1959

December 14

ANANT CHINTAMAN LAGU

v.

THE STATE OF BOMBAY

(S. K. DAS, A. K. SARKAR and M. HIDAYATULLAH, JJ.)

Criminal Law—Murder by poisoning—Circumstantial evidence —Poison not detected in body of deceased—Conduct of accused, both before and after—Conviction for murder.

At the trial of a person for murder by alleged poisoning, the fact of death by poisoning is provable by circumstantial evidence, notwithstanding that the autopsy as well as the chemical analysis fail to disclose any poison; though the cause of death may not appear to be established by direct evidence, the medical evidence of experts and the circumstances of the case may be sufficient to infer that the death must be the result of the administration to the victim of some unrecognised poison or drug which acts as a poison, and a conviction can be rested on circumstantial evidence provided that it is so decisive that the court can unhesitatingly hold that the death was not a natural one.

Per S. K. Das and M. Hidayatullah, JJ —Where the evidence showed that the appellant who was the medical adviser of the deceased, deliberately set about first to ingratiate himself in the good opinions of his patient and becoming her confidant, found out all about her affairs and gradually began managing her affairs, that all the time he was planning to get at her property and had forged her signature on a dividend warrant and had obtained undated cheque from her and then under the guise of helping her to have a consultation with a specialist in Bombay took her in a train, and then brought the patient unconscious to a hospital bereft of all property with which she had started from home and gave a wrong name to cover her identity and wrong history of her ailments, that after her death he abandoned the body to be dealt with by the hospital as an unclaimed body, spread the story that she was alive and made use of the situation to misappropriate all her properties, and that he tried by all means to avoid post-mortem examination and when questioned gave false and conflicting statements, *held* that if the deceased died in circumstances which *prima facie* admit of either disease or homicide by poisoning one must look at the conduct of the appellant both before and after the death of the deceased, that the *corpus delicti* could be held to be proved by a number of facts which render the commission of the crime certain, and that the medical evidence in the case and the conduct of the appellant unerringly pointed to the conclusion that the death of the deceased was the result of the administration of some unrecognised poison or drug which would act as a poison and that the appellant was the person who administered it.

Per Sarkar, J.—If it could be established in this case that the deceased had died an unnatural death, the conclusion would be inevitable that unnatural death had been brought about by poison, but the circumstances were not such that from them the only reasonable conclusion to be drawn was that the deceased died an unnatural death. *Held*, that the prosecution had failed to prove the guilt of the appellant.

Regina v. *Onufrejczyk*, [1955] 1 Q.B. 388, *The King* v. *Horry*, [1952] N.Z.L. 111, *Mary Ann Nash's case*, (1911) 6 Cr. App. R. 225 and *Donnall's case*, (1817) 2 C.&K. 308n, considered and relied on.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 73 of 1959.

Appeal by special leave from the judgment and order dated January 16/20th, 1959, of the Bombay High Court in Confirmation case No. 25 of 1958 with Criminal Appeal No. 1372 of 1958, arising out of the judgment and order dated October 27, 1958, of the Sessions Judge, Poona, in Sessions Case No. 52 of 1958.

A. S. R. Chari, S. N. Andley, J. B. Dadachanji and *Rameshwar Nath*, for the appellant.

H. N. Seervai, Advocate-General for the State of Bombay, Porus A. Mehta and *R. H. Dhebar*, for the respondent.

1959. December 14. The Judgment of S. K. Das and Hidayatullah, JJ., was delivered by Hidayatullah, J. Sarkar, J., delivered a separate Judgment.

Hidayatullah J.

HIDAYATULLAH J.—This appeal by special leave is against the judgment of the Bombay High Court [J. C. Shah, J. (now of the Supreme Court) and V. S. Desai, J.] by which it maintained the conviction of the appellant, Lagu, under s. 302 of the Indian Penal Code, and confirmed the sentence of death passed on him by Shri V. A. Naik (now Naik, J.) Sessions Judge, Poona.

The appellant was tried for the murder of one Laxmibai Karve, and the charge held proved against him was that on or about the night between November 12 and 13, 1956, either at Poona or in the course of a railway journey between Poona and Bombay, he administered to the said Laxmibai Karve, some unrecognised poison or drug which would act as a poison,

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with the intention of causing her death and which did cause her death.

Laxmibai Karve was a resident of Poona where she lived at 93-95, Shukrawar Peth. Before her marriage she was known as Indumati, Indutai or Indu Ponkshe. In the year 1922, she married Anant Ramachandra Karve, a widower with a son by name, Vishnu. On her marriage, as is the custom, she was named Laxmibai by the family of her husband and was known as Laxmibai Karve. She was also known as Mai or Mai Karve. From Laxmibai there were born two sons, Ramachandra (P.W. 1) and Purshottam *alias* Arvind, who died in 1954.

Anant Ramachandra Karve was a moderately rich man, who had been successful in business. He died in 1945 of pleurisy. He was attended till his death by the appellant and his brother, B. C. Lagu, both of whom are doctors. Anant Ramachandra Karve left a will dated February 28, 1944. Prior to the execution of the will, he had gifted Rs. 30,000 to his son, Vishnu, to set him up in business. By his will he gave the house No. 93-95, Shukrawar Peth, Poona to Ramachandra with a right of residence in at least three rooms to his widow, Laxmibai and a further right to her to receive Rs. 50 per month from the rent of the house. He assigned an insurance policy of Rs. 5,000 in her favour. The business was left to Ramachandra. The cash deposits in Bank, Post Office and with other persons together with the right to recover loans from debtors in the Bhor State were given to Purushottam *alias* Arvind. Certain bequests of lands and debentures were made to Vishnu's children. Laxmibai was also declared owner of all her ornaments of about 60 tolas of gold and nose-ring and pearl bangles which were described in the will.

In addition to what she inherited from her husband, Laxmibai inherited about Rs. 25,000 invested in shares from her mother, Girjabai, and another 60 tolas of gold ornaments. In January 1954, Purushottam *alias* Arvind died at Poona. By Purushottam's death Laxmibai also inherited all the property held by him.

Thus, at the time of her death, Laxmibai was possessed of about 560 shares in diverse Electric Companies, debentures in South Madras Electric Supply Corporation and Mettur Chemical and Industrial Corporation, a sum of Rs. 7,882-15-0 at the Bank of Maharashtra, a sum of Rs. 35,000 in deposit with one Vasudeo Sadashiv Joshi, gold and pearl ornaments and sundry movables like clothes, house hold furniture, radio etc.

In the year 1946, Ramachandra, the elder son, started living separately. There were differences between the mother and son. The latter had suffered a loss in the business and had mortgaged the house with one Shinde, who filed a suit, and obtained a decree but Vishnu filed a suit for partition claiming that his one-third share was not affected. Before this, Ramachandra had closed his business in 1951, and joined the military. He was posted at different places, but in spite of their differences, mother and son used to correspond with each other. In May, 1956, Laxmibai arranged and performed his marriage, and he went away in June, 1956.

Laxmibai had contracted tuberculosis after the birth of Purushottam. That was about twenty years before her death. The lesion, however, healed and till 1946 her health was not bad. From 1946 she suffered from diabetes. In 1948 she was operated for hysterectomy, and before her operation, she was getting hysterical fits. On June 15, 1950, she was examined by Dr. R. V. Sathe, who prescribed some treatment. In July, 1950, she was admitted in the Wanless Tuberculosis Sanatorium for pulmonary affection, and she was treated till November 15, 1950. Two stages of thoracoplasty operations were performed, but she left, though a third stage of operation was advised. In the operations, her leftside first rib and portions of 2nd to 6th ribs were removed. Laxmibai was, however, treated with medicines, and the focus, it appears, was under control.

We now come to the events immediately preceding her death. Laxmibai had, through the appellant, taken an appointment from Dr. Sathe of Bombay for

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a consultation about her health, for November 13, 1956, at 3-30 p. m. It was to attend this appointment that she left Poona in the company of the appellant by Passenger train on the night of November 12, 1956, for Bombay. The train arrived at Victoria Terminus Station at 5-10 a. m. thirty-five minutes late. It is an admitted fact that Laxmibai was then deeply unconcious and was carried on a stretcher by the appellant to a taxi and later to the G. T. Hospital, where she was entered as an in-door patient at 5-45 a. m. She never regained consciousness and died at 11-30 a. m. Her body remained at the G.T. Hospital till the evening of the 14th, when it was sent to the J. J. Hospital morgue for preservation. Later, it was to be handed over under the orders of the Coroner to the Grant Medical College for the use of Medical Students. It was noticed there that she had a suspicious ligature mark on the neck, and the body was subjected to *post-mortem* examination and the viscera to chemical analysis and then the body was disposed of. Both the autopsy as well as the chemical analysis failed to disclose any poison and the mark on the neck was found to be *post-mortem*.

The appellant was the medical attendant and friend of the family. He and his brother (also a medical practitioner) attended on Anant Ramachandra Karve till his death. The appellant also treated Purshottam *alias* Arvind for two days prior to his death on January 18, 1954. He was also the medical attendant of Laxmibai and generally managed her affairs. In 1955, he started living in the main room of the suite occupied by Laxmibai, and if Ramachandra is to be believed, the reason for the quarrel between Laxmibai and himself was the influence which the appellant exercised over the mother to the disadvantage of the son. However that be, it is quite clear that the son left Poona in June, 1956, and did not see his mother alive again.

The death of Laxmibai was not known to the relatives or friends. The appellant also did not disclose this fact to any one. On the other hand, he kept it a close secret. Soon afterwards, people began receiving

mysterious letters purporting to be from Laxmibai, stating that she had gone on pilgrimage, that she did not intend to return and that none should try to find her whereabouts. She advised them to communicate with her through the newspaper "Sakal". Laxmibai also exhorted all persons to forget her, as she had married one Joshi and had settled at Rathodi, near Jaipur in Rajasthan. People who went to her rooms at first found them locked, but soon the doors were open and the meveable property was found to have been removed. Through these mysterious letters Laxmibai informed all concerned that she had herself removed these articles secretly and that none was to be blamed or suspected. It is the prosecution case that these letters were forgeries, and that the appellant misappropriated the properties of Laxmibai, including her shares, bank deposits etc.

The appellant has admitted his entire conduct after the death of Laxmibai, by which he managed to get hold of her property. His explanation was that he would have given the proceeds to some charitable institution according to her wishes adding some money of his own to round off the figure. He led no evidence to prove that Laxmibai before she left Poona or at any time gave such instructions to him in the matter.

Meanwhile, the continued disappearance of Laxmibai was causing uneasiness to her friends and relatives. On December 31, 1957, G. D. Bhave (P. W. 8) addressed a complaint to the Chief Minister, Bombay. Similarly, Dr. G. N. Datar (P. W. 5) also addressed a letter to the Chief Minister, Bombay on February 16, 1958, and in both these petitions, doubts were expressed. Ramachandra too made a report, and in consequence of a preliminary investigation, the appellant was arrested on March 12, 1958. He was subsequently tried and convicted by the Sessions Judge, Poona. His appeal was also dismissed, and the certificate of fitness having been refused, he obtained special leave from this Court and filed this appeal.

The appellant's contention in this appeal is that the prosecution has not succeeded in proving that

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Laxmibai was poisoned at all, or that there was any poison administered to her which would evade detection, yet cause death in the manner it actually took place. The appellant contends also that his conduct before the death of Laxmibai was *bona fide* and correct, that no inference of guilt can be drawn from all the circumstances of this case, and that his subsequent conduct, though suggestive of greed, was not proof of his guilt on the charge of murder.

The conviction of the appellant rests on circumstantial evidence, and his guilt has been inferred from medical evidence regarding the death of Laxmibai and his conduct. The two Courts below have held that the total evidence in this case unerringly points to the commission of the crime charged and every reasonable hypothesis compatible with the innocence of the appellant has been successfully repelled. A criminal trial, of course, is not an enquiry into the conduct of an accused for any purpose other than to determine whether he is guilty of the offence charged. In this connection, that piece of conduct can be held to be incriminatory which has no reasonable explanation except on the hypothesis that he is guilty. Conduct which destroys the presumption of innocence can alone be considered as material. The contention of the appellant, briefly, is that the medical evidence is inconclusive, and that his conduct is explainable on hypotheses other than his guilt.

Ordinarily, it is not the practice of this Court to re-examine the findings of fact reached by the High Court particularly in a case where there is concurrence of opinion between the two Courts below. But the case against the appellant is entirely based on circumstantial evidence, and there is no direct evidence that he administered a poison, and no poison has, in fact been detected by the doctor, who performed the post-mortem examination, or by the Chemical Analyser. The inference of guilt having been drawn on an examination of a mass of evidence during which subsidiary findings were given by the two Courts below, we have felt it necessary, in view of the extraordinary nature of this case, to satisfy ourselves

whether each conclusion on the separate aspects of the case, is supported by evidence and is just and proper. Ordinarily, this Court is not required to enter into an elaborate examination of the evidence, but we have departed from this rule in this particular case, in view of the variety of arguments that were addressed to us and the evidence of conduct which the appellant has sought to explain away on hypotheses suggesting innocence. These arguments, as we have stated in brief, covered both the factual as well as the medical aspects of the case, and have necessitated a close examination of the evidence once again, so that we may be in a position to say what are the facts found, on which our decision is rested.

That Laxmibai died within six hours of her admission in the G. T. Hospital is not questioned. Her body was identified by persons who knew her well from her photograph taken at the J. J. Hospital on November 19, 1956. In view of the contention of the appellant that she died of disease and/or wrong treatment, we have to determine first what was the state of her health before she went on the ill-fated journey. This enquiry takes us to the medical papers maintained at the institutions where she was treated in the past, the evidence of some of the doctors who dealt with her case, of the observation of witnesses who could depose to her outward state of health immediately before her departure, and lastly, the case papers maintained by the appellant as a medical adviser.

The earliest record of Laxmibai's health is furnished by Dr. K. C. Gharpure (P. W. 17), who treated her in 1948. According to Dr. Gharpure, she entered his Nursing Home on April 6, 1948, and stayed there till April 24, 1948. Laxmibai was then suffering from Menorrhagia and Metrorrhagia for about six years. In 1946 there was an operation for dilatation and also curettage. She had Diabetes from 1945 and hysterical fits since 1939. On admission in Dr. Gharpure's Nursing Home, her blood pressure was found to be 140/80 and urine showed sugar + +, albumin nil. She was kept in the hospital and probably treated, and on the 11th, when a sub-total

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hysterectomy was performed, she had blood pressure 110/75 and sugar traces (albumin nil) before the operation. According to Dr. Gharpure, the operation was not for hysterical fits, and along with hysterectomy the right ovary was cysticpunctured and the appendix was also removed. A certificate was issued by Dr. Gharpure (Ex. 121), in which the same history is given.

Laxmibai was next examined by Dr. Ramachandra Sathe (P.W.25) on June 15, 1950. He deposed from the case file which he had maintained about her complaints. A copy of the case papers shows that she was introduced to him by the appellant. At that time, her weight was 120 lbs. and her blood pressure, 140/90. Dr. Sathe noticed that diabetes had existed for four years, and that she was being given insulin for 8 months prior to his examination. He also noticed hysterectomy scar, and that she had a tubercular lesion on the left apex 20 years ago. According to the statement of the patient, she had trouble with tuberculosis from May 1949, and her teeth were extracted on account of pyorrhoea. She was getting intermittent temperature from September 1949, and was receiving streptomycin and PAS irregularly. She was then suffering from low temperature, slight cough and expectoration. On examination, the doctor found that there was infiltration in the left apex but no other septic focus was found. The evidence does not show the treatment which was given, and the doctor merely stated that he must have recommended a line of treatment to the patient, though he had no record of it.

On July 13, 1950, Laxmibai entered the Wanlesswadi T. B. Sanatorium, and stayed there till November 15, 1950. Her condition is noted in two certificates which were issued by the Sanatorium and proved by Dr. Fletcher (P. W. 16), the Medical Superintendent. In describing the previous history of the patient, the case papers showed that she had a history of Pott's disease (T. B. of the spine) 20 years before. She had diabetes for five years and history of hysterectomy operation two years before. It was also noted that she had

T. B. of the lungs 15 years back, but had kept well for 14 years and a new attack began in or about 1949. The certificate describes the treatment given to her in these words:

> "Patient was admitted on 13th July, 1950. X-Ray on admission showed extensive filtration on the left side with a large cavity in the upper zone; the right side was within normal limits. She had diabetes with high blood sugar which was controlled by insulin. Two stages of thoracoplasty operations on the left side were done and there was good clearing of disease but there was a small residual cavity seen and the third stage operation was advised. The patient is leaving at her own request against medical advice. Her sputum is positive."

From the above, it appears that Laxmibai's general complaints were menstrual irregularities corrected by hysterectomy, tuberculosis of the lungs controlled to a large extent by thoracoplasty and medicines and diabetes for which she was receiving treatment. In the later case papers, there is no mention of hysterical fits, and it seems that she had overcome that trouble after the performance of hysterectomy and the cystic-puncture of the ovary, for there is no evidence of a recurrence after 1948. Diabetes was, however, present, and must have continued till her death.

Next, we come to the evidence of some witnesses who saw her immediately prior to her departure for Bombay on November 12, 1956. The first witness in this connection is Ramachandra (P.W. 1), son of Laxmibai. He has given approximately the same description of her many ailments and the treatment she underwent. He last saw her in June, 1956, when his marriage was performed. According to him, the general condition of his mother was rather weak, but before that, her condition had not occasioned him any concern and he had not noticed anything so radically wrong with her as to prompt him to ask her about her ailments. When he last saw his mother in June 1956, he found her in good health. Dr. Madhav Domadhar Bhave (P.W. 9), who knew Laxmibai

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intimately stated that he saw her last in the month of October, 1956, and that the condition of her health was good. No question was asked from him in cross-examination at all. His brother, G. D. Bhave, (P.W. 8), who is a landlord, had gone to Laxmibai's house on November 8, 1956, and met her in the presence of the appellant. Laxmibai had then told him that she was going to Bombay with the appellant to consult Dr. Sathe in connection with her health. She had also stated that she would be returning in four or five days. According to the witness, she was in good health, and was moving about and doing her own work. The next witness is Champutai Vinayak Gokhale (P.W. 11), who met Laxmibai on November 10 or 11, 1956. Champutai is a well-educated lady. She is a B.Sc. of the Bombay University and an M.A. of Columbia (U.S.A.) University. She said that she had gone to Laxmibai's house to invite her for the birthday party of her son, which was to take place on November 13, 1956. She found Laxmibai in good state of health, and Laxmibai promised that though she would be going to Bombay, she would return soon enough to join the party.

Similarly, Viswanath Janardhan Karandikar, pleader of Poona, met Laxmibai on November 10 or11, 1956. Laxmibai had herself gone in the afternoon to him to ask him whether her presence was necessary in Poona in connection with the suit filed by Vishnu, to which we have referred earlier. The witness stated that Laxmibai was in good state of health at that time, and that he informed her that he did not propose to examine her as a witness. She was again seen by Dattatreya Vishnu Virkar (P.W. 6) on the night of November 12, 1956, an hour before she left her house for Bombay. Virkar, who is a Graduate in Electrical Mechanics and in Government service, was a tenant living in the same house. Laxmibai, according to the will of her husband, was entitled to Rs. 50 out of the rents from tenants. She went to Virkar's Block at 8 p.m.. and told him that she was going to Bombay to consult a doctor in the company of the appellant and needed money. Virkar gave her Rs. 50 and

Laxmibai went back to her Block saying that she would give a receipt. Later, she brought the receipt to Virkar seated at his meals, asked him not to get up and left the receipt in his room. The receipt signed by Laxmibai is Ex. 70, and is dated November 12, 1956. Shantabai (P.W. 14), a servant of Laxmibai, was deaf and dumb, and her evidence was interpreted with the help of Martand Ramachandra Jamdar (P.W. I3), the Principal of a Deaf and Mute School. It appears that Shantabai had studied Marathi, and was able to answer questions written on a piece of paper, replies to which questions she wrote in her own hand. Some of the questions were not properly answered by Shantabai, but she stated by pantomime that on the day on which she left, the appellant had given two injections to Laxmibai. The learned Sessions Judge made a note to the following effect:

"In the morning the accused gave Laxmibai one injection and in the evening he gave the second one. (The signs were so clear that I myself gathered the meaning and the interpreter was not asked to interpret the signs)."

Next, Laxmibai was seen by Pramilabai Sapre (P.W. 12) at 8 p.m. on November 12, 1956. Laxmibai had told the witness that she was going to Bombay to consult a doctor and Laxmibai again passed her door at 9-15 p.m., when the witness was at her meals. Though Laxmibai told her not to disturb herself, the witness did get up and saw her. The witness stated that Laxmibai did not suffer from T. B. after the operation but was suffering from diabetes, and that she sometimes used to give Laxmibai her injections of insulin but only till 1953. The last witness on the state of Laxmibai's health is K. L. Patil (P. W. 60), who saw Laxmibai immediately before her departure for the station. He saw her standing at the *Par* in front of her house with a small bag and a small bedding. He then saw the appellant arriving there, and Laxmibai presumably left in a rickshaw or a tonga, because there was a stand for these vehicles in the neighbourhood. All this evidence was not questioned except to point out—that Dr. Datar in his petition to the Chief Minister had stated that Laxmibai was a

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frank case of tuberculosis of both lungs and an invalid (Ex. 68). But Dr. Datar explained that he had so stated there, because it was being "circulated" that she had gone on a long pilgrimage alone, and that it was most improbable. Indeed, Dr. Datar said that Laxmibai was well enough to do all her work and even cooked for herself.

From this mass of evidence given by persons from different walks of life and most of them well-placed, it is clear enough that Laxmibai was not in such a state of health that she would have collapsed in the train, unless something very unusual took place. She was not in the moribund state in which she undoubtedly was, when she reached the hospital. Her general health, though not exactly good, had not deteriorated so radically as to prevent her from attending to her normal avocations. She appeared to have been quite busy prior to her departure arranging for this matter and that, and she did not rely upon other persons' help but personally attended to all that she desired. Right up to 9-15 or so in the night, she was sufficiently strong and healthy to go about her affairs, and indeed, she must have boarded the train also in a fit state of health, because there is nothing to show that she was carried to the compartment in a state of collapse or unconsciousness.

We have stated earlier that the appellant who was presumably treating her for her ailments had maintained case papers to show what treatment he was giving her from time to time. These case papers are Ex. 305, and commence on February 27, 1956. The medicines that have been shown as prescribed in these case papers show treatment for diabetes, general debility, tuberculosis, rheumatism and indigestion. Much reliance cannot, however, be placed upon this document, because these case papers significantly enough stop on November 12, 1956, and continue again from February 13, 1957, when Laxmibai was no more. There are four entries of treatment given to Laxmibai between February 13 and February 28, 1957, when Laxmibai had already died and her body had undergone post-mortem examination and been cremated.

