REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2202 OF 2014
[Arising Out of Special Leave Petition (Criminal) No. 7185 of 2013]

ANANDA POOJARY .....APPELLANT(S)

VERSUS

STATE OF KARNATAKA .....RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

2. By this appeal, the appellant Ananda Poojary questions the legality and validity of the judgment dated 14.02.2013 passed by the High Court of Karnataka, whereby the appellant's conviction for offences under Section 302 and Section 201 of the Indian Penal Code (for short 'IPC') has been upheld. The High Court has also upheld the sentence passed by the Sessions Judge, Udupi. The result is that the appellant is made

to suffer incarceration for life for allegedly murdering his own foster mother.

3. It is an admitted position, accepted by the two courts below, that the deceased Dorathi Kutinho, who was a Teacher, had brought Ananda Poojary (the appellant) who was her student to her house and had showered love and affection like a mother. In her old age, there was nobody to look after her as she was living with her only brother Rudolph Kutinho, who was mentally challenged. Dorathi Kutinho had full confidence in the appellant and kept him as a caretaker. It is also established on record, which is the case of prosecution itself, that the appellant had taken due and full care of the deceased as well as her brother. He had been nursing both of them so well. Dorathi Kutinho was too pleased with his selfless and dedicated service, giving all due attention to her and her brother. So much so, she had started loving the appellant as her son and because of this reason, she had executed a Will bequeathing all her movable and immovable properties to the appellant. It was, however, subject to one condition viz. the appellant, who is otherwise a Hindu, marries a Christian lady. In the said Will, she had even conferred upon the appellant rights to perform all rituals after her death and of her brother Rudolph Kutinho.

4. Sadly, on 1st March, 2006, Dorathi Kutinho had to rush to a hospital. As per the appellant, she had complained of chest pain. By the time she reached the hospital, she had died. The doctor who examined her issued a certificate stating that she had died of cardiac arrest. However, as per the postmortem done few days later, the cause of death was found to be Asphyxia as a result of smothering. The appellant was roped in as an accused committing murder of Dorathi Kutinho and was put to trial. Both the sessions court as well as the High Court have found the appellant guilty of the offences under Section 302 and Section 201 IPC. It is to be examined in this appeal as to whether the courts below are right in their conclusion that the appellant who was supposed to act as savior of Dorathi Kutinho had become the destroyer of her life.

5. As per the prosecution, Dorathi Kutinho was aged and had a brother by name Rudolph Kutinho, a mentally challenged person. Only two of them were residing in the house of the deceased situated in Najaru, Kelarkalabettu Village, Udupi. She was an affluent lady and having lots of jewels and fixed deposits as well as investments in several banks and other financial institutions. She also owned a house where she was living. Though, her father had two foster sons, they were living separately. One of them was Anthony Kutinho (PW-3) and other Simon

Kutinho, who is a resident of America.

6. In so far as the alleged murder of Dorathi Kutinho on the fateful day i.e. 1st March, 2006 is concerned, the case set up by the prosecution was that though Dorathi had executed a Will in her favour the appellant was not willing to wait till the death of Dorathi Kutinho and was eager to secure all her properties. With this motive in mind, he had planned to eliminate Dorathi and in furtherance of this intention, on 01.03.2006 at about 6.00 a.m. in the morning smothered her mouth and nose and on account of the same, Dorathi Kutinho died due to Asphyxia. In order to destroy the evidence of the said murder, he took the dead body of Dorathi Kutinho in the auto-rickshaw of PW-10 Roshan Kumar to Adarsha hospital as if she was suffering from cardiac arrest. When Dorathi Kutinho's body was taken to Adarsha hospital, she was seen by CW-13 Dr. Rekha and in turn she telephoned PW-2 Dr. Chandrashekhar informing him about the death of Dorathi Kutinho and having brought her dead to the hospital and on the request of the appellant, a Death Certificate was issued as if Dorathi Kutinho died due to cardiac arrest.

