
ICFAI INTRA-MOOT COURT COMPETITION, 2020

**BEFORE,
THE HON'BLE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION
[UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA]
SPECIAL LEAVE PETITION (CRIMINAL) No. _____ / 2016**

**(AGAINST THE IMPUGNED JUDGMENT AND FINAL ORDER DATED PASSED BY
THE HON'BLE HIGH COURT OF RAJASTHAN IN CRIMINAL APPEAL _/2016)**

**IN THE MATTER OF
STATE OF RAJASTHAN & OTHERS
V.**

DINESH GOYAL & OTHERS

**IN THE MATTER UNDER § 302, § 304B & § 498A OF THE INDIAN PENAL
CODE, 1860.**

**ON THE SUBMISSION BEFORE THE REGISTRY OF THE COURT ON
03.09.2016.**

~SUBMISSION ON BEHALF OF THE RESPONDENT~

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LIST OF ABBREVIATIONS

ABBREVIATIONS	EXPANSIONS
&	And
§	Section
§§	Sections
¶	Paragraph
¶¶	Paragraphs
A.P.	Andhra Pradesh
AC	Appeal Cases
AIR	All India Reporter
ART.	Article
BOM.	Bombay
CAL.	Calcutta
CRI LJ/ CR LJ	Criminal Law Journal
DPP	Director of Public Prosecutor
DW	Defence Witness
GOVT.	Government
HC	High Court
HON ^{BLE}	Honourable
IEA	Indian Evidence Act
ILR	Indian Law Reporter
IPC	Indian Penal Code
KANT.	Karnataka
KER.	Kerala
LD.	Learned
M.P.	Madhya Pradesh

NAG.	Nagaland
NCT	National Capital Territory
ORI.	Orissa
ORS.	Others
P & H	Punjab and Haryana
PUNJ.	Punjab
PW	Prosecution Witness
R.	Reg
RAJ.	Rajasthan
SC	Supreme Court
SCC	Supreme Court Cases
SLP	Special Leave Petition
SUPP.	Supplementary
U.P.	Uttar Pradesh
US	United States
v.	VERSUS
W.B.	West Bengal
WLR	Weekly Law Report

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2)	R.A. DUFF, PHILOSOPHY AND THE CRIMINAL LAW, 55 (1998)
3)	C.D. FIELD'S COMMENTARY ON LAW OF EVIDENCE, 3309 (13 th ed., Delhi Law House)
4)	BUZZARD, JOHN, MAY, RICHARD, HOWARD, M.N., PHIPHSON ON EVIDENCE, 682 (12th ed., Sweet & Maxwell, London)
5)	MODI'S MEDICAL JURISPRUDENCE AND TOXICOLOGY, 764 (23rd ed., 2008)
6)	AMERICAN JURISPRUDENCE, 322 (2nd ed., Vol. 29, Thomson Reuters) (2011)
7)	AN ESSAY ON THE PRINCIPLES OF CIRCUMSTANTIAL EVIDENCE BY WILLIAM WILLS, 451 (3rd ed., Henry Butterworth, 7, Fleet Street, Law Bookseller And Publisher)
8)	WIGMORE, JOHN H., THE PRINCIPLES OF JUDICIAL PROOF, (Little, Brown and Company, 1913)
9)	TAYLOR ON EVIDENCE, 902, § 1418 (12th ed.)

SR. NO.	CONSTITUTIONAL PROVISIONS	PG. NO.
1)	Article 136	passim
2)	Article 134	passim

SR. NO.	WEB RESOURCES
1)	www.westlaw.india.com (WEST LAW INDIA)
2)	www.manupatrafast.com (MANUPATRA)
3)	www.judis.nic.in (SUPREME COURT OF INDIA OFFICIAL)
4)	www.jstor.org (JSTOR)
5)	www.scconline.com (SCC ONLINE)

STATEMENT OF JURISDICTION

The Appellants herein has approached this Honourable Court under Article 136 of the Constitution of India.

SYNOPSIS OF FACTS

A. BACKGROUND OF THE INCIDENT: Mr Suresh Goyal, got married to Sharda Gupta on 17.07.2012. Soon after the marriage disturbances cropped up between the couple. However, a compromise was arrived at with the intervention of family friends and Smt. Shalini Goyal tendered a written apology. After the deceased gave birth to a girl child, disturbances aggravated and deceased chose to stay in her parental house. The deceased was however, brought back to her matrimonial home, after reaching a consensus with her husband. On 25.5.2015, the deceased consumed organo phosphorous drug with an intention to terminate her life and raised alarm to provide her with salty water in order to vomit. Mr Dinesh Goyal gave her water to vomit and then took her to SMS Hospital where she was declared dead.

B. EVENTS THAT UNFOLDED SUBSEQUENT TO THE DEATH: Om Prakash, [PW-4] informed the police about the dilapidated condition of the deceased. The police reached the spot. Dr O.P. Choudhary was called upon in order to ensure medical attention for the deceased. On coming to know, about the condition of his daughter, Shri Vikram Gupta [PW-10] lodged a police complaint stating that accused persons in collusion had caused death of the deceased. The FIR was registered and during the investigation, the police found out and relied upon the daily diary maintained by the deceased and subsequently charges were framed under §§ 498A and 304B read with § 34 of IPC.

C. JUDGMENT OF THE HON'BLE TRIAL COURT: The trial court acquitted Smt Shalini Goyal and Sh. Suresh Goyal on the plea that there is no direct evidence but convicted Shri Dinesh Goyal for commission of offence under § 302 IPC and awarded imprisonment for 7 years with no fine.

D. JUDGEMENT OF THE HON'BLE RAJASTHAN HC: The Hon'ble HC acquitted the respondent on the ground that the circumstances are not of conclusive nature.

E. APPEAL: Aggrieved by the decision of the Hon'ble High Court, the State as well as Shri Vikram Gupta have preferred an appeal to Hon'ble Supreme Court of India challenging the setting aside of conviction and non-levy of maximum imprisonment upon the accused.

STATEMENT OF ISSUES

- [I.]** WHETHER THE SPECIAL LEAVE PETITION AGAINST THE JUDGMENT OF HON^{BLE} HIGH COURT IS MAINTAINABLE?
- [II.]** WHETHER THE ACCUSED ARE GUILTY UNDER § 304-B & § 498-A, IPC?
- [III.]** WHETHER THE EVIDENCE ON RECORD IS SUFFICIENT TO PROVE THE GUILT OF THE ACCUSED BEYOND ALL REASONABLE DOUBTS?

SUMMARY OF ARGUMENTS

[I.] THE SPECIAL LEAVE PETITION AGAINST THE JUDGMENT OF HON'BLE HIGH COURT IS NOT MAINTAINABLE.

