

S.D. SONI
v.
STATE OF GUJARAT

DECEMBER 21, 1990

[S. RATNAVEL PANDIAN AND K. JAYACHANDRA
REDDY, JJ.]

Indian Penal Code 1860: Sections 300, 302 and 304 Part II—Deceased—Whether committed suicide by taking poison or was murdered by her husband—No direct evidence to prove either of the versions—Guilt of appellant/husband to be drawn from circumstantial evidence—Held on facts—Defence theory of suicide—Complete hoax—Falsely invented to escape guilt, legal punishment and drift course of investigations—blow given to deceased on vital part of body containing vital organ—Held act done only with knowledge that it is likely to cause death.

Indian Evidence Act, 1872: Sections 3, 11 and 45 Alibi—Plea of—Appreciation of evidence—Opinion of medical witness—Doctor's evidence—Consideration of case based on circumstantial evidence—Nature of proof of commission of offence—Necessary requirements—What are.

The appellant in Criminal Appeal No. 459 of 1987 was married to one Varsha on 4th December 1982. After the marriage, she came to Ahmedabad and stayed with her husband who was in joint family. After having stayed for about a month with her husband, she returned to her parents' place at Bombay. The husband took her back to the matrimonial home after about a month.

The prosecution alleged that even during her stay with her husband for about a month, the matrimonial life was not happy as the lady members of the house used to taunt her. She was not even allowed to see and freely talk to her father and brother in private when they used to visit her. On 7.7.1983 she wrote a letter Exh. 18 to her parents informing them that she was being ill-treated by her husband and in-laws and other relatives complaining that her father did not give her anything at the time of marriage, and that only Almighty could save her from threatened danger.

After the receipt of this letter, the father contacted the appellant's

father-PW15, to come to meet him personally. Thereafter, there was a chain of correspondence between the parents of both the wife and the husband. While this was going on, the wife was found lying dead in her bed in her matrimonial home on the morning of August 1, 1983.

It was the case of the appellant-husband that a chit Exh. 80 was seen underneath a pillow, said to have been written by the deceased herself that she was committing suicide on her own volition by consuming sleeping pills as she was in love with a boy at Bombay and her demand for divorce was not acceded to by her husband. The medical officer PW3 examined her and declared her to be dead. Thereafter, the police was informed that she had committed suicide.

The Sub-Inspector of Police (PW 17) held the inquest over the dead body and sent a report Exh. 10 stating that it was a suicidal death. After the inquest, the dead body was sent to the Civil Hospital for post-mortem, The parents of the deceased on being informed that their daughter was in a serious condition rushed to Ahmedabad from Bombay. The dead body was brought to the appellant's house in the morning of August 2, 1983 and thereafter the cremation took place.

The father of the deceased (PW 5) having suspected some foul play and that the death was not of a natural one, sent letters to the Commissioner of Police the Home Minister, IGP and Chief Justice of Gujarat and wanted the matter to be investigated. The matter was examined and further investigation was taken up on January 7, 1984 by the Investigating Officer (PW 21) who after recording the statement of witnesses and receiving the opinion of the Handwriting Expert laid the charge sheet and arrested the appellant in August 16, 1984. The defence of the appellant was one of denial.

The Trial Court found the appellant guilty of having committed the murder of his wife and convicted him under Section 302 IPC and sentenced him to imprisonment for life. He was also charged for two other offences viz. under Section 196 IPC that he attempted to use the chit Exh. 80 as a true or genuine evidence knowing that it was false and fabricated one, and another under Section 498A that he subjected his wife, the deceased to cruelty thereby driving her to commit suicide.

On appeal, the High Court held the appellant guilty of the offence punishable under Section 304 Part II IPC, and not under Section 302 IPC and sentenced him to rigorous imprisonment for five years.

A The appellant filed an appeal to this Court challenging his conviction and sentence, and the State of Gujarat also preferred an appeal on the ground that the evidence makes out a case for an offence punishable under section 302 IPC.

B In the appeal to this Court it was contended on behalf of the appellant-accused relying on the evidence of the doctor PW11 and the Sub-Inspector PW17 that the deceased should have been suffering from malaria resulting in splenic fever and that she would have collapsed while violently vomiting and sneezing by taking excessive doses of sleeping pills or barbiturates and that a fall from the cot might have caused all the internal injuries, showing no visible marks of external injuries, Strong reliance was also placed on the chit Exh. 80 in support of the defence theory that it is a case of suicide and that the deceased has unfolded her mind therein that she had already fallen in love with her lover at Bombay and that her marriage with the appellant had been solemnised against her will, and as the appellant had refused to accede to her request for divorce she was committing suicide.

D On behalf of the State it was contended that the offence was one of murder within the ambit of Section 300 IPC, and that the punishment provided thereunder should be imposed.

Dismissing the Appeal, this Court,

E HELD: 1. There is no direct evidence to prove whether the deceased committed suicide by taking poison on account of the alleged failure in love or whether she was murdered by her husband. Therefore, the guilt or otherwise of the appellant has to be drawn only from the circumstantial evidence. [676F]

F 2. In a case in which the evidence is of a circumstantial nature the facts and circumstances from which the conclusion of guilt is said to be drawn by the prosecution must be fully established beyond all reasonable doubt and the facts and the circumstances so established should not only be consistent with the guilt of the appellant but also they must entirely be incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence. [676G]

H *Gambir v. State of Maharashtra*, [1982] 2 SCC 351; *Rama Nand and Ors. v. State of Himachal Pradesh*, [1981] 1 SCC 511; *Prem Thakur v. State of Punjab*, [1982] 3 SCC 462; *Earabhadrapa alias Krishnappa v. State of Karnataka*, [1983] 2 SCC 330; *Gian Singh v.*

