Bhupinder Singh vs State Of Punjab on 6 April, 1988

Equivalent citations: 1988 AIR 1011, 1988 SCR (3) 409, AIR 1988 SUPREME COURT 1011, (1988) 2 JT 23 (SC), 1988 (16) IJR (SC) 383, 1988 (2) JT 23, 1988 (3) SCC 513, (1988) 2 CRIMES 665, 1988 SCC (CRI) 694

Author: K.J. Shetty

Bench: K.J. Shetty, M.M. Dutt

PETITIONER:
BHUPINDER SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT06/04/1988

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
DUTT, M.M. (J)

CITATION:
1988 AIR 1011 1988 SCR (3) 409
1988 SCC (3) 513 JT 1988 (2) 23
1988 SCALE (1)678

ACT:
Criminal Procedure Code, 1973/1898-Section 293-Chemical Examiner-Report of-A piece of evidence-Does not require formal proof-Should normally be forwarded to the doctor who performed autopsy report.
Criminal Trial-Poison murder cases-Invariably committed under cover and cloak of secrecy-Prosecution entitled to establish circumstances consistent with the hypothesis of the guilt of the accused.

HEADNOTE:
%
Bhupinder Singh, appellant, his father Sher Singh and his mother Mukhtiar Kaur, were tried for committing the murder of Bhupinder Singh's wife, Gian Kaur, by administering poison. The Trial Court held that the accused

had strong motive for the murder as the deceased was unable to satisfy their demand for dowry for which she was being constantly harassed. The Trial Court further held that the death of Gian Kaur was not accidental or suicidal or by food poisoning. The Trial Court held that the accused had the opportunity to accomplish their design, and they did administer poison which the deceased must have resisted and thereby suffered injuries on her body. The Trial Court found all the three accused guilty of the offence under section 302 read with section 34 I.P.C. and sentenced them to imprisonment for life.

It was urged before the High Court that the prosecution has failed to establish by evidence the necessary conditions for the proof of murder by poisoning. Disagreeing with the contentions and the theory of suicide put forth by the appellant, the High Court confirmed the conviction and sentence on Bhupinder Singh and Sher Singh while acquitting Mukhtiar Kaur.

The present appeal by special leave is only by Bhupinder Singh.

The main contention of the appellant is that in a case of murder by poison there are three main points to be proved; firstly, did the deceased die of the poison in question; secondly, had the accused got the
410
poison in question in his or her possession, and thirdly, had the accused an opportunity to administer the poison in question to the deceased. It is contended that the evidence falls short of these requirements, and in particular, as to the question of proof of possession of the poison with the accused.

The second contention of the appellant is that it is not enough for the chemical examiner merely to state in his report that the poison-Organo phosphorus compound was present in the substance sent for examination; he should have also stated that a lethal dose of the poison was detected. It is submitted that his report should be full and complete to take the place of evidence which he would have given if he were called to Court as witness.

Dismissing the appeal, this Court,

^

HELD: (1) Section 293 of the Code of Criminal Procedure provides that the report of scientific experts may be used as evidence in any inquiry, trial or other proceedings of the Court. [416D]

(2) No hard and fast rule can be laid down as regards the value to be attached to the report of the chemical examiner. [416D]

(3) The chemical examiner does not, as a rule, give an opinion as to the cause of death but merely gives report of the chemical examination. The report itself is not crucial. It is a place of evidece. The only protection to it is that it does not require any formal proof. It is, however, open

to the Court, if it thinks fit, to call the chemical examiner and examine him as to the subject matter of the report. The report should normally be forwarded to the doctor who conducted the autopsy. [416D-F]

(4) In poison murder cases, the accused are not acquitted solely on the failure of the prosecution to establish one or the other requirement. They are not to be acquitted solely on the ground that the prosecution has failed to prove that the accused had the poison in his possession, and are to be acquitted by the Court taking into account the totality of the circumstances including insufficient motive, weakness in the chain of circumstantial evidence and likelihood of the deceased committing suicide. [421C-E]

(5) Murder by poisoning is run like any other murder and the accused cannot have a better chance of being exempted from sanctions
411
than in other kinds of murders. [422B-C]