It is humbly submitted that the Hon'ble HC has acted on the basis of principles settled by law. Substantial justice has been done by the reasoned decision of the Hon'ble HC in acquitting the accused for concluding two possible outcomes upon re-appreciation of evidence. Moreover, the Appeal doesn't involve any substantial questions of law and thereby Art. 134(1) would become superfluous if leave be granted in the instant case, as question of facts should not be the basis of an Appeal under SLP.

[II.] THE ACCUSED ARE NOT GUILTY UNDER § 304-B R/W & § 498-A, IPC.

It is humbly contended that the Appellants have failed to meet the condition precedents of § 304-B IPC to bring home the guilt of the accused. Further, there exists a modicus plausibility of the deceased having committed suicide. Moreover, neither the conduct of the accused brings home their guilt nor that the Appellants have established the real state of mind of the accused persons to commit the dowry death. Therefore, the Hon'ble HC was legally correct in acquitting the accused persons as the essential legal principles in terms of circumstantial evidence, the poison test and the proximity test haven't been met their respective condition precedents by the Ld. Appellants.

[III.] THE EVIDENCE ON RECORD IS INSUFFICIENT TO PROVE THE GUILT OF THE ACCUSED BEYOND ALL REASONABLE DOUBTS.

It is submitted that the evidence on record is insufficient to prove guilt of the accused as the chain of circumstances have not been satisfied beyond all reasonable doubts. It is further submitted that there is exists an alternative hypothesis consistent with the innocence and inconsistent with the guilt of the accused.

ARGUMENTS ADVANCED

[1] THE SLP FILED IS NOT MAINTAINABLE UNDER ART. 136.

(1.) It is humbly submitted before the Hon'ble SC that the SLP filed by the Appellants is not maintainable as a Special Leave cannot be granted when substantial justice has been done¹ and where no exceptional or special circumstance exists² [1.1]. Also, no irregularity of procedure or violation of principles of natural justice³ has been done by the Ld. Courts below [1.2], and that, in the present case, no substantial question of law is involved and interference is based on pure question of fact⁴ [1.3] which is entitled to be dismissed.

[1.1] SUBSTANTIAL JUSTICE HAS BEEN DONE IN THE PRESENT CASE.

(2.) It is contended that in an SLP, the Appellants have to show prima facie that exceptional and special circumstances exists⁵ and that if there is no interference, substantial and grave injustice would result.⁶ It has also to be shown that the case has features of sufficient gravity to warrant review⁷ of the decision appealed against on merits⁸. The instant case involves a reasoned decision of acquittal by the Hon'ble HC and it requires no interference by the Hon'ble Apex Court.

(3.) Furthermore, leave can be denied at this stage for it being a stated principle of law that, "even in cases where special leave is granted, the discretionary power vested in the Court continues to remain with the Court even at the stage when appeal comes up for hearing".⁹

[1.2] THERE HAS BEEN NO IRREGULARITY OF PROCEDURE OR VIOLATION OF PRINCIPLES OF NATURAL JUSTICE.

¹ A.V. Papayya Sastri v. Govt. of A.P., AIR 2007 SC 1546.

² Baigana v. Dy. Collector of Consolidation, AIR 1978 SC 944; *See also*, Pritam Singh v. State, AIR 1950 SC 169.

³ Sanwant Singh v. State of Rajasthan, AIR 1961 SC 715.

⁴ Chikkaranga Gowda v. State of Mysore, AIR 1956 SC 751; *See also*, P.S. Mills Ltd. v. P.S. Mills Mazdoor Union, AIR 1957 SC 95; State of U.P. v. Ram Manorath, (1972) 3 SCC 215; Union of India v. Rajeswari & Co., AIR 1986 SC 1748.

⁵ Chandra Singh v. State of Rajasthan, (2003) 6 SCC 545.

⁶ ONGC Ltd. v. Sendhabhai Vastrem Patel, (2005) 6 SCC 454.

⁷ Narpal Singh v. Jaipur Development Authority, (2002) 4 SCC 666.

⁸ Pritam Singh v. State, AIR 1950 SC 169.

⁹ Ashok Nagar Welfare Association v. R.K. Sharma, AIR 2002 SC 335.

(4.) It is humbly submitted that except that where there has been an illegality or an irregularity of procedure¹⁰ or a violation of principle of natural justice¹¹ resulting in the absence of a fair trial or gross miscarriage of justice¹², the Hon'ble SC does not permit a third review of evidence with regard to question of fact in cases in which two courts of fact have appreciated and assessed the evidence with regard to such questions¹³. It is thereby contended that this Hon'ble Court in the instant case should not go into the merits and need not interfere as the justice of the case on facts doesn't require interference.¹⁴

[1.3] THE INFERENCE FROM A PURE QUESTION OF FACT IS IN ITSELF A FACT AND HENCE NOT OPEN TO REVIEW.

(5.) It is further contended by the Respondents that the present appeal doesn't involve any substantial question of law rather it involves pure question of fact and hence, is not maintainable. It is a settled principle that questions of fact cannot be permitted to be raised unless there is material evidence which has been ignored by the Hon'ble HC or the finding reached by the Court is perverse.¹⁵ The leave will not be granted merely to question finding of fact which is in favour of the accused¹⁶ neither to examine the reasons for coming to certain conclusions of fact¹⁷. Therefore, there being no negligence in appreciation of material evidence in the instant case, the interference is not called for as it has been held that the Hon'ble SC cannot consistently with its practice convert itself into a third court of facts.¹⁸

[1.3.1] THE PURPOSE OF ART. 134(1)¹⁹ WOULD BECOME SUPERFLUOUS IF LEAVE BE GRANTED.

(6.) It is submitted that Art. 134(1) confers a right of appeal before the Hon'ble SC in certain cases in terms unqualified, on question of both fact and law and if the scope of Appeal under Art.

¹⁰ State of Assam v. Barga Dewani, (1970) 3 SCC 236.

¹¹ Sanwant Singh v. State of Rajasthan, AIR 1961 SC 715.

¹² Bihar Legal Support Society v. Chief Justice of India, AIR 1987 SC 38.

¹³ State of U.P v. Ram Manorath, (1972) 3 SCC 215; *See also*, Union of India v. Rajeswari & Co., AIR 1986 SC 1748.

¹⁴ Raghunath G. Pauhale v. Chagan Lal Sundarji & Co., (1999) 8 SCC 1.

¹⁵ Union of India v. Rajeshwari & Co., (1986) 161 ITR 60 (SC).

¹⁶ Swami v. State, AIR 1960 SC 7.