State of Punjab, [1986] (Suppl.) SCC 676 and *Balvinder singh v. State of Punjab*, [1987] 1 SCC 1, referred to. A

3. Exh. 80 is not proved to be under the handwriting of the deceased and, therefore, no reliance can be placed on this document. [684A]

4. The appellant has failed in his attempt to prove the defence theory of suicide which is fanciful and incredible. [686D] B

Sharad Birdhichand Sarda v. State of Maharashtra, [1984] 4 SCC 116 at 184 and *Lakshmi Singh and Ors. v. State of Bihar*, [1976] 4 SCC 394, referred to. C

5. Admittedly, Varsha was found dead in her bed-room PW13 is the witness who speaks of having seen Varsha lying on her cot. This witness is none other than the wife of the younger brother of PW15 the father of the appellant. It is found from her evidence that when all the family members pushed Varsha's room a little the door had opened. This indicates that the door was not locked from inside. Therefore from these circumstances, one could safely infer that Varsha had slept in her room with her husband on the intervening night of 31.7.1983 and 1.8.1983 and that the appellant had came out of the room and that Varsha was found dead in her bed. [687G-688F] D

6. The witnesses PW13, 14, 15 and 16 have attempted to create the defence of alibi saying that the appellant was not present in the house on the night of 31.7.1983. These four witnesses are none other than the aunt, parents and brother of the appellant and their evidence is highly tainted with interestedness. Even in their attempt at creating alibi, there is no consistent version in that while PW13 would state that the appellant left the house on the evening of 31.7.1983, PWs 14 and 15 would go to the extent of saying that the appellant was not in the house even from 30.7.1983 till the morning of 1.8.1983. According to PW.23 it was the appellant who came to his house at about 8.00 a.m. on the morning of 1.8.83 on a scooter and took him to the scene house to examine Varsha. The inconsistent evidence of PWs 13, 14 and 15, whose testimony is highly interested, has to be thrown overboard in view of the abundant circumstances appearing in the case demonstrably showing that the appellant was in his bed room on the night of 31.7.1983. It further transpires from the evidence of PWs 14 and 15 that the appellant used to come to the house late in the night and sleep in his bed room. [688G-689B] E
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A 7. It boggles one's mind that as to how the appellant suddenly
appeared in the scene house in the early morning of 1.8.1983 when he
had been away from the house for two days as per the evidence of PWs
14 and 15. The various compulsive circumstances appearing against the
appellant, when examined in proper perspective, lead to only one con-
B clusion that the appellant was in the scene house on the fateful night and
that he knew the cause of death of his wife and that he has now come
forward with a complete false defence that he was away from the
house. [689D-E]

C 8. The defence theory of suicide is a complete hoax and an in-
credulous one falsely invented by the appellant in order to escape from
his guilt and the legal punishment, and also to drift the course of the
investigation. [690B]

D 9. The deceased Varsha did not die by taking any sleeping pills or
consuming poisonous substance but only on account of external severe
pressure on region of pancreas and spleen. [686B]

E *Taylor's Principles and Practice of Medical Jurisprudence, Vol. I*
(1965 Edn.) p. 253; *Parikh's Textbook of Medical Jurisprudence, p.*
353; *Modi's Medical Jurisprudence and Toxicology ed. by CA Franklin:*
Harrison's Principles of Internal Medicine, (11th Edn.) Butterworth's
Medical Dictionary, referred to.

F 10. The appellant in his statement under Section 313 Cr. P.C. has
stated that he did not go to the cremation grounds as the elders had
asked him not to go and that he did not enquire as to why he was not to
attend the cremation of his life. This is one more clinging circumstance
raising same suspicion about the conduct of the appellant. [689C]

G 11. The High Court has also examined the nature of the offence
proved to have been committed by the appellant, and has rightly held
that even though he may not have had the intention to cause death, his
act is done with the knowledge that it was likely to cause death and
therefore he had committed the offence punishable under Section 304
Part II I PC and was required to be convicted and punished for the
same. [690D-F]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal
Nos. 459 & 460 of 1987.

H From the Judgment and Order 23, 24, 26 and 27.12.1985 of the

Gujarat High Court in Crl. A. No. 500 of 1985.

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B.K. Mehta T.U. Mehta, H.J. Zaveri, M.N. Shroff and Mrs. H. Wahi for the appearing parties.

The Judgment of the Court was delivered by

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S. RATNAVEL PANDIAN, J. These two appeals arise out of a common judgment rendered in Criminal Appeal No. 500 of 1985 on the file of High Court of Gujarat at Ahmedabad. Criminal Appeal No. 459/1987 is preferred by the convicted appellant, S.D. Soni challenging his conviction under Section 304 Part I, IPC and the sentence of 5 years rigorous imprisonment and Criminal Appeal No. 460/1987 is preferred by the State of Gujarat on the ground that the evidence makes out a case for an offence punishable under Section 302 IPC and that the judgment of the High Court convicting S.D. Soni (respondent in the state appeal) under Section 304 Part-II IPC is erroneous.

