Shaikh Sattar vs State Of Maharashtra on 27 August, 2010

Equivalent citations: AIR 2010 SUPREME COURT 3320, 2010 AIR SCW 5382, AIR 2011 SC(CRI) 1112, 2010 (6) AIR BOM R 266, (2011) 1 ALLCRIR 737, (2011) 1 CGLJ 6, (2010) 2 ALD(CRL) 979, (2010) 3 BOMCR(CRI) 793, (2010) 4 RECCRIR 124, (2010) 3 CURCRIR 433, (2010) 4 RECCIVR 94, (2010) 94 ALLINDCAS 431 (DEL), (2010) 3 DLT(CRL) 349, (2010) 3 CHANDCRIC 693, (2011) 2 CURCC 504, 2010 ALLMR(CRI) 3289, (2010) 8 SCALE 509, (2010) 95 ALLINDCAS 209 (SC), (2010) 4 ALLCRILR 647, (2010) 4 RECCRIR 356, (2010) 47 OCR 442, 2010 (8) SCC 430, (2010) 71 ALLCRIC 359, (2010) 4 CIVILCOURTC 364, (2010) 4 PUN LR 33, (2011) 2 CRIMES 711, (2010) 171 DLT 51, 2010 (3) SCC (CRI) 906, 2010 (4) KCCR SN 152 (SC), 2011 (1) NIJ 655 SN

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Bench: Surinder Singh Nijjar, B.Sudershan Reddy

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.928 OF 2007

Shaikh Sattar ... Appellant

VERSUS

State of Maharashtra ...Respondent

JUDGMENT

SURINDER SINGH NIJJAR, J.

1. This appeal has been filed against the judgment and order of the High Court of Judicature at Bombay, Bench at Aurangabad, in Criminal Appeal No. 582/2004 wherein the Hon'ble Court was pleased to dismiss the appeal of the accused appellant herein and upholding his conviction for the offences punishable under Sections 302, 498A IPC.

2. The case of the prosecution was that, Shaminabee, since deceased, was married to one Shaikh Sattar (hereinafter referred to as the appellant) about four years before the fateful incident. Sk. Hasham (hereinafter referred to as A2) was the father-in-law of the deceased, Sk. Sikander

(hereinafter referred to as A3) was the brother-in-law while Zubedabee (hereinafter referred to as A4) was the mother-in-law of the deceased. After marriage, the deceased started residing with the accused at their house. The appellant used to teach the local children in the masjid at Village Chikalthana. It was alleged that he used to complain that it was not possible to maintain his family with an income of Rs.500/- to Rs.600/- per month. After about one and a half to two years of the marriage, appellant started demanding Rs. 40,000/- from his in-laws for the purpose of starting a business. As the parents of the wife were unable to meet the demand, he used to beat her up frequently. The deceased had reported to her parents about the maltreatment meted out to her whenever she came to the house of her parents. The couple had a son who was aged about two to two and a half years at the time. Appellant and the deceased along with their son had come to the parental home of the deceased on the occasion of Ramzaan-Id on 17.1.2000. They had stayed there for a couple of days. Even then the appellant had inquired as to what arrangement had been made to fulfill his demand of Rs. 40,000/-. He was told by the brother of the deceased that the family may be able to arrange after the sugarcane harvest. On hearing this, the appellant rather angrily said "alright" and left the house in a huff with the deceased, without even taking food.

3. On 22.1.2000, at around 10.00 a.m., the parents of the deceased received a message about the ill health of Shaminabee. Consequently, the parents, other family members and brother of the deceased went to the house of the appellant in a tempo. On reaching the house, they saw the dead body of Shaminabee in the interior of the house. It was placed in a room which had a roof made of clay and wood. The deceased had sustained severe bleeding injuries on her head. Blood was still oozing from her nostrils and ears. A big stone with blood stains was lying near her dead body. The clothes of the deceased were also blood stained.

4. The dead body of Shaminabee was taken to the Ghati Hospital at Aurangabad for post mortem examination, after preparing the inquest report. Upon completion of the post mortem, she was taken to the village of the deceased, where she was buried.