The extent to which her treatment, if any, went in the period covered by the case papers may or may not be truly described by the appellant in these papers, but we are definitely of the opinion that the entries there cannot be read without suspicion, in view of the extraordinary fact described by us here. It appears, however, that the last insulin injection was given to her on September 27, 1956, though the appellant stated in his examination as accused in the case that she was put on Nadisan tablets for diabetes. The appellant was questioned by the Sessions Judge as to the State of her health, and he stated that Laxmibai on the day she left for Bombay had a temperature of 100 degrees and was suffering from laryngitis, pharyngitis, and complained of pain in the ear. What relevance this has, we shall point out subsequently when we deal with the medical evidence and the conclusions of the doctors about it.

The next question which falls for consideration is whether the appellant and Laxmibai travelled in the same compartment on the train. The tain left Poona at 10 p.m., and it is obvious enough that it was a comparatively slow and inconvenient train. We have no evidence in the case as to whether the appellant travelled with Laxmibai in the same compartment, but both the Courts below have found from the probabilities of the case that he did. The best person to tell us about this journey is necessarily the appellant, and reference may now be made to what he stated in regard to this journey. The appellant had arranged for the examination of Laxmibai by Dr. Sathe at Bombay. He was the family physician and also a friend. Laxmibai was an elderly lady and the appellant was for some time previous to this journey living in the main room of her block. There would be nothing to prevent the appellant from travelling in the same compartment with his patient, who might need his attention during the journey. The appellant denied in Court that he had travelled in the same compartment, but his statements on this part of the events have not been quite consistent. After Laxmibai died and the question arose about the disposal of her body, the police at

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Poona were asked to contact the appellant to get some information about her. On November 16, 1956, before any investigation into an offence of any kind was started, the appellant was questioned by the police, and he gave a written statement in Ex. 365. He stated there as follows :

"I, Anant Chintaman Lagu, occupation Medical practitioner, age 40 years, residing at H. No. 431/5, Shukrawar and dispensary at H. No. 20, Shukrawar Peth, Poona 2, on being questioned, state that on the night of 12th November, 1956, I left Poona for Bombay by the train which leaves Poona at 10 p.m. I reached Victoria Terminus at 5-15 a.m. on 13th November, 1956. In my compartment I had a talk with a woman as also with other passengers. On getting accomodation in the train almost all of us began to doze and at about 12 p.m. we slept. As Byculla came, we started preparations for getting down. At that time one woman was found fast asleep. From other passengers I came to know that her name was Indumati Panse, about 36 years old and she had a brother serving in Calcutta. Other passengers got down at V. T. The woman, however, did not awake. I, therefore, looked at her keenly and found that she was senseless. Being myself a doctor, I thought it my duty to take her to the hospital. I, therefore, took her to the G.T. Hospital in a taxi. I know that that hospital was near. As I had taken the said woman to the hospital, the C.M.O. took my address. I have no more information about the woman. She is not my relation and I am not in any way responsible for her."

It will appear from this that he was travelling in the same compartment as Laxmibai, though for reasons of his own he did not care to admit that he was taking her to Bombay. Similarly, in the hospital when he was questioned about the patient he had brought for admission, he stated to Dr. Ugale (P. W. 18), Casualty Medical Officer, that the lady had suddenly become unconscious in the train. This fact was noted by Dr. Ugale in the bed-head ticket, and Dr. Ugale has stated on oath that the information was supplied by

the appellant himself. To Dr. Miss Aneeja, who was the House Physician on the morning of November 13, the appellant also stated the same thing. Dr. Miss Aneeja had also made a separate note of this, and stated that the information was given by the appellant. In view of these statements made by the appellant at a time when he was not required to face a charge, we think that his present statement in Court that he travelled in a separate compartment cannot be accepted.

The train halted at various stations *en route,* and evidence was led in the case, of the Guard, K. Shamanna (P. W. 37), who deposed from his memo book (Ex. 214). This train made 26 halts *en route* before it arrived at V. T. Station. Some of these halts were of as many as 20 minutes. It is difficult to think that the appellant would not have known till he arrived at Victoria Terminus that his patient was unconscious, and the fact that he mentioned that she became suddenly unconscious shows that he knew the exact manner of the onset. Without, however; speculating as to what had actually happened, it is quite clear to us that Laxmibai was in the same compartment as the appellant, a fact which was not denied by the learned counsel in the arguments before us. If we were to accept what the appellant stated as true, then Laxmibai lost her consciousness suddenly. It is, however, a little difficult to accept as true all that the appellant stated in this behalf, because he told a patent lie to the police when he was questioned, that he knew nothing about the woman or who she was, but took her to the hospital as an act of humanity when he found her unconscious. There is nothing to show beyond this statement to the police in Ex. 365 that there were other passengers in the compartment; but if there had been, the attention of these passengers would have been drawn to the condition of Laxmibai, and some one would have advised the calling of the Guard or the railway authorities at one of these stations at which the train halted. The circumstances of the case, therefore, point to the appellant and Laxmibai being in the compartment together, and the preponderance of

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probabilities is that the compartment was not occupied by any other person.

We shall leave out from consideration for the present the circumstances under which Laxmibai was admitted in the G. T. Hospital and the treatment given to her. We shall now pass on to her death and what happened thereafter and the connection of the appellant with the circumstances resulting in the disposal of the dead body. We have already stated that the appellant was present in the hospital till her death. We next hear of the appellant at Poona. On the afternoon of November 13, 1956, Dr. Mouskar (P. W. 40), the Resident Medical Officer of the Hospital, sent a telegram (Ex. 224) to the appellant, and it conveyed to him the following information:

"Indumati expired. Arrange removal reply immediately." The telegram was sent at about 2 p.m. The appellant in reply did not send a telegram, but wrote an inland letter in which he stated that the name of the woman admitted by him in the hospital had been wrongly shown as "Paunshe", and that there was an extra "u" in it. He also stated that he had informed her brother at Calcutta about the death, and that the brother would call at the hospital for the body of his sister. The name of the brother was shown as Govind Vaman Deshpande. The letter also stated that the appellant was writing in connection with the woman aged 30 to 35 years admitted in the hospital at 6 a.m. on November 13, 1955, and who had expired the same day at 11 a.m. The name of the brother in this letter is fictitious, because Laxmibai had no brother, much less a brother in Calcutta and of this name. Thereafter, the appellant took no further action in the matter till the police questioned him on the 16th, two days after he had sent the letter. It seems that the appellant did not expect the police to appear so soon, and he thought it advisable to deny all knowledge about the lady he had taken to the hospital by telling the police that he did not know her. The inference drawn from these two pieces of conduct by the Courts below is against the appellant, and we also agree. We have already stated that from then onwards, the

appellant did not care to enquire from the hospital authorities as to what had happened to his patient's dead body, and whether it had been disposed of or not. He also did not go to Bombay, nor did he inform Dr. Sathe about the cancellation of the appointment. In his examination, he, however, stated that he attempted to telephone to Dr. Sathe, but could not get through, as the instrument was engaged on each occasion. One expects, however, that he would have in the ordinary course written a letter of apology to Dr. Sathe, because he must have been conscious of the fact that he had kept the Specialist waiting for this appointment; but he did not. It is said that the appellant need not have taken this appointment and could have told a lie to Laxmibai; but the appointment with Dr. Sathe had to be real because if the plan failed, Laxmibai would have been most surprised why she was brought to Bombay. With this ends the phase of events resulting in the death of Laxmibai. We shall deal with the events in the hospital later, but we pursue the thread of the appellant's conduct.

Prior to the fateful journey, Laxmibai had passed two documents to the appellant. They are Exs. 285 and 286. By the first, Laxmibai intimated the Bank of Maharashtra, Poona, that she was going to withdraw in the following week from her Savings Bank account a sum of money between Rs. 1,000 and Rs. 5,000. The other document was a bearer cheque for Rs. 5,000, also signed by Laxmibai but written by the appellant. The appellant presented the first on November 17 after writing the date, November 15, on it and the second on November 20, after writing the date, November 19, and received payment. Prior to this, on November 12, 1956, when Laxmibai was alive and in Poona he had presented to the Bank of Maharashtra a dividend warrant for Rs. 2,607-6-0 to Laxmibai's account writing her signature himself. This was hardly necessary if he was honest. The signature deceived the Bank, and it is obvious that he was a consummate forger even then. Of course, he put the money into Laxmibai's account, but he had to if he was to draw it out again on the strength of these

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two documents. The question is, can we say that he was honest on November 12, 1956? The answer is obvious. His dishonest intentions were, therefore, fully matured even before he left Poona. Thereafter, the appellant converted all the property of Laxmibai to his own use. He removed the movables in her rooms including the pots and pans, furniture, clothes, radio, share scrips and so on, to his own house. He even went to the length of forging her signature on securities, transfer deeds, letters to banks and companies, and even induced a lady magistrate to authenticate the signature of Laxmibai for which he obtained the services of a woman who, to say the least, personated Laxmibai. So clever were the many ruses and so cunning the forgeries that the banks, companies and indeed, all persons were completely deceived. It was only once that the bank had occasion to question the signature of Laxmibai, but the appellant promptly presented another document purporting to be signed by Laxmibai, which the bank accepted with somewhat surprising credulity. The long and short of it is that numerous persons were imposed upon, including those who are normally careful and suspicious, and the appellant by these means collected a sum of no less than Rs. 26,000 which he disposed of in various ways, the chief, among them being the opening of a short term deposit account in the name of his wife and himself and crediting some other amounts to the joint names of his brother, B. C. Lagu, and himself. We do not enter into the details of his many stratagems for two reasons. Firstly because, all this conduct has been admitted before us by his counsel, and next because he has received life imprisonment on charges connected with these frauds. Suffice it to say that if the appellant were to be found guilty of the offence, sufficient motive would be found in his dealings with the property of this unfortunate widow after her death. If murder there was, it was to facilitate the action which he took regarding her property. If the finding of his guilt be reached, then his subsequent conduct would be a part of a very deep-seated plan beginning almost from the time when he

began to ingratiate himself into the good opinion of the lady. The fact, however, remains that all this conduct cannot avail the prosecution, unless it proves conclusively some other aspects of the case.

We cannot, however, overlook one or two other circumstances which are part of this conduct. We have already stated briefly that the appellant caused all persons to believe that Laxmibai was alive and living at Rathodi as the happily married wife of one Joshi. Both Joshi and Rathodi were equally fictitious. In this connection, the pleader, the son, the friends and the relations of Laxmibai were receiving for months after her death letters and communications purporting to be signed by her, though written at the instance of the appellant by persons, who have come and deposed before the Court to this fact. These letters were all posted in R. M. S. vans, and the prosecution has successfully proved that they were not posted in any of the regular post offices in a town or village. These letters show a variety of details and intimacies which made them appear genuine except for the handwriting and the signature of Laxmibai. For a time, people who received them, though suspicious, took them for what they were worth, and it appears that they did not worry very much about the truth. It has now been successfully proved by the prosecution and admitted by the appellant's counsel before us that these letters were all sent by the appellant with the sole object of keeping the people in the dark about the fact of death, so that the appellant might have time to deal with the property at leisure. The appellant asserts that he thought of this only after the death of Laxmibai. It seems somewhat surprising that the appellant should have suddenly gone downhill into dishonesty, so to speak, at a bound. The maxim is very old that no one becomes dishonest suddenly; *nema fuit repente turpissimus.* What inference can be drawn from his conduct after the death of Laxmibai is a matter to be considered by us. And in this connection, we can only say at this stage that if some prior conduct is connected intrinsically, with conduct after death, then the motive of the appellant would be very clear indeed.

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We now pass on to the evidence of what happened in the hospital and the total medical evidence on the cause of death. This evidence has to be considered from different angles. Much of it relates to the condition of Laxmibai and the treatment given to her; but other parts of it relate to the conduct of the appellant and the information supplied by him. There is also further evidence about the disposal of the body and the enquiries made into the cause of death. These must be dealt with separately. For the present, we shall confine ourselves to the pure medical aspect of the case of Laxmibai during her short stay in the hospital.

When Laxmibai was admitted in the hospital, Dr. Ugale (P.W.18), the Casualty Medical Officer, was in charge. He made a preliminary examination and recorded his impressions before he sent the patient to Ward No. 12. He obtained from the appellant the history of the attack, and it appears that all that the appellant told him was "Patient suddenly became unconscious in train while coming from up country. History of similar attacks frequently before". It also appears that the appellant told him that the lady was liable to hysterical fits, and that was set down by Dr. Ugale as a provisional diagnosis. So much of Dr. Ugale's evidence regarding the health of Laxmibai as given by the appellant. Now, we take up his own examination. According to Dr. Ugale, there were involuntary movements of the right hand, which he noticed only once. Only the right hand was moving. He found corneal reflex absent. Pupils were normal and reacting to light. So far as central nervous system and respiration were concerned, he detected nothing abnormal. According to him, there was no evidence of a hysterical fit, and he stated that he queried that provisional diagnosis which, according to him, was supplied by the appellant. According to Dr. Ugale, the name of the patient was given as Indumati Paunshe.

The patient was then made over to the care of Dr. Miss Aneeja (P. W. 19). Dr. Miss Aneeja was then a raw Medical Graduate, having passed the M.B.B.S. in June, 1956. She was working as the House Physician,

and was in charge of Ward No. 12. She was summoned from her quarters to the Ward at 6-15 a.m. and she examined Laxmibai. We leave out of account again the conversation bearing upon the conduct of the appellant, which we shall view subsequently. He told her also about the sudden onset of unconsciousness, and that there was a history of similar attacks before. We are concerned next with the result of the examination by Dr. Miss Aneeja, bearing in mind that she was not a very experienced physician. She found pulse 100, temperature 99·5, respiration 20. The skin was found to be smooth and elastic; nails, conjunctiva and tongue were pink in colour; lymphatic glands were not palpable; and bones and joints had nothing abnormal in them. The pupils of the eyes were equal but dilated, and were not then reacting to light. She found that up to the abdomen and the sphincter the reflexes were absent. The reflexes at knee and ankle were normal, but the plantar reflex was Babinsky on one foot, and there was slight rigidity of the neck.

It appears that Laxmibai was promptly given a dose of a stimulant and oxygen was started. Dr. Miss. Aneeja also stated that she gave an injection of insulin (40 units) immediately. Much dispute has arisen as to whether Dr. Miss Aneeja examined the urine for sugar, albumin and acetone before starting this treatment. It is clear, however, from her testimony that no blood test was made to determine the level of sugar in the blood. A lumbar puncture was also made by Dr. Miss Aneeja and the cerebro-spinal fluid was sent for chemical analysis. That report is available, and the fluid was normal. According to Dr. Miss Aneeja, the Medical Registrar who, she says, was Dr. Saify, recommended intravenous injection of 40 units of insulin with 20 C.C. of glucose, which were administered. According to her, Laxmibai was also put on glucose intragastric drip.

Dr. Miss Aneeja stated that the urine was examined by her three times, and in the first sample, sugar and acetone were present in quantities. The first examination, according to her, was at 6-30 a.m., the next at 8-30 a.m. and the last at 11 a.m. She stated that she

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had used Benedict test for sugar and Rothera's test for acetone. In all the examinations, according to her, there was no albumin present. Dr. Miss Aneeja also claims to have phoned to Dr. Variava, the Honorary Physician, at 6-45 or 7 a.m., and consulted him about the case. According to her, Dr. Saify, the Registrar of the Unit, visited the Ward at 8-30 a.m. and wrote on the case papers that an intravenous injection of 40 units of insulin with 20 C.C. of glucose should be administered. According to her, Dr. Variava visited the Ward at 11 a.m., and examined Laxmibai, but the patient expired at 11-30 a.m. We do not at this stage refer to the instructions for post-mortem examination left by Dr. Variava which were noted on the case papers, because that is a matter with regard to the disposal of the dead body, and we shall deal with the evidence in that behalf separately. The evidence of Dr. Miss Aneeja shows only this much that she was put in charge of this case, examined urine three times and finding sugar and acetone present, she started a treatment by insulin which was also supplemented by administration of glucose intravenously as well as by intragastric drip. Apart from one dose of stimulant given in the first few minutes, no other treatment beyond administration of oxygen was undertaken. She had also noted the observations of the reflexes and the condition of the patient as they appeared to her on examination.

There is a considerable amount of contradiction between the evidence of Dr. Miss Aneeja and that of Dr. Variava as to whether acetone was found by Dr. Miss Aneeja before Dr. Variava's visit. According to the learned Judges of the Court below, the first urine examination deposed to by Dr. Miss Aneeja and said to have been made at 6-30 a.m. was never performed. The other two examinations were made, as the urine chart (Ex. 127) shows. It is, however, a question whether they were confined only to sugar and albumin but did not include examination for acetone. We shall discuss this point after we have dealt with the evidence of Dr. Variava.

Dr. Variava (P.W. 21) was the Honorary Physician, and was in charge of this Unit. According to him, he went on his rounds at 11 a.m., and examined Laxmibai from 11 a.m. to 11-15 a.m. He questioned Dr. Miss Aneeja about the line of treatment and told her that she could not have made a diagnosis of diabetic coma without examining urine for acetone. Dr. Variava deposed that the entry regarding acetone on the case papers was not made when he saw the papers at 11 a.m. He then asked Dr. Miss Aneeja to take by catheter a sample of the urine and to examine it for acetone.

Dr. Miss Aneeja brought the test-tube with urine in it, which showed a light green colour, and Dr. Variava inferred from it that acetone might be present in traces. According to Dr. Variava, Laxmibai's case was not one of diabetic coma, and he gave two reasons for this diagnosis, namely, that diabetic coma never comes on suddenly, and that there are no convulsions in it, as were described by Dr. Ugale. Dr. Variava also denied that the phone call to him was made by Dr. Miss Aneeja. Dr. Variava stated that before he left the Ward he told Dr. Miss Aneeja that he was not satisfied that the woman had died of diabetic coma and instructed her that post-mortem examination should be asked for.

In connection with the evidence about the examination of the urine, we have to see also the evidence of Marina Laurie, nurse (P.W. 59), who stated how the entries in the urine chart came to be made. It may be pointed out that the urine chart showed only two examinations for sugar, at 8-30 a.m. and 11 am., and not the one at 6-30 a.m. The entry about that was made on the case papers under the head "treatment" by Dr. Miss Aneeja, and it is the last entry 'acetone + +' which Dr. Variava stated was not on the papers at the time he saw them. Indeed, Dr. Variava would not have roundly questioned Dr. Miss Aneeja about the examination for acetone, if this entry had been there, and Dr. Miss Aneeja admits a portion of Dr. Variava's statement when she says that she examined the urine on Dr. Variava's instructions and

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brought the test-tube to him, in which the urine was of a light green colour.

Now, the urine chart does not show an examination of the urine at 6-30 a.m. According to Dr. Miss Aneeja, she examined the urine, carried the impression of colour in her mind, and noted the result on the case papers. She was questioned why she adopted the unusual course, but stated that it often happened that the urine chart was not prepared and the result was not taken to the case papers. However it be, Dr. Variava is quite positive that the entry about acetone did not exist on the case papers, and an examination of the original shows differences in ink and pen which would not have been there, had all the three items been written at the same time. It also appears that even at 8-30 a.m. the urine was examined for sugar only because the entry in the urine chart shows brick-red colour which is the resulting colour in Benedict test and not in Rothera's test. Similarly, at 11 a.m. the urine chart shows only a test for sugar because the light green colour is not the resulting colour of Rothera's test but also of the Benedict test. Indeed, Dr. Variava was also shown a test-tube containing the urine of slight greenish colour, and his own inference was that acetone might be present in traces. There is thus nothing to show that Dr. Miss Aneeja embarked upon a treatment for diabetic coma after ascertaining the existence of acetone. All the circumstances point to the other conclusion, namely, that she did not examine the urine for acetone, and that seems to be the cause of the questions put by Dr. Variava to her. We have no hesitation, therefore, in accepting Dr. Variava's evidence on this part of the case, which is supported by the evidence of the nurse, the urine chart and the interpolation in the case papers.

From all that we have said, it is quite clear that the treatment given to her for diabetic coma was based on insufficient data. There was also no Kussmaul breathing (Root & White, Diabetes Mellitus, p. 118); her breathing was 20 per minute which was normal. Nor was there any sign of dehydration,

because the skin was smooth and elastic, and the Babinsky sign was a contra indication of diabetic coma. This is borne out by the diagnosis of Dr. Variava himself, who appears positive that Laxmibai did not suffer from diabetic coma, and is further fortified by the reasons given by Dr. H. Mehta (P.W. 65), to whose evidence we shall have occasion to refer later.

Two other doctors from the hospital were examined in connection with Laxmibai's stay. The first was Dr. J. C. Patel, who was then the Medical Registrar of Unit No. 1. It seems that Dr. Saify, the permanent Medical Registrar, was on leave due to the illness of his father, and Dr. J. C. Patel was looking after his Unit. Dr. J. C. Patel went round with Dr. Variava at 11 a.m., and in his presence, Dr. Variava examined Laxmibai. He has no contribution to make, because he says he does not remember anything. The only piece of evidence which he has given and which is useful for our enquiry is that in the phone book (Ex. 323) in which all calls are entered, no call to Dr. Variava on the morning of the 13th was shown. The evidence of Dr. J. C. Patel is thus useless, except in this little respect. The other doctor, Dr. Hiralal Shah (P. W. 72) was the Registrar of Unit No. 2. After Laxmibai entered the hopital, Dr. Miss Aneeja sent a call to him, and he signed the call book (Ex. 322). Dr. Hiralal Shah pretended that he did not remember the case. He stated that if he was called, he must have gone there, and examined the patient; but he stated in the witness-box that he did not remember anything. All the three doctors, Dr. Miss Aneeja, Dr. Patel and Dr. Hiralal Shah, denied having made the entry "Insulin 40 units I. V. with 20 C. C. glucose." Dr. Miss Aneeja says that it was written by Dr. Saify, who, as we shall show presently, was not present in Bombay at all on that day.

We do not propose to deal with the cause of the death, before adverting to the findings of Dr. Jhala (P.W. 66), who performed the autopsy and Dr. H. S. Mehta (P. W. 65), to whom all the case papers of Laxmibai were handed over for expert opinion. Dr. Jhala performed the *post-mortem* operation on November 23,

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and he was helped by his assistants. Though the body was well-preserved and had been kept in the air-conditioned morgue, there is no denying the fact that 10 days had passed between the death and the post-mortem examination. The findings of Dr. Jhala were that the body and the viscera were not decomposed, and that an examination of the vital organs could be made. Dr. Jhala found in the stomach 4 oz. of a pasty meal and ¼ oz.of whitish precipitate in the bladder. He did not find any other substance which could be said to have been introduced into the system. He examined the brain and found it congested. There were no marks of injury on the body; the lungs were also congested and in the upper lobe of the left lung there was a tubercular focus which, in his opinion, was not sufficient to cause death ordinarily. He also found Atheroma of aorta and slight sclerosis of the coronary. He stated that the presence of the last meal in the stomach indicated that there was no vomitting. He found no pathological lesion in the pancreas, the kidney, the liver and any other internal organ. He gave the opinion after the receipt of the Chemical Analyser's report that death could have occurred due to diabetic coma.