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The facts, materials for the purpose of these appeals, may however be briefly indicated:

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The appellant in Criminal Appeal No. 459 of 1987 hereinafter referred to by his name 'Soni' married Varsha, the deceased herein on 4.12.82. After the marriage, she came to Ahmedabad and stayed with her husband who was in joint family of Roopam society at Ahmedabad. After having stayed for about one month with her husband, she returned to her parents' place at Bombay and after about a month, Soni took her back to the matrimonial home. According to the prosecution that even during her stay with her husband for about a month, the matrimonial life was not happy as it ought to be as the lady members of the house used to taunt her. She was not even allowed to see and freely talk to her father and brother in private when they used to visit her. While so, on 7.7.83 the deceased wrote a letter Exh. 18 to her parents informing them that she was being ill-treated by her husband and in-laws and other relatives complaining that her father did not give her anything at the time of marriage and that only Almighty could save her from threatened danger. After the receipt of the letter, the father of the deceased contacted the father of Soni who asked the father of the deceased (PW 5) to come to meet him personally. Thereafter, there was a chain of correspondence between the parents of the deceased and the appellant, Soni. While it is so, on the morning of 1st August 1983, the deceased Varsha was found lying dead in her bed in her matrimonial home. According to the defence version,

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- A a chit (Exh. 80) was seen underneath a pillow, said to have been written by Varsha herself to the effect that she was committing suicide on her own volition by consuming sleeping pills as she was in love with a boy at Bombay and her demand for divorce was not acceded to by her husband. At the request of the inmates of the house, one medical officer by name Dr. Kumudchandra (PW-23) examined Varsha and
- B declared her to be dead. Thereafter, the police was informed that Varsha had committed suicide. The Sub-Inspector of Police (PW-17) attached to Navrangpura Police Station held the inquest over the dead body and sent a report Exh. 10 stating that it was a suicidal death. After the inquest, the dead body was sent to Civil Hospital for post-mortem examination. The parents of Varsha on being informed that
- C their daughter was in a serious condition rushed to Ahmedabad from Bombay by the evening flight. The dead body after the post-mortem examination was brought to the house of Soni in the early morning of 2.8.83 and thereafter the cremation took place.

- Be that as it may, after the completion of the 12th day ceremony,
- D PW5 sent a petition Exh. 29 to the Commissioner of Police, Ahmedabad requesting for a thorough enquiry into the death of his daughter, Varsha as he had suspected some foul play and that the death was not of a natural one. Copies of the letters were sent to the Home Minister, IGP and Chief Justice of Gujarat state. Another petition Exh. 30 dated 1.9.83 was also submitted to the Home Minister of
- E the state. As PW 5 felt Navrangpura Police had not taken proper investigation and was misled by the false information given by Soni and his father and as the alleged chit Exh. 80 was a fabricated one, the father and brother of the victim sent successive petitions which ultimately led to the entrusting of the investigation into the death of Varsha to the Crime Branch, Ahmedabad. PW-21 who was the sub-Inspector
- F of Police, CID, Crime Branch of Ahmedabad took up the investigation on 7.1.84. On obtaining the papers of the previous investigation, PW-21 came to know that there was a note in the case diary to the effect that the cause of death had been kept reserved. He visited the scene of offence on 10.1.84 and obtained two letters Exh. 18 and 19 said to have been written by deceased, Varsha which letters were
- G found attached with the panchnama. Though PW-21 tried to contact Dr. D.G. Desai (PW 11) on 12.1.84 and 16.1.84 for obtaining his opinion about the cause of death, he could not contact him as the Doctor was on leave. He sent the letters said to have been found beneath the pillow and the letters Exh. 18 and 19 to the Handwriting Expert for his opinion. Then he recorded the statement of other
- H witnesses and received the opinion of the Handwriting Expert on

5.6.84 and the opinion of PW-11 on 6.6.84. On 16.8.84, he arrested the appellant and produced him for remand. The specimen handwritings of the appellant were obtained. After completing the investigation, he laid the charge-sheet on 13.10.1984. To establish the charges levelled as against Soni, as many as 23 witnesses were examined and 105 exhibits were filed. The defence of the accused was one of denial.

The Trial Court found the appellant guilty of having committed the murder of his wife Varsha and convicted him under Section 302 IPC and sentenced him to imprisonment for life. It seems that Soni stood charge for two other offences namely under Section 196 IPC on the allegation that he attempted to use the chit Exh. 80 as a true or a genuine evidence knowing that it was false and fabricated one and another under Section 498A on the accusation that he subjected his wife (deceased) to the cruelty thereby driving her to commit suicide. But no finding has been given on these two charges by the Trial Court. On appeal, the High Court found the appellant guilty of the offence punishable under Section 304 Part II IPC and not under Section 302 IPC for the reasons given in its judgment, the relevant portion of which reads thus:

“However, it appears to us that having regard to the fact that no strong motive has been proved (motive of dowry is coming out for the first time after the incident and from the dying declaration, the letter dated 3.7.1983 (Ex. 18) which is not reliable), it is impossible to hold that the death was intentional so as to cover his case of Section 302 IPC., the case would be covered only under Section 304 Part II because he had given the blow on the very vital part of the body containing the vital organs i.e. spleen and pancreas. These organs are deep seated organs and particularly pancreas which is very deep seated and injuries to them can be caused only with very considerable force. The medical evidence also shows that these injuries would be possible if the blow is given with considerable force. Thus even though he may not have the intention to cause death, his act is done with the knowledge that it is likely to cause death and therefore he has committed the offence punishable under Section 304 Part II IPC and is required to be convicted and punished for the same. It appears that having given serious and violent blows and having seen that Varsha had died, the accused might have become panicky and raised defence of suicide by sleeping pills and even

A went to the extent of fabricating the suicide note. However, because of his subsequent acts, it would not be proper to fasten the accused with the liability of offence punishable under Sec. 302 IPC with the intention to cause death. Therefore, the accused can be convicted only under Section 304 Part II IPC."

B Hence, these two appeals are filed, one by the appellant, Soni and another by the State as aforementioned.

C Before adverting to the arguments advanced by the respective counsel, we shall at the threshold find out certain salient features which are beyond controversy.

