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HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 4257 of 2018

Gyanmati @ Sangathiya

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Jawahar Lal Maurya, Mary Puncha (Sheeba Jose), Mohd. Kalim, Ram Naresh Singh, Ramesh Chandra Yadav
Counsel for Respondent(s)	: G.A.

with

CRIMINAL APPEAL No. - 4349 of 2016

Ashok Kumar @ Putti Lal

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Anupam Maurya, Purushottam Pandey, Vindo Kumar Kushwaha, Vinod Kumar Kushwaha
Counsel for Respondent(s)	: G.A.

Court No. - 49

**HON'BLE AJAY BHANOT, J.
HON'BLE DIVESH CHANDRA SAMANT, J.**

[PER : HON'BLE AJAY BHANOT, J.]

1. The instant appeals arise out of judgement dated 27.06.2016 rendered by the learned Additional District and Sessions Judge in Sessions Trial No. 547 of 2013 (State vs. Ashok Kumar and Another). The FIR which culminated in the criminal trial was registered as Case Crime No. 99 of 2013 under Sections 328/34, 302/34 IPC at P.S.-Hathgaon, District-Fatehpur.

2. The following appellants are before this Court in the respective appeals:

I. Gyanmati @ Sangathiya in Criminal Appeal No. 4257 of 2018.

II. Ashok Kumar @ Putti Lal in Criminal Appeal No. 4349 of 2016.

3. Both these appeals are being heard together and are being decided by a common judgment.

4. The learned trial court by the impugned judgment has found the appellants guilty of the offences under Section 302/34 I.P.C. and has imposed a punishment of life imprisonment along with a fine of Rs. 10,000/-. The appellants are liable to undergo two years additional rigorous imprisonment on default of payment of fine. The learned trial court has also held the appellants guilty of the offences under Sections 328/34 of the IPC and has imposed a punishment of ten years rigorous imprisonment and fine of Rs. 5,000/-. Upon default in payment of fine the accused will undergo further rigorous imprisonment for one year.

F.I.R- Prosecution Case

5. Briefly put the prosecution case set out in the F.I.R. is that Gyanmati @ Sangathiya, wife of first informant's son Jagdish @ Jagdhar had developed illicit relations with Ashok Kumar. On 20.07.2013 at about 11:00 AM, the two accused persons administered poison to informant's son after mixing the same in his meal. While partaking his meal Jagdish found the Dal to be bitter. At that time the accused poured milk in the Dal to make it palatable and got the deceased to consume the concoction. One hour after taking the meal the poison took its effect on his body and the deceased began to vomit. News of the incident soon spread. After hearing of the incident Lal Singh, Ram Kumari wife of Lal Singh and other persons from the village brought his son to the hospital at Hathgaon. The attending doctor referred Jagdish @ Jagdhar to a higher facility at Fatehpur. At that point in time, Jagdish @ Jagdhar informed his father and mother that the two accused persons had mixed poison in his food. The deceased died while under treatment at Fatehpur Hospital. The doctor opined that the deceased had consumed a poisonous substance.

Charge:

6. Pursuant to the lodgement of the F.I.R., police investigations were set on foot. A charge sheet was filed against the appellant on 15.10.2013. Cognizance of the offences was taken by the learned trial court on 29.10.2013,

7. The learned trial court framed the following charges against the accused persons on 05.05.2015:

"आरोप

मैं, आदिल आफताब अहमद, अपर जिला एवं सत्र न्यायाधीश, न्यायालय संख्या 9, फतेहपुर आप अभियुक्तगण अशोक कुमार उर्फ पुत्तिलाल एवं श्रीमती ज्ञानमती उर्फ संगठिया को निम्नलिखित आरोप से आरोपित करता हूँ:-

1-यह कि दिनांक 27.03.13 को समय 11 बजे स्थान मृतक की ससुराल ग्राम सिठौरा थाना हथगांव जिला फतेहपुर में आप लोगों ने जगदीश उर्फ जगधर पुत्र लाल सिंह को उपहति कारित करने का सामान्य आशय बनाया तथा अपने उक्त सामान्य आशय को अग्रसारित करते हुए जगदीश उर्फ जगधर पुत्र लाल सिंह को बिष/जहर का सेवन कराया जिससे उक्त जगदीश उर्फ जगधर को उपहति कारित हुई। इस प्रकार आप लोगों ने ऐसा कृत्य किया जो भारतीय दण्ड संहिता की धारा 328/34 के अन्तर्गत दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