It must be remembered that Dr. Jhala was not out to discover whether any offence had been committed. He was making a post-mortem examination of a body which, under the Coroner's order, had been handed over to the medical authorities with a certificate from a hospital that death was due to diabetic coma. It was not then a medico-legal case; the need for post-mortem had arisen, because the peon had noticed certain marks on the neck, which had caused some suspicion. After discovering that the mark on the neck was a post-mortem injury, all that he had to do was to verify whether the diagnosis made by the G.T. Hospital that death was due to diabetic coma was admissible. He examined the body, found no other cause of death, and the Chemical Analyser not having reported the administration of poison, he accepted the diagnosis of the G. T. Hospital as correct. Dr. Jhala, however, stated that there were numerous poisons which could

not be detected on chemical analysis even in the case of normal, healthy and undecomposed viscera. He admitted that his opinion that death could have occurred due to diabetic coma was an inaccurate way of expressing his opinion. According to him, the proper way would have been to have given the opinion "death by diabetes with complications."

As we have said, all these papers were placed before Dr. H. S. Mehta for his expert opinion. It is to his evidence we now turn to find out what was the cause of death of Laxmibai. In the middle of March 1958, Dr. Mehta was consulted about this case, and he was handed over copies of all the documents we have referred to in connection with the medical evidence, together with the proceedings of the Coroner's inquest at Bombay. According to Dr. Mehta, opinion was sought from him about the cause of death of 'Indumati Paunshe' and whether it was from diabetic coma, any other disease or the administration of a poison. Dr. Mehta was categorical that it was not due to diabetic coma. He was also of the opinion that no natural cause for the death was disclosed by the autopsy, and according to him, it was probably due to the administration of some unrecognisable poison or a recognisable poison which, due to the lapse of time, was incapable of being detected by analysis. He gave several reasons for coming to the conclusion that Laxmibai did not suffer from diabetic coma. Each of his reasons is supported by citations from numerous standard medical authorities on the subject, but it is unnecessary to cite them once again. According to him, the following reasons existed for holding that Laxmibai did not suffer from diabetic coma:

(1) *Convulsions never occur in diabetic coma per se.* According to Dr. Mehta, the involuntary movements described by Dr. Ugale must be treated as convulsions or tremors. We are of opinion that Dr. Ugale would not have made this note on the case papers if he had not seen the involuntary movements. No doubt, these involuntary movements had ceased by the time the patient was carried to Ward No. 12, because Dr. Miss Aneeja made a note that they were not observed in

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the Ward. But Dr. Ugale was a much more experienced doctor than Dr. Miss Aneeja, and it is possible that Dr. Miss Aneeja did not notice the symptoms as minutely as the Casualty Medical Officer.

(2) *Diabetic coma never occurs all of a sudden and without a warning. There are premonitary signs and symptoms of prodromata.* In the case, there is no evidence te show how Laxmibai became unconscious. We have, however, the statement of the appellant made both to Dr. Ugale and Dr. Miss Aneeja that the onset was sudden. Dr. Mehta was cross-examined with a view to eliciting that a sudden onset of diabetic coma was possible if there was an infection of any kind. A suggestion was put to him that if the patient suffered from Otitis Media, then sometimes the unconciousness came on suddenly. It may be pointed out that the appellant in his examination stated that on the day in question, Laxmibai had a temperature of 100 degrees, laryngitis, pharyngitis, and complained of pain in the ear. That statement was made to bring his defence in line with this suggestion. Dr. Mehta pointed out that Dr. Jhala had opened the skull and had examined the interior organs but found no pathological lesion there. According to Dr. Mehta, Dr. Jhala would have detected pus in the middle ear if Otitis Media had existed. The fact that no question suggesting this was put to Dr. Jhala shows that the defence is an afterthought to induce the Court to hold that death was due to diabetic coma, or, in other words, to natural causes. We are inclined to accept the evidence of Dr. Jhala that he and his assistants did not discover any pathological lesion in the head or the brain. Otitis Media would have caused inflammation of the Eustachian tube, and pus would have been present. No such question having been put, we must hold that there was no septic focus which might have induced the sudden onset of diabetic coma. It was also suggested to Dr. Mehta that there was a tubercular infection and sometimes in the case of tubercular infection diabetic coma suddenly supervened. The tuberculosis in this case was not of such severity as to have caused this. Dr. Jhala referred

to the septic focus in the apex of the left lung, but he stated that it was not sufficient to have caused the death of Laxmibai. Illustrative cases of sudden diabetic coma as a result of tubercular infection were not shown, and the condition of Laxmibai, as deposed to by witnesses right up to 9 p.m. on the night of November 12, 1956, does not warrant the inference that she had diabetic coma suddenly as a result of this infection.

(3) Dr. Mehta also stated from the case papers maintained by the appellant from February 15, 1956, to November 12, 1956, that during that time, Laxmibai did not appear to have suffered from any severe type of acidosis. The appellant in his examination in Court stated that Laxmibai was prone to suffer from acidosis, and that he had treated her by the administration of Soda Bi-carb. In the case papers, Soda Bi-carb has been administered only in about 8 to 10 doses varying between 15 grains to a dram. It is significant that on most of the occasions it was part of a Carminative mixture. The acidosis, if any, could not have been so severe as to have been corrected by such a small administration of Soda Bi-carb, because the acidosis of diabetes is not the acidity of the stomach but the formation of fatty acids in the system. Such a condition, as the books show, may be treated by the administration of Soda Bi-carb but in addition to some other specific treatment. (Joslin, Root & White, Treatment of Diabetes Mellitus, p. 397).

(4) *A patient in diabetic coma is severely dehydrated.* (Root & White—Diabetes Mellitus p. 118). We have already pointed out that there was no dehydration, because the skin was soft and elastic and the tongue was pink. The eye balls were also normal and were not soft, as is invariably the case in diabetic coma. Dr. Mehta has referred to all these points.

(5) *Nausea and vomitting are always present in true diabetic coma.* There is nothing to show either from her clothes or from the smell of vomit in the mouth or from any other evidence that Laxmibai had vomitted in the train. Dr. Jhala who performed the

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post-mortem examination had stated that Laxmibai could not have vomitted because in her stomach 4 oz. of pasty meal was found. The same fact is also emphasised by Dr. Mehta.

(6) *In diabetic coma, there will be fall of blood pressure, rapid pulse; there will be Kussmaul breathing or air hunger.* The respiration of Laxmibai was found by Dr. Ugale and Dr. Miss Aneeja to be normal. The temperature chart in the case, Ex. 129, gives in parallel columns the respiration corresponding to a particular temperature, and the temperature of 99·5 degrees (Fahrenheit) found by Dr. Miss Aneeja corresponds to respiration at 20 times per minute. Dr. Variava, Dr. Ugale or Dr. Miss Aneeja also did not say anything about the Kussmaul breathing, and the pulse of 100 per minute according to Dr. Mehta was justified by the temperature which Laxmibai then had. Indeed, according to Dr. Mehta, in diabetic coma the skin is cold, and there was no reason why there should be temperature. According to Dr. Mehta, there was no evidence of any gastric disturbance, because the condition of the tongue was healthy. Dr. Mehta also pointed out that the Extensor reflex called the Babinsky sign was not present in diabetic coma, while according to Dr. Miss Aneeja it was present in this case. Dr. Mehta then referred to the examination of the urine for sugar and acetone, and stated that the examination for sugar was insufficient to determine the presence of Ketonuria, which is another name for the acidosis which results in coma. We have already found that the examination for acetone was not made and there was no mention of acetone breath either by Dr. Ugale or by Dr. Miss Aneeja, which would have been present if the acidosis was so advanced. (Root & White—Diabetes Mellitus, p. 118).

(8) Lastly, the examination of cerebro-spinal fluid did not show any increase of sugar and no affection in the categories of meningial irritation was disclosed by the chemical analysis of the fluid. (Physician's Handbook, 4th Edn., pp. 115-120). The neck rigidity which was noticed by Dr. Miss Aneeja did not have, therefore,

any connection with such irritation, and it is a question whether such a slight neck rigidity existed at all.

These reasons of Dr. Mehta are prefectly valid. They have the support of a large number of medical treatises to which he has referred and of even more, which were referred to us during the arguments, all of which we find it unnecessary to quote. We accept Dr. Mehta's testimony that diabetic coma did not cause the death of Laxmibai. It is significant that the case of the appellant also has changed, and he has ceased to insist now that Laxmibai died of diabetic coma. The treatment which was given to Laxmibai would have, if diabetic coma had existed, at least improved her condition during the 5 hours that she was at the hospital. Far from showing the slightest improvement, Laxmibai died within 5 hours of her admission in the hospital, and in view of the contra indications catalogued by Dr. Mehta and accepted by us on an examination of the medical authorities, we are firmly of opinion that death was not due diabetic coma.

We now deal with events that took place immediately after Laxmibai expired. We have already shown that at that time Dr. Variava was present and was questioning Dr. Miss Aneeja about her diagnosis of diabetic coma. Before Dr. Variava left the Ward, he told Dr. Miss Aneeja that he was not satisfied about the diagnosis, and that a post-mortem examination should be asked for. This endorsement was, in fact, made by Dr. Miss Aneeja on the case papers, and the final diagnosis was left blank. Dr. Miss Aneeja says that she left the Ward at about 11-30 a.m. and was absent on her rounds for an hour, then she returned to the Ward from her quarters at about 1 p.m. and went to the office of Dr. Mouskar, the Resident Medical Officer. According to her, she met Dr. Saify, the Registrar, at the door, and he had the case papers in his hands. Dr. Saify told her that the Resident Medical Officer thought that there was no need for a post-mortem examination, as the patient was treated in the hospital for diabetic coma. Dr. Saify ordered Dr. Miss Aneeja to cancel the endorsement about

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post-mortem and to write diabetic coma as the cause of death, which she did, in Dr. Saify's presence. This is Dr. Miss Aneeja's explanation why the post-mortem was not made, though ordered by Dr. Variava.

Dr. Mouskar's version is quite different. According to him, the case papers arrived in his office at 1 p.m. He had seen the endorsement about the post-mortem and the fact that the final diagnosis had not been entered in the appropriate column. Dr. Mouskar admitted that he did not proceed to make arrangements for the post-mortem examination. According to him, the permission of the relatives and the Coroner was necessary. He also admitted that he did not enquire from the Honorary Physician about the need for post-mortem examination. He was thinking, he said, of consulting the relatives and the person who had brought Laxmibai to the hospital. Dr. Mouskar sent a telegram at 2 p.m. to the appellant, which we have quoted earlier. He explained that he did not mention the post-mortem examination, because he was waiting for the arrival of some person connected with Laxmibai. He further stated that between 4 and 5 p.m. he asked the police to remove the body to the J. J. Hospital morgue and to preserve it, and sent a copy of his requisition to the Coroner. According to him, on the 15th the Coroner's office asked the hospital for the final diagnosis in the case. He stated that he asked one out of the three: Honorary Physician, the Registrar or the House Physician,—about the final diagnosis, though he could not say which one. He had sent the papers through the call-boy for writing the final diagnosis, and he received the case papers from the Unit, with the two corrections, namely, the cancellation of the requisition for post-mortem examination and the entry of diabetic coma as the final diagnosis. He denied that he had any talk with Dr. Saify regarding the post-mortem examination.

It would appear from this that there are vital differences in the versions of Dr. Miss Aneeja and Dr. Mouskar. The first contradiction is the date on which the case papers were corrected and the second, about Dr. Saify's intervention in the matter. Dr. Saify,

fortunately for him, had obtained leave orders and had left Bombay on November 8, 1956, for Indore, where his father was seriously ill. He was, in fact, detained at Indore, because his father suffered from an attack of coronary thrombosis, and he had to extend his leave. All the relevant papers connected with his leave have been produced, and it seems that Dr. Saify's name was introduced by Dr. Miss Aneeja either to avoid taking responsibility for correction, on her own, of the papers, or to shield some other person, who had caused her to make the corrections. Here, the only other person, who could possibly have ordered her was the Resident Medical Officer, Dr. Mouskar, who at 1 p.m. had received the papers and had seen the endorsement about the post-mortem examination. Dr. Mouskar's explanation that he sent the telegram to the appellant for the removal of the body without informing him about the post-mortem examination is too ingenious to be accepted by any reasonable person. Dr. Mouskar could not ordinarily countermand what the Honorary Physician had said without at least consulting him, which he admits he did not do. This is more so, if it was only a matter of the hospital's reputation. Whether the corrections were made by Dr. Miss Aneeja in the wards when the call-boy took the papers to her (a most unusal course for Dr. Mouskar to have adopted) or whether they were made by Dr. Miss Aneeja in the office of Dr. Mouskar, to the door of which, she admits she had gone, the position remains the same. Dr. Miss Aneeja no doubt told lies, but she did so in her own interest. She could not cancel the requisition about post-mortem examination on her own without facing a grave charge in which Dr. Mouskar would have played a considerable part. The fact that this correction did not trouble Dr. Mouskar and that his dealings with the body were most unusual points clearly to its being made at his instance. Dr. Miss Aneeja invented the story about Dr. Saify as a last resort knowing that unless she named somebody the responsibility would be hers. The corrections were made at the instance of Dr. Mouskar, because Dr. Mouskar admits that he sent the papers to the

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Ward for final diagnosis in the face of the endorsement for post-mortem examination, and Dr. Miss Aneeja admits making the corrections at the door of Dr. Mouskar's office. In our opinion, both of them are partly correct. Dr. Mouskar made the first move in getting the papers corrected, and Dr. Miss Aneeja corrected them not at the door of the office, because there was no Dr. Saify there but in the office, though she had not the courage to name Dr. Mouskar as the person who had ordered the correction. Dr. Mouskar's telegram and his sending the body to another morgue without the post-mortem examination show only too clearly that it was he who caused the change to be made. It is also a question whether the correction about 'acetone ++' was not also made simultaneously. We do not believe that the corrections were made as late as November 15, because his telegram for the removal of the dead body and its further removal to the J. J. Hospital would not fit in with the endorsement for post-mortem examination on the case papers.

Now, the question is not whether Dr. Mouskar made the correction or Dr. Miss Aneeja, but whether the appellant had anything to do with it. Dr. Miss Aneeja stated that the appellant was present till the visit of Dr. Variava was over and this is borne out by the reply of the appellant, because in the inland letter he mentioned the time of the death which the telegram did not convey to him and which he could have only known if he was present in the hospital. We believe Dr. Miss Aneeja when she says that the appellant was present at the hospital, and the circumstances of the case unerringly point to the conclusion that he knew of the demand for a post-mortem examination. Though Dr. Mouskar and the appellant denied that they met, there is reason to believe that the appellant knowing of the post-mortem examination would not go away without seeing that the post-mortem examination was duly carried out or was given up. Dr. Mouskar and the appellant both admitted that they were together in the same class in 1934 in the S. P. College, Poona, though both of them denied that

they were acquainted with each other. Dr. Mouskar stayed in Poona from 1922 to 1926, 1931 to 1936 and 1948 to 1951. The appellant was practising at Poona as a doctor, and it is improbable that they did not get acquainted during Dr. Mouskar's stay, belonging, as they do, to the same profession. Dr. Mouskar further tried to support the appellant by saying that at 1 p.m. when he saw the case papers the entry about acetone was read by him. He forgot that in the examination-in-chief he had stated very definitely that he had not read the case papers fully and had only seen the top page. When he was asked for his explanation, he could not account for his conduct in the witness-box, and admitted his mistake. There are two other circumstances connected with Dr. Mouskar, which excite considerable suspicion. The first is that he mentioned hysterical fits as the illness from which Laxmibai suffered when Dr. Ugale had questioned it and post-mortem had been asked for to establish the cause of death. The next is that the call book of the hospital for the period was not produced by him as long as he was in office. When he retired, the call book was brought in by his successor, and it established the very important fact that it was not Dr. Saify, the Registrar, who was summoned but Dr. Shah, who had also signed the call book in token of having received the call. Dr. Mouskar's conduct as the Resident Medical Officer in having the post-mortem examination cancelled was a great lapse, and it is quite obvious to us that the finding by the two Courts below that this was done at the request of the appellant is the only inference possible in the case. The alternative suggestion in the argument of the appellant's counsel that Dr. Mouskar thought that Dr. Variava was making "a mountain out of a mole hill" and that "the reputation of the hospital was involved" does not appeal to us, because if that had been the motive, Dr. Mouskar would have talked to Dr. Variava and asked him to revise his own opinion. The cancellation of the requisition for post-mortem examination came to Dr. Variava as a surprise, because he stated that he had heard nothing about it.

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From the above analysis of the evidence, we accept the following facts: The appellant was present in the hospital till the death of Laxmibai, and in his presence, Dr. Variava examined Laxmibai and questioned the diagnosis of Dr. Miss Aneeja and gave the instructions for the post-mortem examination. Dr. Variava's stay was only for 15 minutes, and at the end of it, Laxmibai expired. The statement of the appellant that he caught the 10-30 train from Bombay to Poona because he was asked by the Matron to leave the female ward, and that he was going back to get a female attendant from Poona, is entirely false. He took no action about a female attendant either in Bombay or in Poona, and he could not have left by the 10-30 train if he was present in the hospital till 11-30 a.m. We are also satisfied that Dr. Miss Aneeja did not cancel the endorsement about the post-mortem examination on her own responsibility. She was ordered to do so. We are also satisfied that it was not Dr. Saify who had given this order, but it must have been Dr. Mouskar, who did so. We are also satisfied that Dr. Mouskar did not induce Dr. Miss Aneeja to cancel the post-mortem by sending the case papers through the call-boy of her Ward, but she was summoned to the office, to the door of which she admits she had gone. We are, therefore, in agreement with the two Courts below that Dr. Mouskar caused these changes to be made, and that Dr. Miss Aneeja did not have the courage to name the Resident Medical Officer, and lied by introducing the name of Dr. Saify. We are also satisfied that Dr. Mouskar and the appellant were acquainted with each other not only when they were in College together but they must have known each other, when Dr. Mouskar was residing at Poona. The cancellation of the post-mortem examination was caused by the appellant, because Dr. Mouskar's explanation on this part of the case is extremely unsatisfactory, and his failure to consult Dr. Variava, if it was only a hospital matter, is extremely significant. The appellant's immediate exit from the hospital and the telegram to him at Poona show that Dr. Mouskar knew where the appellant was to be

found. The telegram conveyed to the appellant that the post-mortem was not to be held, because it said that the body should be immediately removed.

Now, the appellant, as we have said, took no action about Laxmibai's death and kept this information to himself. He did not also arrange for the removal of the body. He sent an inland letter which, he knew, would take a day or two to reach the hospital. He knew that the body would be lying unclaimed at the hospital, and that the hospital could not hold the body for ever without taking some action. The appellant is a doctor. He has studied in medical institutions where bodies are brought for dissection purposes, and he must be aware that there is an Anatomy Act, under which unclaimed bodies are handed over to Colleges after 48 hours for dissection. He also knew that the cause of death would become more and more difficult to determine as time passed on, and it is quite clear that the appellant was banking on these two circumstances for the avoidance of any detection into the cause of death. He had also seen to it that the post-mortem examination would not be made, and he knew that if the body remained unclaimed, then it would be disposed of in accordance with the Anatomy Act. He wrote a letter which he knew would reach the hospital authorities, and he named a fictitious brother who, he said, could not arrive before the 16th from Calcutta. This delay would have gained him three valuable days between the death and any likely examination, and if the body remained unclaimed, then it was likely to be disposed of in the manner laid down in the Anatomy Act. The anticipations of the appellant were so accurate that the body followed the identical course which he had planned for it, and it is an accident that ten days later a post-mortem examination was made, because an observant peon noticed some mark on the neck which he thought, was suspicious. But for this, it would have been impossible to trace what happened to Laxmibai, because the hospital papers would have been filed, the body dissected by medical students and disposed of and the relatives and friends kept in the dark about the whereabouts of Laxmibai by spurious letters.

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This brings us to another piece of conduct which we have to view. When Laxmibai boarded the train, she had a bedding and a bag with her, which she was seen carrying at the *Par* by Patil (P. W. 60) on the night she left Poona. There is a mass of evidence that Laxmibai was in affluent circumstances, and always wore on her person gold and pearl ornaments. There is also evidence that she had taken Rs. 50 from Virkar the night she travelled, and presumbly she was carrying some more money with her, because she had to consult a specialist in Bombay and money would be required to pay him. When she reached the hospital in the company of the appellant, she had no ornaments on her person, no money in her possession and her bag and bedding had also disappeared. As a matter of fact, there was nothing to identify her or to distinguish her from any other indigent woman in the street. There is no explanation which any reasonable person can accept as to what happened to her belongings. It is possible that the bag and the bedding might have been forgotten in the hurry to take her to the hospital, but her gold ornaments on her person could not so disappear. The appellant stated that he noticed for the first time in the taxi that she had no ornaments on her person; but there would be no need for him to notice this fact if Laxmibai started without any ornaments whatever. In view of the fact that Laxmibai's entire property soon passed into the hands of the appellant, it is reasonable to hold that he would not overlook the valuable gold and pearl ornaments in this context. Further, the absence of the ornaments and other things to identify Laxmibai rendered her anonymity complete, in so far as the hospital was concerned, unless information to that end was furnished by the appellant only. In the event of Laxmibai's death in the hospital, no complication would arise if she did not possess any property and the body would be treated as unclaimed, if none appeared to claim it.