¹⁷ Zabar Singh v. State of U.P., AIR 1957 SC 465.

¹⁸ Gurbakhsh Singh v State of Punjab, AIR 1955 SC 320.

¹⁹ Constitution of India, 1950, Art. 134(1).

136 is to be extended likewise to question of fact, Art. 134(1) would become superfluous.²⁰ It is therefore, obvious that the intention of the Constitution in providing for an appeal on facts under Art.134 (a) and (b) was to exclude it under Art.136. Henceforth, an appeal on question of facts alone will not be entertained under Art.136.²¹ For, the aforesaid reasons, it is requested before this Hon'ble Court that the present appeal doesn't satisfy the general criteria enshrined under Art. 136 and therefore the present appeal is requested to be dismissed.

[2] THE ACCUSED ARE NOT GUILTY OF COMMITTING DOWRY DEATH OF THE DECEASED

(7.) It is humbly submitted before this Hon'ble Court that it is a fundamental principle of law that a person accused of an offence shall not be held guilty unless the prosecution has proved beyond reasonable doubt individually (i) that responsibility is to be attributed to the accused for certain behaviour or the existence of a certain state of affairs (in a conduct crime), which is forbidden by criminal law and that the accused has caused a certain event (in result crime) and (ii) that the accused had a defined state of mind in relation to the behaviour, existence of the state of affairs or causing of event.²²

(8.) The Respondents submit that the instant case doesn't attract guilt of the accused under the provisions of § 304-B IPC r/w § 34, IPC for the reasons that; the ingredients of § 304-B, IPC haven't been met with [2.1], that there exists a reasonable apprehension of the deceased having committed suicide [2.2], that conduct of the accused does not bring home their guilt [2.3] and that the motive of causing dowry death has not been established beyond all reasonable doubts [2.4].

[2.1] THE APPELLANTS HAVE FAILED TO ESTABLISH THE INGREDIENTS OF § 304-B, IPC.

(9.) It is submitted that the general requirements under § 304-B²³ are that the death of the deceased should have occurred within seven years of marriage [1]; that the death of a woman should be caused by bodily injury or otherwise, than under normal circumstances [2]; that the

²⁰ Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217.

²¹ Pritam Singh v. State, AIR 1950 SC 169.

²² DAVID ORMEROD, SMITH AND HORGAN CRIMINAL LAW, 42 (12th ed., Oxford) (2008).

²³ Indian Penal Code, 1860, § 304-B.

deceased must have been subjected to cruelty soon before her death [3] and that the harassment or cruelty should be for or in relation to or in connection with the demand of dowry [4].²⁴

(10.) It is contended by the Respondents that the prosecution miserably failed to bring home the guilt of the accused under § 304-B, IPC²⁵ and § 113-B, IEA²⁶, as the deceased was not subjected to cruelty soon before her death²⁷[2.1.1] and that appellants have failed to establish the proximity test²⁸[2.1.2].

[2.1.1] THE DECEASED WAS NOT SUBJECTED TO CRUELTY SOON BEFORE HER DEATH.

(11.) In *Suresh Kumar Singh v. State of UP*²⁹, in regards to the expression 'soon before death', it was held that, "*The expression is a relative term which is required to be considered under specific circumstances of each case and no straight jacket formula can be laid down by fixing any time limit. The expression is pregnant with the idea of proximity test. The determination of the period which can come within the term is left to be decided by the Court, depending upon the facts and circumstances of each case. However, there must be an existence of a proximate and live link.*" Further, it is also that the word 'soon' interpreted in § 304-B would embrace the series of incidents forming part of the same transaction which culminated in the death of the concerned woman.³⁰

(12.) In the instant case, the animosity between the in-laws and the deceased was in regards to the birth of a baby boy and not dowry. The same was settled and the matter came to rest with the interference of both the families which is corroborated by the written apology tendered by

²⁴ Keshab Chandra Pandey v. State, (1995) Cr LJ 174 (Ori.); *See also*, Pawan Kumar v. State of Haryana, (1998) 3 SCC 309; Kans Raj v. State of Punjab, AIR 2000 SC 2324; Satvir Singh v. State of Punjab, AIR 2001 SC 2828; State of Andhra Pradesh v. Raj Gopal Asawa, AIR 2004 SC 1933; Baljeet Singh v. State of Haryana, AIR 2004 SC 1714; Arun Garg v. State of Punjab, (2004) 8 SCC 251; Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388 : AIR 2005 SC 785; Kishan Singh v. State of Punjab, (2007) 14 SCC 204 : AIR 2008 SC 233; Tasrem Singh v. State of Punjab, (2008) 16 SCC 155 : AIR 2009 SC 1454; Rajesh Bhatnagar v. State of Uttarakhand, (2012) 5 SCALE 311 : 2012 Cri LJ 3442.

²⁵ Indian Penal Code, 1860, § 304-B.

²⁶ Indian Evidence Act, 1872, § 113-B.

²⁷ State of Karnataka v. M.V. Manjunathgowda, AIR 2003 SC 809.

²⁸ Kunhiabulla v. State of Kerala, AIR 2004 SC 1731.

²⁹ 2009 (7) SCALE 629; Biswajit Halder v. State of West Bengal, 2007 Cr LJ 2300; Shobha Rani v. Madhukar Reddi, AIR 1988 SC 121; Thakkan Jha & Ors. v. State of Bihar, (2004) 13 SCC 348; Satvir Singh & Ors. v. State of Punjab & Anr., (2001) 8 SCC 633; Harjit Singh v. State of Punjab, (2006) 1 SCC 463; Baldev Singh v. State Punjab, (2008) 3 SCC 233; Kamlesh Panjiyar v. State of Bihar, (2005) 2 SCC 388; Prema S. Rao v. Yadla Srinivasa Rao, AIR 2003 SC 11; Kalia Perumal v. State of Tamil Nadu, AIR 2003 SC 3828.

³⁰ Rameshwar Dass & Anr. v. The State of Haryana, (1993) 103 PLR 265.

Shalini Goyal, one of the accused.³¹ There is no trustworthy evidence on record in respect of dowry demand.³² In the first place, evidence on record shows that the financial position of the accused was very high and in such a case, it would not be safe to accept the story of the demand.³³ Thus, the allegation in regards to the dowry is just the hypothesis of the Prosecution and lacks corroborative evidence. Therefore, it is not a fact that harassment or ill treatment has been inflicted upon the deceased "soon before" she died.

[2.1.2] THE APPELLANTS HAVE FAILED TO ESTABLISH THE PROXIMITY TEST.

