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RAJBIR SINGH

v.

THE STATE OF PUNJAB

(Criminal Appeal No. 2152 of 2010)

B

AUGUST 24, 2022

**[HEMANT GUPTA AND VIKRAM NATH, JJ.]**

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*Penal Code, 1860 – s.302 – Death by poisoning alleged – Circumstantial evidence – As per the prosecution, PW-1-informant’s wife died after consuming the milk brought from the appellant, residing in the neighbourhood and carrying on the business of dairy farm and selling milk – Appellant convicted u/s.302 – On appeal, held: In the present case, chain of evidence has many missing and weak links – None of the essential ingredients to record conviction in a case of circumstantial evidence and that of poisoning case are made out – Prosecution has not established the charge beyond reasonable doubt so as to record conviction u/s.302 – It has failed to bring home the guilt – Both the courts below committed error in recording conviction – Appellant extended benefit of doubt – Judgments of the High Court and the Trial Court set aside – Appellant acquitted.*

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*Criminal Law – Case of poisoning – Circumstantial evidence – Principles laid down in Sharad Birdhichand Sarda vs. State of Maharashtra reported as Held: In a case of circumstantial evidence, the five golden principles as laid down by this Court in Sharad Birdhichand case have remained unaltered and are still followed – With respect to the case of poisoning, four important circumstances for recording a conviction were further laid down – These principles have also remained unaltered.*

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**Allowing the appeal, the Court**

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**HELD:1.1 This is a murder case of circumstantial evidence by poisoning. In a case of circumstantial evidence, the five golden principles as laid down by this Court in *Sharad Birdhichand Sarda vs. State of Maharashtra* have remained unaltered and are still followed. One of the issues to be considered in the present case would be as to whether the chain of evidence was so complete so**

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as not to leave any reasonable ground that there could be any other hypothesis except the one put forward by the prosecution. With respect to the case of poisoning, this Court in the case of *Sharad Birdichand Sarda* further laid down four important circumstances for recording a conviction. The principles laid down in the case of *Sharad Birdichand Sarda* have remained unaltered and even as recently as 11.08.2022 this Court in Criminal Appeal No.25 of 2012, *Ram Niwas vs. State of Haryana*, has relied upon the same with approval. It is also well settled that suspicion, howsoever strong it may be, cannot replace proof beyond reasonable doubt. [Paras 35, 37-39][95-G-H; 97-E-F; 98-B]

*Sharad Birdichand Sarda v. State of Maharashtra* (1984) 4 SCC 116 : [1985] 1 SCR 88; *Ram Niwas v. State of Haryana* Decision of Supreme Court dtd. 11.08.2022 in Criminal Appeal No. 25 of 2012 – relied on.

1.2 The motive set up by the prosecution that appellant had taken a loan of Rs. 1 lakh and had executed a pronote as well as receipt is denied by the appellant. In his statement under section 313 CrPC, there is specific denial of borrowing any money and also executing of pronote. The defence set up in the cross-examination of PW-1, PW-2 and PW-7 as also the statement under section 313 of CrPC was that the informant was carrying on a business of Committees of which the appellant was a member and there was an amount due from the informant to the appellant. Running of business of Committees by the informant; there being defaulters; there being financial loss is admitted. According to the appellant, amount was due to him from the informant and that he had been falsely implicated to deprive him from recovering the same from the informant. A case of false implication, therefore, cannot be ruled out. Reliance placed upon the pronote and the receipt is also not proved in as much as the original was not produced, rather a false plea was raised that it was filed before the Civil Court, which stands belied by the Ex-D/1 filed by the appellant, and secondly, no attesting witness was produced by the prosecution. [Para 41, 42][98-D-F]

A           **1.3 The next question which arises for consideration is as to whether mixing of the poisonous compound in the milk was done by the appellant or it could have been done by someone else, and for the same there are two windows. First, the time between the collection of milk from the appellant on the morning of the fateful day, till the time it was consumed by the deceased,**

B           **was about five hours. Second window being the time after consumption of milk at around 12:30 PM on the fateful day, till the next day when the Investigating Officer recovered and took into possession the sample of milk and the utensils, which had a gap of about 20-24 hours. Total time gap from the time milk was**

C           **collected from appellant till the samples were collected is more than 24 hours. Chances of mixing poison during this period cannot be ruled out. Defence had cross-examined both PW-1 and PW-2 on this aspect. The next question which arises for consideration is whether the death of deceased was caused due to consumption**

D           **of organophosphorus, a poisonous compound or for any other reason. Organophosphorus has a strong pungent smell. This smell could not be sensed by the informant, his son as also the deceased. The milk which is said to be adulterated with the poison was taken out from the refrigerator, transferred into a pan for boiling and thereafter given to the deceased. If it actually had**

E           **organophosphorus in it the smell would have filled up the room. The deceased being a healthy woman aged 45 years would not have consumed it if the pungent smell was coming from the milk. Even the informant (PW-1) did not sense any foul smell from the milk while boiling it. It would be worthwhile to refer to a judgment of this Court in *Jaipal vs. State of Haryana*. It was a case of**