5. It was only on the next day that the father lodged a complaint against the appellant at the Police Station Phulambri which was registered as FIR at 16:30 hours on 23.1.2000. We may also notice that earlier a report had been lodged by Sk. Nawab and Sk. Bashir, Police Patil of Village Naigaon regarding death of Shaminabee. Although the aforesaid report is not based on the personal knowledge of the Police Patil, it indicated that Shaminabee had died of an accident when a stone fell on her head. It was stated that the stone fell on her head while she was removing a quilt from the tin roof of a shed constructed in front portion of the house. On the basis of the aforesaid report, A.D. No. 4/2004 was registered at Police Station, Phulambri. The panchnama of the dead body and the scene of incident were duly prepared. The police also seized a number of material objects, i.e., the clothes of the deceased Shaminabee, salwar and odhni, the lungi and the "nicker" of the appellant. A mat and a quilt as well as a stone weighing about 15 Kg. were also seized from the spot of the incident. All the aforesaid articles were stained with blood. The Head Constable also seized samples of plain earth and blood stained earth from the spot of the incident. It was only then the body was taken for post mortem.

6. It was the case of the prosecution that the appellant had killed his wife by hitting her on her head with a stone. The stone is said to be 15 Kgs. in weight. The motive for the crime was the non-fulfillment of the demand made by the appellant from the parents of the deceased. As noticed earlier, he had been claiming Rs.40,000/- to start some business as his income from the Priest-cum-teacher of Koran was inadequate.

7. The appellant was arrested on the same day, i.e., 23.1.2000. Statements of seven persons were recorded on that day. Some supplementary statements were also recorded on 5.2.2000. On the basis of the supplementary statements, accused nos. 2 to 4, i.e., father-in-law, mother-in-law and the younger brother of the appellant were also included in the list of accused. After completion of the investigation, the charge sheet was duly submitted against the accused persons in the Court of Judicial Magistrate, First Class (14th Court), Aurangabad, who committed them for trial by the Sessions Court.

8. At the trial, the prosecution examined seven witnesses. They were examined on the point of demands made by the accused, as well as the ill-treatment of the deceased. PW3, Kishore Teengutte is a neighbour of the parents of the deceased. He had been approached by the father of the deceased for a loan of Rs. 40,000/- so that the same could be paid to the appellant.

9. On due appreciation of the evidence, the trial court concluded that the appellant had committed the murder of his wife and therefore convicted him for the offences punishable under Sections 302 and 498A IPC. In appeal the High Court, on a reappreciation of the evidence, also concluded that the accused was guilty of the said offences. It is against such concurrent findings of both the Courts that the accused-appellant has filed this appeal before us.

10. We have heard the counsel for the parties.

11. The learned counsel for the appellant has reiterated the submissions made before the trial court as also before the High Court. The learned counsel for the appellant has submitted that the trial court as well as the High Court wrongly overlooked the fact that Dagadu Baig PW5 and Shaikh Hakim PW6 who were Panchas of the Panchnama of the scene of the incident did not support the case of the prosecution. The learned counsel further submitted that the trial court as well as the High Court have failed to appreciate that PW1 Dr.Anil Digambarrao Jinturkar who performed the post mortem on the dead body in his cross examination stated that "if a stone falls on the left side of the head from the upper side, injury nos. 1 to 4 are possible. The corresponding internal injuries also are possible by fall of a stone on the head from the upper side." The learned counsel submitted that the appellant has been falsely implicated. The relatives of the deceased wanted to blackmail the appellant. They had threatened the appellant that unless a sum of Rs.50,000/- was paid, a false case would be registered against him. The trial court as also the High Court illegally ignored the unexplained delay of more than twenty four hours in lodging the FIR. The learned counsel emphasized that the prosecution has failed to prove an unbroken chain of circumstances, a requisite for bringing home the guilt in a case based on circumstantial evidence. The trial court as well as the High Court illegally ignored that there was hardly any motive for the appellant to kill his wife as the brother-in-law had promised to give the amount allegedly demanded by the appellant a little later.

The trial court as well as the High Court wrongly disbelieved the plea of alibi of the appellant. He was not in the house when the stone fell on the head of the Shaminabee. He only got to know about the accident when he reached home at 7 a.m. He had spent the previous night at Chikalthana and went home to Naigaon only after the namaz was over. When he came back home, he came to know that a stone had fallen on Shaminabee. She was taking out a quilt from over the tin shed and she had died because of the injuries sustained by her.