D The marriage of the victim, Varsha (aged about 25 years at the time of occurrence) with the appellant, Soni was solemnized on 4.12.82. She died on 1.8.83 i.e. after about 8 months of the marriage. Her marital life was not happy and congenial but on the other hand it was deplorable, whatever might have been the reasons for it. Whilst the prosecution has come forward with a case that the victim, Varsha was subjected to harassment for not having brought adequate dowry, the defence version is that the deceased has created a hell of her own as she was not married to her lover at Bombay and her request for divorce from the appellant, Soni was not acceded to. At the time of the occurrence, she was residing in her marital home with her husband, in-laws and relatives and the deceased was found lying dead in her bed on the morning of 1.8.83.

F The crucial question that arises for consideration is, as to whether the deceased committed suicide by taking poison on account of the alleged failure in love or whether she was murdered by her husband, Soni. There is no direct evidence to prove either of these two versions. Therefore, the guilt or otherwise of the appellant, Soni has to be drawn only from the circumstantial evidence. Needless to say that in a case in which the evidence is of a circumstantial nature the facts and circumstances from which the conclusion of guilt is said to be drawn by the prosecution must be fully established beyond all reasonable doubt and the facts and the circumstances so established should not only be consistent with the guilt of the appellant but also they must entirely be incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence. See *Gambir v. State of Maharashtra*, [1982] 2 SCC 351; *Rama Nand and Others v. State of Himachal Pradesh*, [1981] 1 SCC 511; *Prem*

Thakur v. State of Punjab, [1982] 3 SCC 462; *Earabhadrapa alias Krishnappa v. State of Karnataka*, [1983] 2 SCC 330 *Gian Singh v. State of Punjab*, [1986] (Suppl.) SCC 676 and *Balvinder Singh v. State of Punjab*, [1987] 1 SCC 1.

We shall now examine those circumstances relied on by the defence in support of their theory that the deceased committed suicide and the circumstances relied on by the prosecution in support of its version and see whether those surrounding circumstances unmistakably and unerringly go in support of the theory of suicide or of homicide. First of all, we would like to deal with the defence theory of suicide.

Much reliance is placed by the defence on the evidence of PWs. 8, 17 and 23 Exh. 80 as well as certain circumstances inclusive of some features of the scene as existed at the time of inspection by PW 17. PW-23 has deposed that on 31.7.83 Varsha came to his dispensary accompanied by someone and that he treated her for cold and fever by giving an injection and that on the morning of 1.8.83 at 8 A.M. he on being called by the appellant went to the house of Soni and examined the pulses and blood pressure of the deceased and found her dead. In continuation of his evidence, PW-23 states that he did not see marks of any injury on her person. On the same day, he claims to have issued a death certificate after going to his dispensary to a person who accompanied him. However he admits that he has not mentioned in the certificate that he treated her on the previous day. It is seen from the records that PW-23 has been cross examined by the prosecution with the permission of the Court evidently treating him as a hostile witness. In the cross examination this witness has stated as follows:

"In my statement recorded on the date 19.8.84, I had stated that, "Prior to the date 1.8.83 Varshaben had come to my place for taking treatment and I have an impression that since she was having effect of fever and cold, I had given her chloroquine or B.I.O. Manigen with Decacrome and this injection was given in the muscles above the elbow on her left arm."

PW-8, the youngest brother of Devjibhai (father of the appellant) has deposed that on receipt of a telephonic message he reached the scene house at about 7.30 or 7.40 A.M. and found Varsha dead; that on enquiry he came to know that the deceased seemed to have consumed poisonous substance; that he went to the police station-at

A the instance of Devjibhai i.e. father of the appellant and waited at the police station for 2 or 3 hours for the arrival of PW-17 and then informed PW-17 that the deceased had consumed some poisonous substance. A report was obtained from him, namely, Exh. 46.

B PW-17 who was then the Sub-Inspector of Police has testified to the fact that on 1.8.83 at about 11.15 a.m. he on being informed about the death of the deceased by PW-6- namely, Amrutlal Madhavlal went to the scene of incident and made a preliminary enquiry and on seeing the chit (Exh.80) produced by some one, he came to the conclusion that the information lodged by Amrutlal appeared to be correct. According to him, the mouth of the dead body was half open and some liquid had come out of it. The head of the dead body was covered with a *Sadi*. The left arm of the dead body was bent at the elbow towards the thigh while the other hand was towards the leg. There was no visible marks of violence on any part of the body except the symptoms of vomiting containing the grains of food. PW-17 further states that from those symptoms and features he and panchas came to the conclusion that the deceased appeared to have died by consuming excessive dose of sedative pills or poisonous drug.

C Reference was also made to the contents of Exh. 12, the inquest report wherein panchas have expressed their opinion that the deceased appeared to have died having taken excessive dose of sedative pills or some other poisonous drugs.

D After having referred to the evidence of PWs 8, 17 and 23 as well as to the contents of document Exh. 12 the learned defence counsel drew our attention to the notes of the post-mortem examination (Exh. 87) wherein under column No. 16 the following injury is noted; that being "Injection Mark on the left upper arm on the lateral aspect at lower third part. Surrounding there is 0.1.00x 1.00 cm. blue coloured haematoma" which injury according to the Medical Officer was an antimortem injury. this injury according to the defence corroborates the evidence of PW-23 that he gave an injection to the deceased on the previous day of the occurrence and indicates that the deceased was sick and treated by PW-23. Then our attention was drawn to the evidence of PW-11 who was then the Assistant Professor in Forensic Medicine attached to B.J. Medical College who conducted necropsy on the dead body of the deceased. PW-11 had noticed and noted the following internal injuries in his postmortem certificate (Exh. 17).