F           **aluminium phosphite (sulphas) which also has a strong pungent smell. It is observed that such compounds are generally used for suicide rather than in a case of homicide. Further, Dr. Avtar Singh (PW-4) who had conducted the autopsy has clearly stated in both his statements that he did not find any smell of organophosphorus coming out of the body. The first statement was recorded on 08.04.2002 and the second statement was recorded on 03.11.2003, in both the statements he had stated that he had not seen any change in colour of nails as also in the body, which would have been a common symptom in the case of poisoning. He had also**

G           **deposed that all the organs of the body were healthy. Even though**

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he admits in the case of poisoning by organophosphorus there would be shrinking of the muscles, however, there was no squeezing or shrinking in the outside muscles of the abdomen, which were healthy. According to him, there were no symptoms of poisoning noticed during the autopsy despite the fact that it was reported in all police papers about the case being that of poisoning. PW-4 must have been careful in observing whether any symptoms of poisoning were present in the body. This may lead to an inference that death could have been caused by some other reason but not poisoning. In so far as the chemical examination report is concerned it could be a case of tampering with the samples for the reasons discussed and hereinafter. [Para 43, 44][98-G-H; 99-A-H; 100-A]

*Jaipal v. State of Haryana* (2003) 1 SCC 169 : [2002] 2 Suppl. SCR 714 – relied on.

1.4 The presence of organophosphorus in the milk, utensils, and the viscera is proved by the Reports of Chemical Examiner dated 31.01.2001 (Ex-PF) and 05.02.2001 (Ex-PG). The sample was received in the laboratory on 22.09.2000, whereas as per the two reports, it was received by the Assistant Chemical Examiner, Dr. Sandeep Kakkar, on 22.11.2000 from one Dr. O.P. Goel after his suspension, not in a sealed form, but as an open case. This note “This opened case, received by me from Dr. O.P. Goel on 22.11.2000 after his suspension.” is typed out in both the reports after an overwriting /cutting is made by using alphabet “X” continuously. Ex-PF mentions that there were three sealed jars in the sealed parcel which contained parts of organs. This Ex-PF does not mention of any fourth jar, whereas as per the post-mortem report and the statement of Dr. Avtar Singh (PW-4), four sealed packets were sent, three containing parts of organs, and one containing the saline solution. The result refers to presence of organophosphorus compound in the three sealed jars and it also refers to no poison found in the contents of fourth jar. The fourth jar does not find mention in the description of contents in Ex-PF. The other report, Ex-PG of the Assistant Chemical Examiner, Dr. Sandeep Kakkar, is with respect to the recovery made by the Investigating Officer on the next day of the incident, which included milk, boiled and unboiled and the

- A utensils. This also had a similar cutting, and a note attached that it was received as an open case from Dr. O.P. Goel on 22.11.2000 after his suspension. The result as reported is that organophosphorus compound was found in contents of all the Exhibit Nos. (i) to (vi). The following doubts arise from the perusal of the reports of the Chemical Examiner: i. That samples were not handed over to the Assistant Chemical Examiner who had to conduct the analysis in a sealed form. ii. The cutting, and a fresh note regarding parcels being open also creates a doubt. iii. Chances of tampering with the samples could not be ruled out. [Para 45, 46][100-B-H]
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- C 1.5 The Investigation Officer admits of having made no effort to find out as to whether or not the appellant was in possession of the poisonous substance said to be mixed in the milk. The Courts below have proceeded on the assumption that organophosphorous was available in every household. It is more than evident that chain of evidence has many missing and weak links. None of essential ingredients to record conviction in a case of circumstantial evidence and that of poisoning case are made out. Prosecution has thus failed to bring home the guilt. Taking an overall view of the evidence on record, this Court is of the firm view, that prosecution has not established the charge beyond reasonable doubt so as to record conviction under Section 302 of IPC. Both the courts below committed an error in recording conviction. The appellant deserves to be extended benefit of doubt. The judgments of the High Court and the Trial Court are set aside, the appellant is acquitted. He is already on bail. His bail bond is cancelled and sureties are discharged. [Paras 18, 47-49][101-A-D]
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Case Law Reference

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|---|-------------------------|-----------|---------|
|   | [1985] 1 SCR 88         | relied on | Para 35 |
| G | [2002] 2 Suppl. SCR 714 | relied on | Para 44 |
- CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2152 of 2010.
- From the Judgment and Order dated 29.10.2009 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 355-DB of 2005.
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Suryanarayana Singh, Sr. Adv., Anil Kumar, T. Mahipal, Advs. A  
for the Appellant.

Ms. Jaspreet Gogia, Karanvir Gogia, Advs. for the Respondent.

