RAGHAV PRAPANNA TRIPATHI

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May 4.

v.

THE STATE OF UTTAR PRADESH

(S.K. DAS, J. L. KAPUR, A.K. SARKAR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Circumstantial evidence—Murder—No direct evidence—Sufficiency of proof—Inference from absconding—Inference from non-recovery of jeep—Inference from presence of accused in house where murder was alleged to have taken place—Indian Penal Code, ss. 176, 201, 302.

The appellants were prosecuted and committed to the Sessions for trial. Raghav was convicted and sentenced to death under s. 302, I.P.C. He and Jai Devi, his mother, Ramanuj Das, Mohan Singh and Udham Singh were convicted under section 201 IPC. Ramanuj Das was also convicted under section 176 IPC. Their appeals were dismissed by the High Court. They came to this court by special leave. The appeal of Raghav, Mohan Singh and Udham Singh was allowed by majority, that of Ramanuj Das and Jai Devi for offence under s. 201, IPC was allowed unanimously and appeal of Ramanuj Das for offence under s. 176 IPC was allowed by a majority.

Held (Kapur and Hidayatullaha, JJ dissenting) that there was no direct evidence about Raghav committing the murder of Kamla and Madhusudan. There was no direct evidence about his carrying away their dead bodies in the jeep. There was no direct evidence about Ramanuj Das or any other accused being a party to the removal of the dead bodies from the house. The entire case was based on circumstantial evidence. The circumstances proved against Raghav were not sufficient to support the finding that he had committed the murder. The mere absconding may lend weight to the other evidence establishing the guilt of the accused but by itself that is hardly any evidence of guilt. It was too much to conclude from the non-recovery of the jeep that if it had been recovered, it would have afforded evidence of existence of human blood-stain and of its having been used to remove evidence of murder. That circumstance had no evidentiary value. There was no evidence about the part Ramanuj Das or Jai Devi played in the removal of the dead bodies. The fact that they were in the house and could have possibly known of the removal of the dead bodies, if that was a fact

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would not by itself establish that they assisted in the removal of the bodies. The conviction of the appellant was not justified on the material on record.

Per Kapur and Hidayatullah JJ. The strained relations between husband and wife, the motive to escape the giving of money and land as maintenance to the wife or child, suddenly leaving the village at night with two others and almost simultaneous disappearance of Kamla and her son, no search for her and absolute callousness on the part of Raghav, giving of false explanation later on and his absconding were circumstances from which the Courts below were justified in concluding that Kamla and her son were murdered and Raghav had a predominant motive to commit the murder. The inculpatory facts proved against Raghav were not capable of explanation on any other hypothesis except his guilt. The Courts below had applied correct principles and found Raghav guilty and there was no reason to disagree with their conclusions. The non-production of the jeep was a circumstance against Raghav which the Courts below were entitled to take into consideration. Articles like jeeps do not just disappear in thin air and when they do disappear and cannot be traced and when the allegation is that they have been used for carrying away the dead bodies, their non-production or their not being found is a circumstance which a Court can take into consideration in determining the guilt of an accused person.

No case under section 201 of the Indian Penal Code had been made out against Ramanuj Das and Jai Devi. What section 201 requires is causing any evidence of the commission of the offence to disappear or giving any information respecting the offence which a person knows or believes to be false. It was not proved that the two appellants had caused any evidence to disappear. There may be a strong suspicion that if from the house dead bodies were removed or blood was washed, the persons placed in the position of the two appellants must have had a hand in it, but still that remains a suspicion, although a strong suspicion. There mere absconding would not fill the gap or supply the evidence which was necessary to prove the ingredients of section 201.

Anant Chintaman Lagu v. *The State of Bombay*, [1960] 2 S.C.R. 460, *Govinda Reddy* v. *The State of Mysore*, A.I.R. 1960 S.C. 29, *Stephen Seneviratnan* v. *The King*, A.I.R. 1936 P.C. 289, *Towell's case*, (1854) 2 C & K 309, *Rex* v. *Horry*, [1952] N.Z.L.R. 111, *Regina* v. *Onufrejczyk*, (1955) 1 Q.B. 338, relied upon.

Rex v. *Hodge*, (1833) 2 Lew. 227, referred to.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 72 of 1962.

Appeal by special leave from the judgment and order dated February 8, 1962, of the Allahabad High Court in Criminal Appeals Nos. 1728 and 1739 of 1961 and Referred No. 125 of 1961.

Jai Gopal Sethi, A.N. Mulla, J.B. Goyal, C.L. Sareen and *R.L. Kohli*, for the appellants.

G.C. Mathur and *C.P. Lal*, for the respondent.

1962. May 4. The Judgment of Das, Sarkar, Dayal, JJ., was delivered by Dayal, J. The Judgment of Kapur and Hidayatullah, JJ., was delivered by Kapur, J.

Raghubar Dayal J.

RAGHUBAR DAYAL, J.—Raghav Prapanna Tripathi, hereinafter called Raghav, Ramanuj Das, Jai Devi, Moban and Udham Singh, appeal by special leave against the order of the High Court of Allahabad, dismissing their appeal against their conviction by the Sessions Judge, Etawah. Raghav was convicted and sentenced to death under s. 302 I. P. C. He and the other apppellants were also convicted of the offence under s. 201 I. P. C. Ramanuj Das was convicted of the offence under s. 176 I. P. C. also.

The prosecution case, in brief, is that Raghav shot dead his first wife Kamla, and their son Madhusudhan, aged about 4 years, at about sunset on April 5, 1961, at their house in village Hamirpur Roora, District Etawah. The motive for this conduct is said to be Raghav's not caring for Kamla and ill-treating her after his marrying one Bimla in 1954. Kamla had to go to her father's place and stay there for about two years on account of the alleged ill-treatment she got at her husband's

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hands. She was, however, brought back by Ramanuj Das, in 1960. He assured her father that she would be well looked after and that he would transfer 90 bighas of land to her and pay her Rs. 10,000/-.

It is also alleged that earlier in the day on April 5, 1961, Ramanuj Das had ultimately promised to Lakhan Prasad that he would execute the necessary transfer deed on Monday following and that Raghav left the place during their conversation in this regard. It is alleged that he did so as he resented the idea of so much property and cash, which would have ultimately benefited him, being made over to Kamla. This resentment is said to have prompted Raghav to murder his wife and son that evening.

We may now mention facts to show the connection of Ramanuj Das and other accused with Raghav which is said to have led them to be parties to the disappearance of the evidence about the murders in order to protect Raghav from legal punishment and thereby to commit the offence under s. 201 I. P. C. Lachman Das was the Mahant of the temple in village Hamirpur Roora. Narayan Das, father of Raghav, and Ramanuj Das were his disciples. On Lachman Das, death, Ramanuj Das succeeded him as Mahant, though Narayan Das was the senior disciples, as Narayan Das had taken to secular life. Ramanuj Das, Raghav, Jai Devi, mother of Raghav. Raghav's wife Kamla, and Madhusudhan, all lived as a joint Hindu family in the house in which there was the temple. Mohan Singh was a servant of Ramanuj Das. Udham Singh was also alleged to be a servant of Ramanuj Das.

Raghav mostly lived at Lucknow with Bimla and his sisters who were studying there. He is

a law graduate. He possessed a jeep car whose registration number was U. S. J. 3807.