7. It is the further case of the prosecution that immediately thereafter, the appellant informed PW-3 the foster brother of Dorathi Kutinho about the

death of Dorathi Kutinho on account of cardiac arrest over phone. PW-3 informed his brother Simon Kutinho, who was in USA and body of Dorathi Kutinho was kept in Kasturba Medical College Hospital, Manipal, awaiting the arrival of Simon Kutinho from USA. Thereafter, a complaint was filed before the Police as per Ex.P-4 which is registered as an UDR complaint suspecting the murder of Dorathi Kutinho and he requested the Police to send body of Dorathi Kutinho for Autopsy to find out the cause of death. The case was registered in UDR No.5/2006 and thereafter Autopsy was conduced by PW-1 Dr. Pradeep Kumar as per Ex.P-1. Based on the postmortem report, PW-8 M.S. Naikar registered a complaint as per Ex.P-11 *suo moto* on 07.03.2006 in Crime No.19/206 for the offences punishable under Sections 302 and 201 of IPC and thereafter the case was investigated by Udupi Police and charge sheet was filed against the appellant for the aforesaid offences. This case has resulted in the conviction of the appellant, as already noted above.

8. In order to bring home the guilt of the accused, the prosecution relied upon evidence of PW-1 to PW-14; Exs.P-1 to P-46 and Mos.1 to 5. The accused was also examined by the Court under Section 313 Cr.P.C. and he denied the incriminating evidence found in the evidence of the prosecution against him. No defence evidence was led by the appellant

except marking Ex.D-1 a portion of statement of PW-3.

9. There is a serious dispute about the cause of death. As per the medical examination, Dorathi Kutinho had died unnatural death, cause of death Asphyxia by smothering. It is, therefore, claimed to be a case of murder. The defence maintains that she died natural death because of cardiac arrest. Admittedly, there are no eye-witnesses to the alleged crime and it is a case of circumstantial evidence. The learned trial court held it to be a case of murder. After analysing the testimony of various witnesses, it observed that motive could not be elicited directly from any of the witnesses. However, from the recovery of articles and deposition of PW-3, one could clearly find the motive which the appellant had in committing the said murder. The trial court also recorded that the various ingredients proved by the prosecution are sufficient to complete the chain of circumstances to come to a definite and unerring conclusion that the appellant must be the person who had committed the murder. The sessions court has rested its aforesaid findings by taking into consideration the following circumstances: The execution of Will is not in question. As per PW-14, the recovery of the said articles was from a bed placed in the Flour Mill, which was situated in the same compound as that of the deceased lady's house. The bag included gold ear stud; one pendent; one gold rope chain; the Will; one General

Power of Attorney; one consent letter; bank certificates. All the above-mentioned documents were in the name of the appellant herein i.e. he was named the nominee/beneficiary. PW-10 (Auto-Rickshaw driver) stated that he had advised a nearby hospital named Goratti Hospital but the appellant insisted on going to Adarsha Hospital. He also stated that the appellant was found to be scared and was sweating. PW-2 (Dr. Chandrashekhar, Adarsha Hospital) stated that the appellant had informed him that the deceased died due to chest pain and requested him to issue a death certificate and to keep the dead body in the cold storage till other relatives of the deceased arrive. PW-11 is the sister of the appellant (extra judicial statement) who turned hostile. According to the prosecution, it was stated by PW-11 that the appellant had mentioned it to her that the deceased had asked the appellant to marry a Christian girl in order to get the will in his name. PW-4 stated that the appellant was like a son to the deceased lady. The appellant denied to answer the questions put to him when examined under Sections 313 Cr.P.C. and so much so when he was asked if he lived with the deceased lady, he even denied that.

10. The High Court has also upheld the aforesaid conclusion of the trial court by echoing virtually the same reasoning. It is, *inter alia*, observed that:

(i) It is not in dispute that the appellant was residing with the deceased and her mentally retarded brother Rudolph.

(ii) There was no other person except the appellant, deceased and Rudolph who were residing in the house of the deceased.