12. We are unable to accept any of the submissions made by the learned counsel for the appellant. Undoubtedly, in this case there is no direct evidence of the crime. The prosecution case hinges on circumstantial evidence. It is an accepted proposition of law that even in cases where no direct evidence is available in the shape of eye-witnesses etc. a conviction can be based on circumstantial evidence alone. The hypothesis on which a conviction can be based purely on circumstantial evidence, was stated by this Court in the case of Hanumant Govind Nargundkar Vs. State of M.P., 1952 SCR 1091. In the aforesaid judgment, Mahajan, J. speaking for the Court stated the principle which reads thus:-

> It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.
>
> The aforesaid proposition of law was restated in the case of Naseem Ahmed Vs. Delhi Admn., (1974) 3 SCC 668 by Chandrachud J. as follows:
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> "This is a case of circumstantial evidence and it is therefore necessary to find whether the circumstances on which prosecution relies are capable of supporting the sole inference that the appellant is guilty of the crime of which he is charged. The circumstances, in the first place, have to be established by the prosecution by clear and cogent evidence and those circumstances must not be consistent with the innocence of the accused. For determining whether the circumstances established on the evidence raise but one inference consistent with the guilt of the accused, regard must be had to the totality of the circumstances. Individual circumstances considered in isolation and divorced from the context of the over-all picture emerging from a consideration of the diverse circumstances and their conjoint effect may by themselves appear innocuous. It is only when the various circumstances are considered conjointly that it becomes possible to understand and appreciate their true effect."

13. Keeping in view the aforesaid principle, we may now consider whether the course adopted and the conclusions reached by both the Courts, are manifestly erroneous or clearly illegal. As noticed earlier, on due appreciation of the evidence, the trial court concluded that the prosecution has failed to establish the guilt of accused nos. 2 to 4 for any of the offences. It was noticed that initially, when the father of the deceased lodged the report with the police, he had accused only the appellant. The trial court, therefore, accepted the submission that they had been subsequently implicated on the basis of supplementary statements made on 5.2.2000. They were, therefore, given the benefit of doubt and acquitted.

14. The trial court thereafter carefully examined the evidence qua the appellant herein. The trial court also found that the appellant had been harassing the deceased and her family members as they were not able to give him the money demanded. The trial court disbelieved the plea of the appellant that the deceased had been killed when a stone fell on her head while she was trying to pull a quilt from over the tin roof of the shed in front of the house.

15. The appellant had given an explanation that in fact on the fateful night and the morning of the death, he was actually preoccupied in reading the Koran at Chikalthana. He had also stated that he had gone to his house after Namaj was over. He stated that he had reached the house at about 7.00 a.m, and learnt about the accidental death of his wife. The plea of alibi has been disbelieved by the trial court.

16. The trial court has recorded that the following facts had been proved:-

> "a) There was demand of money from the side of the accused No.1 from the maternal home of the deceased Shaminabee.
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> b) She was being ill-treated by accused No.1 in connection with that demand.
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> c) Accused No.1 left the maternal home of the deceased Shaminabee along with her prior to about two days of the incident, by exhibiting anger for non-fulfillment of his demand for cash amount.
>
> d) The dead body of Shaminabee with severe bleeding injuries on her head was found in the house of the accused No.1 in a room which was having a roof made of clay and wood.
>
> e) There was absolutely no possibility of falling a stone on the head of the deceased Shaminabee from over the tin sheets shed, which was in front of the house of accused no.1.
>
> f) Accused No. 1 has given a false explanation and/or he failed to establish the possibility of falling of a stone on the head of the deceased Shaminabee from the roof of his house.

g) The deceased Shaminabee died because of the head injuries in the form of intracranial hemorrhage and contusion of brain due to fracture of skull bone, which were sufficient in the ordinary course of nature to cause death.

h) Accused No.1 did not establish the plea of alibi set up by him."