No information was conveyed by anyone to the police about the numbers for about two days. Khushali, Chaukidar, lodged a report at 9.20 a. m. on April 7, 1961, at police station Airwa Katra, District Etawah. The Station Officer was not present at the police station. This report may be usefully quoted here:

> "Day before yesterday in the night Raghav of my village, who is a son of Narain Das, has murdered his wedded wife and son by firing at them with the gun of Mahant Ramanuj Das. He has gone somewhere with the two dead bodies in a car. There is a rumour about it in the whole of the village. Having heard of it, I went to the Mahant who is also the Pradhan of my village. I asked him to give me something in writing, so that I would go to the Police Station and make a report. The Mahant then asked me to wait and to go only after Thakur Dalganjan Singh had come. I did not listen to him, although he kept on forbidding. I have come to make a report."

Sub-Inspector Brij Raj Singh Tomer, Station Officer, Airwa Katra, received the copy of the first information report at 11 a. m., and immediately proceeded to the spot and reached there at 2 p. m. He inspected the house of Ramanuj Das and prepared the site plan. He suspected blood stains at about 11 places in the house and took the stained plasters from those places and put them in different packets. All the 11 packets were then sealed in a single bundle.

The Chemical Examiner found the plasters in 5 of these packets to be stained with blood. The

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Serologist could not determine the origin of the blood on account of its disintegration.

The positions of the plasters found blood-stained are not clearly made out from the various documents, but, in view of the fact that 11 stained plasters were taken in possession from over the door in the front wall of the southern outer room or from its floor or its wall, that at least 2 of the blood stained plasters were from the southern outer room portions, even if the other three blood stained plasters were from the outer wall of the northern room, the roof of the temple and the floor of the southern inner room.

Sub-Inspector Brij Raj Singh Tomer did not find any of the appellants in the village.

On April 12, 1961, Bashir Hussain, Deputy Superintendent of police, visited the spot and recovered suspected blood-stained earth from the parnalas of the roof of the house and also from the land on which the water of the parnalas fell. He took 7 samples of such earth, put them in 7 packets and sealed them in a bundle. The Chemical Examiner found the earth of two such packets to be stained with blood. Again, the Serologist could not determine the origin of blood due to dis-integration.

On April 16, 1961, Bashir Hussain recovered Raghav's shirt and pyjama from Snowhite, Cleaners & Dyers at Lucknow, as they were suspected to be stained with blood. No blood was detected on the pyjama. The Chemical Examiner found blood stains on the shirt. The Serologist could not detect the origin of the blood.

The police failed to discover the dead bodies of Kamla and Madhusudhan and also the jeep car.

Raghav surrendered in the Court of the Magistrate at Barabanki on April 20. Mohan was arrested on April 9, Ramanuj Das surrendered in the Court of the Judicial Officer, Bidhuna, on April 24, 1961, Jai Devi applied for bail on April 27, presumably, she surrendered on that day.

As a result of the investigation, the appellants were sent up for trial. All the appellants denied that they committed the offences with and stated that they had been falsely implicated.

There is no direct evidence about Raghav's committing the murder of Kamla and Madhusudhan. Neither is there direct evidence about his carrying away the dead bodies of Kamla and Madhusudhan in the jeep that night from village Hamirpur Roora as alleged for the prosecution. There is no direct evidence about Ramanuj Das or any other accused being a party to the removal of the dead bodies from the house. The entire case against the appellants depends on circumstantial evidence.

We may deal with the circumstances which the learned Sessions Judge and the High Court found established and from which they concluded that Raghav murdered Kamla and Madhusudhan and that thereafter, Raghav, Mohan and Udham Singh, with the connivance of Ramanuj Das and Jai Devi, carried away the dead bodies in the jeep and disposed of them.

These circumstances are—

1. On April 5, 1961, Kamla and Madhusudhan were in the house of Ramanuj Das.

2. Kamla and Madhusudhan were last seen alive on April 5, 1961, in the evening.

3. On April 5, 1961, Raghav Prapanna was also in the house of Ramanuj Das.

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4. On April 5, 1961, at about 5 or 6 p. m. three gun shots were fired on the roof of Ramanuj Das.

5. On April 5, 1961, at about 9 or 10 p. m. Raghav Prapanna, Mohan and Udham Singh left village Hamirpur Roora on the jeep of Raghav.

6. On April 5, 1961, at about 11 p. m. Raghav Prapanna purchased petrol from Bidhuna Petrol Pump.

7. On April 6, 1961, at about 8. 30 a. m. Raghav Prapanna crossed Rawatpur barrier in Kanpur.

8. On April 6, 1961, Raghav Prapanna got a post card sent by his sister that Kamla had reached Lucknow safely.

9. On April 7, 1961, blood-stained earth was recovered from the house of Ramanuj Das from 11 different places.

10. On April 14, 1961, blood-stained earth was recovered from the house of Ramanuj Das from 7 different places.

11. All the accused absconded after the alleged murder.

12. Blood-stained shirt and pyjama belonging to Raghav Prapanna were recovered from the possession of Snow-white Dyers and Cleaners, Lucknow.

13. The police could not trace out the jeep of Raghav Prapanna in spite of best efforts.

On behalf of the appellants it is not dispute that the circumstances numbered 1, 2, 7, 9, 10, 1

and 13 have been established. It is contended for the appellants that the other circumstances have not been proved and that, even if proved, all the aforesaid circumstances are insufficient to lead to the sole conclusion that Raghav committed the murders of Kamla and Madhusudhan and that he and the other appellants were parties to the removal of the dead bodies.

Kamla and Madhusudhan were in the house on April 5, 1961. They were not seen after the evening of April 5, 1961,

The third circumstance is disputed. Raghav states that he had left Hamirpur Roora on April 4. This finds support from the statement of Sri Ram, P.W. 3, that he had seen Raghav pass via Samain in a jeep that night. He saw this on Tuesday, April 4, 1961 was a Tuesday. Even if he was in the village on April 5, his presence in the house does not put him in such a position that his omission to furnish information about the whereabouts of Kamla and Madhusudhan or as to what happened to them should point to his committing their murders. He was not the only person in the house to know of what happened to them. There were other persons in the house. It is true that the circumstance of his presence in the house and the absence of any activity on his part to make enquiries about Kamla and Madhusudhan when they were not seen in the house on April 6, is a conduct which is not expected from a husband, even if the relations between the husband and the wife be strained.

The fourth circumstance that three gun shots were fired from the roofs of Ramanuj Das at about 5 or 6 p.m. on April 5, cannot lead reasonably to the only conclusion or even to a reasonable suspicion that Raghav did fire those shots, that he

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fired them in the room and that he shot dead his wife and son by that firing. The connection between the firing of gun shots from the side of the roof of Ramanuj Das and the alleged murders, seems to us to be too remote to arrive at the conclusion that Raghav had killed his wife and son.

In this connection, reference may also be made to circumstances Nos. 9 and 10, relating to the recovery of the bloodstained earth from the house. The blood-stained earth has not been proved to be stained with human blood. Again we are of opinion that it would be far-fetched to conclude from the mere presence of blood-stained earth that that earth was stained with human blood and that the human blood was of Kamla and Madhusudhan. These circumstances have; therefore, no evidentiary value.

The facts that Kamla and Madhusudhan have not been seen since the evening of April 5, 1961, and that blood stains, not proved to be of human origin, were found in that room, are not sufficient for holding that they must have been murdered, however strongly one may suspect it in view of the unlikelihood of their having left the house for any other place.