(iii) The appellant was taking care of the deceased and her brother and it was within his knowledge that the deceased had executed a Will bequeathing all her movable and immovable properties in his favour. Even Power of Attorney was executed in his favour by the deceased giving him power to manage all her properties. These documents were not disputed by the appellant. Will was found in the possession of the appellant.

(iv) One of the covenants in the Will was the desire of the deceased that the appellant shall marry a Christian lady. However, as per the testimony of Sampa Poojarthy (PW-11) who is appellant's sister, the appellant was not willing to marry a Christian lady.

(v) The appellant had not disputed that Dorathi was shifted by him in Adarsha Hospital in auto-rickshaw of PW-10 Roshan Kumar. Roshan Kumar had received a call from the appellant stating that the deceased was in an uncomfortable condition and had to be shifted immediately to the hospital. Thus, he came to the house of Dorathi and took Dorathi along with the appellant to the hospital in his auto-rickshaw. He deposed that though there was a hospital nearby but the appellant, instead, took Dorathi to Adarsha Hospital which was little away. This circumstance is held against the appellant with the observation that he wanted to take Dorathi only to a hospital of his choice where he could manage the things in his own way.

(vi) When the appellant reached with Dorathi at Adarsha Hospital, Dr. Rekha (CW-13) examined Dorathi and found that she was brought dead. She informed Dr. G.S. Chandrashekhar (PW-2), the owner of Adarsha Hospital and PW-2 directed Dr. Rekha to issue a certificate. Thereupon, the certificate was issued that death had occurred as a result of cardiac arrest. As per the prosecution, this certificate was issued giving aforesaid cause of death just to oblige the appellant considering the relationship between the appellant and the deceased. On the other hand,

relying upon the testimony of PW-1 who had conducted an Autopsy on the dead body and submitted report as Exh. P-1, courts below concluded that cause of death was not due to cardiac arrest but Asphyxia on account of smothering.

(vii) There was recovery of certain documents and jewellery items at the instance of the appellant. Documents were in the nature of Power of Attorney and Will which was executed by the deceased. These documents and jewellery which also belonged to the deceased were seized from the place where the appellant was running a service station. This service station was in the compound of deceased house and it is the deceased who had allowed the appellant to run a service station from the compound of the house.

11. Narrating the aforesaid circumstances, the High Court took the view that Session Judge was right in holding that chain of circumstances is complete to prove the guilt of the appellant.

12. Mr. Basant R., learned Senior Counsel appearing for the appellant submitted that in arriving at the aforesaid conclusions, the courts below had ignored and did not take into account some very relevant and

material aspects of the case which would clearly prove the innocence of the appellant. He went to the extent of submitting that the appellant was falsely roped in the aforesaid case by the relatives of the deceased, particularly Anthony Kutinho (PW-3) and Simon Kutinho (who lives in USA), as they did not like her sister giving away all her properties to the appellant. With regard to Dr. Chandrashekhar (PW-2), he submits that if the appellant had any mala fide intentions, then he would not have requested PW-2 to store the body of the deceased and on the contrary being the caretaker of deceased lady's who had also authorised him to perform the last rites as per her Will, he would have gone ahead with the cremation himself, more so when even the doctor (CW-13) had testified that cause of death was cardiac arrest. With regard to the statement of Vishwanath (PW-14) – Circle Inspector of Police, it is submitted that it is important to note that articles were recovered from the bag that was kept on the bed, placed in the Flour Mill which was in the same house. He submits that other than gold chain and the earpiece, all other documents kept were in his name and he was the nominee/beneficiary to those. So there is no reason for him to hide such articles and rather placing such documents would help him to prove his case. Also, if the appellant had such intentions to hide these articles, then why would he hide it in the same compound as that of the house of the deceased? He, thus, argued that such recovery

seems more like a story/plot made by the prosecution. With regard to Roshan Kumar (PW-10) an auto-rickshaw driver, learned Senior Counsel agrees to the fact that PW-10 suggested a nearby hospital but submits that in such a critical situation, the appellant opted for the safer option as the deceased was already getting treatment at Adarsha Hospital and the doctors at Adarsha Hospital knew the history of the patient (deceased) and hence, thought of it to be a more viable option. With regard to the appellant being nervous and sweating, he submitted that it was not an abnormal behaviour as any person, in such a situation, would feel nervous when his/her dear one is critical. Hence, he submitted that inferences drawn by the courts below from certain circumstances were clearly perverse and many vital aspects were totally overlooked which would clearly prove the innocence of the appellant.