E Those injuries are:

(1) Pancreatic haematoma at the tale region about 10 cm. on tale of pancreat. A

(2) Haematoma on viseral surface of the spleen at hylum region about 2 cm./2 cm and other 1×1 cm. but haematoma is covered by peritonium. B

(3) Haematoma on surrounding peritinium about 4 cm x 4 cm but very thin layer. C

(4) Blood was coming out of servic. There would be no fresh bleeding of monstruation after death. External injury. No. 3 corresponds with internal injury Nos. 2 and 3. C

The Medical Officer on the strength of the visceral report of the Assistant Director gave his final opinion about the cause of death as follows: .. lm 20

“Death occured due to pancreatic and splenic haeomorrhage. D

It seems that this Medical Officer has been subjected to a searching and incisive cross examination with reference to various text books, namely, Modi's Medical Jurisprudence, Tailor's Medical Jurisprudence and Grant Wolf's Medical Jurisprudence and questioned as to whether the injuries found by him on pancreas and spleen could be possible by a fall, but PW-11 was assertive that the injuries could not have been caused by a fall. In the cross examination the following evidence was elicited from the Medical Officer: E

“It is not true that in such type of poisoning and death, no poison can be detected in the chemical examination at the Forensic Science Laboratory. My say is that mostly the poison would be detected in the chemical analysis report. Severe erosion in the stomach, severe erosion in the mouth and severe erosion in the esophagus are the signs suggesting the poisoning though the poison may not be detected in the chemical analysis report and because on such signs, we say that patient might have died because of poison.” F G

The learned defence counsel, Mr. B.K. Mehta relying on the evidence of PW-11 revealing that there was an injection mark with haematoma formation and on the evidence of PW-17 admitting that there was signs of vomiting and also on that of PW-11 to the effect that H

- A** there was pancreatic haematoma at the tail region and haematoma on viseral surface of the spleen at hylm region and that there was yellow material with food particles in the stomach of the deceased, contended that the deceased should have been suffering from malaria resulting in splenic fever and she would have collapsed while violently vomiting and sneezing by taking excessive doses of sleeping pills or barbiturates
- B** and that as PW-11 himself has admitted that the sleeping pills, synthetic derivatives and vegetable alcoholic medicines are the types of poison "which do not leave characteristic signs which can be noted in the post-mortem examination." Further it was contended that the deceased might have fallen from the cot and sustained all the internal injuries. In support his submission, the learned counsel referred to
- C** certain passages from the Text Books on Medical Jurisprudence authored by renowned medical jurists. Firstly he drew our attention to the following passage found in Taylor's principles and Paractice of Medical Jurisprudence, Volume I (1965 Edition) at page 253 reading.

- D** "Ruptures of the spleen mostly commonly occur from violence, and it is clear from the following case that only a slight degree of violence may be sufficient to rupture this organ, and there may be no marks of injury externally."

The relevant portion of the passage heavily relied upon by the counsel reads thus:

- E**
- F** "Cases of spontaneous rupture of the spleen are reported from time to time, but it is extremely doubtful if a normal spleen ever ruptures spontaneously. When the spleen is the seat of disease as, for example, in malaria, Banti's disease, in Kala Azaar, in leukaemia, etc., it is liable to rupture with comparatively little violence. In some cases the trauma may not lead to rupture of the capsule and consequently a haematoma develops in the organ which may rupture the capsule and produce serious symptoms only after several days. In one recorded case no complaint was made for 36 hours after the injury. Death from rupture of the spleen is usually rapid, but occasionally it is delayed. Recovery may sometimes ensue without operation."
- G**

Then he referred to a passage in Parikh's Textbook of Medical Jurisprudence and Toxicology. wherein at page 353 the author has registered his opinion as follows:

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"The rupture of the spleen usually involves the concave or inner surface and causes death from hemorrhage. In some cases, symptoms of gross intra-abdominal bleeding may not occur for several hours or days after the rupture due to haematoma collecting under the intact capsule. Serious symptoms become apparent only when the capsule ruptures. Spontaneous rupture of a diseased spleen has been reported. While the possibility of spontaneous rupture of a much enlarged spleen cannot be denied, what can be positively denied is that a normal or even a moderately enlarged spleen can rupture spontaneously. This is specially emphasised, as in a case in which a person is accused of having caused the death of another by assaulting him so that this spleen was ruptured, the defence, relying on statements contained in medical books that an enlarged spleen may rupture spontaneously, almost invariably attempts to establish the possibility of this having happened."

Drawing strength from the same text book it is stated that barbiturates are classified into four groups depending on whether their action is long, intermediate, short or ultrashort. Under the heading 'Intermediate action'-Effect from 1/2 to 4-8 hours fatal dose 2-3 gms' it is stated under item (e) thus: "Pentobarbitone (Nembutal-yellow capsules)".

Then reference was also made to Modi's Medical Jurisprudence and Toxicology, edited by C.A. Franklin, wherein the author has expressed his views that enlarged spleen becomes softened and brittle and that the rupture of an enlarged spleen from very slight violence is a common occurrence in districts where malaria and kala azar are prevailing and every medical jurist is familiar with such cases and that an enlarged spleen may sometimes rupture spontaneously from the contraction of the abdominal muscles during the act of sneezing, coughing, vomiting or straining, particularly if the spleen is abnormally mobile.

The next text book referred to by the learned counsel is "The Essentials of Forensic Medicine and Toxicology", wherein the effect of barbiturates is given with its classification. The other text books referred to are Harrison's Principles of Internal Medicine 1 (Eleventh Edition) and Butterworths Medical Dictionary.

On the basis of the above opinion of the medical jurists it has

- A been forcibly urged by the learned defence counsel that in the present case the deceased Varsha who was suffering from malaria resulting in splenic fever should have taken lethal dose of sleeping pills or consumed poisonous drugs and thereby committed suicide. According to him, the presence of the yellow material with food particles in the stomach of the deceased as spoken to PW 11 demonstrates that the deceased might also have taken some excessive barbiturates and that a fall from the cot might have caused all the internal injuries showing no visible marks of external injuries.