2- यह कि दिनांक 27.03.13 को समय 11 बजे स्थान मृतक की ससुराल ग्राम सिठौरा थाना हथगांव जिला फतेहपुर में आप लोगों ने जगदीश उर्फ जगधर पुत्र लाल सिंह की हत्या करने का सामान्य आशय बनाया तथा अपने उक्त सामान्य आशय को अग्रसारित करते हुए जगदीश उर्फ जगधर पुत्र लाल सिंह को बिष/जहर का सेवन कराकर हत्या कारित की। इस प्रकार आप लोगों ने ऐसा कृत्य किया जो भारतीय दण्ड संहिता की धारा 302/34 के अन्तर्गत दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

अतः एतद्वारा मैं आदेशित करता हूँ कि उक्त आरोप के अन्तर्गत आपका विचारण इस न्यायालय द्वारा किया जाएगा।"

8. The accused-appellant denied the charges and the case went to trial.

Evidences:

9. Tabular charts depicting the evidences adduced by the prosecution during the trial are as under:

Oral Evidence:- List of prosecution witnesses

Prosecution Witnesses

Sr. No.	Witness No.	Witness Name	Nature of Witness
1	PW-1	Lal Singh	First Informant
2	PW-2	Durga Prasad	Author of Tehrir
3	PW-3	Sher Singh	Witness to the Extra Judicial Confession
4	PW-4	Dr. Sudhir Shrivastava	Doctor who conducted the post mortem report

5	PW-5	Gulab Tiwari	Constable Muharri/Author of Chik
6	PW-6	Ram Autar Singh	Ist Investigating Officer
7	PW-7	Chhavinath Singh	Author of Inquest
8	PW-8	Lallan Singh	IInd Investigating Officer

Documentary Evidences

Sr No.	Documents	Proved By	Exhibit No.	Date
1	Written Report/Tehrir	PW-1	Ex Ka-01	22.07.2013
2	Inquest Report	PW-7	Ex Ka-02	21.07.2013
3	Post Mortem Report	PW-4	Ex Ka-03	21.07.2013
4	Fauti Soochna of Deceased Jagdhar	PW-4	Ex Ka-04	20.07.2013
5	F.I.R	PW-5	Ex Ka-05	20.07.2013
6	Carbon Copy of GD	PW-5	Ex Ka-06	22.07.2013
7	Site Plan	PW-6	Ex Ka-07	22.07.2013
8	Challan Nash	PW-7	Ex Ka-08	21.07.2013
9	Photo Nash	PW-7	Ex Ka-09	21.07.2013
10	Letter to CMO	PW-7	Ex Ka-10	21.07.2013
11	Sample Seal	PW-7	Ex Ka-11	21.07.2013
12	Chargesheet	PW-8	Ex Ka-12	15.10.2013
13	Viscera sample sent for Testing	PW-8	Ex Ka-13	16.08.2013
14	Viscera Report		Ex Ka-14	18.09.2014

Tehrir:

10. The tehrir was submitted by Lal Singh/P.W. 1/ deceased's father on 22.07.2013 at 20:45 hours at the police station. P.W.1-

Lal Singh has testified that he had dictated the tehrir to Durga Prasad who took it down in writing. P.W.1 identified his signatures on the tehrir and proved the same. The tehrir was marked as Ex. Ka-1.

I. FIR:

11. The F.I.R. was lodged on 22.07.2013 at 08:40 PM at P.S. Hathgaon, District Fatehpur, under Sections 328 and 302 IPC. P.W.1-Lal Singh was the first informant.

12. The Chik F.I.R. was registered by Constable Muharrir Gulab Tiwari/P.W.5. P.W.5 identified his hand writing and signatures and signatures on the Chik F.I.R. and proved the same which was marked as Ex. Ka-5.

13. The entry in the General Diary in respect of the F.I.R. was made by P.W.5 on 20.07.2013 at 20:45 Hours as G.D. No. 29.

14. P.W.5 produced the original G.D. before the Court and stated that carbon copy of the G.D. is in the trial court record and is registered as paper No. 69. After comparing the carbon copy of the GD P.W.5 proved the carbon copy available in the G.D. in the records of the trial court which was then marked as Ex. Ka-6.