In addition to the stripping of the lady of her belongings, the appellant took measures to keep her

identity a close secret. No doubt, he gave her name as "Indumati", but he added to it her maiden surname in a garbled form. According to Dr. Ugale, the name given was "Paunshe". In every one of the other papers, the name appears to have been corrected by the addition of some letter resembling "k" but not in the case papers. Dr. Ugale swore that he had not heard the name "Paunshe" before, though his mother-tongue is Marathi, and he is himself a Maharashtrian. He, therefore, asked the appellant to spell the name, and he was definite that the name was written as spelt by the appellant. There is, however, other evidence coming from the appellant himself to show that he did not give the correct maiden surname of Laxmibai, because in the letter he wrote to the hospital he only stated that there was an extra "u" in the name as entered in the papers but did not mention anything about "k". His solicitude about the name and its spelling in the case papers clearly shows that his mind even under the stress of these circumstances was upon one fact only that the name should remain either "Paunshe" or "Panshe" and not become "Ponkshe". Indeed, one would expect the appellant to have given the name "Laxmibai Karve" or "Indumati Karve" instead of "Indumati Ponkshe", and much less, "Indumati Paunshe". There must be some reason for the appellant choosing the maiden surname, even if he gave the correct maiden name. The reason appears to be this: Either he had to say at the hospital that he did not know the name, or he had to give some name. If he said that he did not know the name, it would have caused some suspicion, and the matter would then have been entered in the emergency police case register. This is deposed to by the doctors in the hospital. By giving the name, he avoided this contingency. By giving a garbled name, he avoided the identity, if by chance that name came to the notice of some one who knew Laxmibai. His intention can only be interpreted in the light of his subsequent conduct and the use to which he put this altered name. We have already seen that he hid the fact of death from every

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one and wrote to people that the woman was alive. He had two opportunities of correcting this name which he had noticed very carefully on the case papers. The first was when he wrote the letter to the hospital in which he insisted that "u" should be omitted but did not add "k". The other was when on the 16th the police questioned him and he stated that he did not know who the woman was. He also gave the age of the woman wrongly, and perhaps, deliberately:—see the correction and overwritings in the inland letter he wrote on November 14, 1956. Immediately after the death of Laxmibai, he misappropriated a sum of Rs. 5,000 by presenting two documents, Exs. 285 and 286, without disclosing to the Bank that the person who had issued the cheque was no more. All this subsequent conduct gets tied to his conduct in giving the name as "Indumati Paunshe" or "Panshe"; and it shows a foreknowledge of what was to happen to Indumati at the hospital. It also shows a preparation for keeping the fact of her death hidden from others to facilitate the misappropriation of her property, which as we know, eventually took place starting from November 15, that is to say, two days following her death. No explanation worth considering exists why this name was given, and the effort of the counsel for the appellant that he was probably on intimate terms with Laxmibai and chose to call her by her maiden name rather than her married name is belied by the fact that in every document in which the name has been mentioned by the appellant, he has addessed her as Laxmibai Karve and not as Indumati *Ponkshe*. There is no evidence that this elderly lady was anything more than a foolishly trusting friend of this man who took advantage of her in every way.

Then, there is the conduct of the appellant in not disclosing to the hospital authorities the entire case history of Laxmibai and the treatment which he had been giving her as her medical attendant. Instead of telling the doctor all the circumstances of her health, he told him that the woman was suffering from hysterical fits, which fits, according to the

evidence in the case, did not recur after 1948. He also did not give any particulars of the onset of unconsciousness in the train. Even the fact that Laxmibai had suffered from diabetes for some years was not mentioned, and this shows that he was intent upon the medical attendants in the hospital treating the case from a scratch and fumbling it, if possible. To him, it appears to us, it was a matter of utter indifference what treatment was given to her, an attitude which he continued to observe even after his patient had died. In our opinion, therefore, the conduct at the hospital appears significantly enough to suggest that he anticipated that Laxmibai was doomed, and he was intent upon seeing to it that no one but himself should know of her death and that a quiet disposal of her body should take place.

We may mention here one other fact, and that is that the G.T. Hospital, is situated at a distance of 5 or 6 furlongs from the Victoria Terminus Station, whereas the St. George's Hospital is said to be only 50 feet away from the main entrance. Why an unconscious woman was carried first on a stretcher and then in a taxi to this distant hospital when she could have been carried straight to the hospital on the stretcher itself, is not explained. There is ofcourse, this significant fact that at the St. George's Hospital he would not have been able to pull his weight with the medical authorities, which he was able to do with Dr. Mouskar because of his acquaintance with him. This choosing of the hospital is of a piece with the choosing of an inconvenient train which would make detection difficult, arrival at the hospital when it would be closed except for emergency cases, and the patient likely to be waited upon by a raw and inexperienced doctor in the early hours of the morning. We, however, cannot say this too strongly, because it is likely that Laxmibai herself chose to travel by a night train. But the whole of the conduct of the appellant prior to the death of Laxmibai appears to be of a piece with his conduct after her death, and we are satisfied that even before her entry into the hospital, the appellant had planned this line of conduct.

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Our findings thus substantially accord on all the relevant facts with those of the two Courts below, though the arrangement and consideration of the relevant evidence on record is somewhat different. It is now necessary to consider the arguments which have been advanced on behalf of the appellant. The first contention is that the essential ingredients required to be proved in all cases of murder by poisoning were not proved by the prosecution in this case. Reference in this connection is made to a decision of the Allahabad High Court in *Mst. Gujrani* v. *Emperor* (1) and two unreported decisions of this Court in *Chandrakant Nyalchand Seth* v. *The State of Bombay* (2) decided on February 19, 1958, and *Dharambir Singh* v. *The State of Punjab* (3) decided on November 4, 1958. In these cases, the Court referred to three propositions which the prosecution must establish in a case of poisoning: (a) that death took place by poisoning; (b) that the accused had the poison in his possession; and (c) that the accused had an opportunity to administer the poison to the deceased. The case in *Dharambir Singh* v. *The State of Punjab* (3) turned upon these three propositions. There, the deceased had died as a result of poisoning by potassium cyanide, which poison was also found in the autopsy. The High Court had disbelieved the evidence which sought to establish that the accused had obtained potassium cyanide, but held, nevertheless, that the circumstantial evidence was sufficient to convict the accused in that case. This Court did not, however, accept the circumstantial evidence as complete. It is to be observed that the three propositions were laid down not as the invariable criteria of proof by direct evidence in a case of murder by poisoning, because evidently if after poisoning the victim, the accused destroyed all traces of the body, the first proposition would be incapable of being proved except by circumstantial evidence. Similarly, if the accused gave a victim something to eat and the victim died immediately on the ingestion of that food with symptoms of poisoning and

(1) A.I.R. 1933 All. 394. (2) Cr. A. No. 120 of 1957.
(3) Cr. A. No. 98 of 1958.

poison, in fact, was found in the viscera, the requirement of proving that the accused was possessed of the poison would follow from the circumstance that the accused gave the victim something to eat and need not be separately proved. There have been cases in which conviction was maintained, even though the body of the victim had completely disappeared, and it was impossible to say, except on circumstantial evidence, whether that person was the victim of foul play, including poisoning. Recently, this Court in *Mohan* v. *State of U. P.* (1) decided on November 5, 1959, held that the proof of the fact of possession of the poison was rendered unnecessary, because the victim died soon after eating *pedas* given by the accused in that case, and he had not partaken any other food likely to contain poison. In *Dr. Palmer's case* (2), strychnine was not detected, and the accused was convicted by the jury after Lord Chief Justice Campbell (Cresswell, J. and Mr. Baron Alderson, concurring) charged the jury that the discovery of the poison on autopsy, was not obligatory, if they were satisfied on the evidence of symptoms that death had been caused by the ministration of the strychnine. The conduct of Palmer, which was also significant, was stressed inasmuch as he had attempted to thwart a successful chemical analysis of the viscera, and had done suspicious acts to achieve that end. In *Dr. Crippen's case* (3), the conduct of the accused after the death of Mrs. Crippen in making the friends and relatives believe that Mrs. Crippen was alive was considered an incriminatory circumstance pointing to his guilt. No doubt, in *Dr. Crippen's case* (3), the body was found and poison was detected, but there was no proof that Dr. Crippen had administered the poison to her, that being inferred from his subsequent conduct in running away with Miss Le Neve. In the second case of this Court, the poison was availiable to the victim, and it was possible that she had taken it to end an unhappy life.

The cases of this Court which were decided, proceeded upon their own facts, and though the three

(1) Cr. A. No. 108 of 1959. (2) Notable Trials Series.
(3) Notable Trials Series.

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propositions must be kept in mind always, the sufficiency of the evidence, direct or circumstantial, to establish murder by poisoning will depend on the facts of each case. If the evidence in a particular case does not justify the inference that death is the result of poisoning because of the failure of the prosecution to prove the fact satisfactorily, either directly or by circumstantial evidence, then the benefit of the doubt will have to be given to the accused person. But if circumstantial evidence, in the absence of direct proof of the three elements, is so decisive that the Court can unhesitatingly hold that death was a result of administration of poison (though not detected) and that the poison must have been administered by the accused person, then the conviction can be rested on it.

In a recent case decided in England in the Court of Criminal Appeal (*Regina* v. *Onufrejczyk* (1), the body of the victim was not found at all. And, indeed, there was no evidence that he had died, much less was murdered. The accused's conduct in that case which was held decisive, was very similar to the conduct of the present appellant. He was in monetary difficulties, and the victim was his partner, whom he wished to buy out but did not have the money to do so. One fine day, the partner disappeared, and his body was not found, and it was not known what had happened to him. The activities of the accused after the disappearance of his partner were very remarkable. To people who enquired from him about his partner, he told all manner of lies as to how a large and dark car had arrived in the night and that three men had carried off his partner at the point of a revolver. To a sheriff's officer he stated that his partner had gone to see a doctor. He also asked a lady to send him some sham registered letters and forged other documents. Lord Chief Justice Goddard stated the law to be that in a trial for murder, the fact of death could be proved by circumstantial evidence alone, provided the jury were warned that the evidence must lead to one conclusion only, and that even though there was no body or even trace of a body or any direct evidence as to

(1) [1955] 1 Q.B 388.

the manner of the death of a victim, the *corpus delicti* could be held to be proved by a number of facts, which rendered the commission of the crime certain. It is pertinent to remember that Lord Goddard observed during the course of argument that there was no virtue in the words "direct evidence", and added:

> "It would be going a long way, especially in these days when we know what can be done with acid, to say that there cannot be a conviction without some proof of a body. If you are right you have to admit that a successful disposal of the body could prevent a conviction."

It is obvious that Lord Goddard had in mind the case of *John George Haigh* (1) who, as is notorious, disposed of bodies by steeping them in acid bath, destroying all traces. It is, in this context, instructive to read a case from New Zealand to which Lord Goddard also referred, where the body of the victim was never found, *The King* v. *Horry* (2). The statement of the law as to proof of *corpus delicti* laid down by Gresson, J. (concurred in by Fair, A.C.J., Stanton, J. and Hay, J.) was approved by Lord Goddard with one slight change. The statement of the law (head-note) is as follows:

> "At the trial of a person charged with murder, the fact of death is provable by circumstantial evidence, notwithstanding that neither the body nor any trace of the body has been found, and that the accused has made no confession of any participation in the crime. Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

Lord Goddard did not agree with the words "morally certain" and stated that he would have preferred to say "such circumstances as render the commission of the crime certain."

(1) Notable Trials Series. (2) [1952] N.Z.L.R. 111.

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The same test has been applied by Wills in his Book on Circumstantial Evidence, and the author has quoted the case of *Donellan* (1), where the conduct of Donellan in rinsing out a bottle in spite of the wife of the victim asking him not to touch those bottles, was treated as a very significant evidence of guilt. Butler, J., charged the jury that:

> "if there was a doubt upon the evidence of the physical witnesses they must take into their consideration all the other circumstances either to show that there was poison administered or that there was not, and that every part of the prisoner's conduct was material to be considered."

Similarly, in *Donnall's case* (2), Abbot, J., according to Wills, in summing up, said to the jury that:

> "there were two important questions: first did the deceased die of poison? and if they should be of opinion that she did, then whether they were satisfied from the evidence that the poison was administered by the prisoner or by his means. There were some parts of the evidence which appeared to him *equally applicable to both questions*, and those parts were what related to the conduct of the prisoner during the time of the opening and inspection of the body; his recommendation of a shell and the early burial; to which might be added the circumstances, not much to be relied upon, relative to his endeavours to evade his apprehension. His Lordship also said, as to the question whether the deceased died by poison, 'in considering what the medical men have said upon the one side and the other, you must take into account the conduct of the prisoner in urging a hasty funeral and his conduct in throwing away the contents of the jug into the chamber utensil'."

In *Rex* v. *Horry* (3), where the entire case law in England was presented for the consideration of the Court, it was pointed out by the Court that there was no rule in England that *corpus delicti* must be proved by direct evidence establishing the death of the person

(1) Gurneys Rep. (1781) (2) (1817) 2 C. & K. 308n.
(3) [1952] N.Z.L.R. 111.

and further, the cause of that death. Reference was made to *Evans* v. *Evans* (1), where it was ruled that that *corpus delicti* might be proved by direct evidence or by "irresistible grounds of presumption". In the same case, it has been pointed out that in New Zealand the Court upheld numerous convictions, where the body of the victim was never found.

The rule of law stated by Sir Matthew Hale in Pleas of the Crown Vol. 2, p. 290 that "I would never convict any person of murder or manslaughter, unless the fact were proved to be done, or at least the body found dead" was not accepted in this and other cases. Lord Goddard also rejected the statement as one of universal application, in the case to which we have already referred.

The case of *Mary Ann Nash* (2) is illustrative of the proposition that even though the cause of death may not appear to be established by direct evidence, the circumstances of the case may be sufficient to infer that a murder has been committed. In that case, the prisoner had an illegitmate son, 5 years old. There was evidence to show that the mother desired to put the child out of her way. One day in June, 1907, the mother left the house and returned without the child. She made several statements as to what had happened to the child, which were found to be untrue. As late as April 1908, the body of a child was discovered in a well. Decomposition had so far advanced that even the sex of the child could not be determined. There was nothing therefore to show whether death was natural or violent, or whether it had occurred before or after the body was put into the well. The case was left to the jury. On appeal, it was contended that there being no proof how death took place, the judge should not have left the case to the Jury but ought to have withdrawn it. Lord Chief Justice delivering the judgment of the Court of Appeal referred to the untrue statements of the prisoner about the wherebouts of the child, and observed as follows:

"All these statements were untrue. She had an object in getting rid of the child, and if it had been

(1) 161 E.R. 466, 491. (2) (1911) 6 Cr. App. R. 225.

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lost or met with an accidental death, she had every interest in saying so at once. It is said there is no evidence of violent death, but we cannot accept that. Mr. Goddard cannot have meant that there must be proof from the body itself of a violent death. . . . In view of the facts that the child left home well and was afterwards found dead, that the appellant was last seen with it, and made untrue statements about it, this is not a case which could have been withdrawn from the jury."

There is no difference between a trial with the help of the jury and a trial by a Judge in so far as the appraisement of evidence is concerned. The value of the evidence in each case must necessarily be the same. If the case of *Mary Ann Nash* (1) could be left to the jury, here too the case has been decided by the two Courts below concurrently against the appellant on evidence on which they could legitimately reach the conclusion whether an offence of murder had been established or not.

A case of murder by administration of poison is almost always one of secrecy. The poisoner seldom takes another into his confidence, and his preparations to the commission of the offence are also secret. He watches his opportunity and administers the poison in a manner calculated to avoid its detection. The greater his knowledge of poisons, the greater the secrecy, and consequently the greater the difficulty of proving the case againt him. What assistance a man of science can give he gives; but it is too much to say that the guilt of the accused must, in all cases, be demonstrated by the isolation of the poison, though in a case where there is nothing else such a course would be incumbent upon the prosecution. There are various factors which militate against a successsful isolation of the poison and its recognition. The discovery of the poison can only take place either through a post-mortem examination of the internal organs or by chemical analysis. Often enough, the diagnosis of a poison is aided by the information which may be furnished by relatives and friends as to the symptoms

(1) 161 E.R. 466, 491.

found on the victim, if the course of poison has taken long and others have had an opportunity of watching its effect. Where, however, the poision is administered in secrecy and the victim is rendered unconscious effectively, there is nothing to show how the deterioration in the condition of the victim took place and if not poison but disease is suspected, the diagnosis of poisoning may be rendered difficult. In *Chapman's case* (1), the victim (Maud Marsh) was sent to Guy's Hospital, where the doctors diagnosed her condition to be due to various maladies "including cancer, rheumatism and acute dyspepsia". It is clear that doctors can be deceived by the symptoms of poison into believing that they have a genuine case of sickness on hand. In *Dr. Palmer's case* (2), two medical witnesses for the defence diagnosed the case from the symptoms as being due to Angina Pectoris or epilepsy with tetanic complications.

The reason for all this is obvious. Lambert in his book "The Medico-Legal Post-Mortem in India" (pp. 96,99-100) has stated that the pathologist's part in the diagnosis of poisoning is secondary, and has further observed that several poisons particularly of the synthetic hypnotics and vegetable alkaloids groups do not leave any characteristic signs which can be noticed on post-mortem examination. See Modi's Medical Jurisprudence and Toxicology, 13th Edn., pp. 450-451 and Taylor's Principles and Practice of Medical Jurisprudence, Vol. II, p. 229. The same is stated by Otto Saphir in his book "Autopsy" at pp. 71 and 72. In Dreisbach's Handbook of Poisons, 1955, it is stated that pathological findings in deaths from narcotic analgesics are not characteristic. He goes further and says that even the laboratory findings are non-contributory. The position of the pathologist who conducts a post-mortem examination has been summed up by Modi in Medical Jurisprudence and Toxicology, 13th edn., p. 447 as follows:

"In order to make a probable guess of the poison and to look for its characteristic post-mortem appearances, it is advisable that a medical officer, before

(1) Notable Trials Series. (2) Notable Trials Series.

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commencing a post-mortem examination on the body of a suspected case of poisoning, should read the police report and endeavour to get as much information as possible from the relatives of the deceased regarding the quality and quantity of the poison administered, the character of the symptoms with reference to their onset and the time that elapsed between the taking of the poison and the development of the first symptoms, the duration of the illness, nature of the treatment adopted, and the time of death. He will find that in most cases the account supplied by the police and the relatives is very meagre, or incorrect and misleading. His task is, therefore, very difficult, especially when many of the poisons except corrosives and irritants do not show any characteristic post-mortem signs and when bodies are in an advanced state of decomposition . . .".

Similarly, Gonzales in Legal Medicine and Toxicology states at p. 629:

> "The question of whether or not a negative toxicologic examination is consistent with death by poison can be answered affirmatively, as may persons overcome by carbon monoxide die after twenty-four hours, at which time the gas cannot be determined in the blood by chemical tests. Likewise, the organs of individuals who have been poisoned by phosphorus may not contain the toxic substance responsible for death if they have managed to survive its effects for several days.
>
> Many conditions seriously interfere with the toxicologic examination, such as post-mortem decomposition . . . . ".

We need not multiply authorities, because every book on toxicology begins with a statement of such a fact. Of course, there is a chemical test for almost every poison, but it is impossible to expect a search for every poison. Even in chemical analysis, the chemical analyser may be unsuccessful for various reasons. Taylor in his Principles and Practice of Medical Jurisprudence, Vol. II, p. 228 gives three possible explanations for negative findings, viz., (1) the case

may have been of disease only; (2) the poison may have been eliminated by vomitting or other means or neutralised or metabolised; and (3) the analysis may have been faultily performed. Svensson Wendel in Crime Detection has stated at p. 281 that:

> "Hypnotics are decomposed and disappear very quickly—some even in the time which elapses between the administration and the occurrence of death.

Circumstantial evidence in this context means a combination of facts creating a net-work through which there is no escape for the accused, because the facts taken as a whole do not admit of any inference but of his guilt. To rely upon the findings of the medical man who conducted the post-mortem and of the chemical analyser as decisive of the matter is to render the other evidence entirely fruitless. While the circumstances often speak with unerring certainty, the autopsy and the chemical analysis taken by themselves may be most misleading. No doubt, due weight must be given to the negative findings at such examinations. But, bearing in mind the difficult task which the man of medicine performs and the limitations under which he works, his failure should not be taken as the end of the case, for on good and probative circumstances, an irresistible inference of guilt can be drawn.

In the present case, the effort of the appellant has been to persuade the Court that the death of Laxmibai was possibly the result of disease rather than by poison. During the course of the case and the appeal, various theories have been advanced and conflicting diagnoses have been mooted. The case of the appellant has wavered between death by diabetic coma and by hypoglycemia, though relying upon the condition of the arteries and the aorta and the rigidity of the neck, suggestions of coronary complications and renal failure have also been made. We have shown above that this was not a case of diabetic coma, because of the absence of the cardinal symptoms of diabetic coma. This also is the opinion of Dr. Variava and Dr. Mehta, though Dr. Jhala, for reasons which we have indicated, accepted it. The appellant argued again the case

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from the angle of diabetic coma, but later veered in favour of hypoglycemia. This change noticeable not only in the arguments before us but also throughout the conduct of the case is merely to confuse the issue, and create, if possible, a doubt, which would take the mind away from the surrounding circumstances, and focus it only upon the medical aspect of the case. Full advantage has been taken of the findings of Dr. Ugale and Dr. Miss Aneeja, which suggest partly an onset of diabetic coma, partly of hypoglycemia, and partly of renal failure. There is no true picture of any one disease. The rigidity of the neck was not reflected in the chemical analysis of the cerebro-spinal fluid and was negatived, in so far as renal failure is concerned, by the negative findings about albumin. Diabetic coma stood ruled out by the presence of the Babinsky sign and the suddenness of the onset, the negative aspect of acetone breath and the rather remarkable failure of the specific treatment given for it to have worked any change. Driven from these considerations to such doubtful suggestions as coronary complications of which no physical evidence was found by Dr. Jhala, the appellant put his case on hypoglycemia, and relied upon the fact that at the hospital 40 units of insulin intravenously and another 40 units subcutaneously were administered. Medical text-books were quoted to show that in the case of hypoglycemic coma the introduction of even a small quantity of insulin sometimes proves fatal. The learned Advocate-General stoutly resisted this move, which was at variance with the case as set out before the High Court, because it is obvious enough that if one accepted the theory of hypoglycemic coma, the only injections of insulin causing such shock would be proved to have been given at the hospital and not by the appellant. Here, the position, however, is not so difficult for the State, because Laxmibai was found to have 4 oz. of pasty meal in her stomach, and with food inside her, the possibility of hypoglycemia taking place naturally was extremely remote. If it was hypoglycemic coma due to excessive administration of insulin, then it must have been administered prior to its onset, and who could have

given it but the appellant? Even though coma supervenes suddenly, the patient passes through symptoms of discomfort, and Laxmibai would have told the appellant about it in the train. The appellant mentioned nothing of this to Dr. Ugale. If an excessive dose of insulin was given by the appellant, the question of intent would arise, and the conduct shows the intention. There were no pronounced symptoms of hypoglycemia either. Laxmibai just passed from unconsciousness to death without the manifestation of any of the signs associated with the syndrome of hypoglycemic death. It is also to be remembered that hypoglycemic coma is generally overcome by the administration of a very small quantity of glucose (5 or 10 grams of glucose orally): Treatment of Diabetes Mellitus by Joslin, Root and White, p. 350. The 40 units given intravenously were mixed with 20 C. C. of glucose and carried the palliative with them. Even otherwise, Laxmibai was receiving glucose by intragastric drip, and during the three and a half hours, there should have been an improvement. The surprising part is that the administration of the insulin and glucose brought about no visible symptoms in the patient either for better or for worse. She passed into death, and the inference can only be that she did not die of these diseases of which she was either suspected or for which she was treated but of something else, which could not answer to the treatment given to her.