(13.) It is well-settled that in interpreting a penal statute, the principle of strict construction should be applied in consonance with the ratio laid down in *W.H. King v Republic Of India*³⁴. Therefore, once the evidence is clear that there is no connection between the harassment or cruelty meted out to the deceased and that of the demand of money or other valuables³⁵, it transpires that the two in the instant case, are independent of each other³⁶ and thus leading to the conclusion that, in absence of a criteria to prove that the death was a dowry death, the presumption under § 113-B would not come into play to attract § 304-B.³⁷

[2.2] **THERE EXISTS A REASONABLE APPREHENSION OF THE DECEASED HAVING COMMITTED SUICIDE.**

(14.) It is contended before this Hon'ble Court that there is no direct evidence of administration of poison by the accused to the deceased. Therefore, there exists a reasonable doubt as to the commission of suicide by the deceased herself as the ingredients of death caused through poison have not been established³⁸ [2.2.1], the psychological aspect of suicide supports modicum plausibility of deceased having committed suicide [2.2.2] and that the hypothesis of the prosecution in regards to forcible administration of poison is untenable [2.2.3].

³¹ Moot Proposition- 6th UFYLC Ranka National Moot Court Competition 2016, p.3, ¶ 7.

³² Ramesh v. State of Tamil Nadu, 2005 Cr LJ 1732.

³³ Nanda Kishore v. State of Maharashtra, 1996 (5) Bom CR 315.

³⁴ AIR 1952 SC 156, ¶ 6; The Lordships observed that, "As statute creates an offence and imposes penalty of fine and imprisonment, the words of the § be strictly construed in favour of the subject. We are not concerned so much with what might possibly have been intended as with what has been actually said in and by the language employed.

³⁵ Ram Kumar v. State of Haryana, AIR 1999 SC 1491.

³⁶ Pyare Lal v. State of Haryana, AIR 1999 SC 1563.

³⁷ Nanda Kishore v. State of Maharashtra, 1996 (5) Bom CR 315.

³⁸ Mohan v. State of U.P, AIR 1960 SC 659.

[2.2.1] THE INGREDIENTS OF DEATH CAUSED THROUGH POISON HAVE NOT BEEN ESTABLISHED.

(15.) The Hon'ble HC was justified in its decision for the reason that the Prosecution in the instant case has miserably failed to establish the poison test.³⁹ It has not been cogently proven that the accused had the possession of poison; thereby there was no opportunity to administer such poison, neither could it establish a particular motive for the accused to have committed the alleged offence beyond all reasonable doubts.

[2.2.2] PSYCHOLOGICAL ASPECT OF SUICIDE SUPPORTS MODICUS PLAUSIBILITY OF COMMISSION OF SUICIDE.

(16.) It is noteworthy that, "The psychological aspect of suicide is an important factor to be taken into consideration while re-appreciating the evidence. The melancholy marriage may create or much of emotional disorder resulting from frustration and pessimism that one may become psychotic and develop a tendency to end his life. Persons with such psychotic tendency or bent of mind always dream of an ideal, they possess a peculiar psychology which instils extreme love and devotion but when their ideal fails or when they are faced with disappointment or find their environment so unhealthy or unhappy, they seem to lose all the charms of life and they are driven to end their life."⁴⁰

(17.) It has also been held that "Revenge fantasies are also associated with suicide. In cases of women of sensitive and sentimental nature it has usually been seen that if they are tired of their life, they become so desperate that they develop a spirit of revenge and try to destroy those who have made their lives worthless and under this strong spell of revenge, sometimes they can go to the extreme limit of committing suicide with a feeling that the subject who is the root cause of their malady is also destroyed."⁴¹

(18.) Therefore, there exists a modicus possibility that the deceased has caused injuries to herself, consumed the poison, acted in a result to show the entire scenario to be homicidal in order to falsely implicate the accused persons for she couldn't bear the taboo of being driven out of her in-laws house and done away with her life as a revenge to the accused persons for a matter that the accused persons had already pleaded apology for.

³⁹ Mohan v. State of U.P, AIR 1960 SC 659; *See also*, Ram Gopal v. State of Maharashtra, AIR 1972 SC 656; Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622.

⁴⁰ Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622.

⁴¹ Ibid.

[2.2.3] PROSECUTION'S HYPOTHESIS IN REGARDS TO FORCIBLE ADMINISTRATION OF POISON IS UNTENABLE.

(19.) It is humbly contended that no definite opinion was given by any of the doctors regarding the possibility of the forcible administration of the poison. It is also that in view of the convulsions, the possibility of the deceased having sustained the injuries, during such convulsions, is a reasonable apprehension and cannot be legally proved out of contention. This possibility is strengthened from the fact that the number of injuries had increased during the period of the deceased being examined by the two doctors, especially, in the absence of an explanation by the prosecution as to how the number of injuries came to be increased.

(20.) Moreover, it is noteworthy that in forcible administration of poison, the victim would try to spit it out and there is a likelihood that the poison would spill on the clothes and body of the deceased.⁴² As the clothes weren't produced, material evidence has thus been withheld by the prosecution and as such, an inference may be drawn to the effect that neither stains nor traces of poison were found in the clothes of the deceased.

[2.3] THE CONDUCT OF THE ACCUSED PERSONS DOES NOT BRING HOME THEIR GUILT.

(21.) It is contended that even if the accused committed the alleged act, then it does not seem likely that they would have left the poison in the scene of crime⁴³. In addition to that, it was the duty of the prosecution and the Hon^{ble} Court to see that the poison i.e., the reason of death, is shown to the medical witness and his opinion as to whether all or any of the injuries on the victim could be caused with such⁴⁴. The proof of the possession of such poison with the accused being absent in the instant case, it is even fallacious to claim that the accused had the opportunity to commit the murder.⁴⁵

(22.) Further, the manner in which the accused are shown to have conducted themselves as per the evidence on record, is indicative of their innocence. They had all the time to remove or destroy the poison to do away with any kind of doubts being levelled against them. No such thing being done, it is fallacious to believe the contention of the Ld. Prosecution that the incident was a pre-planned murder with a strong motive.

⁴² State of Himachal Pradesh v. Rajiv Jassi, Criminal Appeal No. 771 of 2005 dated May 6, 2016.

⁴³ Thulia Kalia v. State of Tamil Nadu, AIR 1973 SC 501.

⁴⁴ Kartarey v. State of U.P., AIR 1976 SC 76; *See also*, Ishwar Singh v. State of U.P., AIR 1976 SC 2423.

⁴⁵ State of Himachal Pradesh v. Rajiv Jassi, Criminal Appeal No.771 of 2005, dated May 6, 2016.

[2.4] THE MOTIVE OF CAUSING DOWRY DEATH HAS NOT BEEN SHOWN.