II. Inquest Report

15. The inquest report was drawn up by S.I. Chhavinath Singh/PW-7. Inquest report records that the inquest proceedings commenced on 21.07.2013 at 12:00 AM. Information regarding death of the deceased was sent to the police station by Mahindra, Room Attendant, District Hospital, Fatehpur. Father of the deceased Lal Singh, grandfather Ganga Prasad, paternal

uncle Gulab Singh, and Gram Pradhan of the village Durga Prasad, were witnesses to the inquest proceedings.

16. The inquest report records that in the opinion of the panchas the death appeared to have been caused by consumption of a poisonous substance. Recitals in inquest report disclose that no injuries were visible on the body of the deceased.

17. PW-7 Chhavinath Singh in his testimony stated that the inquest report was drawn up in his handwriting. The same was proved by him and marked as Exh. Ka-2.

III. Transfer of the body for Post Mortem:

18. The inquest report records that after the inquest proceedings, the body of the deceased was stitched wrapped and sealed and made over to Constable 372 Amrendra Mishra and Home Guard 549 Shiv Mohan for being carried to the mortuary for post-mortem. The documents which were drawn up and sent with the body to the mortuary were Photo Nash, Challan Nash, Letter to C.M.O. and sample seal. The said documents were proved by P.W.7 and then marked as Ex. Ka-8, Ex. Ka-9, Ex. Ka-10 and Ex. Ka-11 respectively.

IV. Medical Opinion

19. The medical report drawn up by the Medical Officer, District Hospital, Fatehpur, and sent to Police Station S.O. Kotwali, depicts the condition of the deceased at the time of admission to the hospital. As per the aforesaid document, the deceased was admitted in Sadar District Hospital, Fatehpur on 20.07.2013 at 06:25 PM.

20. The said medical report further records that the accused-appellant, Gyanmati, who is the deceased's wife had got him admitted to the hospital. The medical report further opines that at the time of admission the deceased was gasping and poisoning was suspected. PW 4 testified that Dr Nallesh Pandey was the author of the said medical report. The medical report dated 20.07.2013, received by Dr. Sudhir Shrivastava/P.W. 4 identified his signatures on the document and proved the same. The document was marked as Exh. Ka-4.

V. Cause of death and Post Mortem Report

21. Post mortem was conducted by Dr. Sudhir Srivastava/P.W.4 on 21.07.2013 from 03:30 PM to 04:00 PM. The relevant parts of the postmortem report depicting ante mortem injuries, cause of death and time of death are reproduced hereinunder:-

“Ante Mortem Injuries: No External Injury seen

Cause of Death: Could Not be ascertained hence viscera preserved

Time of Death: Hospital Death at 7:30 PM on 20.07.2013”

22. The post mortem report dated 21.07.2013 records that, as per relevant documents, the deceased was admitted on 06:25 PM on 20.07.2013 at District Hospital, Fatehpur. Dr. Sudhir Srivastava entered the witness box as P.W.4 and proved the post mortem report and its contents. The post mortem report was marked as Ex. Ka-3.

VI. Site Plan

23. S.I. Ramavtar Singh/I.O./P.W.6 prepared the site plan at the pointing out of the first informant/P.W.1. The P.W.6 identified his hand writing on the site plan and proved the same which was then marked as Ex. Ka-7.

VII. FSL Report

24. The post mortem report did not make any definitive opinion on the cause of death. The preserved Viscera sample was sent to F.S.L. for further examination. The F.S.L. report dated 18.09.2014 (Ex. Ka-14), upon examination of the Viscera sample, opines as under:-

“प्रदर्श का विवरण

(अ) विसरा के अंश

1. स्टमक एण्ड इट्स कन्टेन्ट्स । एक समुद्रित प्लास्टिक जार में
2. आँत का टुकड़ा ।
3. लिवर का टुकड़ा । एक समुद्रित प्लास्टिक जार में
4. दोनों किडनी के टुकड़े ।
5. स्प्लीन ।

परीक्षण परिणाम

विसरा के भागो (1-5) में अल्युमिनियम फॉस्फाइड विष पाया गया। रासायनिक विधियाँ प्रयोग की गई। अन्य रासायनिक विष के प्रयोग नकारात्मक रहे। प्रयोग के समय समस्त सावधानियाँ ध्यान में रखी गई।”