13. The prosecution questions that when a nearby hospital was suggested to the appellant herein by PW-10, then why did the appellant opt for the hospital that was far. He submits that the appellant could have first taken the deceased lady to the nearer hospital and once her state/condition would have got stable, he could have shifted her to Adarsha Hospital. The prosecution then questions the finding/recovery of the gold chain and the earpiece from the possession of the appellant

hidden in a bed placed in the Flour Mill. It is further submitted that the appellant denied to answer the questions put to him when examined under Section 313 Cr.P.C., which shows his falsehood. The learned counsel read out the reasons given by the High Court in support of its conclusions and submitted that the findings of the trial court and the High Court are correct and should be upheld.

14. We have already discussed in brief the circumstances which persuaded the trial court as well as the High Court to come to the conclusion that Dorathi died unnatural death "cause of death was Asphyxia by smothering" and it is the appellant who is responsible for causing the murder of Dorathi. In this scenario, two basic questions which fall for consideration are as under:

(i) Whether Dorathi's demise was on account of cardiac arrest or the cause of death was asphyxia as a result of smothering?

(ii) In case Dorathi was murdered, whether the appellant is the culprit who caused this murder?

15. We would take up these issues for our discussion and conclusions in the aforesaid order in which these questions are formulated. At the same time, we would like to point out that some of the aspects of

discussion are overlapping as the issues are interrelated and, therefore, there would be some repeat discussion while answering these questions.

Answer to Question No.1

16. So far as cause of death of Dorathi is concerned, we have two conflicting documentary evidences on record. On the one hand, there is a certificate in the form of Ex.P-3 issued by CW-13 Dr. Rekha as per which the deceased died of cardiac arrest. On the other hand, we have Autopsy report in the form of Ex.P-1, as a result of postmortem of the body conducted by PW-1 Dr. G. Pradeep Kumar which claims that Dorathi died of Asphyxia by smothering. The courts below have discarded Ex.P-3 and preferred to rely upon Ex.P-1. Reason given in rejecting the credit worthiness of Ex.P-3 is that Dr. Rekha has purportedly obliged the appellant by issuing said certificate considering the relationship between the appellant and the accused. The courts below also raised eyebrows on the conduct of the appellant in taking the deceased to Adarsha Hospital, even when there was another hospital near Goratti, the residential place of the deceased. On this basis, also keeping in view the statement of PW-10 Roshan Kumar who had taken the deceased and the appellant in the auto-rickshaw, the courts below have refused to chew the defence put forth by the

appellant that after finding Dorathi in an uncomfortable position, he had called Roshan Kumar so that he could take Dorathi immediately to the hospital for her treatment.

17. Let us first deal with this aspect of the so called abnormal and suspicious behaviour of the appellant. It is a matter of record, even accepted by the prosecution as well, that the deceased used to be examined by the doctors at Adarsha Hospital as and when she had medical problem. That would mean that the doctors at Adarsha Hospital with whom Dorathi was regular patient knew about the medical condition of Dorathi so well. That is an admitted fact as stated by PW-2 as well. When we keep this crucial fact in mind, the choice of the appellant to take her to Adarsha Hospital, by no stretch of imagination, can be termed as so unnatural or abnormal so as to create suspicion about his conduct. In fact, he acted in the best interest of the patient in a manner any reasonable person would. It is a common case of the parties that Dorathi was an old and infirm woman who was suffering from various illness including heart ailment and because of this reason, he was getting medical treatment, on and off, from Adarsha Hospital. It is for this reason while at home, the appellant was nursing Dorathi and taking absolute care of her. It would be rather, a natural conduct of any person to take the patient to a doctor under whose care and supervision

the patient is already put, as that doctor would be in a position to immediately diagnose the ailment, knowing well the medical history of the patient. Therefore, merely because there was some other hospital near Goratti and the appellant did not take Dorathi at the said hospital but chose to bring her to Adarsha Hospital, is not a circumstance which would create any doubt about his integrity or conduct.