(6) The poison murder cases are not to be put outside the rule of circumstantial evidence. There may be obvious very many facts and circumstances out of which the Court may be justified in drawing permissible inference that the accused was in possession of the poison in question. [421H; 422A]

(7) The insistence on proof of possession of poison with the accused invariably in every case is neither desirable nor permissible. It would mean to introduce an extraneous ingredient to the offence of murder by poisoning. [422B]

(8) Murder by poison is invariably committed under the cover and cloak of secrecy. Nobody will administer poison to another in the presence of others. The person who administers poison to another in secrecy will not keep a portion of it for the investigating officer to come and collect it. The person who commits such murder would naturally take care to eliminate and destroy the evidence against him. In such case, it would be impossible for the prosecution to prove possession of poison with the accused. The prosecution may, however, establish other circumstances consistent only with the hypothesis of the guilt of the accused. The Court then would not be justified in acquitting the accused on the ground that the prosecution has failed to prove possession of the poison with the accused. [421E-G]

Mt. Gajrani and another v. Emperor, A.I.R. 1933 All 394; State v. Fateh Bahadur, A.I.R. 1958 All 1; Chandra Kant Myalchand Seth's case, (Criminal Appeal No. 120 of 1957 decided on 19.2.1958): Dharambir Singh v. The State of Punjab, Criminal Appeal No. 98 of 1958 decided on 4.11.1958; Mohan v. State of Uttar Pradesh, A.I.R. 1960 SC 669; Ram Gopal v. State of Maharashtra, A.I.R. 1972 S.C. 656; Sharda B. Chand Sarda v. State of Maharashtra, [1985] 1 SCR 88 and Ananth Chintaman Lagu v. The State of Bombay, A.I.R. 1960

S.C. 500, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 379 of 1986.

From the Judgment and Order dated 13.7.1984 of the Punjab and Haryana High Court in Crl. Appeal No. 82 D.B. of 1984.

R.L. Kohli and R.C. Kohli for the Appellant.

R.S. Suri for the Respondent.

The Judgment of the Court was delivered by JAGANNATHA SHETTY, J. One may ask the question whether murder by poisoning is not run like any other murder? The learned counsel for the appellant purports to state that it is not. He relies upon the judicial prescriptions as to the burden of proof in "poison-murder" cases. He contends that the prosecution must prove "that the accused had the poison in his possession". He asserts that failure to establish that factor should entail the acquittal of the accused. This is a vital question which goes far beyond the case and it, therefore, requires careful consideration.

Bhupinder Singh-Appellant was prosecuted for the murder of his wife by poisoning. He was sentenced for life imprisonment by the Additional Sessions Judge, Faridkot in Session Case No. 86 of 1983. His conviction and sentence have been affirmed by the Punjab and Haryana High Court in criminal appeal No. 82-DB of 1984. He has preferred this appeal by special leave challenging the conviction and sentence.

We may first advert to the prosecution case. It reveals a sad story. It runs like this: Gian Kaur, the victim in this case is the only daughter of Baltej Singh. Baltej Singh like many other parents thought that his problems would be solved by the marriage of his daughter. He got her married to Bhupinder Singh by spending all his savings. His relatives also contributed for the marriage. But ill-luck would have it, his problems started immediately after the marriage. Bhupinder Singh and his parents wanted Gian Kaur to bring Rs. 10,000 from her father. It was nothing but a demand for dowry. They stopped up their demand with harassment to Gian Kaur. Gian Kaur informed her father. The father could not arrange that much of amount. He had already spent all that he had in connection with her marriage. He had also then given presents in cash and kind to Bhupinder Singh. So he felt helpless. Unmerciful, Bhupinder Singh asked his wife to go back to her parents' house. So she left to seek shelter with her parents. She remained with them for about eight months. But how long the father could keep his married daughter away from her husband. Some parents think that it is a reflection upon them. Baltej Singh also must have thought like that. He somehow arranged Rs.6,000 and sent Gian Kaur to her husband's house. Gian Kaur rejoined her husband upon making the payment of Rs.6,000. That appears to have satisfied Bhupinder Singh for about one year. In the meantime, Gian Kaur had a male child. Naturally there was jubilation for Baltej Singh. He performed the customary

Chuchhak ceremony and again gave Rs.4,000 and a buffalo as presents to Bhupinder Singh. Bhupinder Singh ought to have been happy and satisfied. But he was not. It was alleged by the prosecution that this time he demanded a motorcycle. Baltej Singh could not give it. Gian Kaur, as usual, was again the target. It was further alleged by the prosecution that Bhupinder Singh threatened to kill his wife if motorcycle was not given to him. Gian Kaur had kept her father informed about the said demand and the threat.