The Judgment of the Court was delivered by

**VIKRAM NATH, J.** B

This appeal is directed against the judgment and order of the Punjab  
and Haryana High Court dated 29.10.2009 whereby the appeal filed by  
the appellant was dismissed, confirming the judgment of the Sessions  
Judge, Bathinda dated 08.04.2005 convicting the appellant under Section  
302 of Indian Penal Code 1860<sup>1</sup> and sentencing him to undergo rigorous C  
imprisonment for life and pay a fine of Rs.1,000/-, in default of payment  
of fine, to further undergo rigorous imprisonment for three months.

2. The prosecution story begins with the lodging of the First  
Information Report by Joginder Singh (PW 1- husband of the deceased)  
at Police Station Kotwali, District Bathinda on 18<sup>th</sup> September, 2000 at D  
7 PM. According to the complainant, his son Gursharan Singh in the  
morning at around 07.45 am brought 1 kg of milk from the house of  
Rajbir Singh (appellant) who used to reside in the neighbourhood and  
was carrying on business of dairy farm and selling milk with the help of  
his wife Sheela. The appellant was known to the complainant being E  
resident of the neighbourhood.

To help the appellant purchase buffaloes and for domestic needs,  
he had borrowed Rs.1 lakh from the informant about 7/8 months before.  
He had also executed a pronote in that respect. The milk as brought by  
Gursharan Singh (PW-2) was kept in the refrigerator. At about 12.30 F  
PM his wife Kuldeep Kaur @ Bhajno felt hungry and as she was resting  
due to some uneasiness, the informant himself took out some milk from  
the jug kept in the refrigerator and after boiling the same gave it to her.  
After sipping the milk once, she remarked that the milk was bitter in  
taste and after sipping further, she further remarked that there was some  
defect with the milk. Then he also smelled the milk lying in the jug from G  
which a pungent smell was coming. In the meantime, his wife felt irritation  
on her lips and also became restless. He called his son Gursharan  
Singh(PW-2), who took his mother on his scooter to the Children and  
General Hospital. He also followed. As the condition of his wife had

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<sup>1</sup> In short "IPC" H

A deteriorated, she was referred to the Civil Hospital, Bathinda where she  
breathed her last after some time. He further stated in his complaint that  
he was of the firm belief that Rajbir Singh and his wife Sheela had  
mixed some poisonous substance in the milk in order to eliminate his  
family. His wife died because of the poisonous milk. He and his wife  
B were demanding their money from Rajbir Singh but he was making  
excuses and on account of this grudge he poisoned the milk and hence a  
report be registered and appropriate action be taken.

3. Dr. K.S. Brar (PW-12), Emergency Medical Officer at Children  
and General Hospital after examining Kuldeep Kaur referred her to the  
Civil Hospital considering her serious condition, and also sent information  
C to the police. SI Balwant Singh (PW-7) who was in-charge of the Canal  
Colony Police Post, Bathinda, left for the Children and General Hospital  
and from there proceeded to the Civil Hospital where the doctor informed  
him about the death of Kuldeep Kaur. He met Joginder Singh (PW1) at  
the Hospital, he gave his statement which was recorded and which after  
D being read over was signed by Joginder Singh (PW-1). SI Balwant Singh  
(PW-7) made an endorsement on the same (Ex-PA/1) for registering  
the case. On its basis formal FIR (Ex-PA/2) was registered.

4. The inquest report (Ex-PE) was prepared by the Investigating  
Officer. The dead body was sent for post-mortem examination in the  
E custody of Head Constable Kapur Chand (PW-5) and Constable Satpal  
(PW-10). Necessary police papers were prepared. The Investigating  
Officer on the next day inspected the place of occurrence, prepared the  
site plan (Ex-PK). He also collected the sample of milk lying in the jug  
as also the boiled milk which was lying in the glass. They were packed  
and sealed. The utensils in which the milk was kept were also taken into  
F custody and a recovery memo (Ex-PM) was prepared of all the recovered  
items. The statement of witnesses was recorded under Section 161 of  
the Code of Criminal Procedure, 1973<sup>2</sup>. Charge-sheet was submitted  
against Rajbir Singh – the appellant only.

5. Cognizance was taken. Magistrate committed the case for trial  
G to the Sessions Court. The Trial Judge on 22.01.2002 read out the charge  
under Section 302 of IPC to the appellant who denied the same, pleaded  
not guilty and claimed to be tried. Thereafter, the trial proceeded, and  
five witnesses were examined. Dr. K.S. Brar who had first examined  
the deceased at the Children and General Hospital was examined as

H <sup>2</sup> Hereinafter referred to as “CrPC”

PW-1; Dr. Avtar Singh who had conducted the autopsy was examined as PW-2; Head Constable Satpal who had accompanied the dead body for autopsy and had carried the sealed samples to the laboratory was examined as PW-3; Head Constable Kapur Chand who had taken the dead body for post-mortem was examined as PW-4 and Gursharan Singh son of the deceased was examined as PW-5 on 14.03.2003.

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6. At this stage, Sheela Devi wife of the appellant was summoned under Section 319 of CrPC vide order dated 08.04.2003. Thereafter, both the accused were again read out fresh charge under section 302 read with Section 34 of IPC on 08.07.2003. Both the accused denied the charge, pleaded not guilty and claimed to be tried. They also stated that they would cross-examine all the witnesses who had already been examined.