Dreisbach in his Handbook on Poisons at p. 27 has stated that coma also results from the action of several poisons. Depressants, sedatives and hypnotics all cause death by coma (ibid. p. 201). The symptoms, according to the author, are sleepiness, mental confusion, unsteadiness rapidly followed by coma with slow shallow respiration, flaccid muscles and absent deep reflexes. The difference between coma due to disease and coma as the result of poisons is stated by him in the following words:

> "Coma from poisoning presumably results from some interference with brain cell metabolism. In attempting to combat the effects of drugs which induce coma, remember that no agents are known

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which will specifically overcome the metabolic derangements of drug-induced coma. The mechanism of action of cerebral stimulant drugs is also unknown, but these drugs presumably act by depressing some inhibiting function in the cell. There is no evidence that any stimulants specifically oppose the cellular metabolic depression induced by the depressant drugs such as the barbiturates."

No specific antidote is known for the sedative and hypnotic drugs. (Ibid. p. 202).

The condition of Laxmibai clearly indicated an impairment of the central nervous system. It is no doubt true that in some cases of coronary thrombosis, coma supervenes; but it is idle to suggest in the present case that Laxmibai was afflicted by this type of coma, because Dr. Jhala who performed the post-mortem examination and opened the coronary arteries found no evidence of thrombosis. According to Otto Saphir, a myocardial infarct is easily detected. (Autopsy, pp. 301-302). Coma in Laxmibai's case, as we have shown above, was not the result either of acidosis, hypoglycemia, renal failure or meningial irritation. Her liver, pancreas and kidney were found to have no pathological lesions, and it is significant that no question was even attempted to establish that the opinion of Dr. Jhala on this part of the case was incorrect. Learned counsel for the appellant suggested that the examination by Dr. Jhala might have been superficial, and might not have included a microscopical examination of sections of some of the vital organs normally affected by diabetes. This suggestion, in our opinion, ought to have been put forward during the cross-examination of the witness, and it is unfair now to suggest that the opinion that no lesions were found was based on either improper or inadequate examination. We hold that Dr. Jhala performed the examination adequately, and he was also helped by his assistants.

Here, we pause to ask a question why the appellant brought up the question of hysterical fits at all. He could have said that Laxmibai was a diabetic, and that it was likely she had coma by reason of that

disease. The suggested diagnosis given by the appellant was so unlikely that Dr. Ugale questioned it then and there. There is nothing in the Wanlesswadi T.B. Sanatorium papers or in Dr. Sathe's evidence to show that Laxmibai had hysterical fits after her hysterectomy operation. No suggestion was made to the doctors in Court that Laxmibai might have had hysterical fits. The condition of the muscles and the absence of deep reflexes clearly show that this was just another piece of deception. It is not possible to hold that the appellant gave the full particulars to Dr. Miss Aneeja. No suggestion was made to her or to Dr. Ugale that any information other than what was noted in the case papers was furnished. There is no case for holding that Laxmibai had a relapse of hysterical fits.

It would, therefore, appear that Laxmibai's condition was not due to any disease, because diseases inducing coma generally leave some trace behind, and also respond to medication. No doubt, in some cases the pathological findings after death from diabetic coma have been negative, but the question is if this was such a case. We have, on the one hand, the fact that numerous poisons causing coma leave no identifiable trace in the victim after death, and, on the other, that sometimes the autopsy does not disclose any discoverable signs in a patient who dies after an attack of diabetic coma or disease. The appellant can be presumed to have had knowledge of these poisons. The appellant challenged the Advocate-General to show from any standard book that the symptoms found by the doctors accorded with any known poison. Here, it must also be remembered that a man with knowledge may manipulate not one but more drugs to achieve his purpose, and the cardinal signs of poisoning on the victim may, as a result, be either obliterated or, at least significantly modified. We give one example on which a certain amount of knowledge is possessed even by laymen. A poison of which one of the symptoms would be the contracting of the pupils of the eyes may be side-tracked by putting into the eyes of the victim a drug like atropine, which by its local

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action dilates the pupils. We give this example, because most of us know the action of atropine on the eyes, and because the example also shows how easily a person with knowledge may confuse the symptoms by a simple trick. We are not suggesting that this is what has happened in this case; but when we have to deal with a case of crime *versus* natural death, we cannot overlook the possibility of some ingenious artifice having been used to screen the action.

If Laxmibai died in circumstances which *prima facie* admit of either disease or homicide by poisoning, we must look at the conduct of the appellant who brought her to the hospital, and consider to what conclusion that conduct unerringly points. If the appellant as an honest medical man had taken Laxmibai to the hospital and she had died by reason of disease, his conduct would have been entirely different. He would not have taken her to the hospital bereft of property with which she started from home; he would not have given a wrong or misleading name to cover her identity; he would not have given a wrong age and wrong history of her ailments; he would not have written a letter suggesting that she had a brother in Calcutta, which brother did not exist; he would not have abandoned the corpse to be dealt with by the hospital as an unclaimed body; he would not have attempted to convince the world that she was alive and happily married; he would not have obtained her property by forgeries, impersonation and other tricks indulged in both before and after her death; but he would have informed her relatives and done everything in his power to see that she was properly treated and stayed on to face whatever inquiry the hospital wished to make into the cause of death and not tried to avoid the post-mortem examination and would not have disappeared, never to reappear. His prevarications about where Laxmibai was, make a big and much varied list, and his forgeries cover scores of documents. In the words of Baron Parke in *Towell's case* (1):

> "Circumstantial evidence is the only evidence which can in cases of this kind lead to discovery.

(1) (1854) 2 C. & K. 309.

There is no way of investigating them except by the use of circumstantial evidence; but it most frequently happens that great crimes committed in secret leave behind them some traces, or are accompanied by some circumstances which lead to the discovery and punishment of the offender... Direct evidence of persons who saw the fact, if that proof is offered upon the testimony of men whose veracity you have no reason to doubt is the best proof; but, on the other hand, it is equally true with regard to circumstantial evidence, that the circumstances may often be so clearly proved, so closely connected with it, or leading to one result in conclusion, that the mind may be as well convinced as if it were proved by eye-witnesses."

The appellant in this case took some risk in taking Laxmibai to the hospital and in giving his name there; and these aspects were, in fact, stressed as arguments in the case. As regards the first part, the argument overlooks that what appears to us to be a risk might not have so appeared to the appellant, who might have been sure of his own ability to screen himself. To him, the death of Laxmibai at the hospital without discovery of poison would be the greatest argument in his favour that he had acted honestly. The second argument is equally unacceptable to us. The appellant could not take the risk of a false name and address, if he was intending that the body should be disposed of as unclaimed. By giving his own address he could keep the strings in his own hands. If he gave an address and no reply came from that address, the hospital would suspect foul play. If he gave the address of Laxmibai, people in Poona would know of this mysterious death, and they would remember the death of Purshottam *alias* Arvind in 1954. At that time also a post-mortem examination on the body of Arvind was held (see, evidence of Ramachandra (P. W. 1)), and the explanation of the appellant given in writing on January 22, 1954, is set out below in his own words:

"My name is Anant Chintaman Lagu, age...years, residing at No. 431/5, Madiwale Colony, Poona, on

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being questioned state that I am the family doctor of Karve family in H. No. 94-95, Shukrawar. The deceased Purshottam Anant Karve belongs to that family. He came from Bombay to Poona on Saturday, the 16th January, 1954. He had come to me on Sunday, the 17th February, 1954, for medicine for weaknèss. I treated him for 2 days, on 17th and 18th. He had neither told me that there was poisoning in his stomach, nor did I detect any even when I examined and treated him. He became unconscious 5 hours before his death. He was taken to the Sassoon Hospital at 9 p.m. on 18th January, 1954. He was taken to the Sassoon Hospital because his disease was increased in unconsciousness and also because his mother as also myself and Dr. Joshi were of the same opinion. He died there in about 30 to 45 minutes. The fact that there was deliberate poisoning by somebody, was neither revealed in my examination nor did Purshottam Karve speak to me anything about it during the time I treated him 2 days before. What exactly was the cause of death could not be revealed during my treatment. I do not know if somebody is on bad terms with him. There are rumours about suicide but there is no reason or any circumstance whatsoever for doing so."

A false address would have started enquiries at the hospital end. Laxmibai's own address would have started speculation in Poona. It was for this reason that the appellant had to choose another place and to trim between fact and fiction so that he might be able to deal with the matter himself. Of course, Laxmibai did have an address of her own which could have been given, and which did not cease to be her address because she had got an attack of coma, from which people are known to recover.

These arguments, however, are of no avail, in view of the appellant's entire conduct now laid bare, which conduct has been proved to our satisfaction to have begun not after the death of Laxmibai but much earlier. This conduct is so knit together as to make a net-work of circumstances pointing only to his guilt.

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The case is one of extreme cunning and premeditation. The appellant, whose duty it was to care for this unfortunate lady as a friend and as her medical adviser, deliberately set about first to ingratiate himself in her good opinion, and becoming her confidant, found out all about her affairs. All this time he was planning to get at her property after taking her life. He did not perpetrate his scheme at Poona, where the death might have brought a host of persons to the hospital. He devised a diabolical scheme of unparalleled cunning and committed an almost perfect murder. But murder, though it hath no tongue, speaks out sometimes. His method was his own undoing; because even the long arm of coincidence cannot explain the multitude of circumstances against him, and they destroy the presumption of innocence with which law clothed him. In our judgment, the two Courts below were perfectly correct in their conclusion that the death of Laxmibai was the result of the administration of some unrecognised poison or drug which would act as a poison, and that the appellant was the person who administered it. We, accordingly, confirm the conviction.

As regards the sentence of death passed on the appellant by the Sessions Judge and confirmed by the High Court, it is the only sentence that could be imposed for this planned and cold-blooded murder for gain, and we do not interfere with it.

The appeal fails, and it will be dismissed.

Sarkar J.

SARKAR J.—In my opinion this appeal should be allowed.

The appellant was tried by the Sessions Judge, Poona, on a charge under s. 302 of the Indian Penal Code for the murder of Laxmibai Karve on November 13, 1956, by administering poison to her and was convicted and sentenced to death. His appeal to the High Court at Bombay against the conviction and sentence failed. He has now appealed to this Court with special leave.

The evidence against the appellant is all circumstantial. The question to be decided in this appeal is

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whether that evidence is such that the only reasonable conclusion from it is that the appellant was guilty of the charge brought against him.

Laxmibai Karve, the deceased, was the widow of one Anant Karve who was a businessman of Poona. Laxmibai was married in 1922 at the age of eleven to Anant Karve, then a widower. Her maiden name was Indumati Ponkshe. After her marriage she was given the name Laxmibai but was also called Indumati or Indutai or Mai Karve or simply Mai. It does not appear that after her marriage she had been known by her father's surname of Ponkshe, a fact the significance of which will appear later.

Anant Karve had a son named Vishnu by his first wife. By Laxmibai he had two sons, Ramchandra and Purshottam also called Arvind.

Anant Karve died in 1945 leaving a will. By his will he gave Laxmibai a right of residence in three rooms in his dwelling house at No. 93-95, Shukrawar Peth, Poona and a right to receive Rs. 50 per month from the rent of that house which was in part let out, and made certain other bequests to her. He devised the rest of his properties to his sons. Besides what she had received from her husband, Laxmibai in 1954 inherited the properties of Purshottam who had died intestate and unmarried in that year. She further inherited a large sum of money and gold ornaments of considerable value from her mother, Girjabai, who had died in 1946 or 1947. She had also considerable valuable ornaments of her own. Her total assets amounted in 1956 to about Rs. 80,000. Part of her liquid assets were held in shares and debentures in limited companies. She had also certain moneys in an account in her name in the Bank of Maharashtra. A considerable sum was due to her from one Joshi to whom she had given a loan.

After the death of her husband, differences cropped up between Laxmibai and her elder son, Ramchandra. In 1946 Ramchandra started living separately from his mother in the same house and used to take his food in a hotel. In October 1952, Ramchandra joined military

service as a craftsman and left Poona. Since joining service till the death of Laxmibai he was not residing at Poona but came there now and then. In May 1956, Laxmibai got Ramchandra married.

After her husband's death Laxmibai lived in the three rooms in premises No. 93-95, Shukrawar Peth, Poona, in which she had been given a right of residence by her husband's will. Her younger son Purshottam also appears to have gone out of Poona on service in 1953, and he died in January 1954. Since then Laxmibai had been living all by herself. She had however certain relatives in Poona.

The appellant is a medical doctor. He and his brother B. C. Lagu, also a doctor, had been the family physicians of Anant Karve during his life time and attended him in his last illness. After his death the appellant continued to be Laxmibai's family doctor. It is clear from the evidence that Laxmibai had great trust and confidence in the appellant and depended on him in all matters concerning her moneys and investments. It was he who went to the Bank for withdrawing and depositing moneys for her. In 1955 he actually took on rent a big hall in premises No. 93-95, Shukrawar Peth for his personal use and had been in occupation of it since then.

Laxmibai did not possess very good health. She had developed a tuberculous lesion some twenty years before her death but it had healed. She was a chronic diabetes patient since 1946 and started having hysterical fits since 1939. She suffered from menorrhagia and metrorrhagia since 1942. On April 11, 1948, Dr. Ghorpure, a surgeon performed an operation on her which is described in these terms:

> Abdomen opened by mid-line sub-umbilical incision—Subtotal hysterectomy done. Rt. ovary cysticpunctured—Appendicectomy. Abdomen closed after exploring other viscera which were normal.

In 1949 she suffered from pyorrhoea and had her teeth taken out. In 1950 the tuberculous affection became active and on June 15, 1950, she consulted Dr. Sathe, a lung specialist, who found that there was tuberculous

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affection of the left lung and he recommended a line of treatment. This treatment was carried out by the appellant but apparently did not achieve much result. On July 13, 1950, she got herself admitted into the Wanlesswadi Tuberculosis Sanatorium at Miraj in Bombay for treatment of the tuberculosis. Two thoracoplasty operations were performed on the left lung and she was recommended a third such operation which she was unwilling to undergo and left the hospital at her own desire. In the course of these operations nine of her ribs on the left side were removed. The report given by this hospital on November 17, 1950, reads thus:

> Patient was admitted on 13th July, 1950. X-Ray on admission showed extensive filtration on the left side with a large cavity in the upper zone; the right side was within normal limits. She had diabetes with high blood sugar which was controlled by insulin. Two stages of thoracoplasty operation on the left side were done and there was good clearing of disease but there was a small residual cavity seen and the third stage operation was advised. The patient is leaving at her own request against medical advice. Her sputum is positive.

There is no evidence that after she left Wanlesswadi Sanatorium she had any relapse of any of her previous illnesses earlier recounted. It appears from the evidence of her relation one Datar, a medical man, that Laxmibai had been completely invalid being a frank case of tuberculosis of both the lungs but in November 1956, her health was good and she was cooking her food and moving about in the house. The other evidence also shows that she was carrying on her daily avocations of life in a normal way at that time. After her death her body was found to be well nourished. She had however to have ordinary medical attention constantly and the diabetes had continued though controlled. The appellant treated her all along and the fees paid to him appear debited to Laxmibai's account.

I have so far been stating the earlier history of the case and now come to the more immediate events. On November 8, 1956, Laxmibai had Rs. 5,275-09 in her

account in the Bank of Maharashtra. On a date between November 8 and 10, she signed two papers the first of which was a notice to the Bank reading, "I desire to withdraw an amount exceeding Rs. 1,000 up to about Rs. 5,000 in the next week from my savings Bank Account" and the other was a withdrawal slip or cheque and it read, "Pay Bearer the sum of Rupees Five thousand only which please debit to the account of Laxmibai Anant Karve". None of these papers bore any date and the bodies of them were in the appellant's handwriting. These papers were made over by Laxmibai to the appellant and he did not present them to the Bank till after her death. On November 12, 1956, the appellant paid to the credit of Laxmibai's account in the Bank a dividend warrant dated November 10, 1956, for Rs. 2,607-6-0 drawn in her favour by a company on the Bank of Maharashtra, after signing her name on the back of it himself.

The appellant had fixed up an engagement with Dr. Sathe of Bombay, who has been named earlier, for November 13, 1956, at 3 p.m. for examining Laxmibai. On November 8, 1956, Bhave, a relation of Laxmibai, called on Laxmibai and found the appellant there. Laxmibai told him that she proposed to go to Bombay with the appellant for consulting Dr. Sathe for her health and that she would be returning in four or five days. On November 10 or 11, she saw a lawyer Karandikar, also a relation, and informed him that she intended to go to Bombay with the appellant for consulting a physician. About the same time Champutai, daughter of Bhave mentioned earlier, came to Laxmibai's house to invite her to attend the birthday party of her son which had been fixed for November 13. Laxmibai told Champutai that she was going to Bombay and if she was able to come back in time, she would attend the party. At about 8 p.m. on November 12, Laxmibai went to Virkar, who was a tenant of the house where she lived, and informed him that she was going to Bombay by the night train to consult a doctor and requested him to pay Rs. 50 on account of the rent then due for meeting the expenses of the

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journey to Bombay. The amount was paid by Virkar to her. She told Virkar that she expected to return to Poona after three or four days. About the same time she met Pramilabai, another tenant of the house, and told her that she was going to Bombay with the appellant by the night train to consult Dr. Sathe. A little later she was seen by a third tenant Krishnaji, standing in front of the house with a small bag and bedding. Krishnaji also saw the appellant on the road going away from the house. All these people have said that they found Laxmibai in a good state of health and going about performing her normal avocations of life.

There was a passenger train leaving Poona for Bombay at 10 p.m. Laxmibai and the appellant went by this train to Bombay on November 12, 1956. Though the appellant denied this, the Courts below have found that they travelled in the same compartment. The train reached Victoria Terminus Station, Bombay, at 5-10 a.m. on November 13. Laxmibai had then gone into a comatose condition. The appellant procured a stretcher and carried her into a taxi with the help of porters and took her to Gokuldas Tejpal Hospital, usually called for short G.T. Hospital, which is about six furlongs from the station. They reached the hospital at about 5-45 a.m. Laxmibai was taken to the Outdoor Department where Dr. Ugale, the Casualty Officer in charge, admitted her into the hospital. According to Dr. Ugale, the appellant told him that the name of the unconscious woman was Indumati Paunshe and her age was forty. The appellant gave as the address of the patient the address of his own dispensary at Poona, namely, "C/o Dr. Lagu 20-B, Shukrawar, Gala No. 12, Poona 2". Dr. Ugale said that the appellant at his request spelt the name "Paunshe" and he took it down as spelt by the appellant. On enquiry about the history of the patient by Dr. Ugale the appellant told him that the patient suddenly became unconscious in the train while coming from upcountry and that there was a history of similar attacks frequently before. Dr. Ugale also said that the appellant told him that he thought that the case was one of hysterical fit from

which she frequently suffered. He did not tell Dr. Ugale that the patient suffered from any other disease. He said that he had brought the unconscious woman to Bombay for getting her examined by a specialist and that she was his patient. Dr. Ugale entered in the appropriate record of the hospital called the case paper, all that the appellant told him and what he himself had noticed. As a result of his own examination Dr. Ugale found that the patient was making some involuntary movement, the corneal reflex was absent, the pupils were normal and reactive. He found nothing abnormal in the cardio-vascular system or the respiration. There was a clerk sitting by the side of Dr. Ugale when the appellant was speaking to him and he made the necessary entries in another record of the hospital. In that record the name of the patient appears as Indumati Pankshe. Dr. Ugale examined the person of Laxmibai and found no ornament or cash on her. Within four or five minutes of the time that she arrived at the Out door Department of the hospital, Laxmibai was removed to Ward No. 12.

Dr. Anija, a young woman doctor, who had passed out the previous June, was then the House Physician in attendance at that ward. The appellant accompanied Laxmibai to the ward and introduced himself to Dr. Anija as Dr. Lagu, which is his name. He told her that while travelling in a train from upcountry the patient had got unconscious and therefore he had brought her straight from the station to the hospital and that before the journey the patient was alright. He further said, that the patient had similar attacks before. The appellant also told Dr. Anija that he was the family physician of the patient and a family friend and spoke of some of the illnesses from which the patient had earlier suffered. Dr. Anija made some notes in the case paper of what she heard from the appellant and then examined the patient, the result of which she also similarly noted in the case paper. Thereafter, according to Dr. Anija, she tested the patient's urine in a laboratory attached to the ward and recorded the finding on the case paper. She then administered some stimulant and oxygen and also

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gave an injection of 40 units of insulin as she thought, as a result of the urine test, that the case was one of diabetic coma. There is some dispute as to whether the urine was examined by Dr. Anija at this time and as to when the entries on the case paper of the results of the examination had been made. This will be discussed later. Dr. Anija examined the urine of the patient for the second time at about 8-30 a.m. and that also disclosed a certain quantity of Sugar. She said that she then sent a call to the Registrar of the ward, who was her immediate superior, to come and see the case. The Registrar came and, according to Dr. Anija, directed that the patient be given another 40 units of insulin with 20 c.c. of glucose by intravenous injection and that she be also given "intra-gastric glucose drip" and this was done at about 9 a.m. At about 11 a.m. the Honorary Visiting Physician, Dr. Variava, came to the hospital. Dr. Anija told him that it was a case of diabetic coma. Dr. Variava then himself examined the patient and thereafter asked Dr. Anija why she thought it to be a case of diabetic coma, to which Dr. Anija replied that she did so because there was sugar present in the urine. Dr. Variava then asked her whether she had examined the urine for acetone to which she replied that she had not. Dr. Variava thereupon reprimanded her by saying "How can you diagnose a case of diabetic coma without ascertaining acetone in the urine?" Thereafter under the directions of Dr. Variava, Dr. Anija again tested the urine and showed it to Dr. Variava who thought that the urine contained a slight trace of acetone. Shortly after this urine test the patient, that is, Laxmibai expired. It was then about 11-30 a.m. Dr. Variava then told Dr. Anija that he did not think that the case was one of diabetic coma and that therefore he wanted a post-mortem examination of the body of the deceased. Dr. Anija then made a note on the case paper stating "Asked for post-mortem" and put her signature below the entry. She did not then put down anything in the column there about the final diagnosis. Dr. Variava did not wait to see the entry about

post-mortem being made by Dr. Anija but left to attend other cases. It is clear that the appellant was present in the hospital up to the time of the death of Laxmibai though in his statement in the trial Court he had denied this. There is no evidence as to how long he remained in the hospital after Laxmibai's death but it is clear that he was in Poona on November 14.

There was arrangement in the hospital for conducting post-mortem examinations. The case papers along with note "Asked for post-mortem" had been sent by Dr. Anija to the Resident Medical Officer of the hospital, Dr. Mouskar. It was his duty to arrange for the post-mortem examination. The case paper came to Dr. Mouskar's office at 1 p.m. but he did not proceed to make any arrangement for having a post-mortem examination held. Instead, at about 2 p.m. he sent an official telegram to the appellant at Poona at the address which he had given to Dr. Ugale and which was recorded in the case paper. The telegrams was in these words:

> "Indumati expired arrange removal reply immediately."