- In support of the defence theory that it is a suicidal case, Mr. B.K. Mehta, the learned counsel for the defence placed much strong reliance on Exh. 80, wherein the deceased is alleged to have unfolded her mind that she had already fallen in love with her lover at Bombay and that her marriage with the appellant Soni had been solemnised against her will and that the appellant had refused to accede to her request for divorce and that, therefore, she was committing suicide as she had reached a point of no return in her life. This letter is shown to have addressed to her Fai (Aunti), father, mother, Kaki (Aunti) and all members of her family. This letter Exh. 80 alleged to have been written by the deceased was sent to the handwriting expert for comparison with the handwritings of Varsha in Exh. 18 and 19. According to the father and brother of the deceased Varsha, i.e. PWs 5 and 7, Exh. 18 and 19 are in the handwriting of the deceased. The expert, namely, Assistant State Examiner of Questioned Documents, Ahmedabad by his report (Exh. 54) dated 2.6.1984 gave his opinion that the writings found in Exh.80 are not written by the one and the same person who wrote Exh. 18 and 19. PW 7, the brother of the deceased has deposed that Exh. 18 is an inland letter addressed to PW 5 and that Exh. 19 is a letter written to the uncle of the deceased at Dubai and that his attempt to get the handwriting of the deceased from the college was not successful. The High Court taking note of the facts that PW5 had not taken any immediate action on Exh.18 in which the deceased is said to have expressed her ill treatment in her matrimonial home at the hands of her husband and in-laws and that PW 5 had not disclosed this letter in his earlier complaints was not inclined to place any reliance on the expert's opinion holding thus:

“In view of that finding, the evidence and opinion of handwriting expert that Ex.18 and 19 on one hand and Ex.80 suicide note on the other hand, are not of the same person loses all significance.

That, however, does not lead us to the conclusion that the suicide note Exh.80 is in the handwriting of Varsha and a genuine document. That question will be considered while appreciating the evidence of the other class of witnesses i.e. relatives of the accused."

Notwithstanding the above finding, the High Court on the scrutiny of the evidence of PWs 8, 9, 13-16 was not inclined to accept Exh.80 as a genuine document for the reasons assigned in paragraph 34-39 of its judgment. Finally in paragraph 40 it has made the following observations:

"Not only that the suicide note Exh.80 is not proved by any witness, there is inherent evidence to show that the suicide note is not written by Varsha. The writing of the note is highly unnatural and the facts have been stated carefully and vaguely so that no corroboration can be obtained. The note vaguely states about the pre-marital love affair and having disclosed the same on the very first night of the marriage and seeking of divorce. However, even though during the span of 8 months thereafter, there was no knowledge whatsoever to any of the relatives of Varsha or Shailesh about this seeking of divorce. However, even though during the span of 8 months thereafter, there was no knowledge whatsoever to any of the relative of Varsha or Shailesh about this seeking of divorce. On the contrary, the evidence of Ushaben, PW 9 clearly shows that there was good mental rapport and love between them and they loved each other. No name or identity is even remotely disclosed about the so-called premarital affair and the identity of the body involved. The evidence of the relatives of the deceased Varsha clearly show that she was willing and happy with the betrothal with Shailesh."

It may be pointed out in this connection that the Trial Court concluded that Exh.80 is a sheer concoction holding in paragraph 23 of its judgment thus:

"..... It appears that Exh.80 has been got written by the accused in the hand writing of some other person but the fact established is that Exh.80 is certainly not in the hand writing of the deceased."

A We after bestowing our painstaking consideration on the genuineness of this document hold that Exh. 80 is not proved to be under the handwriting of the deceased, Varsha and, therefore, no reliance can be placed on this document.

B Coming to the medical evidence, PW-11 has testified to the fact that the nails of the deceased were cynoised suggesting the high carbondioxide in the blood due to lack of oxygen and that he did not find anything abnormal in the deceased, Varsha suggestive of any disease and that in the case of throttling or pressing there would be cynoised and that there was bleeding from her virginia and the deceased would have taken her last food by about 10.00. P.M. and she should have died by 2.00 A.M. past mid-night and that in the present case there was no rupture of spleen or stomach or intestine. According to the medical officer the internal injury No. (1)- namely pancreatic haematoma does not correspond to any of the external injuries and that extent injury No. (3), namely, haematoma on surrounding peritonium on spleen region measuring about 4 cms. × 4 cms and the internal injuries No. (2) and (3) could be caused by pressing or by a severe blow on the anterior part of the abdomen on the left side. He gave his final opinion about the cause of death only on 6.3.1984 on receipt of the report of the Assistant Director, Forensic Science Laboratory opining "no poison could be detected from viscera."

E Thus PW-11 who conducted the autopsy on the dead body is assertive of his opinion that the death was not due to poisoning but due to injuries. It is pertinent to note in this connection that in case the deceased had died by consuming poison certainly poison should have been detected from viscera by the Assistant Director of Forensic Science Laboratory.

F In response to Exh. 102 a requisition sent by the Sub Inspector, PW-17 requesting the Director of the Forensic Science Laboratory to offer his opinion whether the deceased had taken any sedative pills or consumed some poisonous substance and if so what kind of poison contained in the stains of vomiting. With the requisition Exh. 102, G PW-17 sent the bed sheets and two pillow covers on which the stains of vomiting were found. To these queries a reply has been sent from the Forensic Science Laboratory on examination of the stains of vomiting under Exh. 14. The report of the chemical analysis reads thus: "The samples are not found to contain poison of any nature." This opinion of the chemical analyst fortifies the opinion of PW-11 that the cause of H death was not due to taking of excessive sleeping pills or consuming

any poisonous drugs but it was due to the internal injuries of haemorrhage of spleen and pancreas which internal injuries correspond to external injury No. (3). In the Parikh's Textbook of Medical Jurisprudence and Toxicology it is stated that wounds of pancreas are rare and they are usually accompanied by injuries to other parts of abdomen and that a kick or punch in the upper abdomen may injure the pancreas and cause death within a few days from resultant inflammation and that external injury to abdominal wall may not be visible in such cases. The same Text Book further states that the spleen is ruptured by a fall, blow or kick on the abdomen or a crushing injury due to vehicular accident which may or may not leave a mark on the abdominal wall.