In this connection, reference may also be made to circumstance No. 8. Exhibit Ka-7 was addressed by Govind Kumari, sister of Raghav, to Ramanuj Das on April 6, 1961, from Lucknow. It is stated in this post-card that 'Raghav etc., had arrived safely and that as 'bhabi' had also arrived, it was not necessary for her to cook food etc.'. This letter, according to the post-mark, reached Samrin Post Office on April 10, and was not delivered till April 13, to the addressee, as he was not present, and was ultimately handed over to

the Deputy Superintendent of Police, in compliance with the orders of the Magistrate under s. 95, Cr. P. C. It is alleged that this letter was written at the instigation of Raghav in order to prepare evidence about Kamla's reaching Lucknow on April 6. There is however no evidence on record about Raghav's having a hand in the sending of this letter by Govind Kumari. She was not examined to prove the contents of her letter and to explain to whom she referred to as 'bhabi'. Raghav has stated that he had gone to Lucknow along with Rama Sewak's wife, whom he also called 'bhabi'. That may be true or not. The fact remains that there is no evidence that Govind Kumari wrote this postcard with a purpose and at the instigation of Raghav. The evidentiary value of this postcard is nil and the conclusions that Raghav got this letter sent is not justified when there is no evidence to that effect and there is no definite proof that the expression 'bhabi' referred to Kamla.

Support for the inference that the expression 'bhabi' referred to Kamla has been found, by the Court below, from complete omission to Govind Kumari's sending wishes to Kamla and Madhusudhan, as it is expected that if she knew that they were at Hamirpur Roora, she would have conveyed her wishes to them. One can normally expect this, but it is in the statement of Lakhan Prasad, P. W. 6, that there could not have been good relations between Govind Kumari and Kamla. Lakhan Prasad deposed that on his asking Kamla the cause of her unhappiness for the last four years, she told him that one Sub-Inspector Iqbal visited her father-in-law's place and had illicit connection with Govind Kumari and that these persons, together with Raghav, used to take wine and meat in the temple. She further told him that her complaint to her mother-in-law in this respect

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went un-heeded. It follows, therefore, that omission of the usual courtesies in the postcard from Govind Kumari need not lead to the conclusion that it was on account of the attempt to show, when need be, that Kamla and her son had reached Lucknow and were alive on April 6, 1961.

Circumstances 5 and 6, by themselves, are not sufficient to lead to the conclusion that Raghav had taken the corpses of Kamla and Madhusudhan in the jeep from the village on the night of April 5, 1961, when there is no evidence of any witness about seeing any such things in the jeep which might reasonably lead to the inference that they contained the dead bodies.

The 7th circumstance, does not in any way go against Raghav, as he himself admits to have gone to Lucknow from village Bhuwain on April 6, 1961. In doing so he would pass Rawatpur barrier. This circumstance, in a way, supports his version and has nothing incriminating in itself.

The 11th circumstance, as stated, is not quite correct. All the accused did not abscond after the alleged murders. Ramanuj Das himself was in the village till the morning of April 7, according to the statement of Khushali, Chowkidar, who lodged the first information report. If he and others left the house after knowing of the report lodged by the chowkidar, that is understandable. The mere absconding, however, may lend weight to the other evidence establishing the guilt of the accused, but, by itself, is hardly any evidence of guilt.

The 12th circumstance, is about Raghav's shirt being found to be stained with blood by the Chemical Examiner. The bloodstain has not been proved to be of human origin. In the circumstances, this circumstance has no evidentiary value in

connecting Raghav with the offence of murder. Further, the shirt was recovered from the Dry Cleaners on April 16. It was given to them on April 9. The murder is said to have taken place on April 5. Bloodstain on the shirt could have been due to reasons other than Raghav's taking part in the murder of his wife and son.

In this connection, reference must be made to the statement of Babu Lal, P. W. 7, the proprietor of the Snowhite Cleaners & Dyers to the effect that when Raghav gave him the shirt for washing it was not blood-stained. He has also stated that even when the Sub-Inspector took it in possession, it was not blood-stained. The High Court considered Babu Lal's statement to be untrue as he had signed the recovery list which stated that the shirt had stains suspected to be washed bloodstains. There was no statement that the shirt had bloodstains on April 9 when it was given for washing. Further, if the signing of the recovery list by Babu Lal as a witness to the recovery be taken to be his statement about the correctness of its contents, that statement would be inadmissible in evidence in view of s. 162, Cr. P. C.

The last circumstance, as a piece of evidence against the accused, is that the police could not trace out the jeep of Raghav in spite of best efforts. The inability of the police to find the jeep does not prove that the jeep, if found, would have furnished evidence against Raghav' by showing the existence of human blood-stains on its parts and thereby indicating that it was used in removing the corpses. If it had been recovered and human bloodstains had been found on it, there would have been some evidence against the accused about the jeep having been used for removing the dead bodies. But it is too much to conclude from the non-recovery of the jeep that if recovered

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it would have afforded evidence of existence of human bloodstains and thus of its having been used to remove evidence of murder. This circumstance has therefore no evidentiary value.

In this connection, we must refer to the unusual conduct of the Magistrate in forwarding the letter of request by the Investigating Officer under s. 94 Cr. P. C., to the Jailor, requiring Raghav to convey information in whose charge he left his jeep No. 3807 while surrendering in Court at Barabanki, and the whereabouts of the jeep at the time. The Investigating Officer could have interrogated the accused in jail, as is usually done, of course, with the permission of the Magistrate. But, to attempt to get written replies from the accused, is unusual, if not unwarranted under the Code of Criminal Procedure. Any way, any reply given by the accused to such a query of the Investigating Officer, cannot be used in evidence in view of s. 162 of the Code of Criminal Procedure.

We have now dealt with the pieces of circumstantial evidence which were accepted by the Courts below and are of opinion that those circumstances are not sufficient to support the finding that Raghav committed the murder of Kamla and Madhusudhan.

The facts alleged to constitute motive for Raghav to commit the murders do not necessarily provide such a motive. Raghav married Bimla in 1954 and for seven years he appears to have continued his marital relations with Kamla as well. Madhusudhan was born in 1957. He may not be showing the same affection to Kamla after his marriage with Bimla as before. There might have been something of an estrangement in his relations towards her. But all this would not afford a motive for murdering her, and also their son Madhusudhan. The suggestion to Ramanuj Das to pay

Rs. 10,000/- to Kamla and also to transfer 90 Bighas of land to her, even if true, need not have caused such a resentment to Raghav as to decide on murdering his wife and son. There is nothing on the record to indicate how such a transfer of cash and property would affect the total property of Ramanuj Das, and how, ultimately, Raghav would be affected by it. Apparently, Raghav would have no claim to the property left by Ramanuj Das as a mahant of the mutt or temple. The property would go to the successor of Ramanuj Das. Raghav who was leading a secular life, will not succeed to the Mahantship, just as his father Narain Das, though a senior disciple of Lachman Das, did not succeed to it. His leaving the place when Ramanuj Das was approached by Lakhan Das to transfer cash and land to Kamla, does not necessarily indicate that he left as he resented the suggestion. There is no evidence that he raised any protest at the time or indicated by any expression that Ramanuj Das should not do so. We do not consider it reasonable to conclude, from the mere fact of his leaving the place, that he did so on account of such keen resentment as would make him commit the murders of his wife and son.

Lastly, there is no such circumstantial evidence which would establish that the appellants had removed and concealed the dead bodies. We have already referred to the absence of evidence about the dead bodies being carried in the jeep that night by Raghav. There is no evidence about the part which Ramanuj Das or Jai Devi played in the removal of the dead bodies. The fact that they were in the house and could have possibly known of the removal of the dead bodies, if that was a fact, would not by itself establish that they assisted in the removal of the bodies. We are therefore of opinion that no offence under s. 201

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I. P. C. has been established against the appellants.

Further, no offence under s. 176 I. P. C. can be held proved against Ramanuj Das when there is no proof that Kamla and Madhusudhan were murdered. As a member of the village Panchayat he was bound to convey information to the nearest Magistrate or Officer-in-charge of the nearest Police Station about the commission of an offence under s. 302, I. P. C., only when a murder had been committed and he knew about it.