On November 14, the appellant wrote from Poona a letter in reply to the telegram. This letter was in these terms:

> "I have already telegraphed to the brother of Shrimati Indumati Panshe at Calcutta, earliest he will reach Bombay on the 15th November, 1956, Thursday. His name is Govind Vaman Deshpande; he will enquire as Indumati Panshe. I have seen the name of the patient entered in the Ward Book as Indumati Pannshe as 'n' extra. Please correct it. I am writing all these things in connection of a case woman aged 30-35 years admitted in G. T. Hospital at 6 a.m. on Tuesday 13th November, 1956, and expired the same day at about 11 a.m.
>
> Shri Govind Vaman Deshpande will take the body and do the necessary funeral function according to Hindu rites."

Laxmibai had in fact no brother of the name of Govind Vaman Deshpande and in fact the appellant

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had sent no telegram as he stated in the letter. The statements in the letter were all false. The letter was received in the office of Dr. Mouskar in the afternoon of November 15.

Not having received any reply from the appellant to his telegram, Dr. Mouskar on November 14, at about 4 p. m., sent the following information to the Inspector of Police—A Esplanade P. S., Bombay.

"Sir,

I am to state that Smt. Indumati Paunshe, Hindu, female, aged 40 years was admitted in Ward No.XII for treatment of hysterical fits on 13th November, 1956, at 5-45 a. m. She died on the same day at 11-30 a.m.

The address given at the time of admission is as follows:

C/o Dr. Lagu,
20B, Shukrawar,
Gala No. 12, Poona-2.

A telegram on the above address has already been sent, but without any response.

It is therefore requested that the body may please be removed and taken to the J. J. Hospital Morgue for avoiding decomposition."

A copy of this letter was sent to the Coroner for information. The letter was written as in the G. T. Hospital there was no air conditioned morgue and there was one in the J. J. Hospital.

On receipt of this letter the police immediately wrote to the Coroner for permission to remove the body from the G. T. Hospital to the J. J. Hospital. The permission was granted by the Coroner at about 7-50 p.m. on the same day. The body was thereupon removed from the G. T. Hospital to the J. J. Hospital morgue at about 9 p.m. on November 14.

On the same day, that is, November 14, at about 9-30 p. m. the police again wrote to the Coroner stating that it had received a report from the Resident Medical Officer, G. T. Hospital of the death of one Indumati Paunshe, referring evidently to the letter which Dr. Mouskar had earlier on the same day written to the

police, and that Indumati appeared to have no relatives in Bombay and further that the cause of death was not certified and requesting in the circumstances that an inquest over the death might be held. What happened about this request will be stated later.

On November 15, the Bombay police sent a wireless message to the police at Poona intimating that on November 13, one Indumati Paunshe, who had been admitted to the G.T. Hospital for treatment of hysterical fits, had died on the very day in the hospital and her address was "C/o Dr. Lagu, 20B, Shukrawar, Gala No. 12, Poona 2" and asking that enquires might be made at the above address and the relatives might be asked to claim the dead body which was lying unclaimed. Pursuant to this message, the Poona police interviewed the appellant at Poona on November 16, when he made the following statement:

> "On November 12 he left Poona for Bombay by the 10 p.m. train and had gone off to sleep. Towards the end of the journey when he started preparing to get down at Bombay, he found one woman fast asleep. From other passengers he came to know that her name was Indumati Paunshe about 35 years of age and she had a brother serving in Calcutta. When other passengers got down at Victoria Terminus Station in Bombay, the woman did not awake. He thereupon looked at her keenly and found her senseless. Being himself a doctor he thought it his duty to take her to the hospital and so took her to the G. T. Hospital in a taxi. As he had taken that woman to the hospital, the Casualty Medical Officer took his address. He had no more information about the woman. She was not his relation and he was not in any way responsible for her."

The statement so made by the appellant was received by the Bombay police from the Poona police on November 17.

I now come back to the events that were happening at Bombay. I have earlier stated that the case paper had not initially given the final diagnosis as to the

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cause of Laxmibai's death but bore the endorsement "Asked for post-mortem". At some stage, as to which the evidence is conflicting and which I will have to discuss later, the endorsement "Asked for post-mortem" was crossed out and the words "diabetic coma" were written on the case paper as the cause of the death of the patient. Both of these alterations had been made by Dr. Anija who put her signature under the crossed out entry. Dr. Mouskar on November 15, sent to the Coroner a certificate of the death of the patient Indumati in the G. T. Hospital stating therein diabetic coma as the cause of her death. By this time the alteration in the case paper had clearly been made, crossing out the direction as to post-mortem examination and stating therein diabetic coma as the cause of death. On the same day, that is, November 15, the police wrote a letter to Dr. Mouskar, apparently in ignorance of the death certificate issued by him, requesting him to send per bearer the cause of the death of "Indumati". This letter was sent with a copy, the idea being that the original would be retained by the Hospital and the copy returned with an acknowledgement of the receipt of the original made on it. Both these were however produced from the police custody without any endorsement by the hospital acknowledging the receipt of either. The copy bore the following remark, "Diabetic coma, Dr. N. S. Variava, G. T. Hospital." It is clear on the evidence that the endorsement had not been made by Dr. Variava. Dr. Anija also denied having made it though before the police she admitted that the words "Diabetic coma" had been written by her. Dr. Mouskar said that neither the original nor the copy had ever come to him and he thought that the endorsement "Diabetic coma" might be in Dr. Anija's hand writing but he could not say by whom the words "Dr. N.S. Variava, G. T. Hospital" had been written adding that the words "Dr. N. S. Variava" had not been written by Dr. Variava. The question as to who made the endorsement will be discussed later.

On receipt of the death certificate from Dr. Mouskar, the Coroner's office made on the letter of the police

dated November 14, asking an inquest to be made, which I have earlier mentioned, an endorsement directing that no inquest was necessary as the Resident Medical Officer, G. T. Hospital had certified the cause of death and had issued the death certificate. On November 19, the Coroner's office directed that the dead body might be disposed of as unclaimed after taking a photograph of it. A photograph of the dead body was duly taken on the same day. In the meantime the Grant Medical College had written to the Coroner on November 17, for authority to take over certain unclaimed dead bodies lying in the J.J. Hospital mortuary, for dissection purposes and thereupon the Coroner made an order directing that the dead bodies might be made over to the Grant Medical College. Pursuant to this order, the dead bodies, which included that of Laxmibai, were then made over to the Grant Medical College on November 20, 1956. When the dead body of Laxmibai was about to be taken to the dissection hall, some scratches on the neck were detected. The Professor of Anatomy of the College did not thereupon allow the body to be dissected and brought the discovery to the notice of the police. The police then wrote to the Coroner that in view of this, a post-mortem and an inquest might be held. Accordingly, under the instructions of the Coroner, Dr. Jhala, Police Surgeon, Bombay, held a post-mortem examination of the body of Laxmibai on November 23. He found no sign of decomposition in the body nor any characteristic smell of any recognisable poison. He also found the scratches on the neck to be post-mortem. Dr. Jhala sent the viscera to the Government Chemical Examiner who sent the report of his examination on December 19, 1956, wherein he stated that he was unable to detect any poison in the viscera. Thereupon, Dr. Jhala submitted his post-mortem report stating that in his opinion death could have occurred on account of diabetic coma. In the meantime, after the post-mortem examination, the body of Laxmibai had been made over to the Hindu Relief Society for cremation on November 24 and the cremation had been duly carried out.

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It is now necessary to go back to Poona and relate what the appellant did after Laxmibai's death. To describe it summarily, the appellant did not give any one the information of Laxmibai's death but on the contrary, represented that she was alive and moving about from place to place and in the meantime misappropriated most of her moneys.

I will now give some details of his activities in relation to Laxmibai's moneys. It will be remembered that about November 8, the appellant had taken from Laxmibai a notice to the Bank for withdrawal of money and a withdrawal slip, none of which bore any date. The appellant inserted on the notice of withdrawal the date November 15, 1956, and lodged it in the Bank on the same day or soon thereafter. On the withdrawal slip he inserted the date November 19, 1956, and on November 20, presented it to the Bank and drew out a sum of Rs. 5,000 from Laxmibai's account. He subsequently put in to the credit of her account diverse cheques and by April 1957, had drawn out by forging her signature practically the whole amount in her credit totalling about Rs. 10,000 including the sum of Rs. 5,000 withdrawn on November 20, 1956. The appellant also embarked on a systematic course of forgeries of the signature of Laxmibai on various fabricated documents, including share transfer deeds, as a result of which, before the end of 1957, he misappropriated a large part of the liquid assets belonging to Laxmibai's estate. When some of the forged signatures of Laxmibai had been doubted by the authorities to whom they had been presented with the object of being acted upon, the appellant even went to the length of getting a woman to falsely impersonate Laxmibai before a Magistrate and thereby procured the latter to certify forged signatures of Laxmibai as genuine signatures. He also clandestinely denuded Laxmibai's flat of its entire contents. None of her ornaments has been recovered after her death. In the meantime, he had been falsely representing to various persons, including all friends and relatives of Laxmibai, that he had met her on several dates after November 13, when she was already

dead. He manufactured various letters purported to be written by her from distant places in India and addressed to her relatives in Poona stating that she was going round on a pilgrimage. Eventually, he fabricated letters purported to have been written by her to her relatives in which it was stated that she had married one Joshi and had settled down in a place called Rathodi near Jaipur and did not intend to return to Poona. There is in fact no place of the name of Rathodi. His idea in manufacturing these letters was to create a false impression in the minds of Laxmibai's friends and relatives that she was still alive and this he did with the object of gaining time to misappropriate her properties. It is not necessary to go into the details of this part of the conduct. The substance of it is that he made full use of the situation arising out of Laxmibai's death to misappropriate by all kinds of dishonest means most of her properties and to facilitate the misappropriation assiduously spread the story that she was alive. It may be stated that the appellant was put on his trial on charges of misappropriation and other allied charges and found guilty and sentenced to imprisonment for life.

The long absence of Laxmibai had gradually made her relatives grow suspicious about her fate and they approached the police but no trace of Laxmibai could be found. Several petitions were sent to the higher police officers and also to the Chief Minister of Bombay. In the end, the matter was entrusted to Mr. Dhonde, Deputy Superintendent of Police, C. I. D., Poona, for enquiry. Mr. Dhonde made various investigations and eventually on March 13, 1958, interrogated the appellant. The appellant then told him that he had taken Laxmibai to the G. T. Hospital, Bombay, and admitted her there, and that she died there on November 13, 1956. The police made enquiries at the G. T. Hospital and was able to find the clothes which Laxmibai wore when she died. These were identified by Laxmibai's relations. The photograph of the dead body of Laxmibai also helped to prove her identity. After certain further enquiries, the police sent up the

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appellant for trial on a charge of murder of Laxmibai with the result I have earlier mentioned.

The prosecution case is that the appellant caused the death of Laxmibai by administering to her a poison which was undetectable. On the evidence in this case it has to be held, as the Courts below have done, that there are poisons which cause death but are undetectable. I do not wish to be understood as saying that death by poisoning cannot be proved without proof of detection of poison in the deceased person's system after his death. I quite agree that the circumstances may be such that the only reasonable conclusion that can be drawn is that death was an unnatural death. In this view of the matter, I do not consider it necessary to discuss the cases cited at the bar and in the judgments of the Courts below. They are all illustrative of the proposition that a crime can be proved by circumstantial evidence, a proposition which I fully accept. In one of them, namely, *Regina* v. *Onufrejczyk*[1] guilt was held proved from the circumstances of the case notwithstanding that there was no body or trace of a body, or any direct evidence as to the manner of death of a victim. The legal proposition that arises in the present case may be put in the words of Wills in his treatise on Circumstantial Evidence which has been quoted in the judgment of the High Court:

> "It would be most unreasonable, ... and lead to the grossest injustice, and in some circumstances to impunity for the worst of crimes, to require, as an imperative rule of law, that the fact of poisoning shall be established by any special and exclusive medium of proof, when that kind of proof is unattainable, and specially if it has been rendered so by the act of the offender himself. No universal and invariable rule, therefore, can be laid down; and every case must depend upon its own particular circumstances; and the *corpus delicti* must, like anything else, be proved by the best evidence reasonably capable of being adduced, and by such an amount and combination of relevant facts, whether direct or circumstantial, as to establish the factum probandum

(1) [1955] 1 Q. B. 388.

to the exclusion of every other reasonable hypothesis. (7th Ed., p. 385)".

In the present case, therefore, the circumstances must be such that no other conclusion than that Laxmibai died of poisoning and that the poison was administered by the appellant, can reasonably be drawn. The Courts below have found that the circumstances of this case fully establish this. I have come to a different conclusion. In my view, the circumstances are not such that from them the only reasonable conclusion to be drawn is that Laxmibai died of poisoning. If that conclusion cannot be drawn, of course no question of the appellant having poisoned her arises. I may also say that if Laxmibai could be said to have died of poisoning, I would have no reason to disagree with the view of the Courts below that it was the appellant who had administered the poison.

I proceed now to consider the question whether Laxmibai had died of poisoning. I do not suggest that poison had to be found in her system. In my view, if it could be established in this case that Laxmibai had died an unnatural death the conclusion would be inevitable that that unnatural death had been brought about by poison; no other kind of unnatural death could be possible on the facts of this case.

The real question in this case then is whether Laxmibai had died an unnatural death. I think the Courts below also considered that to be the only question in this case. I have earlier said that no poison was detected in the post-mortem examination. So far as direct evidence of the cause of death goes, which in this case is all opinion evidence, we have the evidence of three doctors. All that Dr. Variava said was that death was not due to diabetic coma. The Courts below have accepted this evidence and I find no reason to take a different view. Then there is Dr. Jhala, who conducted the post-mortem examination. He had stated in the port-mortem examination report that the cause of death was diabetic coma. In his evidence in Court he said that the opinion stated in his report was not based on his pathological findings and that the proper way of describing the cause of

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death would be by stating "death by diabetes with complications". He also referred to certain complications such as, atheroma of aorta with slight sclerosis of coronary. In the end he was asked by the Court, "Would you agree with the view . . . . . that the proper opinion on the pathological data available before you should have been that the cause of death was not ascertainable or could not be ascertained?" His answer was, "My answer is that on pathological data I would agree to the answer proposed. We have however to see the clinical data also." On the clinical data he would have said that death was due to diabetes with complications, but he conceded that that opinion was somewhat speculative. These two doctors therefore did not suggest that death was due to any unnatural cause. Dr. Variava did not in his evidence say that he had directed the post-mortem examination to be done because he suspected any foul play. It would appear that he did not suspect any foul play for he did not require the case to be marked as a medico-legal case.

The most important direct evidence as to the cause of death and on which the prosecution has greatly relied, is the opinion of Dr. Mehta who appears to be a medical man of some eminence. All the papers connected with the illnesses of Laxmibai and the post-mortem examination report had been given to him and he had made a thorough study of them. The net result of this study would appear from his evidence, the relevant part of which I think it right now to set out. He said:

> "On a careful consideration of the entire material placed before me I am definitely of the opinion that the cause of death of Indumati Paunshe as mentioned in the case record and the Coroner's inquest, viz., diabetic coma, cannot be true. In my opinion, the cause of death may probably be due to:
>
> (1) Administration of some unrecognisable poison, i.e., some poison for the detection of which there are no definite chemical tests.
>
> (2) Administration of some recognisable poison for which there are chemical tests, but which tests

could not be obtained on account of deterioration of the poison remaining in the dead body which was kept in the morgue for considerable time after death without post-mortem being performed and which was already undergoing decomposition prior to the actual post-mortem examination as is clear from the absence of rigor mortis. Rigor mortis means stiffening of muscles. The above opinion that the probable cause of death may be due to administration of poison is further fortified by the fact that the post-mortem did not reveal any definite pathalogical lesion to account for the sudden rapid death of the deceased.

.....

.....

The question then arises whether she died a natural death, i.e., due to any other disease or diseased condition. The post-mortem notes do not show anything abnormal beyond congestion of organs and tubercular focus in the left lung. Congestion of organs occurs in majority of the cases after death of the person and particularly more so when so many days have elapsed between death and post-mortem examination. Some decomposition is bound to be going on.

There is still possibility of death being due to poison in spite of the fact that the poison was not detected in the post-mortem examination. Two reasons can be assigned for non-detection of poison: (1) There are no definite chemical tests for each and every poison. There are some poisons which cannot be detected on chemical analysis. (2) There may be a recognisable poison in the sense that there are tests for its detection. But the poison may not be detected on account of deterioration of the poison remaining in the body for a considerable time before the post-mortem examination and it has undergone decomposition or oxidation. .....

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The possibility of death being due to poisoning cannot be ruled out."

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I do not think that the Courts below thought that the evidence of Dr. Mehta established that death must have been due to an unnatural cause. If they did, I find myself unable to agree with them. The substance of Dr. Mehta's evidence is that death may "probably be due to" some poison, "the probable cause of death may be due to administration of some poison", the posibility of death being due to poisoning cannot be ruled out. It will have been seen that Dr. Mehta posed a question whether Laxmibai had died a natural death. That question he did not answer beyond stating that the post-mortem examination did not show anything abnormal beyond congestion of organs and a tubercular focus in the left lung and that such congestion of organs occurs in the majority of cases after death. It is clear that Mr. Mehta could not say with conviction that death had been caused by poisoning nor that death could not have been due to natural causes. The net result of the evidence of the medical experts is clearly that it cannot be said with definiteness how death was caused. In this view, nothing really turns on the fact that shortly prior to her death Laxmibai was found to have been in good health; which of course can only mean as good a health as a confirmed invalid like her could have. It cannot be definitely inferred from the fact that she was in good health that she had not died a natural death. If such an inference was possible, the doctors who gave evidence would have given a clear opinion but this they did not.

In this state of the evidence the Courts below have founded themselves on various circumstances of the case, most of which I have earlier related, in coming to the conclusion that Laxmibai had met with an unnatural death. These circumstances I now proceed to consider.

The first thing that I wish to discuss is the fact that after Laxmibai's death the appellant started on a systematic career of misappropriating her assets. I am unable to conclude from this that the appellant had caused her death. It is reasonably possible to think that he made use of the opportunity that came his way on Laxmibai's death to misappropriate her

properties and had not caused her death. The fact that the appellant deliberately kept back the information of Laxmibai's death from her relatives and falsely created the impression in their minds that she was alive, does not advance the matter. This was clearly done with a view to give him time in which to carry out his scheme of misappropriating her properties. I quite concede however that these circumstances may take on a different colour from other circumstances, but I have found no such circumstance.

The next circumstance is the conduct of the appellant in obtaining from Laxmibai her signatures on the undated notice of withdrawal to the Bank and the withdrawal slip. The bodies of these documents are in the handwriting of the appellant. The Courts below have thought that the appellant obtained the signatures of Laxmibai on blank papers and filled them in the forms they now stand after the death of Laxmibai and utilised them to misappropriate her moneys. They came to this conclusion from the fact that these documents were admittedly without dates and had been subsequently dishonestly utilised. It has been held from this that the appellant had during her life time a design on her moneys and therefore it becomes likely that he caused her death. I am unable to agree with this conclusion. It would be difficult to hold from the fact that the appellant had a design on Laxmibai's moneys that he had also a design on her life or that her death was an unnatural death. But apart from that there is reason to think that when Laxmibai signed these documents their bodies had already been written up. That reason is this. It will be remembered that on November 12, 1956, the appellant had put to the credit of Laxmibai's account in the Bank a dividend warrant in her favour for Rs. 2,607-6-0. The balance to the credit of her account on November 12, 1956, became as a result of this deposit, Rs. 7,882-15. Now it is obvious that if the appellant had filled in the bodies of the notice of withdrawal and the withdrawal slip after the death of Laxmibai he would not have mentioned the amounts therein as Rs. 5,000 but would have increased it to a

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figure nearer the balance because he undoubtedly had set about to misappropriate the moneys in that account and in fact he actually withdrew almost the entire balance in that account later by forging Laxmibai's signatures on other appropriate documents. Therefore, it seems to me that the bodies of the notice of withdrawal and the withdrawal slip had been written out before Laxmibai put her signatures on them.

Furthermore, the evidence clearly establishes that even during Laxmibai's life time the appellant used to present to the Bank cheques signed by Laxmibai for withdrawal of moneys and signed on the reverse of such cheques in acknowledgement of receipt of the moneys. He also used to deposit moneys in the Bank to the credit of her account. It is quite possible that the two documents mentioned had come into the appellant's possession in the usual course of managing Laxmibai's banking affairs. The fact that Laxmibai had not put dates on the documents would indicate that it was not intended that they would be presented to the Bank immediately for there is no reason to think that Laxmibai had not noticed that the documents did not bear any date. She seems to have been quite a capable woman managing her own affairs well. The Courts below have thought that there was no need for her to have wanted to withdraw such a large amount. The appellant said that she wanted to invest the money in some fixed deposit which would have yielded a higher return but he actually lent it to a friend whom however he refused to name. The Courts below have disbelieved the appellant's case. Even so it does not seem to me possible to hold that Laxmibai did not want to withdraw any moneys and the appellant had fraudulently got her to put her signatures on blank papers. I have earlier given my reason for this. It was not necessary for the appellant to have got her to sign blank papers and there is nothing to show that she would have done that even if the appellant had asked her.

I may here mention that no adverse inference can be drawn from the fact that the appellant put in the

dividend warrant to the credit of Laxmibai's account: it proves no guilt. But it is said that the appellant forged the name of Laxmibai on the back of it. The High Court thought that this forgery proves that the appellant had during the lifetime of Laxmibai entertained the intention to misappropriate her property. I am wholly unable to see how that conclusion could be reached from this or how in fact the forgery proves anything against the appellant. By the forgery, as it is called, the appellant was putting the money into the account to which it lawfully belonged; he did not thereby give it a different destination. Furthermore, he need not have signed her name himself. In the normal course Laxmibai would have signed it herself if asked to do so and given it to the appellant for being sent to the credit of her account. There is no reason to think that she would not have signed it if the appellant had asked her to do so. The dividend warrant was in Laxmibai's favour and had been drawn on the Bank of Maharashtra. It was being put to her credit in the same Bank. The Bank was therefore not likely to scrutinise with any care the payee's signature on the dividend warrant. That may have been the reason why it was left to the appellant to sign Laxmibai's name on the dividend warrant for putting it into the Bank. But whatever view is taken, I cannot see how it helps at all in solving any question that arises in this case. The trial Court found it a riddle and did not rely on it.

Next, it is said that the appellant falsely denied that he travelled in the same compartment with Laxmibai on their journey to Bombay. The denial was no doubt false. But it had been made at the hearing. He had admitted to the doctors at the hospital and to the Poona police on November 16, 1956, that he and the deceased had travelled in the same compartment. This falsehood therefore does not establish that the death of Laxmibai was an unnatural death, a question which I am now investigating. The fact that they travelled in the same compartment may no doubt have given him an opportunity to administer poison to her and to that extent it is of course relevant.