25. The Viscera sample which was sent by communication dated 13.08.2013 was marked as Ex. Ka-14.

Oral Testimonies**PW-1/ Lal Singh/ First Informant**

26. Lal Singh/the first informant and father of the deceased entered the witness box as PW-1. PW-1 while deposing before the trial court testified that Gyanmati @ Sangathiya ,wife of his son Jagdish had developed illicit relations with Ashok Kumar. Gyanmati and Ashok mixed poison in his son's meal and served it to him on 20.07.2013 at about 11:00 A.M. P.W.1 states that he reached his son's residence on hearing of the deteriorating

health of the latter. The information was given by one person belonging to Sithaura. Jagdish @ Jagdar informed PW 1 that the accused persons had administered poison to him. PW 1 and his party took Jagdish to a hospital at Hathgaon which referred him to Sadar Hospital, Fatehpur. Jagdish died at Sadar Hospital, Fatehpur.

PW-2/ Durga Prasad

27. Durga Prasad was produced by the prosecution as PW-2. PW-2 in his testimony stated that on 20.07.2013, he had accompanied Lal Singh and his wife and others to Sithaura when they learnt that the condition of deceased had deteriorated. On reaching Sithaura at about 12 pm, they found that Jagdish was unwell and had been vomiting. Jagdish told them that the two accused persons had mixed poison in his meal and that they were in an illicit relationship. Thereafter they took Jagdish on a Bolero to Hathgaon Government Hospital at Hathgaon, which referred them to Sadar Hospital, Fatehpur. They reached Sadar Hospital, Fatehpur with the deceased where he died while under treatment.

Proceedings under Section 313 Cr.P.C.

28. The accused-appellant Gyanmati in the proceedings under Section 313 Cr.P.C. stated that her husband had left his house in the morning. He started to vomit after returning home, and his condition deteriorated. She informed her in-laws and her cousin sister; but no one from her in-laws came over. Her nephew Ashok later arrived and the two took her husband to the Hathgaon Hospital. Thereafter they accompanied her husband to Sadar Hospital, Fatehpur where he was admitted for further treatment. The deceased died at Sadar hospital; and his body

was kept there. The next day she went to the police station. Co-accused had also reached the police station. Her father-in-law and the Pradhan took the Sub-Inspector aside and had a conversation with him. She and Ashok were sent to jail. She then explained her aunt and nephew relationship with Ashok.

29. Accused-appellant Ashok stated in proceedings under Section 313 Cr.P.C. that he is the nephew of the co-accused Gyanmati. His mother sent him to his aunt Gyanmati's house when she learnt of his uncle's condition. He and his aunt took Jagdish to the Hathgaon hospital. Thereafter on doctor's advice they went to Sadar Hospital, Fatehpur. They got his uncle Jagdish admitted at Sadar Hospital, Fatehpur for further treatment. During the course of his treatment his uncle died. His aunt informed her in-laws through some villagers. However, no one came when the body was lying in the hospital. Later they were arrested.

Submissions on behalf of the Bar

Submissions on behalf of the appellant

30. Ms. Sheeba Jose, learned counsel assisted by Shri Mohd. Kaleem, learned counsel for the appellant has made the following submissions:

- I. The delay in lodgment of F.I.R. is fatal to the prosecution case.
- II. P.W.1 and P.W.2 are unreliable witnesses who reached the hospital only after the accused had died.
- III. The conduct of the appellant was above board inasmuch as she promptly took her husband to the hospital.

IV. The administration of poison by the appellants to the deceased has not been proved.

V. There was delay in testing the viscera sample. The prosecution failed to establish that the viscera was preserved in safe conditions and was fit for testing at the time it was evaluated.

VI. The F.S.L. report which depicts poison in the Viscera sample is not backed by reasons and hence could not be read in evidence against the appellant.

VII. The doctor conducting the post mortem was never confronted with the FSL report.

VIII. The defence of the appellant taken in the proceedings under Section 313 is credible and supported by the prosecution evidences in the record.