The conviction of the appellants for the various offences is therefore not justified on the material on record. We therefore allow the appeal, set aside their conviction and acquit them of the offences they have been convicted of. They will be released forthwith from custody, if not required to be detained under any other process of law.

Kapur J.

KAPUR, J.—This is an appeal against the judgment and order of the High Court of Allahabad confirming the conviction and sentences passed on the appellants. Of the appellants Raghav Prapanna Tripathi was convicted of murdering his wife Kamla and his son Madhusudhan on the evening of April 5, 1961 at Hamirpur Roora and was sentenced to death. He and other appellants were also convicted under s. 201, Indian Penal Code for causing the disappearance of the evidence of the crime and were sentenced to five years' rigorous imprisonment. Appellant Ramanuj Das was further convicted under s. 176, Indian Penal Code and sentenced to 3 months' rigorous imprisonment.

The conviction is based on circumstantial evidence. This Court in *Anant Chintaman Lagu* v. *The State of Bombay* (1) has laid down the princi-

(1) (1960)2 S.C.R. 460.

ples which govern such cases. In that case Hidayatullah J., at p. 516 quoting the observations of Baron Parke in *Towell's case*(1) where the learned Baron laid down the principles applicable to such cases observed that any circumstance which destroys the presumption of innocence, if properly established can be taken into account to find out if the circumstances lead to no other inference but of guilt. Thus what we have to see is whether taking the totality of circumstances which are held to have been proved against the appellants it can be said that the case is established against the appellants i.e. the facts established are inconsistent with the innocence of the appellants and incapable of explanation on any hypothesis other than that of guilt. See also *Govind Reddy* v. *State of Mysore*(2). It may also be observed here that ordinarily this court does not reassess the evidence and re-examine the findings reached by the courts below particularly where there are concurrent findings of fact, but it was urged before us that this is one of those cases where the rule laid down by the Privy Council in *Stephen Seneviratne* v. *The king* (3) applies i. e. on the evidence taken as a whole no tribunal could as a matter of legitimate inference arrive at the conclusion that the appellants are guilty. The inference of guilt of the appellants has been drawn from a number of circumstances which, according to the appellants, do not lead to the irresistible conclution that they are guilty and which, according to the submission of the respondent, lead to only one conclusion and one alone that the appellants have been rightly convicted and sentenced. In order to satisfy ourselves at to the guilt of the appellants we have found it expedient in this case to go into the evidence and see whether the conviction is rightly based.

(1) (1854) 2 S.C.R. 30). (2) A.I.R. 1960 S.C. 29.
(3) A.I.R. 1931 P.C. 289, 299.

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Kapur J.

In village Hamirpur Roora which is in Itawah district there is a religious institution of which Lachhman Das was the Mahant. He had two chelas (disciples) the elder was Narain Das and the younger Ramanuj Das who is one of the appellants in the present case. Narain Das got married and was therefore excluded from succession. His wife is Jai Devi who is also an appellant and they has several children amongst whom is their son Raghav who is another appellant in the case and they have got younger sons and some daughters amongst whom we need only mention Govind Kumari who is M.A.LL.B. of the Lucknow University but she is neither a witness nor an accused in the case. The other two accused are Mohan Singh and Udham Singh who are retainers of the Mahant. Raghav in the year 1950 was married to Kamla who was the daughter of Ram Sarup, a well-to-do gentleman living in another village. In 1954 Raghav married another girl who is also an M.A., LL.B. and she and Raghav with Govind Kumari and other sisters were living at Lucknow in a flat in Shankarpuri. The case for the prosecution is that after the marriage the relations between Kamla, the first wife, and Raghav were strained and she was ill-treated by her husband and Kamla had to leave her father-in-law's house and to go and live with her father in his village. Before this Kamla and Raghav had a son Madhusudhan who was born in 1957. While Kamla was staying with her father, P.W. Lakhan Prasad intervened and suggested to Ramanuj Das appellant to give to Kamla Rs. 10,000 in cash and 90 bighas of land and this was agreed to by Ramanuj Das and on this assurance Ramanuj Das went to Kamla's father's house and brought back Kamla after the *Bidai* ceremony was performed. It has been stated in the evidence of Ram Sarup which has been accepted by the High Court that Ramanuj Das himself had told him (Ram Sarup) that the money and the land would be given.

Sometimes in February 1961 i.e. about a month and half before the date of the alleged occurrence Ram Sarup went to the house of Ramanuj Das along with Lakhan Prashad P.W. He asked Ramanuj Das to execute the document in respect of the property and also in regard to the money and they were told by Ramanuj Das that after Raghav returned from Lucknow this would be done. After having this talk Ramanuj Das, Ram Sarup and Lakhan Prasad met Kamla in the house of Ramanuj Das and apprised her of this arrrangement. On April, 4, 1961 Lakhan Prasad came to know about the arrival of Raghav and on the following day i.e. April 5, 1961 he want to Ramanuj Das as he had been instructed by Ram Sarup and there he found both Ramanuj Das and Raghav. Lakhan Prasad then asked Ramanuj Das that the promise in regard to Rs.10,000 and 90 bighas of land should be carried into effect. Thereupon it is stated that Raghav got up abruptly and left the place but Ramanuj Das promised to execute the document on the day Ram Sarup could come. Lakhan Prasad told Ramanuj Das that he would go to Ram Sarup on Saturday i.e. April 8, 1961 and bring him on the following day i.e. April 9,1961 and then the document could be executed on Monday, April 10,1961. This arrangement was accepted by Ramanuj Das. Lakhan Prasad then went and informed Kamla about it.

According to the prosecution both Kamla and Madhusudan were murdered with gun-shots sometime in the evening of April 5,1961, the day the above talk took place. These gunshots were heard by three witnesses. The same evening Raghav left Hamirpur Roora by jeep accompanied by appellants Mohan Singh and Udham Singh They were seen passing through the village Samain at about 9 O'clock by P.W. Sri Ram. They then proceeded to Bidhuna where petrol was purchased from the shop of one Ram Bhajan P.W. This was at about

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11 P.M. Ram Bhajan saw two other persons in the jeep which was being driven by Raghav. They then crossed the Ganga at Kanpur at the Rawatpur Barrier at 8.30 a.m. and from there proceeded to Lucknow. A post card was sent from Lucknow on April 6, 1961 by Govind Kumari in regard to the arrival of Raghav and others.

It is not disputed that Kamla and Madhusudan were not seen alive after the evening of April 5,1961. As a matter of fact it is admitted that she became "traceless" after Raghav left Hamirpur Roora. On April 7,1961, Khushali Chowkidar of the village made a First Information Report at the police station to the following effect.

> "Day before yesterday in the night Raghav of my village, who is son of Narain Das, has murdered his wedded wife and son by firing of them with the gun of Mahant Ramanuj Das. He has gone some where with the two dead bodies in a car. There is a rumour about it in the whole of the village. Having heard of it, I went to the Mahant who is also the Pradhan of my village. I asked him to give me something in writing, so that I should go to the Police Station and make a report. The Mahant then asked me to wait and to go only after Thakur Dalganjan Singh had come. I did not listen to him, although he kept on forbidding. I have come to make a report".