18. In so far as issuance of death certificate (Ex.P-3) is concerned, it has come on record that CW-13 Dr. Rekha had seen the dead body of the deceased. She formed the opinion that Dorathi had died of cardiac arrest. She informed PW-2 Dr. G.S. Chandrashekhar about the same and PW-2 directed her to issue a certificate to this effect. PW-2 has merely said that he did not examine Dorathi when she was brought to the hospital and going by this statement alone, PW-3 is discarded. Since Dr. Rekha examined the body and issued the certificate, it is she who was competent to issue such a certificate. We fail to understand as to from where the inference has been drawn that she issued the certificate giving cause of death as desired by the appellant. Pertinently, CW-13 is not even examined by the prosecution. No efforts are made to find out her whereabouts. Therefore, not much reliance can be placed on the fact that PW-2 admitted in his evidence that he had not seen the body of Dorathi, which is neither here nor there.

19. However, at the same time, we find that after the postmortem of the dead body was conducted, the cause of death is mentioned as asphyxia on account of smothering. This cannot be lightly brushed aside. Before adverting to this report (Ex.P-1), it would be necessary to ease out some creases. As per the High Court, postmortem is conducted at the instance of Dorathi's brother namely Anthony Kutinho (PW-3). However, in the process a very relevant and material aspect is glossed over and missed out by the courts below. After Dorathi was declared dead at Adarsha Hospital and certificate (Ex.P-3) was issued by the doctor (CW-13), the appellant had informed PW-3 about the said death. Significantly, it is the appellant who suggested the Autopsy of the dead body. If it was a case of unnatural death and appellant was responsible for the same, appellant would not made such a suggestion. In that case, armed with the certificate showing that deceased had died due to cardiac arrest, he would rather shown his eagerness to perform the last rites of the deceased. He was empowered to do so by the Will of the deceased herself. But he did not do so. It is on his suggestion that PW-3 lodged a complaint with the Police and requested for the postmortem of the deceased. (to be taken from the statement of PW-2 (doctor) at page 73-74.

20. There is one more very crucial and critical circumstance which needs to be highlighted at this stage. Death took place on 1st March, 2006; UBR was registered only on 4th March, 2006 and postmortem conducted on 5th March, 2006. On that basis, FIR was registered on 7th March, 2006 wherein it was stated that the 'murder was committed by unknown persons'. It shows that till that time, the appellant was not the suspect at all. Why and under what circumstances he came under cloud and roped in as an accused person, would be dealt with us a little later at an appropriate stage. For now, we revert back to the postmortem report. PW-1 is the doctor who conducted the postmortem and gave his report (Ex.P-1) in which he has stated that after the postmortem examination, he gave the 'tentative' cause of death as 'cerebral and pulmonary oedema secondary to smothering'. This opinion of his, which is only 'tentative', is based on his examination of the body whereby he observed certain external injuries. In his cross-examination, he categorically admitted that the type of contusion found on the body could be caused if that portion came in contact with rough and hard surface. He also admitted in the cross-examination that presence of alcohol was found in the dead body. Therefore, possibility cannot be ruled out that after consuming the alcohol, Dorathi might have fallen and hit herself on a rough and hard surface. This vital portion of the testimony of the doctor is not even adverted to and conveniently omitted

from the discussion. It would be also relevant to point out at this stage even PW-2 namely Dr. Chandrashekhar under whose regular treatment the deceased was, had stated that the deceased had come to his hospital for treatment on 05.11.2005, 08.11.2005 and 25.11.2005. He also categorically mentioned that at that time, she was treated for hypertension and depression. He also mentioned that she was an alcoholic and he had advised her to quit drinking. Even this part of testimony of PW-2 is overlooked by the courts below.