In Modi's Medical Jurisprudence and Toxicology, the following text is found:

"Pancreas. - Wounds of the pancreas are extremely rare. They may occur from direct violence applied to the epigastrium or from penetrating wounds of the abdomen. They are usually accompanied by injuries of the other abdominal organs. But when the stomach is empty, the pancreas alone may be vertically ruptured by being pressed against the spinal column by the object struck, and may produce severe shock probably due to damage to the sympathetic and semilunar ganglia."

Further it is stated in the same book that a spleen subjected to traction forces may be torn from its pedicle.

In Medical Jurisprudence by Gordon Turner and Price (Third Edition) at page 670-671 the author has stated that the "injuries of the spleen may be caused by forces of compression or traction forces" and that "pancreas may be injured by compression forces when the viscera are crushed against the posterior abdominal wall."

The High Court in paragraph 32 of its judgment for discussions made by it in its preceding paragraphs has concluded as follows:

"From the aforesaid medical evidence, the following things clearly emerge:

The deceased Varsha did not consume and did not die because of sleeping pills."

A We after very carefully going through the opinion of PW-11 who conducted the post-mortem examination on the dead body of the deceased and the report of the chemical analyst of the Forensic Science Laboratory under Exh. 14 have no compunction in agreeing with the view of the High Court in concluding that the deceased Varsha did not die by taking any sleeping pills or consuming poisonous
B substance but only on account of external severe pressure on the region of pancreas and spleen. This view is fully supported by the medical jurists in the various Text Books on Medical Jurisprudence. The hopeless abortive attempt made by the learned defence counsel by picking up various isolated circumstances in snippet and stringing them altogether in order to project the defence theory of suicide has to be
C completely ruled out.

We shall now examine whether the prosecution case is satisfactorily established on the evidence adduced on the side of the prosecution, notwithstanding the fact that the appellant has failed in his attempt to prove the case of suicide which, in our opinion, is fanciful
D and incredible.

As pointed out by this Court in *Sharad Birdhichand Sarda v. State of Maharashtra*, [1984] 4 SCC 116 at 184 that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence and that it is not the law where there is any
E infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

However, as observed by this Court in *Lakshmi Singh and Others v. State of Bihar*, [1976] 4 SCC 394 “fouler the crime, higher the proof”.
F

The case of the prosecution is that the marital bondage and the relationship was strained and that fortune did not smile on the face of the deceased, Varsha and worst treatment was meted out to her in the matrimonial home. PW-5, the father of the girl has deposed that one and a half months after the marriage of his daughter, he took her back
G to Bombay where she stayed with him for one and a half months. He further states that at one point of time, when he had been to the house of Varsha’s in laws at Ahmedabad and stayed there overnight, he had no talk with Varsha in private as one or other member of the family was always sitting with her, and that he received a letter Exh. 18 on 7.7.83 under the handwriting of his daughter, Varsha and came to
H know from that letter that Varsha was subjected to harassment in her

matrimonial home. He continues to state that he had telephonic talk with the father of the appellant, namely, Devjibhai who requested him to meet him in person and put down the receiver. Thereafter, he wrote a letter to Devjibhai requesting that his daughter should not be put to any harassment. Three days thereafter, he contacted Devjibhai. At that time also, Devjibhai asked PW-5 to go to Ahmedabad so that they could sit together and settle the matter. While it is so, at about 9.00 a.m. on 1.8.83, he received the message from his neighbour that there was a telephonic call from Ahmedabad asking him to go over to that place. Thereupon, PW-5 contacted Devjibhai who told him that Varsha had suffered from brain haemorrhage. Then he left Bombay and reached Ahmedabad.

PW-3, Indiraben Rameshchandra Soni testified to the fact that when the deceased had been at Ahmedabad after one and a half months of her marriage, Varsha complained to this witness that she was being tortured by her mother-in-law and sister-in-law and taunted saying that the marriage party was not received well. The prosecution has also filed one more document namely Exh. 19 which letter was written by Varsha to Amra Taal Derajbhai at Dubai.

PW-5 even in the first complaint dated 12th August 1983, Exh. 29 has stated that when the appellant had come to Bombay to take Varsha back, he asked for large amount of dowry for starting a new business.

Mr. B.K. Mehta, the learned counsel for the defence relying on the decision of this Court in *Sharad Birdhichand Sarda v. State of Maharashtra*, (supra) contended that these two letters, Exh. 18 and 19 are not admissible as evidence and, therefore, they cannot be looked into for any purpose.

Even eschewing these two documents, Exh. 18 and 19, we are satisfied on the oral evidence as well as the attending circumstances that there was no cordial relationship between the husband and the wife and the deceased was not happy in her matrimonial home.