The Sub-inspector-in-charge of the Police Station had gone in connection with some official duty and therefore the above information was sent to him by the police. He came to Hamirpur Roora at about 2 p.m. and inspected the house where the deceased was residing. According to his statement he did not find any one in the house; he took some witnesses along with him and made a search of the house and there he found some patches

which looked like blood on the terrace and in the rooms of the first floor. He prepared a site plan and made a memorandum of what he saw there. This site plan and the memorandum that he prepared have been proved. He took into possession blood stained plaster pieces from 11 places from inside the room, put them into separate packets and made the packets into a bundle and sealed it. On April 12, 1961 Police Deputy Superintendent Bashir Hussain took in and the investigation and came to the place of the occurrence and found seven other places where there were marks which looked like blood marks and he took the earth into possession. These included places like *Parnalas* (water spots). These were also made into a sealed parcel but unfortunately all these articles were not sent to the Chemical Examiner till May 25, 1961 and when examined out of 11 pieces which had been collected by the Sub-Inspector five were found to be bloodstained and of out seven pieces collected by Deputy Superintendent Bashir Hussian only two were found to be bloodstained. When these articles were sent to the Serologist the origin of the blood could not be ascertained as the blood by that time had disintegrated.

The Sub-Inspector searched for the accused persons but could not find any one at the house or at other places. On April 10, 1961 he arrested Mohan Singh appellant but the others could not be traced. They excepting Raghav surrendered themselves on different dates in the Magistrate's court in the district of Etawah Ramanuj Das on April 24 and Jai Devi on April 27. The Sub-Inspector started a search for Raghav, looked for him in different places in Lucknow but he could not find him nor was his jeep found. April 20, 1961 Raghav surrendered in the court of the Magistrate at

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Nawabganj in the district of Barabanki. In the application he stated as follows:-

> "2. That Srimati Kamla daughter of Ram Swarup of village Manchhana, P. S. Kotwali District Mainpuri, residing in my house has become traceless along with her minor son and in this connection a strong rumour has been set afloat by the enemies of the applicant's family to the effect that she has been murdered."

He also stated that his name was being associated with the murder because of enmity. An Affidavit was filed in the court of the Magistrate by Govind Kumari sister of the appellant in which it was stated that Kamla had run away from the house of Ramanuj Das after stealing ornaments. The jeep in which Raghav had left Hamirpur Roora was never found in spite of the best efforts of the Police.

During the course of their investigations the police recovered from the laundry of on Babulal P.W. in Lucknow a shirt and a pyjama belonging to appellant Raghav. The police thought that there were blood marks both on the shirt as well as the pyjama but the Chemical Examiner only found three minute size bloodstains on the shirt but the origin of this blood also could not be discovered as the blood had disintegrated. The appellants were then tried before the learned Sessions Judge who convicted them as has been said above. The conviction was upheld by the High Court and the appellants have come to this court by special leave.

It may be remarked that the dead body of Kamla or her son Madhusudan was never found and this is a case where there is no direct proof of *corpus delicti*. The question is whether in a case

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like this and on the evidence which we are going to discuss, it can be said that a case of murder has been proved and it has also been proved as to who committed the murder and further whether a case under s. 201 has been made out.

There are certain facts in this case which are not in controversy. The appellant Raghav after having been married to Kamla for about four years married a second time. His second wife is Vimla who is a graduate of the Lucknow University. It is not disputed that some time in 1959 Kamla with her son Madhusudan who was born in 1957 went to live with her parents, her father being a well to-do resident of another village. She stayed with her parents for about two years and was brought back to Hamirpur Roora some time in 1960. The prosecution case is that this was on the promise that she will be given Rs. 10, 000 in cash and 90 bighas of land but this is denied by the defence. The High Court has found this fact proved. There is again no dispute about their (Kamla and her son Madhusudan) being alive upto the evening of April 5, 1961. On the night between April 5 and April 6, both Kamla and Madhusudan disappeared. They were not seen at the house of Ramanuj Das where they were residing and where also were residing her father in-law and his family and her husband whenever he came to the village from Lucknow where he was a University student and where he had a flat of his own for his residence and that of his second wife Vimla and his sisters. It is also clear on this record that none of the members of the family i. e. Ramanuj Das, Jai Devi or any other made the slightest attempt to trace the whereabout of Kamla and her son after their disappearance. No report was made to the Police, no search was made. On the other hand when the chowkidar of the village Khushali P. W., asked Ramanuj Das

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to give something in writing so that he could inform the Police regarding the rumour which was afloat in the village about the murder of Kamla and her son he told him to wait till Dalgajan Singh came. It was after this that the chowkidar made a report at the Police Station.

The first question is as to whether Kamla and her son were murdered and the murder was committed in the house of Ramanuj Das as alleged by the prosecution. As we have said above both Kamla and her son were seen alive till the evening of April 5, 1961 and they were not seen thereafter. Both the courts below have found and there is evidence on the record that relations between Kamla and he husbanrd Raghav were strained and it was for that reason that she had gone away to her parents house. Ram Swarup, Kamla's father has deposed to this and so has Lakhan Prasad who deposed that whenever he met Kamla he found her to be unhappy. Ordinarily amongst families such as that of the appellant daughters-in-law do not go away to stay at their parents house unless there is reason for it. The High Court has considered this evidence in regard to the relations between the husband and the wife at great length and it is not necessary to repeat those statements of the witnesses which have been referred to in the judgment of the High Court. We are satisfied that on this evidence the High Court has rightly found that the relations between the two were unhappy. In those circumstances it has to be enquired as to how and why Kamla came back to the house of her in-laws along with her son. For that the evidence again is of Ram Swarup and Lakhan Prasad. Somewhere in 1960 Lakhan Prasad went to Ram Swarup and asked him that Kamla should be sent to Hamirpur Roora and that there would be no further trouble. we also told Ram Swarup that Ramanuj Das had decided to give Kamla a sum of Rs. 10,000 in cash

and 90 bighas of Land for cultivation on the understanding that she would reside at Hamirpur Roora. On this condition Ramanuj Das came and took Kamla with him after the *bidai* ceremony. On that occasion, according to Ram Swarup, Ramanuj Das told him that he would settle the money and the land as promised. Sometime in February 1961 Ram Swarup accompanied by Lakhan Prasad went to the house of Ramanuj Das and asked him to perform his part of the promise to which Ramanuj Das replied that he would do so on the arrival of Raghav from Lucknow.

On April 5, 1961, the date of the alleged murder, Lakhan Prasad went to the house of Ramanuj Das and there he had a talk with Ramanuj Das, Raghav was also sitting near Ramanuj Das. When Lakhan Prasad started talking about this matter Raghav got up and went away but Ramanuj Das promised that he would execute the document on Monday April 10, 1961 and it was arranged that Ram Swarup would also be present by them and Lakhan Prasad informed Kamla of this fact. The defence has denied this part of the prosecution case and before us the evidence of Lakhan Prasad was severely criticised and reliance was placed on the criticism of this witness by the learned Sessions Judge. It appears that the learned Sessions Judge has been unduly severe on Lakhan Prasad merely because of a post card which was produced by Ramanuj Das and proved by defence witnesses that the marriage between Kamla and Raghav was not brought about by Lakhan Prasad but by Dafadar Singh. Lakhan Prasad had deposed that he had brought about the marriage. It was also said that Lakhan Prasad was unable to recognise the photograph of Govind Kumari and other children and thus could not be very familiar with the family. But the evidence of Lakhan Prasad gets strong corroboration from the evidence of Ram Swarup. The

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High Court was satisfied that on that day Ramanuj Das had agreed that he would execute such a document and we see no reason to differ from the finding of the High Court.

The fact that Ramanuj Das was present for the settlement of money and land in favour of Kamla is amply proved on this record and it is equally clear that when this matter was broached in the presence of Raghav he suddenly left the place from which an inference might well be and has rightly been drawn that he was not very happy about this settlement.