(23.) It is a matter of principle that the proof of motive is not necessary to sustain a conviction but when the prosecution puts forward a specific case as to motive for the crime, the evidence regarding the same has got to be considered in order to judge the probabilities.⁴⁶ It is well-settled that motive for a crime is a satisfactory circumstance of corroboration when there is convincing evidence to prove the guilt of an accused person but it cannot fill up a lacuna in the evidence.⁴⁷

(24.) Now, it being not disputed that the witnesses had seen the deceased lying on the bed with water all around and that her dress was drenched, supports the contention of the defence that gastric lavage was carried out by the accused persons and in such circumstances, the innocence of the accused is deemed to be inferred.

(25.) Moreover, the legal principles establish that, in case the Court is not satisfied with the story of the accused to be true, even then the court must acquit if the court thinks that it might reasonably be true which is a rule of general application.⁴⁸

(26.) Furthermore, it is possible for Courts to dispense with mens rea, but they can never dispense with actus reus as crimes without actus reus, i.e., 'thought crimes' do not exist. Henceforth, in the instant case, the lack of direct evidence coupled with broken links in the chain of the circumstances clearly gives rise to reasonable doubts on substantial grounds.

(27.) Therefore, it is submitted that, there being no proof of a real state of mind, the Appellants have failed to satisfy this Court so as the accused had the requisite state of mind, whatever it is, when they did the fatal act alleged and thus it is fallacious in nature.

[3] THE EVIDENCE ON RECORD IS INSUFFICIENT TO PROVE THE GUILT OF THE ACCUSED BEYOND ALL REASONABLE DOUBTS

(28.) In the instant matter, the Hon^{ble} HC has acquitted Goyals of the offences of Murder and Dowry death under § § 302 and 304-B of the IPC. With the evidence presented at the trial stage, there is insufficient and inconclusive evidence to show that Goyal family is indeed guilty of the aforementioned offences.

⁴⁶ Emperor v. Nishi Kanta Banikya, AIR 1925 Cal 525; *See also*, Mishra Paraja v. State of Odisha, Cr Appeal No. 242 of 2013.

⁴⁷ Omvati v. Mahendra Singh, AIR 1998 SC 249.

⁴⁸ Mancini v DPP, [1942] AC 1; Chan Kau v R, [1955] AC 206.

[3.1] TESTIMONY OF THE THREE DEFENCE WITNESS CAN BE RELIED UPON.

(29.) The Respondent submits that the Defence witnesses are independent witnesses and their testimonies should be relied upon by the Hon^{ble} court.

[3.1.1] DEFENCE WITNESSES ARE INDEPENDENT WITNESSES.

(30.) Defence witnesses are independent witnesses and their testimonies cannot be discarded on whimsical and erroneous grounds.⁴⁹ The evidences of independent witnesses can only be rejected on very strong reasons⁵⁰ which are patently absent in this case. All the three witnesses have respectively mentioned in their testimonies before the Hon^{ble} court that Sharda Goyal was happy in the Goyal House and their relations inters were cordial and she was treated as a daughter.⁵¹

(31.) There are no evidences whatsoever which has been adduced from the Appellant on which the veracity and probity of their testimonies can be questioned and negated.

[3.1.2] TESTIMONIES OF THE DEFENCE WITNESSES PASS THE TEST OF RELEVANCY.

(32.) The testimonies given by the three defence witnesses pass the test of relevancy and should be accepted by the Hon^{ble} court on merits. In order to admit evidence under § 50 three conditions must be fulfilled: (1) the person must be proved to have special means of knowledge; (2) (a) the opinion alone is evidence; (b) the opinion as expressed by conduct only is evidence ; and (3) the opinion which is relevant must be the one as to the existence of the relationship.⁵² In the instant matter, all the requisite aforementioned conditions have been fulfilled by the testimonies given by the three witnesses and henceforth, the Hon^{ble} court should duly take consideration of the testimonies of the defence witnesses to come to a conclusion.

[3.2] RELATIVE'S TESTIMONIES CANNOT BE RELIED UPON.

(33.) The Respondent submits that the testimonies of Relatives are erroneous, uncorroborated and lacks the requisite probative value.

⁴⁹ State of Assam v. Muhim Barkataki, (1986) 4 SCC 439: 1986 SCC (Cri) 503: AIR 1987 SC 98.

⁵⁰ State of U.P. v. Hari Ram, (1983) 4 SCC 453 : 1983 SCC (Cri) 861 : 1983 Cri LJ 1638 : AIR 1983 SC 1081.

⁵¹ Moot Proposition – 6th UFLYC Ranka National Moot Court Competition, p.4, ¶ 10.

⁵² C.D. FIELD'S COMMENTARY ON LAW OF EVIDENCE, 3309 (13th ed., Delhi Law House) (2011).

[3.2.1] RELATIVES ARE INTERESTED AND CHANCE WITNESSES.

(34.) Relatives in the instant case are interested witnesses as they have a motive to falsely implicate the accused. If the chance witnesses fail to assign any convincing reason for being at the place of the commission of the crime at abnormal hour, testimonies of such witnesses, on fact should be held unreliable⁵³.

(35.) In the instant case, Shri Anil Kumar [PW-5], and Shri Shiv Kumar [PW-6], relatives of the deceased have failed to provide any convincing reason to be present on that place on that hour of the night. Both the witnesses are interested witnesses, inimically disposed against the accused persons and so far as the present incident is concerned, their presence at the scene is highly suspicious. Hence, in the absence of any such credible explanations, any such events narrated by them become highly doubtful, suspicious and controversial.

[3.2.2] TESTIMONIES OF THE INTERESTED WITNESSES ARE NOT CORROBORATED IN THE INSTANT CASE.

(36.) It's a well settled principle of law that testimonies of interested witnesses must be scrutinized with caution, care and scrutiny.⁵⁴ In cases of suspicion and doubt, their testimonies should be corroborated.⁵⁵

(37.) In the instant matter, the Appellants have failed to adduce any such evidences to corroborate the testimonies of the relatives. Hence, it is submitted before the Hon'ble Court that with such grave doubts, the Hon'ble Court should righteously reject their testimonies.

[3.2.3] THEIR TESTIMONIES LACK THE ESSENTIAL PROBATIVE FORCE.

(38.) In the instant matter, the Prosecution has presented the testimonies of the relatives to establish that the accused have been indulged in the criminal act. As previously prescribed by the Appellant that the testimonies in question are infected with suspicion, surmise and conjecture, it is uncorroborated and furthermore, they are interested and chance witnesses.