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7. From the record it appears that the witnesses already examined were re-examined before the Trial Court by the prosecution although in a different sequence. In all 12 witnesses were examined by the prosecution as follows -

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- i. PW-1 - Joginder Singh, informant.
- ii. PW-2 - Gursharan Singh, son of the deceased.
- iii. PW-3 - Balwinder Singh, brother of informant, to prove the pro note.
- iv. PW-4 - Dr. Avtar Singh, who conducted the autopsy.
- v. PW-5 - Head Constable Kapur Chand, who had carried the body of the deceased for post-mortem.
- vi. PW-6 - Head Constable Darshan Singh, with whom the articles of post-mortem report and the parcel containing clothes of the deceased were deposited.
- vii. PW-7 - Sub Inspector Balwant Singh, the Investigating Officer.
- viii. PW-8 - Sub Inspector Manjeet Singh, who had arrested Rajbir Singh on 12.06.2001.
- ix. PW-9 - A.S.I Kuldeep Singh, who had taken into possession the pronote (Ex-PB) and had also recorded the statements of marginal witness of pronote.

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A (At this stage, statement of both the accused under Section 313 of CrPC was recorded on 10.11.2004 by putting all the incriminating material to them. Thereafter, three more witnesses were examined.)

x. PW-10 - Head Constable Satpal Singh who had carried the recovered material and viscera to the laboratory.

B xi. PW-11 - Constable Paramjeet Singh, who had delivered the Special Reports to the Judicial Magistrate.

xii. PW-12 - Dr. K.S. Brar, who had first examined the deceased at the Children and General Hospital.

C After the above three witnesses were examined the additional incriminating material was put to both the accused and their supplementary statement was recorded under Section 313 of CrPC on 09.03.2005.

D 8. Both the accused were examined twice under Section 313 CrPC and the entire incriminating material was put to them. They denied the prosecution evidence and pleaded innocence and stated that they were falsely implicated. It was further stated by them that the complainant was running the business of Committees in which the appellant was also a member of the said Committees; that he had made payment for the Committees but some members of the Committees had refused to make the payment of the remaining instalments, although they had received full amount from the Committees; due to this reason the financial position of the complainant had become very weak; the appellant had not received the due amount of Committees and was demanding the same from the informant; it is for this reason that he has been falsely implicated so that the complainant may get rid of the said burden; the deceased might have committed suicide due to her family's financial crisis. The accused did not lead any oral evidence in defence, however, he filed one document (Ex-D1) copy of the order dated 22.11.2004 of the Civil Court.

E 9. The samples of milk and the utensils which were seized by the Investigating Officer along with viscera were sent for chemical examination. Two reports were received from the laboratory – one is dated 31.1.2001 (Ex-PF) and the other is dated 5.2.2001 (Ex-PG).

F 10. According to Ex-PF, the sealed packet contained –

G i. A sealed jar said to contain brain, heart and lung parts;

ii. A sealed jar said to contain parts of liver, spleen and kidney;

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- iii. A sealed jar said to contain parts of large intestine with stomach; A

11. In the analysis an organophosphorus compound, a group of insecticides was found in the contents of samples (i) to (iii). No poison was found in the contents of sample (iv). In the report of Ex-PF there is no mention of sample (iv). There is description of only three samples of the organs of the body. There is also cutting on the report which would be discussed at a later stage. B

12. Ex-PG consisted of six sealed parcels as follows:

- i. Plastic shishi duly sealed said to contain unboiled milk; C  
ii. One sealed plastic shishi said to contain boiled milk given to the deceased;  
iii. One sealed plastic shishi said to contain milk taken from unboiled milk;  
iv. One sealed steel jug empty with glass stained with milk; D  
v. One sealed Dolu and glass;  
vi. One aluminium frying pan.

In this report also there is a cutting of similar nature as Ex-PF. The result of the analysis was an organophosphorus compound, a group of insecticides, was found in the contents of samples (i) to (vi). E

13. Both the reports Ex-PF and Ex-PG mention that open case was received by the signatory from Dr. O.P. Goyal on 22.11.2000 after his suspension.

14. It would also be relevant to refer to the post-mortem report at this stage. According to the post-mortem report (Ex-PD) it was conducted on 19.09.2000 at 11.10 AM. With respect to the cause of death it was stated in the report that the same would be declared after receiving the report of the Chemical Examiner. No external or internal injury was noticed on the body of the deceased. All the organs inside the body were reported to be healthy. It was also reported that the probable time that had lapsed between death and the post-mortem was within 24 hours. Viscera was preserved and handed over to the police. F  
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15. The Trial Court vide judgment dated 08.04.2005 found that all the ingredients which proved the death by poisoning were present and H

A charge was proved by the prosecution. It also found that there was no clinching evidence against Sheela, wife of the appellant and accordingly acquitted her giving benefit of doubt. However, the evidence established the charge of murder against the appellant and he was convicted under Section 302 of IPC. The Trial Court did not find the offence to be in the ambit of rarest of rare cases and accordingly sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/- and in default thereof to further undergo rigorous imprisonment for three months.