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It is also said that there was a hospital called St. George's Hospital within a few yards of the Victoria Terminus Station but the appellant took the unconscious Laxmibai to the more distant G. T. Hospital with an ulterior purpose. That purpose it is said was that in the G. T. Hospital his friend Dr. Mouskar, was the Resident Medical Officer and the appellant wanted to secure his help, if necessary, in preventing the discovery of the crime that he had committed. The appellant said that he chose the G. T. Hospital as he was familiar with it but not with the St. George's Hospital. This seems to me to be too insignificant a thing. The St. George's Hospital was no doubt very near, but the G. T. Hospital was not very far away either. There is nothing to show that the appellant knew that Dr. Mouskar was on duty on the day in question. There is neither any evidence to show how much the two were friendly or how far Dr. Mouskar would have gone to help the appellant. Furthermore, as the appellant had administered a poison which was undetectable, it is not clear what help he anticipated he would require from Dr. Mouskar. Again, he must have known that as the Resident Medical Officer, Dr. Mouskar was not in charge of the treatment of patients in the hospital but only performed administrative functions and that the unconscious Laxmibai would have to be treated by other doctors. It cannot be said that if these other doctors found anything wrong, Dr. Mouskar could have done much to help the appellant. So it seems to me impossible to draw any inference against the appellant from the fact that he had taken the unconscious Laxmibai to the comparatively distant G. T. Hotpital.

It is then pointed out that when Laxmibai was admitted to the G. T. Hospital, she had no ornaments on her person and no moneys with her and even her bag and bedding had disappeared. It is suggested that the appellant had removed them and that this again proves that he had conceived the idea of misappropriating her properties even during her life time which supports the theory that he caused her death. Now the bedding and bag can be dismissed at once,

There is no evidence as to what they contained. They were of small sizes. It is reasonable to think that in the bag Laxmibai had taken a few wearing apparels which she might need for her stay in Bombay which the evidence shows she thought would not be of more than four days. The box and the bedding must, therefore, have been of very insignificant value. As regards ornaments, the evidence is that usually she wore certain ornaments which might be of some value. None of the witnesses, however, who saw her the day she left Poona, has said that they found ornaments on her person. It is not at all unlikely that as she was going to Bombay and was not sure where she would have to put up there, she had as a measure of safety, taken off the ornaments she usually wore, before she left Poona. Then again, if the appellant had taken off the ornaments from the person of Laxmibai he must have done it in the train or while taking her to the hospital. Now it is too much to assume that in the compartment in which they were travelling there were no other passengers. The removal of the ornaments would have been noticed by the other passengers or if done later, by the stretcher bearers or the taxi driver. None of these persons was called. Neither is there any evidence that any search for them had been made. Therefore, it seems to me that on the evidence on record it cannot be said definitely that the appellant removed any ornaments from the person of the unconscious Laxmibai. With regard to the money, she must have brought some with her to meet her expenses in Bombay. It is more than likely that she had entrusted the moneys to the appellant for safety which the appellant never returned. There is no evidence that she had more than Rs. 50 with her and there is no reason to think that she was carrying a large sum. The disappearance of the money does not prove that the appellant had conceived the design of getting rid of her.

Then we find the appellant describing Laxmibai in the Hospital by the name 'Indumati Paunshe'. It is said he did this to prevent her identity being discovered after her death and that this shows that he had

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already poisoned her and knew that she was going to die. Now, so far as the name Indumati is concerned, that was one of her names. The papers that the appellant maintained in connection with Laxmibai's treatment show that he mostly called her by that name and never called her Laxmibai. He said that he was used to calling her by her maiden name of Indumati Ponkshe and gave that name to Dr. Ugale by sheer force of habit. Dr. Ugale however said that as he did not follow the surname he asked the appellant to spell it and took it down as spelt, namely, as "Paunshe". The Appellant denies that he gave the name Paunshe but says he said "Ponkshe". The appellant's version receives support from the fact that the hospital clerk who also took down the name for another record of the hospital as the appellant was giving it to Dr. Ugale, took it down as "Indumati Pankshe". Therefore, there is some doubt whether Dr. Ugale heard the name correctly. However that may be, I doubt if the name Paunshe indicates that the appellant gave it with a view to prevent disclosure of identity. It is said that his plan was to disappear after Laxmibai's death so that her body would become unclaimed and be disposed of as such. If that were so, then nothing would turn on the name. It is only when people came to know that a woman of the name of Indumati Paunshe had died that the question as to who she was would have arisen. In view of the fact that the appellant had given Indumati's address as care of himself at Poona, it would be known that she belonged to Poona. I am very doubtful if an enquiry made at Poona for Indumati Paunshe would have kept back the real identity. Indumati or Laxmibai had disappeared mysteriously; her maiden name was Ponkshe. People interested in her would surely have been led by the name Indumati Paunshe to enquire if it was Laxmibai Karve. So it seems to me that if the appellant had really wanted that the woman he took to the hospital should never be discovered to have been Laxmibai, he would have used a totally different name. I am unable to hold that the use of the name "Indumati Paunshe" is any clear evidence of the guilty intention of the appellant. In this connection I have to refer to the

appellant's letter of November 14, 1956, to the G. T. Hospital in which he pointed out that in the hospital record the name had been taken down as "Pannshe" that is, with an extra "n" and this should be corrected. By this time the appellant had clearly conceived the idea that the news of the death of Laxmibai should be prevented from becoming public. He had also misled the hospital authorities by informing them that Indumati's brother would arrive to take over her body; as already stated, she had no brother. Therefore this attempted correction in the name by deleting the extra "n" is really irrelevant; the extra "n" would not in any event have made the discovery of the identity of the dead person easier. What led the appellant to make this attempt cannot however be ascertained.

Then I have to consider the fact that the appellant told Dr. Ugale that Laxmibai had become unconscious of a hysterical fit and she had a history of similar attacks before. It is said that this story about hysterical fit is false and had been conceived to hide the fact that she had been poisoned. The appellant had denied that he had mentioned hysterical fit to Dr. Ugale and said that he had only stated that she had suddenly become unconscious. That he had mentioned sudden onset of unconsciousness in the train is admitted by Dr. Ugale. It is somewhat curious that the appellant would have mentioned both "hysterical fit" and "patient suddenly became unconscious in the train". It is significant that "hysterical fit" was entered in the case paper by Dr. Ugale under the head "Provisional Diagnosis" a thing, for which I think, the doctor in charge has some responsibility. It may also be stated that Dr. Anija did not say that the appellant mentioned hysterical fit to her. In these circumstances I have some doubt if the appellant had in fact mentioned "hysterical fit" to Dr. Ugale.

I will however proceed on the basis that the appellant did mention hysterical fit to Dr. Ugale. Now, there is evidence that for nine years upto 1948 Laxmibai had suffered from hysterical fits. There is no

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evidence one way or the other whether she had such fits thereafter. If she had not, the prosecution could have easily produced evidence of it. The only evidence on which the prosecution relied was that of Laxmibai's son, Ramachandra. All that he said was that between 1943 and 1948 his mother suffered from fits and that in 1956 when he had come to Poona for his marriage his mother was not suffering from fits. Now, Ramachandra does not appear to have much knowledge of his mother's health. He did not even know what kind of fits these were nor that his mother suffered from diabetes. Apart from the nature of his evidence, it has to be remembered that he was living separtely from his mother since 1946 and was away from Poona since 1952. It cannot therefore be said that it would have been improbable for the appellant to have thought that Laxmibai had a relapse of a hysterical fit.

I now come to the fact that the address of Laxmibai given by the appellant to the hospital authorities was his own address. It is said that he did so deliberately to ensure all communications concerning her from the hospital coming to him; that he knew that Laxmibai was going to die and wanted that nobody else would know of her death. I find some difficulty in appreciating this. I do not see what communication could be addressed by the hospital authorities to Laxmibai after her death or when she was lying ill in the hospital. Further there was no other address which the appellant could have given. Laxmibai lived alone in her flat and when she was away, there would be no one there to receive any communication addressed to her at that address. Her only son Ramachandra was away from Poona. She was clearly more friendly with the appellant than with her other relatives, none of whom was a very near relative. In these circumstances and particularly as he had taken Laxmibai to Bombay it seems only natural that he would give his own address. Again if he had given Laxmibai's own address, that would have served his purpose as well for he had a room in her house and because of his friendly relation with

Laxmibai, would have been in charge of her flat in her absence as he in fact was. It would not have been difficult for him to ensure that any letters that came for Laxmibai would reach him. He could also have given an entirely false name and address and disappeared from the scene altogether; the body of Laxmibai would then, whether there was post-mortem examination or not, have been disposed of in due time as an unclaimed body and nobody would have ever known what had happened to Laxmibai. Indeed, it is the prosecution case that this was the appellant's plan and things happened just as he had planned and that is why he deliberately brought Laxmibai to the hospital and gave his own address. What strikes me is that this plan would have worked with any false address given. I am therefore unable to think that the fact that the appellant gave his own address is a circumstance which can be reasonably explained only on the hypothesis of his guilt.

I come now to the most important circumstance on which the Courts below have strongly rested their conclusion. It is said that the endorsement made on the hospital case paper reading "Asked for post-mortem" under the direction of Dr. Variava had been crossed out and under the heading "Cause of death" in that paper the entry "diabetic coma" had been interpolated. The Courts below have found that it is the appellant who had procured these alterations to be made with the help of his friend Dr. Mouskar. If this is so, then no doubt it would be a very strong circumstance pointing to the guilt of the appellant for the only reasonable explanation of this act would be that he wanted to prevent a post-mortem examination which might reveal that Laxmibai had been poisoned. As I have already said, the alterations had no doubt been made. But in my view, there is no evidence whatever to show that the appellant had anything to do with them.

Before I state my reasons for this view, it is necessary to set out the relevant evidence on this point. Dr. Anija admits that she made the alterations but she says that she did it in these circumstances: After

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she had made the endorsement "Asked for post-mortem" on the case paper, she asked the sister in charge of the ward to send the case paper to Dr. Mouskar whose duty it was to do the needful as regards the post-mortem examination, and herself followed Dr. Variava on a round of the wards, which took her about an hour. About 12-30 p.m. she proceeded to Dr. Mouskar's office to make enquiries as to when the post-mortem examination was to be held. She met Dr. Saify, the Registrar of Unit No. 1 of the hospital in which Ward No. 12 was included, outside Dr. Mouskar's office. Dr. Saify had the case paper in his hand and he told her that Dr. Mouskar thought that there was no need for holding a post-mortem examination as the case had been treated as one of diabetic coma and also asked her to cancel the direction about the post-mortem examination and to show in the column meant for cause of death, "Diabetic coma". As Dr. Saify was her official superior, she accordingly carried out his directions and made the alterations in the case paper as required.

I will now refer to Dr. Mouskar's evidence on this aspect of the case which was as follows: The case paper relating to Laxmibai came to his office at 1 p.m. on November 13. At that time the endorsement "Asked for post-mortem" was still there and diabetic coma had not been shown as the cause of death. There was arrangement in the hospital for post-mortem examination but he did not proceed to arrange for it immediately as on the face of it it was not a medico-legal case nor a road-side case. It was the invariable practice to ask for the permission of the Coroner for holding the post-mortem examination in all cases but before doing so it was necessary in non-medico-legal cases to get the permission of the relatives of the deceased for holding the post-mortem examination. In that view of the matter at 2 p.m. he sent the telegram to the appellant at his address as appearing in the case paper. He never met the appellant in the hospital. On the next day, that is, November 14, about 4 p.m. he wrote to the police to remove the dead body to ther air-conditioned morgue in the J. J. Hospital

for better preservation as no reply to the telegram had been received till then. He sent a copy of this letter to the Coroner. On the morning of November 15, somebody from the Coroner's office rang him up and asked him about the final diagnosis. He thereupon sent the case paper through a ward boy to Unit No. 1 with an oral message either to the Honorary physician, the Registrar or the Assistant Houseman as to whether they were able to tell him about the final diagnosis and whether they still insisted on post-mortem examination. He did this as there was no final diagnosis uptil then and as the physicians often changed their minds in a non-medico-legal case. After about half an hour the case paper came back to him and he found that the final diagnosis had been stated as "Diabetic coma" and the endorsement "Asked for post-mortem" had been crossed out. He then wrote out the death certificate and sent it to the Coroner.

The Courts below have disbelieved both Dr. Anija and Dr. Mouskar as to their respective versions regarding the manner in which the case paper had been altered. It has to be noticed that apart from the evidence of these two doctors, there is no other evidence on this question. The Courts below have held that the alteration was made by Dr. Anija at the direction of Dr. Mouskar and that Dr. Mouskar had been persuaded to give that direction by the appellant whose friend he was, on a representation that he, the appellant, was the patient's old family doctor and knew the case to be one of diabetic coma and that it would save the family humiliation if the dead body was not cut up for a post-mortem examination. They also held that the alteration was made on November 13, soon after the death of Laxmibai and before the appellant had left Bombay for Poona. They have further held that Dr. Mouskar got the alteration made as a friendly act for the appellant and that he was in no way a conspirator in the crime. There is no direct evidence to support this finding but it has been inferentially arrived at from the evidence of these two doctors.

The reasons on which this finding is based may be thus stated: (a) Dr. Mouskar was an old friend of the

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appellant; (b) both Drs. Anija and Mouskar had lied with regard to this part of their evidence; (c) Dr. Mouskar's conduct after the death of Laxmibai and his evidence in court showed that he wanted to assist the appellant; (d) Dr. Anija being very much junior to Dr. Mouskar had been prevailed upon by the latter to give false evidence; and (e) lastly, that no one excepting the appellant could have been interested in avoiding the post-mortem examination.

As to the first reason, the only evidence on this question is that of Dr. Mouskar. All that he said was that in 1934 he and the appellant had studied Inter Science in a college in Poona together and that he had stayed in Poona for three different periods, namely 1922-26, 1931-36 and 1948-51. He also said that while studying together he had come to know the appellant by name but had never talked to him and had never come in contact with him since 1934. The Courts below have disbelieved the later part of the evidence of Dr. Mouskar and have held that he and the appellant were friendly. This finding does not seem to me to be based on strong grounds. No reason has been given as to why Dr. Mouskar should be disbelieved. The prosecution led no evidence to show that the two were friendly. No witness has been found to say that the two were seen talking to each other in the hospital. It has not been noticed that the difference in age between the two was twelve years.

I will take the next three reasons together. They are that Drs. Anija and Mouskar had both lied and that the conduct and the evidence of Dr. Mouskar showed that he wanted to help the appellant and lastly, that Dr. Anija gave false evidence only as she dared not estrange Dr. Mouskar who held a much higher position. There is no doubt that Dr. Anija told lies. The first lie was that she had tested the urine at 6-30 a.m. for acetone. She also interpolated into the case paper an entry showing that she had found acetone in the urine which she said she examined at 6-30 a.m. Dr. Variava said that he took her to task for diagnosing the case as diabetic coma without having tested the urine for acetone, which she told him she had not done, and that the entry in the case paper showing

that acetone had been found on the first examination of urine was not there when he saw it at about 11 a.m. The second lie which Dr. Anija said was that she put through a telephone call to Dr. Variava about 7 a.m. and told him about the symptoms she had found and that she had been giving insulin. She said that Dr. Variava agreed with her diagnosis and asked her to continue the treatment she had started. That this is untrue, will appear from the fact that Dr. Variava denied that this talk had taken place. Dr. Variava's recollection is supported by the fact that on arrival at the hospital he doubted if the case was of diabetic coma and the treatment given was the correct one. Further, there is a call book in the hospital on which telephone calls made by the house physicians are entered. There is no entry there showing a call having been made by Dr. Anija on Dr. Variava. The third lie that she said was that it was Dr. Saify who told her outside Dr. Mouskar's office to make the alteration in the case paper. It has been clearly established that Dr. Saify was not on November 13 in Bombay at all. He was then on leave and in Indore.

I come now to Dr. Mouskar. No part of his evidence has been directly found to be false. The Courts below have disbelieved him on improbabilities. The first improbability they found was in Dr. Mouskar's explanation that he did not arrange for the post-mortem examination immediately as he considered the permission of the Coroner and the relatives of the deceased necessary before holding the post-mortem examination and that this was the invariable practice in non-medico-legal cases. I do not know why it should be said that this practice is improbable. The prosecution did not lead any evidence to show that there was no such practice as spoken to by Dr. Mouskar. That the Coroner's permission had to be taken would be borne out by the fact as appearing in the correspondence, that the police asked the Coroner to hold an inquest as the cause of death was not known. The Courts below referred to the telegram that Dr. Mouskar sent to the appellant at about 2 p.m. on November 13 and observed that if Dr. Mouskar had delayed the post-mortem examination only in order to obtain the

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consent of the relatives, then the telegram would not have asked the appellant to arrange for the removal of the dead body. Dr. Mouskar said that he had intended to ask for the permission to hold the post-mortem examination when the appellant appeared on receipt of his telegram. The Courts below have not accepted this explanation. It does not seem to me that this explanation is so absurd that it must be rejected. No other view would fit in with the circumstances of the case. This I will explain now.

It has to be remembered that the finding of the Courts below is that Dr. Mouskar was not in any sense a conspirator with the appellant in the crime. The learned Advocate General of Bombay, who appeared for the respondent, also made it clear that he did not suggest that Dr. Mouskar was in any conspiracy. On the evidence on the record it would be impossible to hold that Dr. Mouskar was in any conspiracy with the appellant. There is no reason whatever for him to have done that. There is no evidence of such friendship between the appellant and Dr. Mouskar from which it can possibly be inferred that Dr. Mouskar would have become a party to secreting a diabolical crime committed by the appellant. The trial Court expressly held, "I do not think that at that time Dr. Mouskar realised that there was anything suspicious about the death of Laxmibai, nor do I think that he was aiding or abetting the suppression of truth by cancelling the post-mortem examination." The High Court also took the same view. We then come to this that if Dr. Mouskar had procured the cancellation of the direction for post-mortem examination, he had done so without thinking that there was anything suspicious about the death of Laxmibai, and only to oblige his friend, the appellant, by saving the family of the deceased from humiliation by cutting up her body. Now that being so, when Dr. Mouskar got the direction cancelled at the appellant's request, he would naturally expect the appellant to take charge of the body and to remove it for cremation. Evidently, the appellant had disappeared for otherwise Dr. Mouskar would not have sent him a telegram to Poona. What would have been the normal reactions then of an

innocent man in Dr. Mouskar's position? He would have been very much surprised. He would have thought that he had been let down. It is not too much to think that he would have grown suspicious. As an innocent man, as he has been found to be, the only thing he could then possibly have done was to have restored the direction for post-mortem examination and to proceed to take steps to have it held. I cannot imagine that an innocent man in such circumstances would have acted otherwise. It will be remembered that the appellant's reply to the telegram was not received for over two days and in the meantime Dr. Mouskar did nothing in the matter. I find it impossible to hold that Dr. Mouskar, innocent as he was, would have waited all this time and done nothing about the post-mortem examination at all. It would have been impossible for him then to have asked if the doctors in charge of the case still wanted a post-mortem examination as he actually did. If he was not a party to any conspiracy with the appellant, I cannot think it possible for him to have sent the telegram to Poona asking the appellant to remove the body after he had been innocently made to obtain a cancellation of the direction and found that the appellant had disappeared. I may also add that if the appellant had duped Dr. Mouskar and procured him to obtain a cancellation of the direction for post-mortem examination, it would be extremely unlikely for him to have taken the risk of disappearing from the hospital without making any arrangement for the disposal of the body for then he could not be sure whether the post-mortem would be held or not. It would have been more natural for him to have taken over the body and cremated it. That would not have affected his design, as alleged by the prosecution, to have evidence of the natural death of Laxmibai created and to have kept back the knowledge of her death from her relatives. I therefore think that the telegram instead of showing that Dr. Mouskar had already obtained a cancellation of the direction for post-mortem examination rather indicates that that direction had not till then been cancelled as is Dr. Mouskar's own evidence. This makes the explanation

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of Dr. Mouskar as to why he sent the telegram a very probable explanation.

Now, there are other things which would support Dr. Mouskar's evidence. On November 14, about 4 p.m. he wrote to the police intimating them that a Hindu female named Indumati Panshe who had been admitted into the hospital on November 13 at 5-45 a.m. for treatment of hysterical fits had died the same day at 11-30 a.m. He further stated in that letter that a telegram had been sent to the address given at the time of the admission of the patient but without a response and requested that the dead body might be removed to the J. J. Hospital morgue. This would indicate two things. First, that Dr. Mouskar was surprised at having received no answer from the appellant to his telegram and that being so, if he had been innocently induced to get the case paper altered, he would not have permitted the alteration to remain there. The second thing it shows is that Dr. Mouskar even in the afternoon of November 14 referred to hysterical fits as the illness of the patient. This would be impossible if the prosecution case is true, namely, that at about 1 p.m. on November 13, Dr. Mouskar had procured Dr. Anija to state in the case paper that the cause of death was diabetic coma.

The next thing that the Courts below have found against Dr. Mouskar is that his story of having received a telephone call from the Coroner's office on the morning of November 15 asking for the final diagnosis of the case was unbelievable. I find no reason to disbelieve Dr. Mouskar. His evidence is strongly supported by the death certificate which he issued on that date stating diabetic coma as the cause of death. There is no reason to think that Dr. Mouskar would have issued this certificate on the 15th unless he had been asked about the cause of death. Furthermore, the police on that date had actually wanted to know the cause of death as will appear from their letter of November 15. If the police could ask, I do not see why the Coroner's office could not. In that letter the police asked Dr. Mouskar to send per bearer the cause of death to enable them to dispose of the dead body. I have earlier referred to this letter. It is on a copy

of this that the endorsement "Diabetic coma, Dr. N. S. Variava, G. T. Hospital" had been made. There is no other explanation as to why Dr. Mouskar sent the death certificate on this date and not on any other date. Indeed, if he was under the impression that the appellant or a relative of the deceased would come and take charge of the body for cremation, as the prosecution case must be, then he would not have issued the death certificate for that was wanted only to enable the police to dispose of the dead body. Therefore it seems to me likely that Dr. Mouskar had been asked by the Coroner about the cause of death. Now if he was so asked, it does not strike me as wholly improbable that he asked the physicians in charge whether they were then in a position to state the cause of death or still insisted on a post-mortem examination. It has to be remembered that till then no suspicion attached to the case. Dr. Mouskar said that he had seen the physicians change their opinion in such matters and had therefore asked whether a post-mortem examination was still required. It has also to be remembered that Dr. Mouskar had no knowledge that the direction for post-mortem examination had been given by Dr. Variava. All that he knew was that such a direction appeared over the signature of Dr. Anija. It does not seem to me improbable that Dr. Mouskar on being asked by the Coroner to state the cause of death would have enquired of the physicians in charge about it. If this version is not true, then the only other probable theory would be that the alteration in the case paper had been made at 1 p.m. on November 13, which as I have earlier said, cannot be accepted in view of the telegram and the other records in this case. It was also said that Dr. Mouskar's version cannot be accepted for it was not possible for him to make enquiries about the cause of death through a ward boy. I think this would be too insignificant a ground for disbelieving Dr. Mouskar.