IX. The prosecution has failed to prove its case beyond reasonable doubt.

X. The judgment of the trial is against the weight of evidence and contrary law is liable to be set aside.

Submissions on behalf of the State

31. Shri Rishi Chaddha, learned AGA on behalf of the State contended as under:

I. The accused are named in the F.I.R.

II. There was no delay in lodgment of the FIR.

III. The deceased had the motive to commit the offence.

IV. The postmortem report as well as the F.S.L. report corroborates the prosecution case.

V. The burden of proving the safe keeping of the Viscera sample is not on the prosecution.

VI. The presence of both accused persons at the hospital is established.

VII. The prosecution has proved its case beyond reasonable doubt.

VIII. The judgment of the learned trial court is in conformity and has rightly appreciated the law and is liable to be upheld.

APPRAISAL OF EVIDENCE

32. Heard learned counsels for the parties. The evidence in the record shall be assessed in the following sequence.

Issue arising for consideration

33. The evidence and the issues which arise for consideration will be appraised in the following sequence:

(I) Prosecution case against the appellants

(II) FIR: Delay and Consequences

(III) Reliability and credit of P.W.1 and P.W.2:

(IV) FSL report: Admissibility

(V) Safe preservation of viscera sample: Burden of proof

(VI) Failure to confront the doctor conducting the postmortem with the FSL report: Consequences

(VII) Cause of death

(I) Prosecution case against the appellants:

34. The prosecution case is that the deceased died by poisoning after consuming Aluminium phosphide, and that the poison was administered by the accused persons.

II F.I.R. : Delay

35. The deceased died on 20.07.2013 at about 07:30 P.M. As per the prosecution case, the first informant had reached the site prior to the death of the deceased. The F.I.R. was lodged on 22.07.2013 at 08:45 P.M. According to the first informant, the deceased had told him that he had been poisoned by accused persons. No good cause of the delay in lodgment of the F.I.R. has been shown by the prosecution during the trial. The F.I.R. was registered belatedly and as an afterthought. The delay in lodgment of the F.I.R. will be fatal to the prosecution case in the cumulative view of facts and evidences in the record.

III. Credibility of P.W.1 and P.W.2

A. Hospitalization of the deceased

36. P.W.1 who is the first informant stated that he and his wife reached the house of the deceased prior to his death. According to PW 1 Jagdish had informed them that he had been poisoned by the accused persons. Thereafter, P.W.1 along with others took the deceased to Hathgaon Hospital from where he was referred to Sadar Hospital Fatehpur.

37. However, under cross-examination P.W.1 stated that he learnt about the death of his son at 11 AM in the village from a person who lives in Sithora whose name he could not disclose.

38. Under further cross-examination, PW 1 admitted that he did not go to Hathgaon Hospital. P.W.1 also stated that he reached Sadar Hospital along with Pradhan Durga Prasad, Gaya Prasad,

Surendra Ahir and Ram Narayan Ahir. No one else accompanied them to Sadar Hospital. They reached Sadar Hospital two hours before sunset. His son died half an hour after they had reached the hospital. The said statement contradicts the earlier version of P.W.1 that he had reached the house of the deceased and then took the latter to hospital.

39. PW 2 stated that they reached Sithaura at 12 PM. They found that Jagdish was vomiting. Jagdish told them that he had been poisoned by the accused persons who were in an illicit relationship. According to P.W.2 they had taken Jagdish on a Bolero to Hathgaon Govt. Hospital. The doctor at Hathgaon Hospital upon examining the deceased said that he had consumed a poisonous substance and referred him to Sadar Hospital Fatehpur.

40. Under cross-examination, P.W.2 stated that when he reached Sithora, he saw both the accused persons Ashok and Sangathiya. However, the aforesaid people did not accompany them to the hospital at Hathgaon. P.W. 2 deposed that his party left Hathgaon Hospital within half an hour at about 2 PM and they reached Sadar Hospital/District Hospital, Fatehpur at 4.00-4.30 PM. The deceased died at Sadar Hospital/District Hospital, Fatehpur within half an hour to 45 minutes.

41. The deposition of PW 2 regarding hospitalisation of the deceased at Hathgaon Hospital contradicts the testimony of PW 1 on material aspects. The said inconsistencies in the testimonies of PW 1 and PW 2 impeaches the reliability of the prosecution case.

42. The medical report marked as Ex. Ka-4 records that deceased was brought to the District Hospital Fatehpur at about

6.25 PM by his wife Gyanmati alias Sangathiya. Further the post mortem report also contains recitals to the effect that the deceased was admitted at District Hospital, Fatehpur at 6.25 PM.