16. The appellant preferred appeal before the High Court, registered as Criminal Appeal No.355/2005. The High Court, vide impugned judgment and order dated 29<sup>th</sup> October, 2009 did not find any infirmity in the judgment of the Trial Court and accordingly dismissed the appeal. This has given rise to the present appeal.

17. The Trial Court as well as the High Court found that the chain of circumstances was complete in order to establish the guilt of the appellant. According to both the Courts, the prosecution had fully established the charge against the appellant of adding poison to the milk supplied to the son of the informant, and the same having been consumed by the deceased, resulted in her death. The finding is that there was a motive to commit the said offence in order to save the appellant from returning the loan of Rs. 1 lakh taken from the informant. The chemical analysis of the boiled milk consumed by the deceased, the unboiled milk, the container (dolu) in which the milk was kept and the glass in which the milk was tendered, all contained organophosphorus, the poisonous substance. The second chemical report also reflected that there was the same substance organophosphorus in the parts of the organs (viscera) of the deceased sent for analysis. Both the Courts below relied on the chemical analysis reports (Ex-PF and PG).

18. Having considered the submissions advanced by the learned counsel for the parties and having perused not only the material on record of the appeal but also the original record of the trial, we are of the view that both the courts below committed an error in recording conviction for the reasons detailed hereinafter.

19. We will first briefly refer to the evidence led by the prosecution.

20. PW-1 Joginder Singh in his statement supported the prosecution story as narrated by him. He has also given details of the recovery of the milk and utensils from his residence. In his cross-examination he has

admitted that he was running business of Committees of which the appellant was member in five Committees. The members of the Committees paid instalments. The appellant Rajbir Singh was not making regular payments towards the Committees; that he was not maintaining the record regarding the Committees. He denied that the alleged pronote and the receipt were executed in connection with the account of the Committees. He also stated that when he smelled the milk in the glass or the jug, he did not find any difference in the odour of the milk and both the utensils. He also denied that he had kept rat killer poison in his house. He further denied that some members of the Committee who had received the amount of the Committee had become defaulters and that they did not pay the amount due towards the Committees. He denied his relations being strained with them. He also denied that there is any quarrel with his wife and he also denied that the facts of financial crisis and quarrel between the husband and wife and she had committed suicide. It was also put to him that the witnesses of the pronote were residents of Kaliawali Mandi where he used to reside earlier. He accepted that the pronote and receipt were not got attested from any resident of the locality where he and the appellant were staying at the time of execution of the pronote. It was also suggested to him that the witnesses of the pronote and the receipt did not know Rajbir Singh. He states that his wife did not vomit at both the hospitals and she had only one motion at the Children and General Hospital. It was suggested to him that his wife did not die due to poisoning but because of tension and stress which was denied by him.

21. PW-2 Gursharan Singh, son of the deceased, has also supported the prosecution story in his examination-in-chief. In his cross-examination, he has admitted that Rajbir Singh was a member of the Committees run by his father. He was confronted with his statement recorded in Ex-DA that he had stated that his father owed money from Rajbir Singh in connection with the committees and had executed pronote for Rs.1 lakh. He, however, reiterated the prosecution case that Rajbir Singh (appellant) had received Rs.1 lakh from his father and had executed the pronote. He was then confronted with the statement Ex-DA where he had not mentioned about Sheela taking a jug from him, both the accused inside the room and then the appellant coming out with the jug and handing it over to him. He stated that he had recorded this fact in the statement Ex-DA before the police but the same was not recorded. He also denied of keeping poison in his house to kill rats. He then admits that some

A members of the Committees had taken away the amount of the  
Committees and had not returned the amount to his father. He also  
admitted that other members of the Committees who were paying  
instalments regularly were demanding the amount from his father. It  
was also suggested to him that they were facing financial crisis; that  
B there used to be quarrel between his father and mother due to the financial  
problems and that his mother had committed suicide. All three suggestions  
were denied by him.

22. The pronote has been proved by PW-3 Balwinder Singh, who  
is real brother of the informant. He admits that he had never seen the  
original pronote and receipt.