(39.) Phipson on Evidence⁵⁶ states that where a witness in a criminal case may be regarded as having some purpose in the case at hand, the judge would be unjustified in accepting such a

⁵³ Baldev Singh v. State of M.P., (2003) 9 SCC 45 : 2003 Cri LJ 880 : AIR 2003 SC 2098.

⁵⁴ State of Rajasthan v. Shera Ram, (2012) 1 SCC 602; *See also*, Haresh Mohandas Rajput v. State of Maharashtra, (2011) 12 SCC 56; Ramachandran v. State of Kerala, (2011) 9 SCC 257; State of Rajasthan v. Abdul Mannan, (2011) 8 SCC 65 : (2011) 3 SCC (Cri) 56; Seema v. State (NCT of Delhi), 2012 SCC OnLine Del 6421; Sikander v. State, 1992 SCC OnLine Del 295 : (1992) 24 DRJ 295 (DB) : ILR (1993) 1 Del 40; Angrej Singh v. State, 2013 SCC OnLine Del 4196.

⁵⁵ Sudam v. State of Maharashtra, (2011) 7 SCC 125 : (2011) 3 SCC (Cri) 56; *See also*, Kilakkatha Parambath Sasi v. State of Kerala, (2011) 4 SCC 552 : (2011) 2 SCC (Cri); Dara Singh v. Republic of India, (2011) 2 SCC 490.

statement without corroboration. In dealing with the admissibility of uncorroborated evidence to establish the guilt of the accused, the court has held that such evidence is admissible but on the qualification that it must possess the probative value to conclude as to what the appellant had done.⁵⁷

(40.) It has been held in the case of *State of Minnesota vs. Thomas Royal Renney*⁵⁸, testimony provided by an interested witness must be corroborated to establish its probative weight, and cannot sustain a conviction on its own. The testimony of an accomplice or an informant or an interested Party must necessarily be corroborated to prove the case beyond reasonable doubt⁵⁹.

[3.3] APPELLANTS HAVE FAILED TO ESTABLISH THE POISON TEST.

(41.) In a case of administration of poison, 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. Three questions arise in such cases namely (Firstly), did the deceased die of the poison in question? (secondly), had the accused the poison in question 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.⁶⁰ In the instant case, all the facts have not been proved by the appellants. They are as:

[3.3.1] APPELLANTS HAVE FAILED TO PROVE THAT THE POISON IN QUESTION WAS IN THE POSSESSION OF THE ACCUSED.

(42.) In the instant case, Appellants have failed to prove at any stage by adducing any credible evidence to show that the poison in question was in the possession of the accused. None of the

⁵⁶ BUZZARD, JOHN, MAY, RICHARD, HOWARD, M.N., PHIPSON ON EVIDENCE, 682 (12th ed., Sweet & Maxwell, London)

⁵⁷ Director of Public Prosecutor v. Kilbourne, [1973] AC 729.

⁵⁸ 2003 Minn. App. LEXIS 1261.

⁵⁹ Birbal Singh v. Kedar Nath, (1976) 4 SCC 691 : (1977) 2 SCR 1 : AIR 1977 SC 1.

⁶⁰ Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487; *See also*, Anant Chintaman Lagu v. State of Bombay, AIR 1960 SC 500 : 1960 Cri LJ 682; Dayanidhi Bisoi v. State of Orissa, (2003) 9 SCC 310 : 2003 SCC (Cri) 1798; Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343 : 1953 Cri LJ 129; Tufail v. State Of U.P., (1969) 3 SCC 198 : 1970 SCC (Cri) 55; Ram Gopal v. State of Maharashtra, (1972) 4 SCC 625; Shivaji Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033; Neel Kumar v. State of Haryana, (2012) 5 SCC 766,774; Phino v. State of Punjab, (1975) 4 SCC 119 : 1975 SCC (Cri) 376; Bhupinder Singh v. State of Punjab, (1988) 3 SCC 513 : 1988 SCC (Cri) 694; Raghav Prapanna Tripathi v. State of U.P., AIR 1963 SC 74 : (1963) 1 Cr LJ 70; Chandrakant Nyalchand Seth v. State of Bombay, Criminal Appeal No. of 1957 (SC).

testimonies given by the prosecution witnesses make it absolute clear that the possession of the poison was with the accused. In such a situation of uncertainty and quandary, benefit of doubt should always be given to the accused.⁶¹

[3.3.2] THERE WAS NO SUCH OPPORTUNITY FOR THE ACCUSED TO ADMINISTER THE POISON IN QUESTION TO THE DECEASED.

(43.) It has been already mentioned in the earlier issue that there exist a cloud of uncertainty and quandary over the question of possession and undoubtedly, it will also mean that at the point of the commission of the crime, the accused didn't have the requisite opportunity to implement the act.

(44.) Henceforth, it is respectfully submitted that with such clear doubts about the certainty of these events, the Appellants have failed to establish the poison test.

[3.4] THE INJURIES PRESENT IN THE PERSON OF THE DECEASED ARE SELF-INFLICTED.

(45.) In the instant case, the injuries enlisted in the post mortem investigation by [PW-9] are self-inflicted in nature. Suicidal wounds are generally situated on the front of the body in easily accessible position, especially on the throat, chest, or wrist.⁶² The wounds inflicted by the deceased are located in lower lips, neck, chest sternocalvicular joint which are situated at accessible parts of the body. Therefore, the possibility of suffering the specified injuries during convulsions cannot be ruled out. The same probability has also been highlighted by the doctors [PW-8] and [PW-9], who have carried out their ante-mortem and post-mortem investigations. In the present case, facts and circumstances established along with the evidences on record are inconclusive in nature. Therefore the observations made by the Hon'ble HC are valid.

⁶¹ Manzoor v. State of U.P., (1982) 2 SCC 72 : 1982 SCC (Cri) 356 : AIR 1983 SC 295; *See also*, Goura Venkata Reddy v. State of A.P., (2003) 12 SCC 469; State of U.P v. Rasid, (2003) 9 SCC 449 : 2003 AII LJ 1152 : 2003 Cri LJ 201; State of U.P v. Rashid, (2003) 9 SCC 449 : 2003 AII LJ 1152 : 2003 Cri LJ 2011 : AIR 2003 SC 1243; State (Delhi Admn.) v. Laxman Kumar, (1985) 4 SCC 476 : 1986 SCC (Cri) 2 : AIR 1986 SC 250; Mohd. Moinuddin v. State of Maharashtra, (1971) 3 SCC 338 : 1971 SCC (Cri) 617; Har Prasad v. State of M.P., (1971) 3 SCC 455 : 1971 SCC (Cri) 703 : 1971 Cri LJ 1135 : AIR 1971 SC 1450; Bhagwan Singh v. State of Punjab, 1994 Supp (2) SCC 344 : 1994 SCC (Cri) 1473; Amzad Ali v. State of Assam, (2003) 6 SCC 270 : 2003 SCC (Cri) 1338 : 2003 Cri LJ 3545 : AIR 2003 SC 3587; Satbir v. State of U.P, 1981 Supp. SCC 54 : 1982 SCC (Cri) 132 : AIR 1982 SC 1216; Gurmail Singh v. State of Punjab, (2011) 15 SCC 412 : 2012 Cri LJ 665: (2011) 104 AIC 186 (SC).