On July 13, 1983, Gian Kaur died under mysterious circumstances. Upon receiving that information, Baltej Singh with his brother Baldev Singh reached the place in the evening of that day. They saw Gian Kaur, lying dead on a charpai. They suspected foul play. Baltej Singh gave the information to the police narrating all the above events. He informed the police that his daughter was killed by Bhupinder Singh and his parents by administering something to her. On the basis of that information, the F.I.R. was issued. The investigation of the case was taken by A.S.I. (PW 4). The body of Gian Kaur was sent to Dr. Sant Prakash Singh (PW 6) for post-mortem. The Doctor Prakash Singh noticed five minor injuries on the body of the deceased. The brain and other vital organs were also found to be congested. The Doctor sent stomach contents, portions of small intestine, liver, spleen and kidney to the chemical examiner for the purpose of analysis.

The chemical examiner in his report dated September 14, 1983 has stated that an Organo phosphorus compound was found in the substance sent to him for analysis. The investigating officer sent that report for opinion of the Doctor Prakash Singh as to the cause of death of Gian Kaur. The Doctor gave his opinion that the death of Gian Kaur was due to organo phosphorus compound poisoning.

Bhupinder Singh, his father Sher Singh and his mother Mukhtiar Kaur were tried for committing the murder of Gian kaur by administering poison.

The prosecution examined six witnesses and the accused in turn examined one. The trial court after considering the evidence and other material on record held as follows:

> The accused had strong motive to get rid of Gian Kaur. Apparently motive for the murder was the inability of Gian Kaur to satisfy the demand for dowry. The death of Gian Kaur was not accidental or suicidal. There was no reason for her to commit suicide. It was also not a death by food poisoning since the accused and deceased shared common food on the fateful night. There was none else in the house on that night except Gian Kaur and the accused. The accused had an opportunity to accomplish their design. The accused must have administered the poison to the victim. The injuries found on the body of the deceased indicated the resistence she must have offered when the poison was administered to her. With these and other conclusions, the trial court finally said:
>
> "In the background of the circumstances and evidence discussed above, the only conclusion possible is that Bhupinder Singh and Mukhtiar Kaur did administer poison organo phosphorus compound to Gian Kaur and did cause her death with

> common intention, which was to get rid of her as she had not been able to persuade his father to meet their demand for motorcycle so as to clear way for another marriage of Bhupinder Singh in his youthful years in order to get more and more of dowry."

Accordingly, the trial court found all the three accused guilty of the offence under Section 302 read with Section 34 I.P.C. They were sentenced to imprisonment for life.

Challenging the legality of the conviction and sentence the accused appealed to the High Court. It was urged before the High Court that the death of Gian Kaur was not homicidal. She must have in all probability committed suicide since she was suffering from tuberculosis. It was also urged that the prosecution has failed to establish by evidence the necessary conditions for the proof of murder by poisoning. The High Court did not agree with those contentions. The High Court ruled out the theory of suicide. It was observed that there was no evidence to show that Gian Kaur was suffering from tuberculosis or ever treated for that disease. The High Court observed:

> "Case of murder by poisoning is always one of secrecy. Almost in every such case one has to depend on circumstances. Doubtless, before a person can be convicted on the strength of circumstantial evidence, the circumstances in question must be satisfactorily established and the proved circumstances must bring home the offence to the accused beyond reasonable doubt. If those circumstances or some of them can be explained by any reasonable hypothesis then the accused must have the benefit of that hypothesis. But in assessing the evidence imaginary possibility has no place. What has to be considered are ordinary human probabilities. We have already referred to some important circumstances which in our opinion point out to the guilt of Bhupinder Singh and Sher Singh appellants. In the well-known case of Anant Chantman Lagu v. The State of Bombay, A.I.R. 1960 S.C. 500 their Lordships held that in a cause of poisoning, the prosecution must establish: (a) that the 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. All the three requirements are satisfied in this case.