43. The deposition of P.W.4 affirms the contents of Ex. Ka-4. Document pertaining to hospitalization of the deceased which is marked as Ex. Ka-4 was drawn up by government doctors in the discharge of official duties. There is a presumption of correctness in favour of the aforesaid document. The said presumption was reinforced after the document was proved and its contents reiterated by P.W. 4. There was no challenge to the same.

44. Exh. Ka 4 and P.W. 4 contradict the testimonies of P.W. 1 and P.W. 2 that they had brought the deceased to the hospital. In this wake, the depositions of P.W.1 and P.W.2 regarding the hospitalization of deceased are found to be entirely false and are accordingly discarded.

B. Veracity of P.W.1 and P.W.2 regarding the deceased informing the P.W.1-his wife and P.W.2 about poisoning by the accused persons and motive of accused persons.

45. P.W.1 in his testimony before the trial court has stated that he left for Sithaura after he was informed about the death of the deceased. In these circumstances the testimony of P.W.1 that the deceased informed him and others about the fact of his poisoning by accused persons is evidently false.

46. On the other hand, PW 2 has stated that deceased had informed them of being poisoned by accused and about the illicit relations between the two, when they reached Sithaura at 12:00 pm.

47. The illicit relationship between the accused persons as the motive was introduced by PW 1 and PW 2 as an afterthought. Save the bald statements regarding the extra relationship there is no evidence regarding the same. The statements of PW 1 and PW 2 in regard to the extra marital affair between the two accused also do not inspire confidence and are disbelieved. The motive of the accused -appellant to commit the offence has not been established.

48. There are material inconsistencies on critical issues in the testimonies of P.W.1 and P.W.2 which self destruct the prosecution case. The credit of P.W.1 and P.W.2 was impeached and they are held to be unreliable witnesses insofar as they state that the deceased had informed them of poisoning by the accused persons before his death, and that they had taken the deceased to the hospital are liable to be entirely disbelieved.

IV. FSL Report

A. FSL Report : Admissibility and Reliability

49. The mainstay of the prosecution case is the FSL report dated 18.09.2014/Exh Ka-14 which records the presence of Aluminium Phosphide in the viscera sample. The FSL report is in the nature of expert evidence. The presence of Government scientific expert who has drawn up the report to prove the report is exempted with under Section 293 CrPC. The provision is extracted hereunder:

“S.293 (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2). The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3). Where any such expert is summoned by a Court and he is unable to attend personally, he may unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4). This section applies to the following Government scientific experts, namely;

- (a). any Chemical Examiner or Assistant Chemical Examiner to Government;
- (b). the Chief Inspector of Explosives; the Director of the Finger Print Bureau;
- (c). the Director, Haffkeine Institute, Bombay;
- (d). the Director or Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State forensic Science Laboratory;
- (e). the Serologist to the Government. any other Government scientific Expert specified by notification by the Central Government for this purpose.”

50. It is undisputed that the FSL, Lucknow which had drawn up the said report comes within the ambit of Section 293 CrPC. Hence no expert was required to prove the aforesaid report. The said report was accordingly marked as Exhibit Ka-14 without having been proved by the expert who had drawn the report.

51. Expert reports are made admissible under Section 45 of the Evidence Act. The provision is extracted hereunder:

“45. Opinions of experts.—When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.

Such persons are called experts.

Illustrations

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.”

52. Cases in point consistently hold that the sole purpose of an expert report is to assist the Court to form an opinion in a field which belongs to the domain of experts. After the expert report is upheld by a Court, the same becomes the report and the opinion of the Court. The tests of admissibility of an expert report point are as under:

(A) The credibility and the standing of the expert in the field.

(B) The reasons on which the expert raises his conclusions.

(C) Conclusions

53. The opinion of the expert which is bereft of reasons or does not disclose the basic scientific criteria which has guided the expert to reach the conclusion is of no avail. The purpose of reasons in an expert report is not far to seek. The reasons stated by the expert in support of the conclusions will enable the Court to independently test the correctness of such opinion. For that purpose the Court may also rely on established authorities and protocols in the concerned field and examine the expert report in the perspective offered in such literature. In absence of

reasons the Court will not be able to independently come to the conclusion regarding the correctness or otherwise of the experts opinion.

