecution is also successful in proving that the relations between the accused and the deceased were strained.

22. The injuries on the person of deceased Nirmala

and the fact that her clothes were discovered at the instance of the appellant/accused in another well would indicate that the death of the deceased Nirmala was homicidal. The injuries on the person of Nirmala would indicate that she had resisted either in the removal of the clothes or while she was being thrown in the well. Even otherwise, from the record, it does not appear at all that Nirmala had any reason for committing suicide. So also deceased Yellawwa, mother of the accused, had no reason for committing suicide. The record does not indicate that they were on inimical terms with any one else. It is true that the prosecution, apart from establishing that the relations between the accused and the deceased Nirmala were strained, has not been able to establish the motive for the commission of the crime. In this regard, Mr. Lawande, the learned Public Prosecutor has relied on the Judgment of the Apex Court in **State of Himachal Pradesh v. Jeet Singh**, 1999 Cri. L.J. 2025 wherein it was observed thus:-

" It is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed

as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended."

23. In our considered opinion, the circumstances so proved by the prosecution unerringly point towards the guilt of the accused and the circumstances taken accumulatively form a chain so complete that there is no escape from the conclusion that, in all human probability, the crime was committed by the accused and no one else. The circumstances so proved by the prosecution exclude every other hypothesis but the guilt of the accused. We are, therefore, of the opinion that the learned trial Court has correctly appreciated the evidence and has recorded a finding in respect of the conviction of the appellant for an offence under Section 302 of the Indian Penal Code.

24. In respect of the charge under Section 436 of the Indian Penal Code, it is seen that there is no direct evidence in respect of the involvement of the accused. At the relevant time, before the room was set on fire, the accused was not seen in the vicinity. There is no circumstantial evidence which would connect the accused with the commission of the crime under Section 436 of the Indian Penal Code. The circumstance in respect of the offence under Section 302 of the Indian Penal Code may at the most raise a suspicion

against the accused for having committed an offence under Section 436 of the Indian Penal Code. Suspicion, however strong, cannot take the place of proof. We, therefore, find that there is no evidence on record justifying the conviction of the appellant for an offence under Section 436 of the Indian Penal Code. The learned trial Court has relied on the circumstance of the recovery of the plastic bag, as that circumstance, according to the learned trial Court, indicates that the accused had returned to his room after he had killed Nirmala. Therefore, according to the trial Court, this circumstance suggests that the accused had set fire to the room of Nirmala. The prosecution evidence does not indicate exactly as to when the accused had come for placing the bag and at what time the room of Nirmala was set on fire. In the absence of any evidence on this vital aspect, the circumstance of the accused returning to keep the plastic bag in his room may, at the most, raise a suspicion against the accused. In our considered opinion, therefore, the prosecution has not been able to establish the offence under Section 436 of the Indian Penal Code against the accused. Accordingly, the accused is entitled to be acquitted.

25. In the result, therefore, Criminal Appeal is partly allowed. The conviction and sentence of the accused for an offence punishable under Section 436 of

the Indian Penal Code is, hereby, quashed and set aside and the accused is acquitted of the aforesaid charge. The conviction and sentence against the accused for the offence punishable under Section 302 of the Indian Penal Code is, hereby, confirmed and the appeal as regards the conviction under Section 302 is dismissed. Since the accused is in custody, the copy of this Judgment be sent to the accused.

(P.V. KAKADE)  
JUDGE.

(P.V. HARDAS)  
JUDGE.

ed's.