17. The High Court, in appeal, re-appreciated the entire evidence and recorded that the parents of the appellant were residing separately from the appellant and his wife. The appellant had failed to establish that he was at the masjid in Chikalthana at the time when the Shaminabee died. The appellant had taken a false plea that at the relevant time he was residing at Chikalthana although his wife and the child were residing at Village Naigaon. The appellant was present in the house at the time when Sk. Nawab had visited the house at about 6 or 6.30 a.m. but the appellant had claimed that he did not reach the residence till 7.00 a.m. The report given by Sk. Nawab about the accidental death was not based on personal knowledge. He reported the matter to the police on the basis of the information given to him by Sk. Shamsher. This witness in evidence in Court stated that he had heard about the accidental death from the villagers but he was unable to identify the person who gave the information. The High Court also found that the Report Ex.36 submitted by Sk. Nawab to the police station narrates two stories, which are mutually exclusive of each other. In either case, the location of the stone ought to be about 1 foot away from the terminal head of the tin sheet roof. The dead body was lying in the inner room of the 2 room tenement. A stone was lying by the side of the dead body. This would further falsify the plea of the defence. On the basis of the above, the High Court concluded that the prosecution had established that the accused was residing with his wife in the rented premises at Naigaon. It was not open for the defence to say that the prosecution had not prima facie established any case or that the trial court had shifted the onus of proof on the shoulders of the defence at a premature stage. The version given by the appellant in the statement under Section 313 of the Cr.P.C. has been disbelieved by both the trial court as well as the High Court.

18. We have given our thoughtful consideration to the entire matter. The High Court while examining the entire evidence has noticed that the parents and the younger brother of the appellant were residing at a farm house separately, even though it is situated in Village Naigaon. It has also rightly come to the conclusion that the parents were not members of the family of the present appellant and the deceased at the material time. Even in the evidence of PW2, Ahmad Khan, PW3, Kishore Teengutte and PW4, Raziyabee, there was reference only to demands made by the appellant and not by the other accused. The trial court had elaborately discussed the entire evidence and concluded that no demands were ever made by the parents of appellant as well as the younger brother of the appellant. Therefore, it becomes quite evident that at the relevant time, the appellant was residing in the rented accommodation at Naigaon independently with his wife and his infant child. In the statement under Section 313 Cr.P.C., the appellant took a plea of total denial and of being absent from the house at Naigaon at the time when Shaminabee is said to have died. During his statement, in answer to question no. 26, the appellant stated as follows:-

"I was working as a teacher at Chikalthana, Shaminabi and myself were residing there happily. We had taken a room at Naigaon. We used to reside in that room during Ramzan Idd holidays. In the night of the incident, Shaminabi alone was in

> that room. Prior to that, I had gone to Chikalthana to read Kuran in the evening. On the next day after Namaz was over, I went to Naigaon from Chikalthana and reached my room at 7 a.m At that time, I came to know that a stone fell on the person of Shaminabi when she was taking out a quilt from over the tin-shed and she died because of the head injuries sustained by her. Thereafter, I sent one Mubarak of our Village to the maternal home of Shamianbi to inform about the incident. I did not commit murder of Shaminabi by throwing stone on her head. The case is false."

In reply to question no. 19, the appellant even made an allegation of attempted blackmail against the relatives of the deceased in the following words:-

> "On the next day of incident, Ahmed Khan, his brother and my father in law came to my house and demanded me Rs.50,000/-. They told that in case the said amount was not paid, a false case would be lodged. He (I) could not pay that amount. Therefore, Ahmed Khan prepared false case and deposed falsely."