There is no dispute that the death of the deceased was caused by poisoning. It has been established by the chemical examiner's report, that the viscera contained organo phosphorus compound poison. The evidence of the prosecution witnesses has established that the aforesaid two appellants had the opportunity to administer poison to the deceased and that they had the motive to commit the crime. Their running away from the house at the time when the Investigating Officer visited their house is also consistent with their guilt and not with their innocence."

With these observations, the High Court confirmed the conviction and sentence on Sher Singh and Bhupinder Singh while acquitting Mukhtiar Kaur.

The present appeal is only by Bhupinder Singh. Before embarking on the validity of the main submission made in this appeal, we may first dispose of one other contention urged for the appellant. Mr. R.N. Kohli, learned counsel for the appellant submitted that it is not enough for the chemical examiner merely to state in his report that the organo phosphorus compound was present in the substance sent to him for examination. He should have also stated that a lethal dose of the organo phosphorus compound was detected in the substance sent to him. His report should be full and complete to take the place of evidence which he would have given if he were called to Court as witness. In the absence of such particulars, the death by poisoning cannot be inferred. In support of this contention, learned counsel relied upon two decisions of the Allahabad High Court viz. (i) Mt. Gajrani and Anr. v. Emperor, [A.I.R. 1933 Allahabad 394] and (ii) State v. Fateh Bahadur & Ors., [A.I.R. 1958, Allahabad 1]. In the first case, it was observed that it was not enough for the chemical examiner merely to state his opinion. He must also state the grounds which formed the basis of his opinion. The second case was a case of death by arsenic poisoning. The chemical examiner did not state the quantity of arsenic poison found in the viscera of the deceased. He did not state whether it was a fatal dose or not. The High Court pointed out that it would be of the utmost importance before a Court could find any individual guilty of murder by arsenic poison that its complete analysis should be made. It is not enough to state that arsenic was detected in the body of the deceased.

In our opinion, these observations cannot be taken as a rigid statement of law. (No hard and fast rule can be laid down as regards the value to be attached to the report of the chemical examiner. Section 293 of the Code of Criminal Procedure provides that the report ofscientific experts may be used as evidence in any inquiry, trial or other proceedings of the court. The chemical examiner does not, as a rule, give an opinion as to the cause of death but merely gives report of the chemical examination of the substance sent to him. The report by itself is not crucial. It is a piece of evidence. The only protection to it is that it does not require any formal proof. It is, however, open to the Court if it thinks fit to call the chemical examiner and examine him as to the subject matter of the report. The report should normally be forwarded to the Doctor who conducted the autopsy. In the instant case, that was done. The Doctor who conducted the autopsy was given a copy of the report of the chemical examiner. The Doctor in the light of the report gave his opinion that the death of Gian Kaur was by poisoning i.e. organo phosphorus compound. The report of the chemical examiner coupled with the opinion of the Doctor is, therefore, sufficient to hold that it was a death by poisoning.

This takes us to the main contention urged for the appellant. It was urged that in a case of murder by poison there are three main points to be proved, firstly did the deceased die of the poison in question; secondly, had the accused got the poison in question in his or her possession; and thirdly, had the accused an opportunity to administer the poison in question to the deceased. It was also urged that if the prosecution fails to prove these factors, then the accused cannot be convicted. The evidence in the case, according to learned counsel falls short of these requirements and, in particular, as to the question of proof of possession of the poison with the accused and therefore the accused is entitled to acquittal.

We have been referred to some decisions of this Court in support of the contention urged. We have also examined some other cases bearing on the question raised. A brief survey of these cases would

be useful to appreciate the contention urged for the appellant. There are two unreported decisions of this Court of the year 1958. The first one is in Chandra Kant Myalchand Seth's case [Criminal Appeal No. 120 of 1957 decided on 19.2.1958]. There a woman died of alkali cyanide. The husband of the deceased was tried and convicted by the trial court for the offence of murder. The conviction was set aside by this Court. In the course of the judgment, it was observed:

> "Before a person can be convicted of murder by poisoning, it is necessary to prove that the death of the deceased was caused by poison, that the poison in question was in possession of the accused and that poison was administered by the accused to the deceased."