⁶² MODI'S MEDICAL JURISPRUDENCE AND TOXICOLOGY, 764 (23rd ed., 2008).

[3.5] THE BODY OF THE DECEASED WAS UNDER THE CHARGE AND CARE OF POLICE.

(46.) The body of the deceased was under the charge and care of police officials right after they were informed by Om Prakash.⁶³ However, on one hand two injuries were recorded in ante mortem investigation, on the other hand, the injuries rose to six during the post mortem investigation. The apparent inconsistency between both the reports, is suggestive of the fact that prosecution has failed to establish and justify such inconsistency, therefore the accused respondents are entitled to benefit of doubt, in the instant case. The medical evidence is itself manifested with errors and omissions and thus cannot be used as a corroborative evidence to prove how truthful the accused was.⁶⁴

[3.6] MEDICAL EVIDENCES AND OPINIONS PASS THE TEST OF RELEVANCY.

(47.) The opinion of medical officer as to the nature of an injury or how it can be caused is relevant to enable the Court to form its own conclusion of the point.⁶⁵ It is a general rule that the opinion of witnesses possessing peculiar skill is admissible, whenever the subject matter of enquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgement upon it without such assistance.⁶⁶ Therefore, in the instant case, the opinions given by the doctors are relevant as per the provisions of § 45 of the Indian Evidence Act, 1872.

[3.7] THE DEPOSITIONS OF MEDICAL EXPERTS ARE ADMISSIBLE.

(48.) Evidence of an expert should be interpreted like any other evidence.⁶⁷ Medical evidence in a criminal case, is of great probative and corroborative value.⁶⁸ In cases of nature of injuries and cause of death, the most competent witness is the doctor examining the deceased and substitute its opinion in place of doctor's.⁶⁹

(49.) Whether the wounds are suicidal, homicidal or accidental, can be determined by the medical practitioner by noting the following points:⁷⁰ The situation and character of the wounds

⁶³ Moot Proposition-6th UFYLC Ranka National Moot Court Competition, 2016 , p.5, ¶ 11.

⁶⁴ Rameshwar Singh v. State of J&K, AIR 1972 SC 102.

⁶⁵ Ramanathan v. State of Tamil Nadu, 1978 Cr LJ 1204.

⁶⁶ TAYLOR ON EVIDENCE, p. 902, §1418 (12th ed.).

⁶⁷ Malay Kumar Ganguly v. Dr. Sukumar Mukherjee, AIR 2010 SC 1162.

⁶⁸ Duraipandi v. State of Tamil Nadu, AIR 1973 SC 659.

⁶⁹ Mafabhai N. Raval v. State of Gujarat, AIR 1992 SC 2186.

⁷⁰ MODI'S MEDICAL JURISPRUDENCE AND TOXICOLOGY, 763 (23rd ed., 2008).

[I]; The number, direction and extent of the wounds [II]; The condition of the locality, the surroundings of the wounded persons and circumstances of the injury [III].

(50.) In the instant case the doctors [PW-8] and [PW-9], after proper examination and application of due diligence have deposed that the possibility of the injuries being caused by convulsions cannot be ruled out. The same has also been admitted by the Hon“ble HC. Therefore, it is apparent that the nature, directions, character and extent of the injury inflicted upon the person of the deceased may also be self-inflicted. Since, the prosecution appellants have relied upon surmises and conjectures without corroboration beyond reasonable doubt that such injuries were inflicted as a result of forceful administration of poison, the respondents are entitled to benefit of doubt.

[3.8] THE CIRCUMSTANTIAL EVIDENCE IS INCONCLUSIVE IN NATURE.

[51.] As Jaffee says „Propositions are true or false; they are not "probable"”.⁷¹ In court as elsewhere, the data cannot 'speak for itself'. It has to be interpreted in the light of the competing hypotheses put forward and against a background of knowledge and experience about the world.⁷² Sir Alfred Wills in his book⁷³ lays down the following rules specially to be observed in the cases of circumstantial evidence: “(1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt with the *factum probandum*; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.” The same has been reiterated in a plethora of cases⁷⁴ and by Wigmore⁷⁵ and Phispon⁷⁶. In the present case,

⁷¹ AMERICAN JURISPRUDENCE, 322 (2nd ed., Vol. 29, Thomson Reuters) (2011).

⁷² Leonard Jaffee, *Of Probativity and Probability*, 46 University of Pittsburgh Law Review 924, 934 (1985).

⁷³ AN ESSAY ON THE PRINCIPLES OF CIRCUMSTANTIAL EVIDENCE BY WILLIAM WILLS, (3rd ed. Henry Butterworth, 7, Fleet Street, Law Bookseller And Publisher).

⁷⁴ Basant Singh v. State of Punjab, 1980 Supp SCC 469 : 1981 SCC (Cri) 376; *See also*, Jagjit Singh v. State of H.P., 1994 SCC (Cri) 176 : 1994 Cri LJ 233 ; Vijender v. State of Delhi, (1997) 6 SCC 171 ; Ram Bharosey v. State of U.P, 1954 Cri LJ 1755 : AIR 1954 SC 704 ; Madhu v. State of Kerala, (2012) 2 SCC 399 : (2012) 1 SCC (Cri) 892 : AIR 2012 SC 664; Mangleshwari Prasad v. State of Bihar, AIR 1954 SC 715; State of U.P v. Desh Raj, (2006) 9 SCC 278 : (2006) 2 SCC (Cri) 489; AIR 2006 SC 1712 ; Thimma and Thimma Raju v. State of Mysore, (1970) 2 SCC 105 : AIR 1971 SC 1871; Hari Om v. State of U.P, (1970) 3 SCC 453; Ronny v. State of Maharashtra, (1998) 3

the plausibility of the hypothesis put forward by the Prosecution at the trial stage is inconclusive in nature. The circumstances encompassing situation at hand fail to prove the factum probandum.

[3.8.1] THERE IS AN ABSENCE OF A MATERIAL HYPOTHESIS INCRIMINATING THE ACCUSED.