19. So the appellant claimed false implications as well as being absent form the scene of the crime at the relevant time. The trial court as well as the High Court upon due appreciation of the evidence have concluded that the appellant was unhappy or even annoyed at the inability of the in-laws to pay him an amount of Rs.40,000/- for starting a business. It has also come in evidence that two days prior to the incident, he had left the house of the in-laws after having expressed his annoyance at their inability to arrange for the funds. He had left the house without even joining them for the meal. It has also been found by both the Courts that appellant was residing separately with his wife (the deceased) and his son at Naigaon in the rented accommodation. It is further to be noticed that the specific case of the appellant is that he was earning a meager amount in the region of Rs.500/-. Therefore he could not possible afford the luxury of renting another room at Chikalthana. Therefore, he would have undoubtedly returned to his residence after his disgraceful departure from his in-laws house two days earlier. He then cooked up a story that he had been to Chikalthana to read Koran, the night before his wife suffered a fatal accident. He came to know about her accidental death on his return to his home at 7:00 a.m, on the following day. The trial court and the High Court have found the explanation to be false. It has been noticed by both the Courts that Chikalthana is only 12 to 15 Kms. away from Naigaon. It is also noticed that the evening Namaj would have taken place just before sunset of the previous evening. Therefore, it is unimaginable that he could not have come back to his residence during the night. Both the Courts also noticed that Sk. Shamsher is said to have learnt about the accidental death of the wife of the appellant from a discussion among the villagers. He was unable to identify any particular villager who had given him the information. He, thereafter, passed on the information to Sk. Nawab who made a Report (Ex.36) at the police station. Both of them have no personal knowledge about the "accidental death". It is also noticed that the Report Ex. 36, actually contains two versions which are both unbelievable. One version is that the victim was asleep when the stone rolled over and fell on her head. The other is that whilst she was withdrawing the quilt, the stone on the roof rolled over and fell on her head. Except for making a bald assertion about his absence from his rented premises, the appellant miserably failed to give any particulars about any individual in whose presence, he may have read the Namaj in the morning. He examined no witness from Chikalthana before whom he may have read the Koran in the evening

prior to the incident. He examined nobody, who could have seen him in the masjid during the night of the incident. Therefore, the trial court as also the High Court concluded that this plea of being away from the rented premises at the relevant time was concocted.

20. Undoubtedly, the burden of establishing the plea of alibi lay upon the appellant. The appellant herein has miserably failed to bring on record any facts or circumstances which would make the plea of his absence even probable, let alone, being proved beyond reasonable doubt. The plea of alibi had to be proved with absolute certainty so as to completely exclude the possibility of the presence of the appellant in the rented premises at the relevant time. When a plea of alibi is raised by an accused it is for the accused to establish the said plea by positive evidence which has not been led in the present case. We may also notice here at this stage the proposition of law laid down in the case of Gurpreet Singh Vs. State of Haryana, (2002) 8 SCC 18 as follows:

> "This plea of alibi stands disbelieved by both the courts and since the plea of alibi is a question of fact and since both the courts concurrently found that fact against the appellant, the accused, this Court in our view, cannot on an appeal by special leave go behind the abovenoted concurrent finding of fact".

21. But it is also correct that, even though, the plea of alibi of the appellant is not established, it was for the prosecution to prove the case against the appellant. To this extent, the submission of the learned counsel for the appellant was correct. The failure of the plea of alibi would not necessarily lead to the success of the prosecution case which has to be independently proved by the prosecution beyond reasonable doubt. Being aware of the aforesaid principle of law, trial court as also the High Court examined the circumstantial evidence to exclude the possibility of the innocence of the appellant. Since the case of the prosecution rests purely on circumstantial evidence, the trial court and the High Court examined all the material circumstances to ensure that the guilt of the appellant has been established beyond reasonable doubt. We see no reason to disagree with the conclusion arrived at by the trial court as well as the High Court.

22. We may notice here some of the glaring facts which would render it inconceivable that Shaminabee had died as a result of a fatal accident:-

> i) The rented accommodation was in the exclusive possession of the appellant and his immediate family.
>
> ii) Appellant's father, mother and younger brother were living separately in a farm house at Naigaon.

The income of the appellant was so negligible that he could not possibly afford the rent of the two room tenement at Naigaon and an independent room at Chikalthana. The appellant miserably failed to establish his absence from the rented premises at Naigaon either on the night before the incident or in the morning when the accident allegedly occurred. It is inconceivable that on 22nd of January, which would be the coldest time of the year in Aurangabad, the deceased would be outside at 6:00 a.m., removing a quilt from the tin roof. It is highly improbable that any sensible individual would

leave the quilt out on the tin roof during a cold winter night. Even if, there was a large stone weighing 15 Kgs. placed on the tin roof, the quilt would not be underneath it. Therefore, even if the quilt is pulled, the stone would not be dislodged from the tin roof. We, therefore, find it difficult to believe that the stone rolled off the tin roof as the quilt was being pulled by the deceased. Assuming that the stone had rolled off the tin roof, it would have fallen some distance away from the edge of the tin roof. It would have been found on the ground in front of the house. Furthermore, in case, the stone had fallen on top of the head of the deceased, the injuries would have been in the middle of the head or on the forehead, as she would be facing up while removing the quilt.