On the same evening three shots were heard by three witnesses P. W., Narain Singh, P.W. Lallu Singh and P. W. Babu Singh. Both the courts below have accepted the testimony of these witnesses. We have gone through the evidence of these witnesses and although there may be certain points on which the testimony of these witnesses may legitimately be subjected to criticism, those points are not sufficient to detract from their evidence that they did hear three shots being fired. The defence had put forward the theory that it was the firing of a toy gun by the younger brother of Raghav which these witnesses heard on that day but this plea has rightly not been accepted by the High Court.

The question then arises whether Raghav was in the village on April 5, the date of the murder. The case for Raghav is that he had left on the 4th and that he was not in the village on the 5th. One fact which has been taken into consideration against this plea is the statement of Lakhan Prasad when he states that in the presence of Raghav the question of settlement of land and of money was discussed and Raghav got up and went away. This, according to Lakhan Prasad, was on the 5th. Then

there is the evidence to show that the jeep of appellant Raghav was seen in the house of Ramanuj Das on the evening of 5th. This evidence is of P. W. Narain Singh who saw the jeep in the house and of P. W. Lallu Singh who saw the jeep of Raghav going towards the north at about 9 or 10 O' Clock on the evening of April 5, 1961 and finally the evidence of P. W. Babu Singh who says that on the same evening he heard the sound of car at about 10 p. m. He also stated that the only person who had a jeep or a car was Raghav. These witnesses have been believed and after going through their evidence we are of the opinion that they have been rightly believed. There is then the evidence of P. W. Sri Ram who says that on April 5, at about 10 p.m. he saw the jeep of Raghav in village Samain which is at a distance of a mile and in that jeep there were the appellant Raghav and the two appellants Mohan Singh and Udham Singh and that the back curtain of the jeep was drawn. This evidence was criticised on the ground that this witness had made a mistake as to the date which was 4th and also that he did not meet the appellant's jeep there but at another place on the canal bank and it is argued that the statement of this witness is compatible with the case of the defence. It appears to us that Sri Ram has made a mistake about the date. He was deposing after a long time but corroboration is from another source and that shows that Sri Ram must have seen the jeep on the 5th and not the 4th. The jeep was seen at Hamirpur Koora on the 5th by two witnesses. Raghav was seen at the house on the 5th by Lakhan Prasad and his further movements have been traced also. Raghav took petrol from P. W. Ram Bhajjan who states that the petrol was purchased about 10-30 p. m. or 11 p. m. and considering the distance between Bidhuna and Samain that would probably be the

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time when Raghav would be in Bidhuna. The evidence of this witness was also criticised that he made a mistake in regard to time and that petrol was brought at 2 p. m. and not in the night. It was argued that other cash memos had not been taken from Ram Bhajjan which, if they had been taken, would have shown that the petrol was taken not at 10-30 p. m. or 11 p. m. but earlier in the afternoon. This witness has given good reasons why he remembered the time when petrol was taken by him. He stated that two days later he heard the rumour and then remembered the time and the date on which Raghav had bought petrol from him. He was criticised for not remembering the time when Raghav bought petrol on the 4th but then he had no reason to recall that visit. In our opinion the testimony of this witness has been rightly accepted by the courts below. On the morning of 6th the jeep was seen at the barrier at the river Ganga at Kanpur at 8-30 a. m. and then Raghav went to Lucknow. From the evidence of demand of Lakhan Prasad for the Settlement of land on Kamla on April 5, 1961 in the presence of Raghav from the fact that the jeep of Raghav was seen in the village in the evening and his jeep was seen going from village Hamirpur Roora and again at Samain and Bhidhuna an inference has rightly been drawn that appellant Raghav was present in village Hamirpur Roora on April 5 and his plea that he left that village on the 4th is false.

The police was informed about the rumour in the village of the murder of Kamla and her son on April 7 and the Sub-Inspector Brijraj Singh Tomar came to the house of Ramanuj Das at about 2 p.m. He went into the house and inspected the place of occurrence and prepared a site plan and memo showing as to what he saw. This, he has sworn to be correct and there is no reason to doubt his testimony. According to his statement he found

what appeared to be blood at different places in the rooms and he took the plaster from those places. As we have said above the origin of this blood has not been proved because of disintegration but the fact is that blood was found in the rooms.

The case put forward by appellant Raghav was that he started from the village on April 4 and want to his mother's father's house at Shah Nagla. From there he took with him his Dada Ram Sewak and the wife of Ram Sewak whom he called Bhabhi. He started from that place on April 5, 1961 at about 12 noon, took petrol from Bidhuna and reached Samain, which he wants us to read as Bhawain, where his mother's sister is married and where he want to condole because the father-in-law of his mother's sister had died and from there he started from Lucknow on April 6, 1961 after taking refreshments. All these facts were capable of easy proof if facts they were. Neither the Dada nor the Bhabhi were examined. The two persons who saw the appellant go in the jeep are P. W. Sri Ram and P. W. Ram Bhajan. The testimony of these witnesses has been believed by the courts below and with that we have agreed. Neither of them says that they saw a woman in the jeep. If the appellant left with Mohan Singh and Udham Singh then there should have been four individuals in the jeep besides the appellant at the petrol pump. That is not the statement of P. M. Ram Bhajan nor is there any proof that as a matter of fact the father-in-law of the appellant's mother's sister (*Massi*) had died or that the appellant had gone there for the purpose of condoling or that he went there at all. We are unable to accept this explanation given by the appellant in view of the testimony of the witnesses who have been discussed above. Thus after the three gunshots were fired and heard by the three witnesses, the appellant's jeep was seen leaving the village. It was seen in Samain with

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the two appellants Mohan Singh and Udham Singh and it was then seen at Bidhuna "with two persons sitting at the back". This was on April 5. The explanation given by the appellant, therefore, is false.

When the appellant reached Lucknow his sister wrote a letter saying that the appellant etc. had arrived and that Bhabhi had also come and "as Bhabhi has come over here so I have not to worry about cooking of food". The defence submit that what was meant by Bhabhi was Vimla or it may be Dada's wife and therefore it cannot be said that there was any oblique motive in the writing of this post card so as to create evidence in regard to Kamla being alive on April 6. 1951. The prosecution has rightly argued that in this post card there is no mention of Kamla. The father, uncle and mother and three younger children are mentioned but not Kamla or Madhusudan. To this the reply of counsel for the appellant was that there was not much love lost between Kamla and Govind Kumari and for that reason her name was not mentioned. But there was nothing against the little boy who could have been mentioned as the other children. Even if Govind Kumari's distaste be true that is an additional reason for saying that Kamla was not a very welcome member of the family of her in-laws.

The appellant then was found to be absconding. According to Sub-Inspector Tomar efforts were made to search for him in different places where he would ordinarily be in the town of Lucknow or elsewhere but he was not found. Ultimately he went to Nawabganj in the district of Barabanki where on April 20, 1961 he surrendered himself before a Magistrate. In the application that he made for surrendering himself he stated, as has been said above, that Kamla d/o Ram Swarup who was living in his house was missing and it was being

said by his enemies that she had murdered and that his name had been mentioned in that connection due to enmity and that a warrant had issued against him although he was wholly unaware of her disappearance. This is rather an extraordinary conduct on the part of a husband. There is nothing to indicates that any attempt was made by the husband to search for the missing wife and the child or anything was done by him in regard to that matter. He may not have worried about the mother but what about the child? The allegation of the prosecution that he was absconding and that when they searched for him they could not find him is satisfactorily established on this record. We are aware that the burden of proving everything against the appellant is on the prosecution and there is no burden on him to disprove anything but in a case of circumstantial evidence where there are circumstance of the kind which are proved in this case the cumulative effect has to be seen by placing together proved facts and conclusion drawn therefrom and in the absence of any explanation all that one has to consider is the prosecution evidence.