Admittedly, Varsha was found dead in her bed room. PW-13 is the witness who speaks of having seen Varsha lying on her cot. This witness is none other than the wife of the younger brother of Devjibhai. According to this witness, on 31.7.83, Varsha cooked the food as usual and that on that night she took her meal sitting together with all the ladies and thereafter went to her bed, and that on the next

- A day when this witness noticed that Varsha had not come out of her room, went to her room and called Varsha but there was no response. Thereafter, she asked Devjibhai. All of them went inside the room and found her not responding to any call and that at this point of time, she found the letter Exh. 80 under the pillow of Varsha. Of course, this witness attempts to create alibi as if that the appellant was not available at the house on that night. Be that as it may, the fact remains that on the night of 31.7.83, Varsha cooked food and took her last meal with all other lady members of the family. PW-14 is the mother of the appellant. According to her, her sons and their respective wives would sleep in their own respective rooms by closing the doors. She also falls in line with the evidence on PW-13 and states that the appellant had gone out of station even on 30.7.83. PW-15, Devjibhai is the father of the appellant. According to him, his son was out of station from the night of 30.7.83. However, he admits that the marriage couples would sleep in their respective bed rooms by closing the doors from inside. The brother of the appellant is also examined as PW-16. He too speaks in the same line of his mother and father. The evidence of these four witnesses, namely, PWs. 13, 14, 15 and 16 who are none other than the aunti, parents and brother of the appellant is highly tainted with interestedness and hence their plea of absence of the appellant in the scene house on the night of 31.7.83 cannot be accepted because according to PW-23, it was the appellant who came to his house at about 8.00 a.m. on the morning of 1.8.83 on a scooter and took him to the scene house to examine Varsha. It is found in the evidence of PW-13 that when all the family members pushed Varsha's room a little, the door had opened. This indicates that the door was not locked from inside. Therefore, from these circumstances, one could safely infer that Varsha had slept in her room with her husband on the intervening night of 31.7.83 and 1.8.83 and that the appellant had come out of the room and that Varsha was found dead in her bed.

- As spoken to PWs 13 and 14 if Varsha and her husband, the appellant used to sleep in their separate bed room only the appellant knew the reason for the death of his wife, in case it is accepted that the appellant was with his wife in the bed-room. As pointed out earlier, the witnesses PW-13, 14 and 15 have attempted to create the defence of alibi saying that the appellant was not present in the house on the night of 31.7.83. Even in their attempt of creating alibi, there is no consistent version in that while PW-13 would state that the appellant left the house on the evening of 31.7.83, PWs 14 and 15 would go to the extent of saying that the appellant was not in the house even from 30.7.83 till the morning of 1.8.83. The appellant in his statement under

Sec. 313 Cr. P.C had stated that he was not available in the house from 30.7.83 till the next morning. The inconsistent evidence of PWs 13, 14 and 15, whose testimony is highly interested, has to be thrown over board in view of the abundant circumstances appearing in this case, demonstrably showing that the appellant was in his bed room on the night of 31.7.83. It further transpires from the evidence of PWs 14 and 15 that the appellant used to come to the house late in the night and sleep in his bed room.

There is one more clinging circumstance raising some suspicion about the conduct of the appellant. The appellant in his statement under Section 313 Cr. P.C. has stated, he did not go to the cremation ground as the elders had asked him not to go and that he did not enquire as to why he was arrested not to attend the cremation of his wife.

It boggles one's mind that as to how the appellant suddenly appeared in the scene house in the early morning of 1.8.83 when he had been away from the house for two days as per the evidence of PWs 14 and 15. The various compulsive circumstances appearing against the appellant, when examined in proper perspective, they lead us to only one conclusion that the appellant was in the scene house on the fateful night and that he knew the cause of death of his wife and he has now come forward with a complete false defence that he was away from the house.

It is admitted by PWs 13 and 14 that the deceased cooked the food and took her supper along with other ladies of the family and that she witnessed a film on the TV along with other women-folk and left for her bed room in a happy mood. PW-11 has opined that the deceased would have taken her last meal about 4 hours before her death. If it is so, there could not be any reason for the deceased to commit suicide.

On the other hand, the medical evidence reveals that her life should have been put to an end on account of some external pressure on the anterior part of the stomach on the region of pancreas and spleen. External injury No. 3 - namely haematoma, surrounding the peritonium - measuring about 4 cm x 4 cm corresponded to internal injury Nos. 2 and 3 and the posture of the dead body on the cot as noticed by PW-23 unerringly lead to a conclusion that some heavy pressure was used on the pancreatic and splenic region by some other human agency. In our considered view, that agency, in the circum-

A tances of the case, was only the appellant.

B We have already expressed our opinion about the defence theory of suicide as a complete hoax and incredulous one falsely invented by the appellant in order to escape from his guilt and the legal punishment and also to drift the course of the investigation. We are not taking this false explanation or false plea taken by the appellant as an additional link to the chain of the circumstantial evidence in establishing his guilt. However, this false explanation to some extent lends some assurance to the final conclusion which we have arrived at on the established facts and chain of circumstances attending the case. See *Sharad Birdhichand Sarda v. State of Maharashtra* (supra).

C Mr. T.U. Mehta, the learned counsel appearing for the State has vehemently urged that the offence is one of murder within the ambit of Sec. 300 IPC and, therefore, this Court be pleased to alter the conviction under Section 302 IPC and impose the punishment provided thereunder. We are unable to agree with Mr. T.U. Mehta since the
D medical evidence is not fully supporting his plea that the offence is nothing short of murder. In fact, the High Court also examined this aspect regarding the nature of the offence, proved to have been committed by the appellant in paragraph 59 of its judgment and observed as follows:

E “Thus even though he may not have the intention to cause death, his act is done with the knowledge that it is likely to cause death and therefore he has committed the offence punishable under Section 304 Part II I.P.C. and is required to be convicted and punished for the same.”

F After giving our anxious consideration to all the aspects of the case, we find ourselves in complete agreement with the view taken and the reasons given by the High Court and consequently uphold the impugned judgment of the High Court convicting the appellant under Section 304 Part II IPC and sentencing him to undergo rigorous imprisonment for five years.
G

In the result, both the appeals are dismissed.

N.V.K.

Appeals dismissed.