C 23. PW-4 Dr. Avtar Singh had conducted the autopsy. He proved  
the post-mortem report and its contents. He has further stated that he  
had prepared the four jars out of which three jars contain the viscera  
and the fourth jar contained saturated saline. He also stated that he has  
received all the police papers before conducting the autopsy. He also  
D stated that after receiving the report of the Chemical Examiner Ex-PF  
he had declared the cause of death was due to poisonous compound  
found in the viscera. In his cross-examination he stated that in the case  
of poison the colours of nail turn into a bluish colour and the colour of the  
body also turns bluish. He stated that the body was not bluish and,  
E therefore, he had not mentioned it in the post-mortem report. He further  
stated that remaining viscera's poison gives a foul smell. He was asked  
whether he observed or felt the foul smell to which he stated that he  
neither observed such smell nor he felt the foul smell while conducting  
the post-mortem examination. He also stated that upon opening the  
stomach a foul smell will come in case it is a case of organophosphorus  
F poison. He further stated that he did not experience any foul smell after  
opening the stomach and as such did not mention it in the post-mortem  
report. He was then suggested whether the muscles of the body shrink  
in case of poisoning which he denied but he clearly said that he did not  
observe symptoms of poisoning and on that account he did not mention  
G it in the post-mortem report. He further stated that in case  
organophosphorus poison is put in the milk it will give smell even to a  
person who is standing at some distance from the utensil in which milk  
with such poison is kept.

24. PW-5 Head Constable Kapur Chand is a formal witness who  
had carried the body of the deceased for post-mortem and he affirmed  
H the contents of his affidavit (Ex-PH).

25. PW-6 Head Constable Darshan Singh is also a formal witness with whom the articles of post-mortem report and the parcel containing clothes of the deceased were deposited. He affirmed the contents of his affidavit (Ex-PJ). A

26. PW-7 Sub-Inspector, Balwinder Singh is the Investigating Officer. He stated that he received the information about the poisoning from the Children and General Hospital whereupon he went there and later went to the Civil Hospital where the deceased had been shifted. At the Civil Hospital he was informed by the doctor that Kuldeep Kaur had already died. There he recorded the statement of the informant, got his signatures made thereon and himself made endorsement for registering the case (Ex-PA/1) which he duly proved and also proved the formal FIR (Ex-PA/2) recorded by ASI Harbans Singh. He thereafter prepared the inquest report and sent the dead body for autopsy in the custody of Head Constable–Kapur Chand (PW-5) and Constable Satpal (PW-10) along with request memo (Ex-PD). He then states that on the next day he visited the house of the deceased, prepared the rough site plan (Ex-PK). He collected the utensils and milk and prepared the recovery memo (Ex-PL). Thereafter, he went to the Civil Hospital where he was handed over the parcel of viscera by constable Satpal along with other papers given by PW-4 conducting the post-mortem and also the other articles and clothes returned by PW-4. He deposited the case property with Head Constable Darshan Singh at police station Kotwali. In his cross-examination, the Investigating Officer states that he did not go to the house of the appellant Rajbir Singh for house search on the same day but visited there later on. He states that he did not find any container in the house of the appellant. He also admits that he did not investigate regarding purchase of poison by the appellant. He also admits that he did not make any house search of the house of the informant. He then states that Gursharan Singh (PW-2) had not stated the presence of Sheela along with Rajbir and that they had taken the container inside the room and that both of them had poured the milk. He then states that he cannot say whether anyone can tamper with the milk during the intervening period of 18<sup>th</sup> to 19<sup>th</sup> September. It is interesting to note that the Investigating Officer says that when milk was boiled in his presence on 19.09.2000 when he visited the house of the informant, it was emitting foul smell in great extent. He also stated that even the two witnesses Manjit Singh and Harbans Singh (witnesses of recovery) stated that there was pungent smell to a great extent. He also states that many B  
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A other persons were purchasing milk from Rajbir Singh but none of them had complained about the quality of the milk. He also states that he did not arrest Rajbir Singh during investigation. He, however, denied that he did not arrest Rajbir Singh as there was no evidence against him. He also stated that the doctors in both the hospitals did not disclose to him that the deceased had vomited or was having loose motions.

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27. PW 8 Sub-Inspector Manjit Singh had arrested the appellant on 12.06.2001.

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28. PW-9 ASI Kuldeep Singh stated that he had taken into possession the pronote (marked 'X') on 16.07.2001 and that he had recorded the statements of the marginal witnesses. In the cross-examination he states that he had not seen the original pronote and receipt; that he had no knowledge whether the payment had actually been made or not.

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29. PW-10 Satpal was accompanying the dead body for post-mortem and also had delivered the viscera and parcel of the recovered utensils and milk to the chemical laboratory. In his cross-examination he had stated that he did not remember how many seals were affixed on the parcel. He further states that the parcel was received on 21.09.2000 at 10-11 AM which he kept with him. In the night it was kept in the police station and that he had stayed at the police station overnight. It was on 22.09.2000 that the parcels were delivered at the laboratory.

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30. PW-11 Constable Paramjit Singh has stated that he received a special report at 9.15 PM dated 18.09.2000 and on the next morning at 07.00 AM he gave the special report to the Judicial Magistrate, Bathinda.

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31. PW-12 Dr K.S.Brar, on the relevant date was posted as an Emergency Officer at the Children and General Hospital, Bathinda. He states that on the said day the deceased had come to the hospital with suspected case of poisoning. He informed the police and thereafter referred her to the Civil Hospital considering her serious condition. In the cross-examination he had stated that the phosgene gas smell was coming from the mouth of the patient and he had given treatment to the patient regarding aluminium phosphide poisoning. He further states that the patient was vomiting but he did not remember whether she had passed motion or not. It was suggested to him that the deceased was never admitted to the hospital for treatment and that he was deposing falsely for covering up the delay at the instance of the police, which he denied.