54. The observations made above are supported by long standing authorities in point. The Supreme Court in ***Madan Gopal Kakkar Vs. Naval Dubey: 1992 (3) SCC 204*** while examining the scope and admissibility of a medical expert report held as under:

“34. A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the Court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the Court.”

55. The issue pertaining to expert opinion also arose for consideration before the Supreme Court in ***Ramesh Chandra Agrawal Vs. Regency Hospital Ltd and Others ((2009) 9 SCC 709)***. The well established principles of admissibility of expert evidence were reiterated by the Supreme Court in ***Ramesh Chandra Agrawal(Supra)*** by holding thus:

“16. The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the layperson. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. Thus cases where the science involved, is highly specialised and perhaps even esoteric, the central role of an expert cannot be disputed. The other

requirements for the admissibility of expert evidence are: (i) that the expert must be within a recognised field of expertise, (ii) that the evidence must be based on reliable principles, and (iii) that the expert must be qualified in that discipline. (See *Errors, Medicine and the Law*, Alan Merry and Alexander McCall Smith, 2001 Edn., Cambridge University Press, p. 178.)

19. It is not the province of the expert to act as Judge or Jury. It is stated in *Titli v. Alfred Robert Jones* [AIR 1934 All 273] that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.

20. An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (See *Malay Kumar Ganguly v. Dr. Sukumar Mukherjee* [(2009) 9 SCC 221 : (2009) 10 Scale 675] , SCC p. 249, para 34.)

Credentials of an expert:

18. The importance of the provision has been explained in *State of H.P. v. Jai Lal* [(1999) 7 SCC 280 : 1999 SCC (Cri) 1184] . It is held, that, Section 45 of the Evidence Act which makes opinion of experts admissible lays down, that, when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

21. In *State of Maharashtra v. Damu* [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088 : AIR 2000 SC 1691], it has been laid down that without examining the expert as a witness in court, no reliance can be placed on an opinion alone. In

this regard, it has been observed in State (Delhi Admn.) v. Pali Ram [(1979) 2 SCC 158 : 1979 SCC (Cri) 389 : AIR 1979 SC 14] that “no expert would claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of question put to him”. ”

56. In the case at hand, the expert report submitted by the FSL dated 18.09.2014/Exh Ka-14 simply records the *ipse dixit* or its conclusion that the Aluminium Phosphide was present in the viscera sample. The report does not disclose any data, tests conducted, scientific criteria or materials which guided the expert to record the aforesaid conclusion. The FSL report dated 18.09.2014/Exh Ka-14 is in the teeth of the law laid down in Ramesh Chandra Agrawal (supra) and Madan Gopal Kakkar (supra). In absence of such relevant data, the expert report is inadmissible in evidence, and the opinion rendered therein is discarded.

IV B. FSL Report- Possibility of consumption of Aluminium Phosphide:

57. The veracity of the prosecution case regarding partaking of milk and food served by the accused person which contained Aluminium Phosphide will now be determined.

58. The attributes of Aluminium Phosphide and the possibility of its voluntary consumption have to be examined in the light of various scientific authorities in point. For the aforesaid purpose, the Court had summoned scientific experts to assist in the determination of the chemical and other attributes of Aluminium Phosphide.

Credentials of the Expert before the Court

59. Dr. Sapna Sharma, Associate Professor and Dean, School of Forensic Science, U.P. State Institute of Forensic Science,

Lucknow appeared before this Court and submitted an affidavit bringing in the record the respected authorities and books holding the field which are used for academic purposes and also cited widely.

60. Dr. Sapna Sharma apart from holding the said post is an academician of high repute. Dr. Sapna Sharma has done her Ph.D. from CSIR, Indian Institute of Toxicology Research, Lucknow. The deponent has worked in the field of Toxicology in various institutes including University of Chicago, United States of America, University of Gothenberg, Sweden, Jawahar Lal University, New Delhi, SRN University, Barabanki, U.P. By virtue of her academic qualifications, experience in the field and her current assignment, this Court finds that Dr. Sapna Sharma is a respected expert in the field of Toxicology. The opinion of Dr. Sapna Sharma regarding authorities and well known books in the field of Toxicology is a reliable opinion which this Court has adopted.