The acquittal, however, was based on the consideration of the entire facts and circumstances of the case. It was found that there was a greater motive to the deceased to commit suicide than to the accused to commit murder. This Court also took note of the concern and conduct of the accused when he found his wife lying unconscious. The accused ran to the house of his friend and returned with a Doctor to render assistance to the victim. The accused called another Doctor for the same purpose. He was also found weeping all the while. Taking into consideration of all these factors, this Court found no justification to sustain the conviction of the accused.

Dharambir Singh v. State of Punjab, (Criminal Appeal No. 98 of 1958 decided on 4.11.1958) is another case of homicidal action by cyanide poisoning. It was perhaps in this case, the guidelines as to the proof of certain facts in "poison murder cases" were laid down by this Court. It was observed:

> "Where the evidence is circumstantial the fact that the accused had motive to cause death of the deceased, though relevant, is not enough to dispense with the proof of certain facts which are essential to be proved in such cases, namely (firstly) did the deceased die of poison in question? (secondly) had the accused the poison in his possession? and (thirdly) had the accused an opportunity to administer the poison in question to the deceased? It is only when the motive is there and these facts are all proved that the court may be able to draw the inference, that the poison was administered by the accused to the deceased resulting in his death."

After laying down these principles, the court considered the entire evidence on record which indicated the likelihood of the deceased committing suicide or another person to have administered the poison to the deceased. This Court accordingly acquitted the accused by extending the benefit of doubt.

If one prefers to go yet further back we find a decision of the Allahabad High Court which is exactly on the principles laid down in Dharambir Singh case. In Mt. Gajrani v. Emperor, A.I.R. 1933 All. 394 Benett, J. speaking for the Court observed (at p. 394):

> "In a case of murder by poison there are three main points to be proved: firstly, did the deceased die of the poison in question; secondly, had the accused got the poison in question in his or her possession; and thirdly, had the accused an opportunity to

> administer the poison in question to the deceased. If these three points are proved, a presumption may under certain circumstances be drawn by the Court that the accused did administer poison to the deceased and did cause the death of the deceased. It is not usual that reliable direct evidence is available to prove that the accused did actually administer poison to the deceased. The evidence of motive which is frequently given in these cases is of subsidiary importance, and the mere fact that the accused had a motive to cause the death of the deceased is not a fact which will dispense with the proof of the second and third points that the accused had the poison in his or her possession, and that the accused had an opportunity to administer the poison."

The above proposition found its way into Mohan v. State of Uttar Pradesh, A.I.R. 1960 S.C. 669 and Ram Gopal v. State of Maharashtra, A.I.R. 1972 S.C. 656. In Mohan's case, the death in question was by arsenic poisoning. In that case, the prosecution was able to prove that the accused gave 'peras' to the victim as 'pershad' and the victim died after eating the 'pershad'. 'Pershad' contained arsenic. There was thus direct evidence as to the possession of the poison with the accused. This Court, therefore, had no difficulty to sustain the conviction and sentence awarded to the accused.

Ram Gopal's case was concerned with homicidal action by administering a compound called "kerosene and orango choloro compound". The High Court, relying upon the motive and other circumstantial evidence convicted the accused for the offence of murder although there was no evidence that the accused was in possession of poison. This Court could not agree with the view taken by the High Court. The analysis of the evidence produced by the prosecution revealed that the motive alleged against the accused was not fully established. The incriminating circumstantial evidence against the accused was also found to be insufficient. So the conviction of the accused was set aside and the acquittal was recorded.