21. In the aforesaid scenario, it cannot be said with certainty as to whether Dorathi died of smothering or being a heart patient, the actual cause of death was cardiac arrest. In such circumstances, when there was a possibility of both the causes of death, in the absence of clear certainty about the cause, we are of the opinion that High Court committed an error in not giving benefit of doubt to the accused person.

Answer to Question No.2

22. With this, we now deal with the second point for consideration formulated by us above. We may observe that with our answer to the first question, itself makes it a case of acquittal giving benefit of doubt to the appellant. Still we are entering into the discussion on this question as the circumstances discussed while dealing with this question would

show more signs of innocence of the appellant.

23. As per the sessions court as well as the High Court, complete chain of circumstances is established pointing accusing finger at the appellant and it is proved beyond any reasonable doubt that it is the appellant who has caused the murder of Dorathi. The circumstances which are found against the appellant are:

(i) Motive on the part of the appellant to commit the murder of Dorathi stands established.

(ii) Appellant and the deceased were last seen together.

(iii) Injuries which are found on the body of the deceased show unnatural death. (This aspect is already dealt with by us above).

(iv) Certain recoveries are made pursuant to the disclosure statement of the appellant which nail him of the offence.

24. As far as the company of the appellant with the deceased and they were together is not in dispute so 'last seen' aspect is proved. In fact, the appellant has accepted the same even in his defence when he claims that he and Dorathi was in the house when Dorathi had complained of chest pain and seen her in an uncomfortable position he decided to take her to the hospital. For this, he called PW-10 Roshan

Kumar and went in his auto-rickshaw to the hospital. However, we have serious doubts on the establishment of 'motive' attributed to him or the 'recoveries' made on the so called disclosure statement of the accused. In so far as motive is concerned, it is apparent on the face of the record that the courts below have stretched the facts too far, bordering distortion, to impute motive on the part of the appellant. It has come on record and in fact it is the case of the prosecution itself that as there was nobody to look after Dorathi and her mentally challenged brother Rudolph Kutinho, Dorathi had brought the appellant to her house as a caretaker. The appellant has been looking after Dorathi and Rudolph. It is clear that he had done this service to the two needy persons with all love and devotion. Dorathi treated him as her son. She was so happy and pleased with his selfless service that she had decided to give all her movable and immovable properties to the appellant. In order to make this desire a reality, she had even executed a Will bequeathing all her properties in favour of the appellant to the exclusion of all others (which would include her brother PW-3 and Simon Kutinho). Will was executed on 5th July, 2005. This Will was kept by Dorathi with the appellant himself which means that Dorathi had even disclosed him the said Will. She had even given her jewellery and documents pertaining to fixed deposits as well as investments in several banks and other financial institutions. In this background, why the appellant would

commit the murder of Dorathi, whom he look after and treated as his mother, that too after a period of 7 months from the execution of the Will.

25. We find that very curious aspect is attributed as a motive on the part of the appellant. It is stated that in the Will, a condition was put that the appellant will succeed to the estate of Dorathi only if he marries a Christian lady and the appellant who was Hindu by religion did not want to marry a Christian girl. This gives rise to an important poser: whether killing of Dorathi would have solved this dilemma of the appellant, if at all such dilemma was there. Answer is to be emphatic 'NO'. Death of Dorathi, natural or unnatural, would have the only consequence of bringing the Will as operational. That would not and could not wipe off the aforesaid condition stated in the Will. Therefore, it can hardly be treated as a motive on the part of the appellant to kill Dorathi. On the other hand, having regard to very cordial and lovable relationship between the appellant and Dorathi which was as pious as mother and son, it was very unlikely that appellant would kill Dorathi even when Dorathi had already Willed away her properties in favour of the appellant. One has to keep in mind another important aspect namely Dorathi was of advanced age and was suffering from hypertension, depression and other old age related ailments. Therefore, no purpose

could have been achieved by killing such a helpless lady, a little prematurely.