There is another important circumstance. A shirt of the appellant was recovered from a laundry on April 16. It was found to be blood-stained although the origin of the blood has not been proved by the prosecution. The fact remains that at three places this shirt which was given by the appellant on April 9, 1961 was found to be blood-stained. Counsel for the appellant argued that this was a most innocuous circumstance because there is no proof that there was blood on the shirt on April 9 when it was given to the laundry and that merely three specks of blood being found on the 16th i.e. seven days later is not a circumstance which can be taken against the appellant. With this we do not agree. The appellant must consider himself lucky that the shirt was washed or it would

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have cleared him or inculpated him still more. The fact that the blood was not visible to Babulal when the shirt was taken is not a circumstance which goes against the prosecution case because books on medical jurisprudence show that bloodstains are sometimes faint and invisible by ordinary light. The shirt was given to be laundered and Babulal will look for tears and damage and not for stains or dirt for which the shirt was given to be cleaned. The colour of the shirt was khaki and it is likely that the small stains would go unnoticed. After all the shirt was given for a wash. It is true that the blood was found on April 16, 1961 and there is no proof that it was there on April 9, 1961 but we see no reason why blood should suddenly appear seven days later on the shirt of Raghav. When he was asked in regard to this bloodstained shirt, his answer was "I do not know". In the circumstances the courts were justified in taking this to be a circumstance in the chain of circumstances which have to be placed together in order to determine whether the case has been made out against the appellant or not.

Another very striking circumstance against the appellant is that the jeep in which Raghav travelled from the village to Lucknow has vanished from the face of this earth. In spite of the best efforts of the police it has not been found. Evidently the police wanted to interrogate the appellant in regard the whereabouts of the jeep but it appears that by an order dated April 28, 1961 the Magistrate ordered that the Investigating Officer should issue a written order requiring Raghav to produce the jeep "as well as to interrogate the accused", that the accused is at liberty to say whatever he likes and he could not be compelled either to produce the thing or to tell its whereabouts as this is his privilege under the law. It is then that the police made an order calling upon the appellant (Raghav) to produce the

jeep and of course it was never produced nor found. His reply cannot be read under s. 162 Criminal Procedure Code and we leave have it out of account altogether. Every possible place was searched and it is significant that it has not been found till today and even when the evidence was being led about its disappearance the evidence was not contradicted by driving the jeep to the court house and saying here it is. This, in our opinion, is a circumstance which can be taken into consideration in order to determine the guilt or otherwise of the appellant. In the opinion of the High Court the jeep has not been produced because it must be bloodstained, on account of the dead bodies having been carried in it. It is quite obvious that however much the jeep be washed the chances would be that in some crevice, in some joint or in some bolt nut or screw, blood may still remain adhearing. But if the jeep is not produced there can be no risk of detection and the inference from its disappearance can be countered by arguments as it has actually been. The non-production of the jeep is a strong circumstance against appellant Raghav which the courts below were entitled to take into consideration. Articles like jeeps do not just disappear in this air and when they do disappear and cannot be traced as they have not been traced in this case and when the allegation is that they have been used for carrying away the dead bodies their non-production or their not being found is a circumstance which a court can take into consideration in determining the guilt of an accused person.

It may also be added that the other appellants were also absconding. Why the whole household went away is not just a coincidence. If the girl and the child had disappeared in innocent circumstances there was hardly reason for all of them to panic. None of them proved why they were so difficult to get at or what was the urgent business which had

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called them away. Mohan Singh was arrested on April 9, Ramanuj Das surrendered on April 24, and in his application he stated that he had been informed by A. P. Dubey that he was wanted. Jai Devi surrendered on April 27, 1961 and claimed to be a purdanashin lady and her appearance in court was excused and she was released on bail. Thus all the accused persons were found to be absconding and except one the other four were not arrested but they surrendered in the court of the Magistrate and of them 3 were released on bail.

We have therefore the following circumstances which the Courts have taken into considerations (1) strained relations between Raghav and his wife Kamla; (2) there was an agreement by Ramanuj Das of making a settlement of land and money in favour of Kamla and on the insistence of Ram Swarup father of Kamla, Ramanuj Das had agreed that the document would be executed on Monday i. e April 10, 1961 ; (3) it is also proved that when the matter was discussed in the presence of appellant Raghav whose arrival was awaited for finalising the arrangement he got up and went away; and it is also established that Kamla had been brought from the house of her parents on the express condition that such a settlement would be made; (4) on April 5, 1961 appellant Raghav was in village Hamirpur Roora and on that evening three gunshots were fired and some time later Raghav left in his jeep with two other appellants Mohan Singh and Udham Singh and after Raghav left Kamla and her son were found missing from the house; (5) although this fact was discovered the next day no attempt was made to search for Kamla and her son; (6) Appellant Raghav and his two companions travelled by night from village Hamirpur Roora according to witnesses he was in a hurry and were found on the 6th morning at Kanpur and the same day they reached Lucknow as the post card written by

Govind Kumari shows. In that post card it is stated that the appellant and others had arrived at Lucknow. The explanation of the appellant was that he left on the 4th and took his Dada and his Bhabhi along with him but this explanation has not been accepted and is a false explanation; (7) thereafter the appellant made himself scarce and the police could not trace him till he surrendered himself in the court of a magistrate at Nawabgunj where he made an application stating that one Kamla was found missing and that he was being suspected of murdering her; (8) why he should have gone to Nawabgunj is not quite clear and of course neither he nor any of his relatives made any attempt to look for Kamla; (9) when the chowkidar of the village told Ramanuj Das about the rumour in the village of the murder of Kamla he was asked by Ramanuj Das not to make the report till Dalganjan Singh had arrived (Dalganjan Singh we are told is an Up-Pradhan of the Panchayat) the report was made by the chowkidar on the 7th and the police came the same day and inspected the house of Ramanuj Das ; (10) In the rooms upstairs blood was found at 5 places. According to the memo prepared and deposed to in Court there were marks of blood having been wiped off at many places and the Chemical Examiner found the marks on these various places of plaster which had been taken into possession by the sub-Inspector to be of blood but its origin could not be determined due to disintegration; (11) on April 12, D. Sp. Bashir Hussain found the blood at 2 places more in the house of the Ramanuj Das. The origin of this blood has also not been proved due to disintegration; (12) on April 16, a bloodstained shirt of Raghav was found from a laundry; (13) no explanation is given of this blood on the shirt and (14) on April 5, 1961 both Kamla nd her son disappeared from the fact of this earth nd no body has heard of them and no attempt has en made to find out as to what happened to them

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and instead false explanation was given that Kamla had left with her child and a suggestion was made in the cross-examination that she had eloped with one Chander Shekhar and thus had vanished from the house. It may be stated that there is no reason why she should have disappeared when according to evidence she was going to get land and money and when she had her father who could look after her and was in affluent circumstances; (15) Coupled with this is the fact of disappearance of jeep in which the appellant travelled from his village to Lucknow; (16) and a wholly false explanation was given as to the movement of the appellant Raghav. From these circumstances the courts below came to the conclusion that the murder was committed at the house of Ramanuj Das. We find no reason to disagree with the conclusions drawn from the evidence that Kamla and her son Madhusudhan are dead and they met their death by violence in the house of Ramanuj Das.

In *king Horry* (1) the headnote states the law as follows:—

> "At the trial of a person charged with murder, the fact of death is provable by circumstantial evidence, notwithstanding that neither the body nor any trace of the body has been found and that the accused has made no confession of any participation in the crime. Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt; the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no raticnal hypothesis other than murder can the facts be accounted for."