[52.] In the instant matter, Goyals have been charged of murdering the deceased Sharda at their own place. The offences, if committed at all, must have been committed by the Goyals on that day in that very room. To convict the Goyals, it is essential for the prosecution to prove that they had the possession and opportunity to administer the poison at the point of the commission of the crime, which has not been established by the Appellants. It is thus contended that none of the existing circumstances are concrete enough to prove the factum probandum. In addition to this, the testimonies of the relatives lack the essential probative value and are uncorroborated. Moreover, they are partisan and interested witnesses.

[53.] Thus the available chain of circumstances fails to prove the proposed hypothesis and at the same time fails to exclude any other possible hypothesis. The Apex Court in the case of *Bakhshish Singh v State of Punjab*⁷⁷ has observed that in a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those 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.

[3.8.2] SUBSEQUENT CONDUCT OF THE ACCUSED AFTER THE COMMISSION OF THE CRIME.

[54.] The subsequent conduct of the accused would be relevant under § 8 of the IEA. In the instant case, the conduct of all the three members of the Goyal family had been quite contradictory to the likes of an individual who had just committed murder. They didn't try to abscond rather they tried their level best to get the deceased diagnosed.

SCC 625 : AIR 1998 SC 1251; Kansa Behera v. State of Orissa, (1987) 3 SCC 480 : AIR 1987 SC 1507; Budhram v. State of Chhattisgarh, (2012) 11 SCC 588 : (2013) 121 AIC 196 (SC); Tukaram v. State of Maharashtra, (1979) 2 SCC 143 : AIR 1979 SC 185; Ghurphekan v. State of U.P., (1972) 3 SCC 361 : AIR 1972 SC 1172.

⁷⁵ WIGMORE, JOHN H., THE PRINCIPLES OF JUDICIAL PROOF: As given by Logic, Psychology and General Experience and Illustrated in Judicial Trials, 632 (Little, Brown and Company, 1913).

⁷⁶ BUZZARD, JOHN, MAY, RICHARD, HOWARD, M.N., PHIPSON ON EVIDENCE, 63 (12th ed., Sweet & Maxwell, London).

⁷⁷ AIR 1957 SC 904.

[3.8.3] THE CIRCUMSTANTIAL CHAIN IS INCOMPLETE AND LEAVES A REASONABLE DOUBT.

[55.] 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, the evidence produced by the prosecution should be of such nature that it makes the conviction of the accused sustainable.⁷⁸

[56.] In the present case, the testimonies of the defence and prosecution witnesses, the failure on the part of the Appellants to prove the poison test, medical reports and opinions of the doctors and the subsequent conduct of the accused leads to an inference that there is a hypothesis which points to the innocence of the accused. It does not exclude any other possible hypothesis nor is the chain concrete enough to prove the guilt of the accused beyond reasonable doubt.

[57.] On the contrary, the facts so established are very well explainable on any other hypothesis except that the accused is guilty. It is therefore most respectfully submitted that the evidence presented is insufficient to sustain a conviction.

[3.8.4] THE APPELLANTS HAVE BEEN UNABLE TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

[58.] In the case of *Woolmington v. DPP*⁷⁹, it has been elucidated by the Hon^{ble} court that the prosecution must prove the case beyond reasonable doubt. It has been mentioned by numerous authorities that an accused must not be convicted unless the court is satisfied of guilt beyond all reasonable doubt.⁸⁰ The above-mentioned arguments do prove at least there lies a reasonable doubt in all the charges framed against the accused. Thus, the conviction should be set aside.

⁷⁸ Kishore Chand v. State of H.P., (1991) 1 SCC 286 : 1991 SCC (Cri) 172 : 1990 Cri LJ 2289 : AIR 1990 SC 2140; See also, Narain Lal v. State of Rajasthan, (1969) 2 SCWR 282; Bakhshish Singh v. State of Punjab, (1971) 3 SCC 182 : 1971 SCC (Cri) 251 : 1971 Cri LJ 1452 : AIR 1971 SC 2016; S.P Bhatnagar v. State of Maharashtra, (1979) 1 SCC 535 : 1979 SCC (Cri) 323 : 1979 Cri LJ 566 : AIR 1979 SC 826; Laxmi Raj Shetty v. State of T.N., (1988) 3 SCC 319 : 1988 SCC (Cri) 633 : (1988) 2 Crimes 107 : AIR 1988 SC 1274; Usman @ Khalnayak v. State of U.P., 2016 SCC OnLine AII 616; Arjun v. State of Rajasthan, 2016 SCC OnLine Raj 5138; Kedarnath v. State of U.P., 2016 SCC Online AII 544.

⁷⁹ [1935] AC 462.

⁸⁰ Adambhai Sulemanbhai v. State of Gujarat, (2014) 7 SCC 716: (2014) 5 SCC (Cri) 312; See also, Ram Lakhan Singh v. State of U.P., (1977) 3 SCC 268 : 1977 SCC (Cri) 474; Tulsiram Kanu v. State, AIR 1954 SC 1 : 1954 Cri LJ 225; Ram Prasad v. State of U.P., (1974) 3 SCC 388 : 1973 SCC (Cri) 953; State of U.P v. Punni, (2008) 11 SCC 153 : (2009) 1 SCC (Cri) 372; Allarakha K. Mansuri v. State of Gujarat, (2002) 3 SCC (Cri) 519 : 2002 Cri LJ 1489 : AIR 2002 SC 1051; Mallappa Siddappa Alakanur v. State of Karnataka, (2009) 14 SCC 748, 753-754; Surinder Kaur v. State of Haryana, (2004) 4 SCC 109 : 2004 SCC (Cri) 926; Mohinder Singh v. State Govt. of NCT of Delhi, (2002) 10 SCC 189; Ashish Batham v. State of M.P., (2002) 7 SCC 317 : 2002 SCC (Cri) 1718; Gurbachan Singh v. Satpal Singh and others, (1990) 1 SCC 445 : 1990 SCC (Cri) 151.

PRAYER

In the light of facts stated, issues raised, arguments advanced and authorities cited, the Respondents most humbly and respectfully pray and request the Honourable Court:

- 1) **TO DISMISS THE PRESENT APPEAL.**
- 2) **TO UPHOLD THE CONVICTION.**

AND/OR

TO GRANT ANY OTHER ORDER IN FAVOUR OF THE RESPONDENTS WHICH THE HONOURABLE COURT MAY DEEM THINK FIT IN THE EYES OF JUSTICE, EQUITY AND GOOD CONSCIENCE.

All of which is respectfully submitted and for such act of kindness the Respondents shall be duty bound as ever pray.

Sd/-

COUNSELS FOR THE RESPONDENTS