Sharda E. Chand Sarda v. State of Maharashtra, [1985] 1 SCR 88 A.I.R. 1984 S.C. 1622 is yet another case of death by cyanide poisoning for which the husband of the deceased was tried for murder. There was no direct evidence to establish that the accused was in possession of that poison. The High Court, however, relied upon the circumstantial evidence and convicted the accused. In the appeal preferred by the accused, this Court did not agree with the reasoning of the High Court. After referring to Ram Gopal's case. Fazal Ali, J., focussed the attention on the following four factors:

> The learned Judge observed (at p.167):
>
> "So far as this matter is concerned, in such cases the court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction:
>
> (1) there is a clear motive for an accused to administer poison to the deceased, (2) that the deceased died of poison said to have been administered, (3) that the accused had the poison in his possession, (4) that he had an opportunity to administer the poison to the deceased."

The learned Judge went on to state:

> "In the instant case, while two ingredients have been proved but two have not. In the first place, it has no doubt been proved that Manju died of potassium cyanide and secondly, it has also been proved that there was an opportunity to administer the poison. It has, however, not been proved by any evidence that the appellant had the poison in his possession. On the other hand, as indicated above, there is clear evidence of PW 2 that potassium cyanide could have been available to Manju from the plastic factory of her mother, but there is no evidence to show that the accused could have procured potassium cyanide from any available source. We might here extract a most unintelligible and extra-ordinary finding of the High Court:
>
> "It is true that there is no direct evidence on these two points, because the prosecution is not able to lead evidence that the accused had secured potassium cyanide poison from a particular source. Similarly there is no direct evidence to prove that he had administered poison to Manju. However, it is not necessary to prove each and every fact by a direct evidence. Circumstantial evidence can be a basis for proving this fact."

The comment by the high Court appears to be frightfully vague and absolutely unintelligible. While holding in the clearest possible terms that there is no evidence in this case to show that the appellant was in possession of poison, the High Court observes that this fact may prove either by direct or indirect (circumstantial) evidence. But it fails to indicate the nature of the circumstantial or indirect evidence to show that the appellant was in possession of poison. If the Court seems to suggest that merely because the appellant had the opportunity to administer poison had the same was found in the body of the deceased, it should be presumed that the appellant was in possession of poison, then it has committed a serious and gross error of law and has blatantly violated the principles laid down by this Court. The High Court has not indicated as to what was the basis for coming to a finding that the accused could have procured the cyanide. On the other hand, in view of the decision in Ram Gopal's case failure to prove possession of the cyanide poison with the accused by itself would result in failure of the prosecution to prove its case."

This Court then went into the merits of the prosecution case. It was observed that the deceased was of sensitive mind. She had occasionally suffered mental depression due to her inability to adjust herself to her husband's family. It was also observed that the deceased had access to the poison in question. She could have secured the poison from the factory of her mother. Considering these and other circumstances, it was held "that it might be a case of suicide or murder and both were equally probable". So the accused was given the benefit of doubt and he was acquitted.

From the foregoing cases, it will be seen that in poison murder cases, the accused was not acquitted solely on the failure of the prosecution to establish one or the other requirement which this Court has laid down in Dharambir Singh case. We do not also find any case where the accused was acquitted solely on the ground that the prosecution has failed to prove that the accused had the poison in his possession. The accused in all the said cases came to be acquitted by taking into

consideration the totality of the circumstances including insufficient motive, weakness in the chain of circumstantial evidence and likelihood of the deceased committing suicide.

We do not consider that there should be acquittal on the failure of the prosecution to prove the possession of poison with the accused. Murder by poison is invariably committed under the cover and cloak of secrecy. Nobody will administer poison to another in the presence of others. The person who administers poison to another in secrecy will not keep a portion of it for the investigating officer to come and collect it. The person who commits such murder would naturally take care to eliminate and destroy the evidence against him. In such cases, it would be impossible for the prosecution to prove possession of poison with the accused. The prosecution may, however, establish other circumstances consistent only with the hypothesis of the guilt of the accused. The court then would not be justified in acquitting the accused on the ground that the prosecution has failed to prove possession of the poison with the accused.

The poison murder cases are not to be put outside the rule of circumstantial evidence. There may be obvious very many facts and circumstances out of which the Court may be justified in drawing permissible inference that the accused was in possession of the poison in question. There may be very many facts and circumstances proved against the accused which may call for tacit assumption of the factum of possession of poison with the accused. The insistence on proof of possession of poison with the accused invariably in every case is neither desirable nor practicable. It would mean to introduce an extraneous ingredient to the offence of murder by poisoning. We cannot, therefore, accept the contention urged by the learned counsel for the appellant. The accused in a case of murder by poisoning cannot have a better chance of being exempted from sanctions than in other kinds of murders. Murder by poisoning is run like any other murder. In cases where dependence is wholly on circumstantial evidence, and direct evidence not being available, the Court can legitimately draw from the circumstances an inference on any matter one way or the other.