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He also stated that he did not know about the body temperature of the patient at the time of her arrival. He also did not produce the OPD register as it was not summoned. A

32. It would be relevant to note that PWs 10, 11 and 12 were examined after the prosecution had closed its evidence on 27.10.2004 and the statements of both the accused under Section 313 CrPC were recorded on 10.11.2004. B

33. The Trial Court proceeded on the premise that the appellant had not denied the execution of the pronote while discussing the motive. This fact is apparently not correct in as much as the appellant in his statement under section 313 CrPC recorded on 10.11.2004 had specifically denied not only borrowing of the money but also that he never executed the pronote. The question as framed and the answer is reproduced below: C

“Q: It is further in evidence against you that you had borrowed a sum of Rs. One Lac from father of PW-5 Gursharan Singh and had executed a pronote and receipt for the same on 01.01.2000. PW Gursharan singh was demanding amount from you and putting of the matter and agreed to pay amount on 18.09.2000. What have you to say about it? D

A: It is false evidence against me. I had never borrowed the said amount and I had never executed the said pronote.” E

34. Further the Trial Court did not take into consideration the time gap from the alleged time of collecting the milk from the appellant till the time it was administered and further the time the samples were collected. It also did not give any importance to the post-mortem report and the statement of Dr. Avtar Singh who had conducted the autopsy. The use of compound organophosphorus has a homicidal purpose because of its extremely strong pungent smell has also not received due attention by the Trial Court. The High Court judgment was cryptic and evidence had been only cursorily dealt with. F

35. This is a murder case of circumstantial evidence by poisoning. In a case of circumstantial evidence, the five golden principles as laid down by this Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra**<sup>3</sup> as stated in paragraph 153 of the report read as follows: G

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<sup>3</sup>(1984) 4 SCC 116



A “A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

B It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra, (1973) 2 SCC 793, where the following observations were made:

C “Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

D (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

E (3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

F (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

G 36. Before laying down the five aforesaid principles, **Justice Fazal Ali** speaking for the Court in paragraph 152 extracted a paragraph from the case of Hanumant vs. State of Madhya Pradesh as stated by Mahajan, J. Paragraph 152 is reproduced hereunder:

H “Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on

circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. The State of Madhya Pradesh, AIR 1952 SC 343,. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh,(1969) 3 SCC 198 and Ramgopal v. State of Maharashtra, (1972) 4 SCC 625. It may be useful to extract what Mahajan, J. has laid down in Hanumant’s case (supra):

“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.”

37. These golden principles have remained unaltered and are still followed. One of the issues to be considered in the present case would be as to whether the chain of evidence was so complete so as not to leave any reasonable ground that there could be any other hypothesis except the one put forward by the prosecution.

38. With respect to the case of poisoning, this Court in the case of **Sharad Birdichand Sarda (supra)** further laid down four important circumstances for recording a conviction in paragraph 165 which is reproduced hereunder:

“165. 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,

- A (3) that the accused had the poison in his possession,  
(4) that he had an opportunity to administer the poison to the deceased.”

B 39. The principles laid down in the case of **Sharad Birdichand Sarda(supra)** have remained unaltered and even as recently as 11.08.2022 this Court in Criminal Appeal No.25 of 2012, **Ram Niwas vs. State of Haryana**, has relied upon the same with approval. It is also well settled that suspicion, howsoever strong it may be, cannot replace proof beyond reasonable doubt.

C 40. In the background of the above legal position we now proceed to analyze the evidence and draw our conclusions.

D 41. The motive set up by the prosecution that appellant had taken a loan of Rs. 1 lakh and had executed a pronote as well as receipt is denied by the appellant. In his statement under section 313 CrPC, there is specific denial of borrowing any money and also executing of pronote.  
E The defence set up in the cross-examination of PW-1, PW-2 and PW-7 as also the statement under section 313 of CrPC was that the informant was carrying on a business of Committees of which the appellant was a member and there was an amount due from the informant to the appellant. Running of business of Committees by the informant; there being defaulters; there being financial loss is admitted. According to the appellant, amount was due to him from the informant and that he had been falsely implicated to deprive him from recovering the same from the informant. A case of false implication, therefore, cannot be ruled out.

F 42. Reliance placed upon the pronote and the receipt is also not proved in as much as the original was not produced, rather a false plea was raised that it was filed before the Civil Court, which stands belied by the Ex-D/1 filed by the appellant, and secondly, no attesting witness was produced by the prosecution.

G 43. The next question which arises for consideration is as to whether mixing of the poisonous compound in the milk was done by the appellant or it could have been done by someone else, and for the same there are two windows. First, the time between the collection of milk from the appellant on the morning of the fateful day, till the time it was consumed by the deceased, was about five hours. Second window being  
H the time after consumption of milk at around 12:30 PM on the fateful

day, till the next day when the Investigating Officer recovered and took into possession the sample of milk and the utensils, which had a gap of about 20-24 hours. Total time gap from the time milk was collected from appellant till the samples were collected is more than 24 hours. Chances of mixing poison during this period cannot be ruled out. Defence had cross-examined both PW-1 and PW-2 on this aspect.