26. The alleged recoveries are nothing but make belief. We get an uncanny feeling that this aspect is introduced just to make the appellant a suspect and thereafter to rope him in a case of murder. It is a matter of record that Will, documents relating to investments and jewellery were handed over to the appellant and, therefore, they were in his rightful possession. He had not taken away and kept these things at any other place. The so called 'recovery' is from the house itself. It is from the service station, which is situated in the same house where all lived. Therefore, this could not have been a circumstance from which an adverse inference is drawn. We hardly see this to be valid reason to suspect the appellant.

27. During arguments, we put a query to the learned counsel for the parties as we were curious about the properties of the deceased which she had bequeathed to the appellant. A very disturbing, but crucial, aspect emerged from the answer given by the parties which was that these assets were disposed of by PW-3 and his brother when the trial of the case is still on and the verdict of guilt had not been pronounced by the Session Judge. This speaks volume about many possibilities and

bolsters our conclusion that the appellant is an innocent person who has been roped in, in a false case with a view to rob him of the properties and assets which Dorathi had Willed to the appellant out of her love and affection, to the exclusion of all others including PW-3 and his brother who is a resident of USA.

28. We also inquired about the whereabouts of Rudolph, mentally challenged brother of Dorathi. The answer was equally startling. We were informed that within few months of Dorathi's death, he also died. Obviously, with the appellant in jail, there was nobody to look after and take care of Rudolph. His foster brother Anthony Kutinho (PW-3) and other brother Simon Kutinho (resident of America) did not care to look after him, after the arrest of the appellant.

29. We are conscious of the fact that with the aforesaid analysis of the evidence, we have interfered with the findings of the courts below. However, having regard to the seriousness of the nature of imputation, viz. that of murder, coupled with the fact that findings of the courts below are the result of ignoring vital material and unsustainable inferences, such an exercise is permissible under the law. Permissibility of such a course of action is supported by various judgments of this Court, some of which are taken note of below.

30. In ***Sham Sunder*** v. ***Puran & Anr.,*** (1990) 4 SCC 731), this Court observed that such an exercise would be justified for the purpose of satisfying itself that the grave injustice had not resulted in the case. We quote hereinbelow the following observations from that case:

> "2. It is true that the High Court is entitled to reappraise the evidence in the case. It is also true that under Article 136, the Supreme Court does not ordinarily reappraise the evidence for itself for determining whether or not the High Court has come to a correct conclusion on facts but where the High Court has completely missed the real point requiring determination and has also on erroneous grounds discredited the evidence and has further failed to consider the fact that on account of long standing enmity between the parties, there is a tendency to involve innocent persons and to exaggerate and lead prejudged evidence in regard to the occurrence, the Supreme Court would be justified in going into the evidence for the purpose of satisfying itself that the grave injustice has not resulted in the case."

31. Further in ***Khilli Ram*** v. ***State of Rajasthan***, when the Court found that certain features were overlooked by the courts below, there was no jurisdictional bar in finding out whether the prosecution case could at all be accepted, and we would be well advised to reproduce paragraphs 4 and 13 from the said judgment, which read as under:

> "4. There are certain features in this case which appear to have been overlooked both by the trial Court as also the High Court. The two panch witnesses have not only turned hostile, but have disclosed facts which support the defence version of the incident. PW. 2, the decoy witness

has stated facts which probabilise the defence stand. Even the literate Constable PW. 7 who has not been declared hostile has supported the defence version. The place and the maner in which the bribe is said to have been offered and received make the prosecution story totally opposed to ordinary human conduct – a feature which the two Courts have overlooked. We are of the opinion that this is a case where the evidence has to be looked into with a view to finding out whether the prosecution case can at all be accepted. The restriction on appreciation of evidence in an appeal by special leave is a self-imposed one and is not a jurisdictional bar. While we reiterate that ordinarily this Court would refrain from re-examining the evidence, in a case where serious injustice would be done if the evidence is not looked into it would not be proper for the Court to shun attention by following the self-imposed restriction.