The view that we have taken gets support from the decision of this Court in Ananth Chintaman Laguy v. The State of Bombay, A.I.R. 1960 S.C. 500 where Hidayatullah, J., has given an anxious consideration to the three propositions laid down in Dharambir Singh case. The learned Judge did not consider them as invariable criteria of proof to be established by the prosecution in every case of murder by poisoning. The learned Judge said (at p. 519-520):

> "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 Mt. Gajrani v. Emperor. AIR 1933 All 394 and to two unreported decisions of this Court in Chandrakant N Nyalchand Seth v. The State of Bombay, Criminal Appeal No. 120 of 1957 decided on February 19, 1958 and Dharambir Singh v. The State of Punjab, Criminal Appeal No. 98 of 1958, decided on 4.11.1958. 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 of

> 1958 D/- 4.11.1958 (SC) 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 poison, in fact, was found in the viscera, the requirement of proving that the accused was possessed of the poison would follow from the circumstances that the accused gave the victim something to eat and need not be separately proved."

The learned Judge continued:

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

So much for the principles for which the learned counsel for the appellant fought for. On the facts there is concurrence of opinion between the two courts below. This Court seldom re-examines the findings of fact reached by the High Court. We may, however, out of deference to the counsel briefly refer to the evidence. The prosecution has established the motive for the murder. The proof of motive goes a long way to tilt the scale against the accused which provides a foundational material to connect the chain of circumstances. The facts which hear on motive are distressing. After the marriage, Gian Kaur was subjected to repeated harassment for not satisfying the demand for dowry made by Bhupinder Singh. Baltej Singh (PW2) has stated that Bhupinder Singh asked Gian Kaur to bring Rs. 10,000. The parents of Bhupinder Singh were also parties to that demand. Baltej Singh with all difficulties satisfied that demand in part by payment of Rs.6,000. Bhupinder Singh thereafter demanded a motorcycle. When that was not immediately given Bhupinder Singh held out a threat to his wife that she would be killed. This was conveyed to Baltej Singh. Before he could take a decision in this regard he was shocked to receive the news of death of Gian Kaur. This has been proved by the testimony of Baltej Singh (PW 2) and Nazir Singh (PW 3). The demand for dowry

followed by harassment to the deceased has been thus satisfactorily proved.

The evidence of the Doctor and the report of the chemical examiner has established beyond doubt that Gian Kaur died of organo phosphorus compound poisoning. Bhupinder Singh had an opportunity to administer that poison. There was nobody else in the house. All the inmates had their common food in the night. All of them slept in the same place. Both the Courts have ruled out the theory of suicide by Gian Kaur. We entirely agree with that finding. She could not have thrown her child to the mercy of others by committing suicide and indeed no mother would venture to do that. The postmortem report giving the description of injuries found on the body of the deceased would also defy all doubts about the theory of suicide. She had contusion on the front of right leg. Abrasion on the front of the left leg just below the knee joint. Linear abrasion on the back of the right hand. Linear abrasion on the antro-lateral aspect of left fore-arm in its middle. And contusion on the back of right elbow joint. These injuries, as the Courts below have observed could have been caused while Gian Kaur resisted the poison being administered to her.

The behaviour of Bhupinder Singh in the early hours of that fateful day by going to his field as if nothing had happened to his wife is apparently inconsistent with the normal human behaviour. There was no attempt made by him or other inmates of the house to look out for any Doctor to give medical attention to the victim. The movement and disposition of Bhupinder Singh towards the victim and situations are incompatible with his innocence. On the contrary, it gives sustenance to his guilt.

The Courts below having considered all these facts and circumstances had no difficulty to convict the accused for murder and we see no good reason to interfere with that conclusion.

In the result, the appeal fails and is dismissed.

R.S.S. Appeal dismissed.