44. The next question which arises for consideration is whether the death of deceased was caused due to consumption of organophosphorus, a poisonous compound or for any other reason. Organophosphorus has a strong pungent smell. This smell could not be sensed by the informant, his son as also the deceased. The milk which is said to be adulterated with the poison was taken out from the refrigerator, transferred into a pan for boiling and thereafter given to the deceased. If it actually had organophosphorus in it the smell would have filled up the room. The deceased being a healthy woman aged 45 years would not have consumed it if the pungent smell was coming from the milk. Even the informant (PW-1) did not sense any foul smell from the milk while boiling it. It would be worthwhile to refer to a judgment of this Court in **Jaipal vs. State of Haryana**<sup>4</sup>. It was a case of aluminium phosphite (sulphas) which also has a strong pungent smell. It is observed that such compounds are generally used for suicide rather than in a case of homicide. Further, Dr. Avtar Singh (PW-4) who had conducted the autopsy has clearly stated in both his statements that he did not find any smell of organophosphorus coming out of the body. The first statement was recorded on 08.04.2002 and the second statement was recorded on 03.11.2003, in both the statements he had stated that he had not seen any change in colour of nails as also in the body, which would have been a common symptom in the case of poisoning. He had also deposed that all the organs of the body were healthy. Even though he admits in the case of poisoning by organophosphorus there would be shrinking of the muscles, however, there was no squeezing or shrinking in the outside muscles of the abdomen, which were healthy. According to him, there were no symptoms of poisoning noticed during the autopsy despite the fact that it was reported in all police papers about the case being that of poisoning. PW-4 must have been careful in observing whether any symptoms of poisoning were present in the body. This may lead to an inference that death could have been caused by some other reason but

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<sup>4</sup>(2003) 1 SCC 169

A not poisoning. In so far as the chemical examination report is concerned it could be a case of tampering with the samples for the reasons discussed above and hereinafter.

45. The presence of organophosphorus in the milk, utensils, and the viscera is proved by the Reports of Chemical Examiner dated  
B 31.01.2001 (Ex-PF) and 05.02.2001 (Ex-PG). The sample was received in the laboratory on 22.09.2000, whereas as per the two reports, it was received by the Assistant Chemical Examiner, Dr. Sandeep Kakkar, on 22.11.2000 from one Dr. O.P. Goel after his suspension, not in a sealed form, but as an open case. This note “This opened case, received by me  
C from Dr. O.P. Goel on 22.11.2000 after his suspension.” is typed out in both the reports after an overwriting /cutting is made by using alphabet “X” continuously. Ex-PF mentions that there were three sealed jars in the sealed parcel which contained parts of organs. This Ex-PF does not mention of any fourth jar, whereas as per the post- mortem report and  
D the statement of Dr. Avtar Singh (PW-4), four sealed packets were sent, three containing parts of organs, and one containing the saline solution. The result refers to presence of organophosphorus compound in the three sealed jars and it also refers to no poison found in the contents of fourth jar. The fourth jar does not find mention in the description of contents in Ex-PF. The other report, Ex-PG of the Assistant Chemical  
E Examiner, Dr. Sandeep Kakkar, is with respect to the recovery made by the Investigating Officer on the next day of the incident, which included milk, boiled and unboiled and the utensils. This also had a similar cutting, and a note attached that it was received as an open case from Dr. O.P. Goel on 22.11.2000 after his suspension. The result as reported is that organophosphorus compound was found in contents of all the Exhibit  
F Nos. (i) to (vi).

46. The following doubts arise from the perusal of the reports of the Chemical Examiner:

- G
- i. That samples were not handed over to the Assistant Chemical Examiner who had to conduct the analysis in a sealed form.
  - ii. The cutting, and a fresh note regarding parcels being open also creates a doubt.
  - iii. Chances of tampering with the samples could not be ruled out.

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47. The Investigation Officer admits of having made no effort to find out as to whether or not the appellant was in possession of the poisonous substance said to be mixed in the milk. The Courts below have proceeded on the assumption that organophosphorous was available in every household. A

48. From the above discussion, it is more than evident that chain of evidence has many missing and weak links. None of essential ingredients to record conviction in a case of circumstantial evidence and that of poisoning case are made out. Prosecution has thus failed to bring home the guilt. B

49. Taking an overall view of the evidence on record, we are of the firm view, that prosecution has not established the charge beyond reasonable doubt so as to record conviction under Section 302 of IPC. The appellant deserves to be extended benefit of doubt. Accordingly, the appeal is allowed, the judgments of the High Court and the Trial Court are set aside, the appellant is acquitted. He is already on bail. His bail bond is cancelled and sureties are discharged. C  
D