I may now deal with the letter of the police dated November 15 to Dr. Mouskar asking for the cause of the death. It will be remembered that this letter was sent along with a copy of it and on the copy the endorsement "Diabetic coma. Dr. N. S. Variava,

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G. T. Hospital" had been made. Dr. Mouskar denied that these letters ever came to him. The Courts below have been unable to accept his denial. Their view is that it is Dr. Mouskar who got the endorsement set out above, to be made and is falsely denying it. I am unable to appreciate why Dr. Mouskar should falsely deny it. He was innocent. He had on that date issued the death certificate. He could easily have admitted the fact, if he had made the endorsement or got it made. Now it seems to me that there is no evidence that the letter was poduced before Dr. Mouskar. In normal course, as spoken to by police Inspector Kantak, who had written this letter, the original would have been retained at the office of Dr. Mouskar and only the copy would have come back to the police with an acknowledgment of the receipt of the original endorsed on it. That did not happen. Both the copy and the original were received back by Kantak. The bearer who was sent to deliver the letter was not called. There is therefore no evidence whatever that the letters were actually delivered or what had actually happened. On the contrary, the return of both copies to the police would show that they had not been delivered to Dr. Mouskar for if the letter had been delivered, then there is no reason why Dr. Mouskar would not have given a formal reply to it stating that diabetic coma was the cause of death. He would have had no difficulty in doing so because on the same day he sent the death certificate mentioning diabetic coma as the cause of death. He had no reason to take to subterfuge and to get the words "Diabetic coma. Dr. N. S. Variava. G T. Hospital" written on the copy by somebody. It would therefore appear that there is no reason to disbelieve Dr. Mouskar when he said that he had not received the letters and had nothing to do with the endorsement made on the copy of the letter. What might have happened was that the death certificate having been earlier issued, some clerk in the office returned these letters and by way of an informal communication of the cause of death made the endorsement on the copy. It may be stated here that Dr. Anija admitted to the police that the words "Diabetic coma" in the endorsement had been written by her

but in court she denied that she had written them. This is another instance which makes me greatly doubt her veracity. It may be that she had written the words "Diabetic coma" and got some one else to write out the rest of the endorsement.

I come now to the last fact which the Courts below have thought fit to disbelieve, in the evidence of Dr. Mouskar. I have earlier mentioned that when Laxmibai was lying unconscious in Ward No. 12, Dr. Anija had sent for the Registrar. Dr. Anija stated that the Registrar whom she sent for was Dr. Saify. This is untrue for, as I have already said, it has been proved clearly that Dr. Saify was not in Bombay at all on that day. Now it appears that the hospital kept a call book in which a House Physician wanting to call the Registrar would make an entry and send it to the Registrar. This call book was produced on September 2, 1958, and it showed that Dr. Anija had herself written down the name of Dr. Shah as the Registrar whom she was calling. What therefore had happened was that Dr. Saify being away on leave to the knowledge of Dr. Anija, she had sent the call to Dr. Shah. This call book conclusively proves that Dr. Anija's statement that she had been told by Dr. Saify, the Registrar, to make the alteration in the case paper is false. Dr. Mouskar had said in his evidence that he could not trace this call book. The Courts below have thought that he was lying and was deliberately preventing this call book from coming to light so that Dr. Anija might not be contradicted by her own writing that it was Dr. Shah whom she had sent for which in its turn would show that her story that it was Dr. Saify who had asked her to make the alteration in the case paper was false. Now Dr. Mouskar's evidence was concluded on August 25, 1958, and he had retired from the office of the Resident Medical Officer on August 14 preceding. Dr. Anija's evidence was taken down on August 18 and August 19, 1958. I do not see why if the call book was considered to be of that importance, the police could not produce it after Dr. Mouskar had left office. It was actually produced from the hospital and must have been lying there all the time. The next thing to be noticed is that there is

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nothing on the record to show that Dr. Mouskar was interested in establishing that Dr. Saify was on duty on November 13 and therefore prevented the call book from being produced. In fact, Dr. Mouskar in his evidence about Dr. Saify stated that "he was not working in the hospital on the 13, 14 and 15 November. I think also that he was not staying in his quarters during that period and I did not see Dr. Saify on these days at all." Therefore, there is no basis for suggesting that Dr. Mouskar deliberately prevented the production of the call book. I may here state that there is nothing in the evidence of Dr. Mouskar which goes to show that he was supporting Dr. Anija in any of her lies.

The Courts below have excused the lies of Dr. Anija in the view that she had told them as she dared not estrange Dr. Mouskar. Again, there seems to me to be no basis for this finding. There is nothing on the record to show that Dr. Anija expected anything from Dr. Mouskar or would have been in any difficulty if she had told the truth even at the risk of putting Dr. Mouskar in a difficult situation. There is no evidence that Dr. Anija had any talk directly with Dr. Mouskar concerning the case of the unconscious Laxmibai and therefore she could not and did not directly contradict anything that Dr. Mouskar said. Again, it is clear from the evidence that Dr. Anija had left the hospital on January 31, 1957. She had worked there without any remuneration. There is no evidence that she had anything to do with the hospital or its Resident Medical Officer, after she had left the hospital. Again, on the date that Dr. Anija gave evidence, Dr. Mouskar had already retired from his office at the hospital. In these circumstances, I find no justification for the conclusion that Dr. Anija had lied only out of fear of Dr. Mouskar. I might also point out that the only lie in Dr. Anija's evidence which the Courts below thought she said out of fear or at the persuasion of Dr. Mouskar was her statement that it was Dr. Saify who had told her that Dr. Mouskar had wanted the direction as to post-mortem examination crossed out and diabetic coma written as the cause of death. I have earlier stated that Dr. Mouskar has gone against this part of

Dr. Anija's evidence by saying that Dr. Saify was not in Bombay on the day in question. It is clear therefore that it was not Dr. Mouskar who had wanted that Dr. Anija should interpose Dr. Saify between him and her in the matter of the direction for altering the case paper. Further, if Dr. Mouskar really wanted that Dr. Anija should put the blame for the alteration on somebody else, then Dr. Anija would not have mentioned that Dr. Saify told her that Dr. Mouskar had wanted the alteration. She would simply have said that it was at Dr. Saify's order only that she made the alteration or put the responsibility on Dr. Shah. The Courts below have been unable to explain why Dr. Anija brought in Dr. Saify at all. I think this is capable of an explanation as I will show later. The net position therefore is that Dr. Anija was clearly lying; there is no clear proof that Dr. Mouskar had lied at all. On the contrary, his evidence and conduct would seem to be consistent with the contemporaneous record and there is no material on which it can be found that Dr. Anija told the lies as she was afraid of Dr. Mouskar.

I come now to the last reason on which the Courts below found that it must have been the appellant who procured the alteration in the case paper. It has been said that no one else was interested in getting that done. I take it that this does not mean a finding that the appellant was interested in getting the alteration made for then of course his guilt would already have been assumed. What it means is that if it is not possible to find reasonably that any one else was interested in getting the alteration made, then it would fit in with the theory that the appellant had committed the crime and therefore was interested in getting the alteration made. The real question is, can it be reasonably said on the evidence that there was no one other than the appellant who could be interested in getting the alteration made? I think it cannot. On the facts established and without making any assumption one way or the other, it seems to me very probable that it was Dr. Anija who was interested in preventing the post-mortem examination and therefore in making the interpolations on the case paper. I will now state my reasons for this view.

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I have earlier stated that Dr. Anija examined the urine of the patient at 6-30 a.m. on November 13. There is an entry with regard to it in the case paper, which reads 'Sugar + + + Albumin—Acetone + + '. There is little reason to doubt that Dr. Anija did examine the urine at that time for sugar, for otherwise she was not likely to have started the insulin injections. She gave two of these, one at 6-30 a.m. and the other at about 9 a.m. Dr. Variava's recollection is that when the case paper was shown to him about 11 a.m. the entry "Sugar + + + Albumin—" was there but the entry "Acetone + +" was not there and that Dr. Anija told him that she had not examined the urine for acetone. The entry "Acetone + +" was clearly interpolated in the case paper later. It was because she had not tested the urine for acetone but had none the less started the treatment for diabetic coma that Dr. Variava had taken her to task and asked her to test the urine for acetone. All this clearly shows that Dr. Anija had interpolated the entry "Acetone + +" at some later time. The trial Court thought that Dr. Mouskar having invented the theory of diabetic coma "must have also thought it necessary to make entries regarding the presence of acetone + +. in the case record" to support this false diagnosis. This is nobody's case. Such a finding would necessarily mean that Dr. Mouskar was in conspiracy with the appellant to hide the crime by creating evidence in support of natural death of the patient. The findings of the trial Court that Dr. Mouskar was innocent and that he had procured Dr. Anija to make the entry "Acetone + +" cannot stand together. The latter finding must be rejected as it is purely inferential. The High Court did not find that the entry "Acetone + +" had been made by Dr. Anija at the persuasion of Dr. Mouskar. But it appears to have taken the view that Dr. Anija having been induced by Dr. Mouskar to state diabetic coma as the cause of death, herself incorporated before the papers were submitted to the Coroner an entry with regard to the examination of the urine in the case paper and in that entry included "Acetone + +". Whether the High Court is right in its view that the entire entry as to the result

of urine test at 6-30 a.m. of November 13, 1956, had been made in the case paper later is a matter which I need not discuss. The only question is who made the entry "Acetone + +" and when. I may state here that the papers were sent to the Coroner at the time of the post-mortem examination, namely, on November 22, 1956. According to the High Court, therefore, the entry "Acetone + +" had been made by Dr. Anija on her own and Dr. Mouskar had nothing to do with it and that Dr. Anija made the entry not at about 1 p.m. on November 13, 1956, when she crossed out the direction for post-mortem examination and wrote out diabetic coma as the cause of death but almost nine days later. The High Court did not accept that part of Dr. Mouskar's evidence where he said that he was positive that the entry "Acetone + +" was in the case paper when it reached him at 1 p.m. on November 13. Earlier he had said that he had not read the case paper fully when it first came to him. Dr. Mouskar was plainly making a mistake. It is nobody's case that it was then there. Even on the prosecution case it was added sometime later, that is, when after the receipt of the case paper Dr. Mouskar had been persuaded by the appellant to procure a cancellation as to the direction for post-mortem examination. We then come to this that the entry "Acetone + +" had been made by Dr. Anija on her own. If she did this, she must have had some reason for it. I cannot imagine that reason being anything else excepting to create evidence in support of her diagnosis of diabetic coma. The next lie which Dr. Anija spoke and which I wish now to refer, is the false story of her telephone talk with Dr. Variava at about 7 a.m. She said that she then informed Dr. Variava about the condition of the patient and that she had started insulin injection and further that Dr. Variava told her to continue the treatment. I have earlier said that this statement was a clear falsehood and given reasons for this view. It is nobody's case, and it could not be, that Dr. Mouskar had asked her to tell this lie. Why then did she do so? Again, the only possible reason that I can think of is the same that I have given earlier, namely, that she was keen on creating evidence in support of the line of treatment that she had given to

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the patient. She had been treating the patient as a case of diabetic coma. It is clear from her evidence and of course from that of Dr. Variava, that he had reprimanded her for adopting that line of treatment without having tested the urine for acetone. She had clearly made a mistake in the treatment of the case and this might have put her in a difficulty with the hospital authorities and also in her future professional career. It was clearly her interest to see that her mistake was not finally established as a result of the post-mortem examination which had been directed by Dr. Variava. In these circumstances, she was under a great temptation to prevent the post-mortem examination which might have revealed her mistake. It must be remembered that she had just started on her professional career and was a very young person. I am unable therefore to hold that apart from the appellant there was no one else who could have been interested in crossing out the direction as to post-mortem examination and inserting diabetic coma as the cause of death. In the circumstances that I have mentioned, it seems quite probable that Dr. Anija had made the alteration in the case paper entirely on her own and to save herself from the possible effects of her mistake. It also seems probable to me that Dr. Anija had made the alterations on November 15, when Dr. Mouskar had sent the case paper through the ward boy for ascertainment of the cause of death.

I have earlier said that Dr. Anija had falsely introduced Dr. Saify as the person who had told her that Dr. Mouskar had wanted the direction as to post-mortem examination to be crossed out and diabetic coma to be stated as the cause of death. I have also said that Dr. Mouskar did not support Dr. Anija as to the presence of Dr. Saify in the hospital on the day in question. Why then did Dr. Anija introduce the name of Dr. Saify ? I have said that the Courts below have not been able to find any explanation as to why Dr. Anija introduced the name of Dr. Saify. It seems to me that when the alteration which she had made on her own, was found out in the course of the investigation, she had to give some explanation as to why she had made it. She thought of saying that she did it under the orders of Dr. Mouskar who was very

much her senior and whom she was bound to obey. But she also realised that Dr. Mouskar was sure to deny that he had asked her to make the alteration and as against his, her evidence was not likely to be accepted. It was therefore that she hit upon the idea of interposing Dr. Saify in between her and Dr. Mouskar in the hope that Dr. Saify being also a very young person, there was some chance of her evidence being accepted as against his. Apart from that there does not appear to be any other explanation as to why Dr. Anija introduced the name of Dr. Saify. She had clearly forgotten while inventing this story that Dr. Saify was away on leave but that of course makes no difference for if she had remembered it, she might have named somebody else, probably Dr. Shah or Dr. Patel who worked in Unit No. 2 of the Hospital. Then it has to be remembered that Dr. Anija admitted to the police that she had written out the words "Diabetic coma" on the letter from the police of November 15, asking for the cause of death and this she later denied. All this would make more probable the view that it was Dr. Anija who in order to prevent the detection of the mistake made by her in the treatment of Laxmibai had the endorsement "Asked for post-mortem" crossed out and inserted in the case paper diabetic coma as the cause of death and that she had not been asked by Dr. Mouskar to make the alteration in the case paper.

I think it right to state here that it cannot be said that Dr. Shah was also to blame for the wrong diagnosis of diabetic coma. Dr. Anija said that pursuant to her call the Registrar came at about 8-45 a.m. and approved of her diagnosis and advised a further insulin injection of 40 units. She also said that the Registrar wrote on the case paper the words "Inj. Insulin 40 units Iv. glucose 20 c.c." By "the Registrar" she was of course referring to Dr. Saify. It is clear from the call book that it was Dr. Shah, who was the Registrar of Unit No. 2 who had been sent for by Dr. Anija. Dr. Shah said in his evidence that he must have gone to the patient pursuant to the call but he had no recollection of the case at all. He denied that the entry "Inj. Insulin 40 units Iv. glucose 20 c.c." was in his handwriting. Dr. Patel who was

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officiating as the Registrar of Unit No. 1 in the absence of Dr. Saify on leave, also denied that that entry was in his handwriting. Dr. Shah said from the sequence of time noted in the call book and the case paper, that he must have gone to the ward before 6-30 a.m. According to Dr. Shaw he could not have seen the case paper when he called because he was not the Registrar of Unit No. 1. He admitted that he must have advised Dr. Anija about the case. What the advice was we do not know. It is clear however that Dr. Anija had started treating the case as diabetic coma and given 40 units of insulin before she sent for the Registrar. Indeed according to her, the Registrar, who must have been Dr. Shah, arrived at 8-45 a.m. So we get that Dr. Anija started treatment of diabetic coma and gave insulin prior to 6-30 a.m. and her statement that the Registrar wrote down the direction for a second insulin injection of 40 units at 8-45 a.m. is false. It is therefore clear that the treatment given to the unconscious Laxmibai had been under the judgment of Dr. Anija alone. It would follow that Dr. Shah had no responsibility for that treatment. This is also supported by the fact that Dr. Anija did not tell Dr. Variava that Dr. Shah had also thought it to be a case of diabetic coma.

There is another circumstance against the appellant which must now be noticed, and that is that the appellant left the hospital soon after the death of Laxmibai without showing the least care as to what happened thereafter. This conduct considered with the appellant's letter of November 14, 1956, stating falsely that "Indumati's" brother would come to take over her body and further considered with the subsequent conduct of the appellant in fraudulently misappropriating the deceased Laxmibai's money clearly indicates that immediately after the death of Laxmibai the appellant had conceived the idea of misappropriating her properties. It has been suggested that it would be somewhat strange that the dishonest intention cropped up in the appellant's mind so suddenly and therefore it is reasonable to think that he had entertained that design even during the lifetime of Laxmibai. The Courts below have accepted that suggestion. I cannot say that that is an unreasonable view to take.

But supposing the appellant had during Laxmibai's lifetime cast a covetous eye on her properties, would that be enough to justify a finding that her death had been an unnatural death? I do not think it would. The design may provide a motive for murder; but the murder, that is, in this case an unnatural death, cannot be proved by it. That design does not exclude the possibility that Laxmibai died a natural death and the appellant made full use of the opportunity thereby provided to carry his design into effect.

I think I should mention here one other aspect of the case. The trial Court observed that the symptoms found in the record as to the last illness and death of Laxmibai all clearly pointed to the conclusion that death was due to hypoglycemia and that hypoglycemia might be one of the possible causes of her death. The trial Court however held that there was nothing to show in the symptoms that hypoglycemia could have been of spontaneous origin though the matter was not very clear. It would seem that the trial Court thought that the hypoglycemia had been induced by two injections of insulin given by the appellant to Laxmibai sometime on November 12. The trial Court for this purpose relied on the evidence of Shantabai a maid servant employed by Laxmibai, who said that on November 12, the appellant gave Laxmibai two injections. This maid servant was deaf and dumb and her evidence must be of doubtful value. However that may be, there is nothing to show that death was caused by hypoglycemia brought about by the two injections given by the appellant, assuming that he had given them. It has to be remembered that in the hospital Laxmibai was given two further injections of insulin of 40 units each. It may be that these injections really caused her death. That is a possibility which on the finding of the trial Court cannot be brushed aside. Now, if that is so, then clearly the appellant is not responsible for the death of Laxmibai. He had done nothing to induce Dr. Anija or any of the other doctors in the hospital to give more insulin to Laxmibai. There is no evidence to that effect. Dr. Anija was clear in her evidence that she never consulted Dr. Lagu regarding the diagnosis that death was due to diabetic coma. I need not go further into this aspect of the

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matter for all that I wish to point out is that the trial Court had thought that hopoglycemia might be the cause of death. The High Court thought that it was not possible in view of the absence of evidence about the time taken for insulin to induce hypoglycemia to hold that death was due to hypoglycemia induced by a massive dose of insulin. It seems to me that if there was no evidence, that was the fault of the prosecution and not of the appellant. In all cases and particularly in a case of this kind, it is the duty of the prosecution to prove that the death was an unnatural death and exclude by evidence completely, the possibility of death having been caused by some instrumentality other than the appellant. This is another reason for saying that it has not been clearly established in this case that Laxmibai's death was an unnatural death or has been caused by the appellant.

I have so long been discussing the facts which are supposed to lead towards the guilt of the appellant. I propose now to deal with some of the facts which seem to be in his favour. The prosecution case is that the appellant had in the train administered to her an undetectable poison which caused her death. Now, if the appellant had done that, he must have made a plan for it before he started on the journey to Bombay with her from Poona. It seems unlikely that if he had done that, he would have made no effort to keep it a secret that he was taking her to Bombay. The evidence is clear that he made no such effort. The next fact that has to be faced by the prosecution is that the railway compartment would be a most unusual place in which to administer a poison. The appellant could not have expected that there would be a compartment for Laxmibai and himself in which there would be no other passenger. Indeed the trial Court thought that there must have been other passengers in that compartment. That being so, it becomes improbable that the appellant had planned to poison her in the train. Again, it has been proved as a fact by Dr. Sathe himself that the appellant had made an appointment with him for November 13. Was it necessary for him to have done this if he knew that Laxmibai would die before the hour fixed with Dr. Sathe? Further, if he had administered

a poison to Laxmibai, would he have taken her to a public hospital? That would have been impossible unless the appellant was perfectly certain that the poison was absolutely undetectable. That requires a great deal of knowledge of poisonous drugs which there is no evidence to think the appellant possessed. But assume that the appellant was so certain that the poison would never be detected, why then should he have worried about the post-mortem examination at all? If it is found that the appellant had not prevented the post-mortem examination being held, there would be very little on which to base his conviction for the murder of Laxmibai by poisoning. Nor can it be said that the appellant was not sure whether the poison would be detected or not, but none the less took the risk of taking the unconscious Laxmibai to the G. T. Hospital in the hope that if any difficulty arose, he could rely on Dr. Mouskar to help him. There is no evidence on which we can hold that Dr. Mouskar would have helped him if any suspicion as to Laxmibai's death having been caused by poision had arisen. It has to be remembered that Dr. Mouskar was not doing the work of a physician in the hospital but was in charge only of the administration. All these are very strong circumstances indicating that the appellant had not administered any poison to Laxmibai on the train. Very cogent reasons would be required to dispel the presumption in favour of the appellant arising from them. I find no such reasons in the case.

In the net result the circumstances appear to me to be these. First, the appellant had a design during Laxmibai's lifetime to misappropriate her properties. This only supplies the motive for causing her death but does not prove that the death which occurred, was an unnatural death. Secondly, the appellant did not give to the hospital the correct name of Laxmibai: the name given however was not such as from it her identity could never have been discovered. Thirdly, the appellant gave his own address instead of that of Laxmibai. It seems to me that that was a natural thing for him to have done in the circumstances of the case for there would have been no one in Laxmibai's flat to receive her letters and there was no other address which the appellant could have

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given. Further, the address given necessarily connected the appellant with the last hours of Laxmibai's life—a conduct not very probable in a person who had brought about her death. The theory that that address was given only to ensure that communications from the hospital concerning the dead Laxmibai should reach the appellant is not very plausible. It is clear that if the appellant had not given his own address, the only other address he could possibly have given would have been Laxmibai's address. I am unable to appreciate what communication the hospital could have sent to Laxmibai at her address after her death or when she lay in the hospital. In any event, the appellant would have had no difficulty in getting hold of any such communication sent to Laxmibai's own address. Fourthly, the appellant told Dr. Ugale that Laxmibai had had a hysterical fit. It is doubtful whether he said so, and also whether, if he did, it was purposefully false. What purpose it served is not clear. The appellant did not mention hysterical fit to the doctor in charge of the treatment nor did he do anything to induce her to take a different line of treatment from that which she had adopted. He did nothing to induce any idea in her mind as to the cause of the illness or the disease. In these circumstances it does not seem possible to hold that hysterical fit had been mentioned by the appellant to prevent detection of the fact that Laxmibai had been poisoned. Lastly, come the series of the appellant's acts from immediately after Laxmibai's death indicating his intention to acquire her properties and the acquisition thereof by deception and forgery. These cannot prove that Laxmibai died an unnatural death. Considering them all together, I am unable to think that the only reasonable conclusion possible is that Laxmibai died an unnatural death.

In my view the prosecution has failed to prove the guilt of the appellant.

In the result I would allow the appeal.

BY COURT. In accordance with the opinion of the majority, the appeal is dismissed.

Appeal dismissed.