XX XX XX

13. We are prepared to agree with Counsel for the State of Rajasthan that ordinarily a case of this type is difficult to prove and the law is settled that even the uncorroborated testimony of trap witnesses can be acted upon as indicated by this Court in the case of Prakash Chand v. State (Delhi Administration), 1979 Cri.L.J. 329 and Kishan Chand Mangal v. State of Rajasthan, (1983) 1 SCR 569, but in the present case the evidence of the panchas is not available to support the prosecution case. There is discrepancy in many material aspects. The prosecution story is opposed to ordinary human conduct. The discrepancies go to the root of the matter and if properly noticed would lead any court to discard the prosecution version. Without powder treatment, for the absence of which no explanation has been advanced, the prosecution story becomes liable to be rejected. An overall assessment of the matter indicates that the story advanced by the prosecution is not true and the defence version seems to be more probable. In these circumstances we are of the view that sufficient material has been brought out to merit interference in this appeal. We allow the appeal, set aside the conviction of the appellant and acquit him. He is discharge from his bail bond."

32. Yet again in ***Suryamoorthi & Anr.*** v. ***Govindaswamy & Ors.***, (1989) 3 SCC 24, the Court observed that discretion conferred by Article 136 of the Constitution is wide enough to permit this Court to interfere even on facts in suitable cases if the approach of the courts below had resulted in grave miscarriage of justice.

> "13. The learned counsel for the accused submitted that we should not disturb the concurrent findings of fact recorded by both the Courts. We are conscious of the fact that ordinarily this Court exercising jurisdiction under Article 136 of the Constitution is slow in substituting its findings of fact in place of those recorded by the courts below. However, this does not mean that this Court has no power to do so. The discretion conferred by Article 136 of the Constitution is wide enough to permit this Court to interfere even on facts in suitable cases if the approach of the courts below has resulted in grave miscarriage of justice. By way of self-imposed discipline, this Court does not ordinarily reappreciate or reassess the evidence unless it is of opinion that the approach of the courts below has resulted in failure of justice necessitating correction. If the courts below have misread the evidence resulting in miscarriage of justice it becomes the duty of this Court to interfere in the interest of administration of justice. In our view, the present is one such case which calls for interference. The approach of the courts below in doubting the capacity of PWs 1 and 2 to possess Rs. 73,600/- and requiring them to prove how PW 2 had over a period of 10 years saved the said amount notwithstanding the find of Rs.33,600/-, was wrong and resulted in an erroneous conclusion."

33. Legal position, explaining the contours and width of power under Article 136 of the Constitution was narrated in detail in ***Mahesh Dattatray Thirthkar*** v. ***State of Maharashtra***, (2009) 11 SCC 141. After taking

note of earlier precedents explaining the scope of Article 136 of the Constitution, position was summarised in para 22 and we reproduce the same:

> "22. From a close examination of the principles laid down by this Court in the aforesaid series of decisions as referred to herein above on the question of exercising power to interfere with findings of fact by this Court under Article 136 of the Constitution, the following principles, therefore, emerge:
>
> - The powers of this Court under Article 136 of the Constitution of India are very wide.
>
> - It is open to this Court to interfere with the findings of fact given by the High Court if the High Court has acted perversely or otherwise improperly.
>
> - When the evidence adduced by the parties in support of their respective cases fell short of reliability and acceptability and as such it is highly unsafe and improper to act upon it.
>
> - The appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record.
>
> - The appreciation of evidence and finding results in serious miscarriage of justice or manifest illegality.
>
> - Where findings of subordinate courts are shown to be "perverse or based on no evidence or irrelevant evidence or there are material irregularities affecting the said findings or where the court feels that justice has failed and the findings are likely to result in unduly excessive hardship.

- When the High Court has redetermined a fact in issue in a civil appeal, and erred in drawing interferences based on presumptions.

- The judgment was not a proper judgment of reversal.

34. The result of the aforesaid discussion would be to allow this appeal, giving the appellant benefit of doubt. The appellant is accordingly acquitted of the charge. He shall be released forthwith.

.....J.
(J. CHELAMESWAR)

.....J.
(A.K. SIKRI)

New Delhi;
October 14, 2014.