(1) [1952] N.Z.L.R. 111.

This statement of the law was approved in *Regina* v. *Onufrejczyk*(1) except as to moral certainty and that statement of the law has received approval of this court in *Anant Chintaman Lagu* v. *The State of Bombay*(2). It was also said in *King* v. *Horry* (3):

> "That the jury, viewing the evidence as a whole, was entitled to regard the concurrence of so many separate facts and circumstances themselves established beyond all doubt, and all pointing to the fact of death on or about July 13, 1942—as excluding any reasonable hypothesis other than the death of the person alleged to have been murdered and as having, therefore sufficient probative force to establish her death."

In this connection it would be apposite to quote from the judgment in *Lagu's case* (2) at page 506 where it was observed:—

> "In Rex v. Horry [1952] N.Z.L.R. 111 where the entire case law in England was presented for the consideration of the Court. It was pointed out by the Court that there was no rule in England that *corpus delicti* must be proved by direct evidence establishing the death of the person and further the cause that death. Reference was made to *Evans* v. *Evans* 161 E.R. 466, 491. Where it was ruled that *corpus delicti* might be proved by direct evidence or by "irresistible grounds of presumption". In the same case it has been pointed out that in New Zeland the Court, upheld numerous convictions, where the body of the victim was never found."

The two cases referred to above i.e. *King* v. *Horry*(3) and *Regina* v. *Onufrejczyk* (1) are cases of conviction

(1) [1955] 1 Q.B. 388, 394. (2) 1960 12 S.C.R. 460.
(3) [1952] N.Z. L.R. 111.

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no doubt by juries on evidence which was wholly circumstantial but in both those cases neither the body was found nor any trace of the body was found and there was no confession by the accused of any participation in the crime and the conviction was based on the occurrence of so many separate facts and circumstances all pointing to the fact of death on or about a particular date and excluded any reasonable hypothesis other than the death of the person alleged to have been murdered and this was held to be of sufficient probative force to establish death. In the present case the circumstances which have been proved and to repeat the circumstances are, strained relations between the husband and wife, motive to escape the giving of money and land or maintenance to the wife or the child, suddenly leaving the village at night with two others and almost simultaneous disappearance of Kamla and her son, no search for her and absolute callousness or the part of Raghav, subsequent false explanation being given and his absconding are all circumstances from which the courts below were justified in concluding the Kamla and her son were murdered and that Raghav had a predominent motive to commit the murder. The High Court found that Raghav had a strong motive to commit the murder and after taking all the circumstances into consideration came to the conclusion that the Sessions Judge had rightly convicted Raghav of murder. No two cases can have the same facts but the principles applied in placing the various links in the chain of events and circumstances by the High Court are, in our opinion wholly correct and they have rightly drawn the conclusion that the appellant Raghav was guilty of the offence with which he was charged. The inculpatory facts which have been proved were, in the opinion of the High Court, inconsistent with the innocence of the appellant and are not capable of explanation or any other hypothesis except his

guilt and as was said by this Court in *Govinda* v. *State of Mysore*(1).

> "In cases where the evidence is of 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 probabilities the act must have been done by the accused. The principle that the inculpatory fact must be inconsistant with the innocence of the accused and incapable of explanation on any other hypothesis than that of guilt does not mean that any extravagant hypothesis would be sufficient to sustain the principle, but that the hypothesis suggested must be reasonable."

The evidence in this case and the inferences drawn from the evidence by the courts below do not fall in what was said by Baron Alderson in his charge to the jury in *Re* v. *Hodge*(2) where it was said :—

> "The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual the more likely was it, considering such matter, to overreach and

(1) A.I.R. 1960 S.C. 29. (2) [1838] 2 Law 227.

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mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

Therefore in our view the courts below having applied correct principles and having found the circumstances, to be such which can only be explained on the hypothesis of the guilt of appellant Raghav have rightly found the appellant to be guilty. He had the immediate motive to rid himself of the wife. His child was just as undesirable and indeed the child could not be kept back and the mother murdered. Jai Devi as the murderer by gun shots was out of the question. Ramanuj Das was trying to placate Kamla by promising money and lands. The servants had no reason to murder their mistress. It is manifest that the shots must have been fired by Raghav who took steps also to rid the bodies and the jeep which carried them. If the jeep was not connected it would have come forth if not in the investigatien at least during the trial.

We therefore dismiss the appeal of Raghav and see no reason to disagree with the opinion of the courts below that no sentence other than death was called for in this case. The murder was a venal one and had been committed to get rid of an inconvenient wife and her child.

Then the question arises whether a case is made out s. 201 of the Indian Penal Code and if so against whom ? The two appellants Mohan Singh and Udham Singh were with the appellant (Raghav) in his jeep and if the dead body was taken away in his jeep as it has been held by the Courts below that they were then the case against these two appellants is proved. It is said that no one saw the dead bodies being carried. That may be so but the conclusion drawn is from circumstantial evidence *i.e.* series of events which lead to the conclusion of

guilt. We have already said that murder was committed in the house of Ramanuj Das on the evening of April 5, 1961. There was disappearance of Kamla and Madhusudan and sudden departure of Raghav and these two appellants. They were in a hurry and the back curtains of jeep were drawn. They travelled all night and took almost 11 hours to reach the barrier at Kanpur. There is no trace of Kamla and her child. No one has seen them since their disappearance on April 5. From these proved facts the courts drew the inference of an offence under s. 201 Indian Penal Code which in our opinion was correct. Thus these two appellants have been rightly convicted and their appeals are dismissed.

In regard to the case of Ramanuj Das and Jai Devi the finding of the High Court is that the dead bodies of Kamla and her son Madhusudan were not found in the house of Ramanuj Das and they must have therefore been removed; that an attempt was made to wash out the bloodstains from inside the rooms and also outside on the roof; that the dead bodies could not have been removed without the knowledge and active cooperation of Ramanuj Das and Jai Devi and further that both Ramanuj Das and Jai Devi absconded. On this basis the conviction of these appellants was held by the High Court to be justified. It is true that the murder was committed in the house of Ramanuj Das and that there is the evidence to show that the blood inside and outside the living rooms was washed and an attempt was made to obliterate any sign of it though it was unsuccessful. It also may be that both Ramanuj Das and Jai Devi had knowledge of the removal of the dead-bodies but what s. 201 requires is causing any evidence of the commission of the offence to disappear or for giving any information respecting the offence which a person knows or believes to be false. In this case there is no evidence of either. It is not shown that

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these two appellants caused any evidence to disappear. There may be a very strong suspicion that if from the house dead bodies are removed or blood was washed, person placed in the position of the appellants must have had a hand in it but still that remains a suspicion even a strong suspicion at that. It is true that they were absconding but merely absconding will not fill the gap or supply the evidence which is necessary to prove the ingredients of section 201 of the Indian Penal Code. In our opinion the case against Ramanuj Das and Jai Devi has not been made out. There appeals must therefore be allowed and they be set at liberty.

We have found that the murder was committed in the house of Ramanuj Das and that disappearance of the dead bodies took place from that house. Ramanuj Das did have the knowledge of the commission of the murder and he took no steps to inform the police about it. In these circumstances he has been rightly convicted under s. 176 of the Indian Penal Code and his appeal in regard to conviction under that section is dismissed.

BY COURT. The appeal of Raghav Prapanna Tripathi, Mohan and Udham Singh is allowed by majority and that of Ramanuj Das and Jai Devi for offence under s. 201 of the Indian Penal Code is allowed unanimously. The appeal of Ramanuj Das for offence under s. 176 of the Indian Penal Code is allowed by majority.