iii) The medical evidence also belies the theory of accidental death. The post mortem examination of the deceased was conducted by Dr. Anil Digambarrao Jiturkar, PWI who had noticed the following injuries on the dead body:-

"i) Contused lacerated wound over left temporal region 2 c.m above the upper portion of left ear pinna, of size 2 x 0.5 c.m., bone deep with margins reddish and swollen.

ii) Irregular laceration of left ear lobule involving fleshy portion all around, margins were reddish and swollen.

iii) Multiple small contusions over left cheek 1 c.m. below and anterior to tragus of left ear, varying from size 1 x 1 cm. to 5 x 5 c.m.

iv) Oval shaped contusion over left cheek 5 c.m. medially to left ear having size 2 x 1 c.m. irregular surrounding area, bluish and reddish.

v) Abrasion over chest in a mid line at the level of sterno-manubrial junction size 2 x 1 c.m., pale yellowish."

The doctor had stated that injury Nos. 1 to 4 were ante mortem while injury no. 5 was post mortem. He had also stated that cause of death was head injury in the form of intracranial hemorrhage and contusion of brain due to fracture of skull bone. The doctor further opined that external injuries no. 1 and 2 alongwith corresponding internal injuries were sufficient to cause death in the ordinary course of nature. He further stated that the injuries were likely to be caused "by a single blow of a heavy, hard and blunt object like a stone". A perusal of the aforesaid post mortem report makes it abundantly clear that, the injuries on the deceased were on the left hand side of the face. This would be consistent, with the hypothesis of the stone being picked up by a human being and being used as a weapon to assault, against the victim either standing or sleeping on his/her side.

iv) This apart, there is conclusive evidence of the fact that the body of the deceased was found in the interior of the two room tenement rented by the appellant. It is also in the evidence that the room in which the body was found has a roof made of clay and wood. It is also in evidence that the stone weighing 15 Kgs. was found lying next to the dead body. We find it rather difficult to imagine that the victim herself would have carried the stone inside after having been struck with it on the head under the tin roof. There is no explanation offered by the appellant as to how the stone came inside

the inner room. There is even no explanation as to how the dead body was found inside the room and not outside the shed.

v) We may also notice that there is no explanation given by anybody about the origin of the story of the "accidental death". The appellant has not given any explanation as to who informed him that his wife had met with an accidental death. There is also no explanation as to who first saw the dead body of Shaminabee. Was the dead body discovered by Sk. Shamsher who had given the information to Sk. Nawab? The evidence on the record suggests that Sk. Nawab visited the house at 6 or 6.30 a.m. The appellant had claimed that he arrived at 7.00 a.m.

vi) This apart, there are two stories mentioned in Ex.36. In one version, it is stated that victim was asleep when the stone from the tin roof rolled over her head. It is inconceivable that in such cold weather, the deceased Shaminabee was sleeping in the open. Especially since, even according to the husband, she was alone in the two room tenement. In normal course, she would sleep in the warmest part of the house, in such cold weather. That would be the interior room where the dead body was lying. The roof of that room was made of clay and wood.

vii) The opinion of Dr. Anil Digambarrao Jiturkar that internal corresponding injuries are also consistent with a stone falling on a head , would not cause any dent in the prosecution version. The fact remains that the victim was struck on the head with a heavy blunt object, such as a stone.

23. In view of the aforesaid, we are of the considered opinion that the conclusions reached by the trial court as also by the High Court cannot be said to be either clearly illegal or manifestly erroneous. We, therefore, see no reason to disturb the concurrent findings of the trial court and the High Court holding the appellant guilty of the charged offences. In view of the above, the appeal is dismissed.

.....J. [B.Sudershan Reddy] .....J. [Surinder Singh Nijjar] NEW DELHI, AUGUST 27, 2010.