61. According to Dr. Sapna Sharma ‘Essentials of Forensic Medicine and Toxicology’ by Dr. KS Narayan Reddy is a well known authority in the field of Toxicology. The academic excellence of Dr. KS Narayan Reddy are extracted hereunder:

“KS Narayan Reddy MD DCP PhD has been Professor of Forensic Medicine (1965–2017). He was awarded the Degree of Doctor of Philosophy in Medicine, by the International University of Contemporary Studies, Washington, DC, USA, in 1998. He has contributed 31 articles to professional journals, and published 10 books in Forensic Medicine. His name is listed in Reference Asia, Vol. III (1989); Biography International, Vol. III (1990–1991); Learned Asia, Vol. I (1992); Indo-Arab Who’s Who, Vol. I (1996); Five Hundred Leaders of Influence, IV Edition (1996), published by American Biographical Institute; Asia-Pacific Who’s Who, Vol. II, 1999,

Asian/American Who's Who, Vol. I, 1999; Twentieth Century Admirable Achievers (Distinguished) Who's Who 1999; Indo-Asean Who's Who, Vol. I, 2000, Man of Achievement, 2000; and Indo-American Who is Who, Vol. III, 2002. He was awarded Fellowship of Academy of Medical Sciences (India) in 1984. He is also a Fellow of Academy of Forensic Sciences; Fellow of Indian Academy of Medical Specialities, Fellow of United Writers Association, Fellow of Academy of Forensic Medicine and Fellow of International Medical Sciences Academy. He is the recipient of Dr. B.C. Roy National Award (1986), in the category of development of medical specialities, and of Vijaya Shree Award (1989), by India International Friendship Society, in the category of authors, Man of Millennium in Forensic Medicine and Toxicology (2001) by the Medicolegal Society, Delhi and Man of Achievement (2006), by Indian Academy of Forensic Medicine."

62. Dr. Sapna Sharma also cited Forensic Medicine and Toxicology for Police Investigation by Dr. SN Tiwari as a respected work in the field. Relevant parts of the same are extracted hereunder :

"Metal phosphides of Aluminium, Zinc, magnesium and calcium are highly effective insecticides and rodenticides. Aluminium phosphide is available as Alphas. Celphos and quick phos in the form of 3 gm tablets or of 0.6 gm pellets of grayish to dark brown in colour and composed of aluminium phosphide (ALP) and aluminium carbonate in the ratio of 56:44. Celphos is frequently used as a grain preservative in stores and during transportation. It is highly poisonous and its effects are due to the liberation of phosphine (PH₃) gas which is toxic to pests, insects and rodents. Its easy availability has led to an epidemic of deaths due to suicides, and accidental ingestion. Many cases even of homicide have been reported in British Journal Lancet, 1988, I : (2598) : 1333, that the number of deaths by ALP. So far exceeded the number of deaths in the Bhopal Gas Tragedy. In fact, it is the most common cause of poisoning in sub urban and rural parts of Northern India.

Exposure to phosphine gas generally occurs by way of accidental or suicidal ingestion. Dermal absorption of aluminium phosphide is rare but it may be absorbed through the lacerated and injured skin causing

toxicity. Following the injection of aluminium phosphide, phosphine gas is liberated which is absorbed throughout the gastro intestinal tract, reaches the blood stream, apart of it goes to the liver by portal vein. It is also rapidly absorbed through lungs. Most of the phosphine is excreted unchanged in expired air. while the residue quantity is oxidized to phosphite and hypo-phosphite ions which are excreted in urine [P. Wexler. second ed., Encyclopedia of toxicology. Vol I and 2. Academic Press, 2005]. Small amounts of zinc phosphide reach liver and kidneys after ingestion and hydrolyse slowly in the tissues to phosphine and zinc salts. It also gets distributed to the brain. [S. Saleki. F.A. Ardsan. A. Javidan-Negad., Liver Histopathology of fatal phosphine poisoning. Forensic sci. Int., 166 (2007). 190 - 193].

Properties of commonly available metal phosphides along with the physical forms and lethal doze (LD 50) of [aluminium ALP- yellow or dark grey crystals; 20 mg/kg); Magnesium Mg_3P_2 – yellow-green crystals; 10.4 mg/kg; Calcium – Ca_3P_2 – Red brown crystalline powder or gray lumps – 8.7 mg/kg and of Zinc – Zn_3P_2 Gray tetragma; crusta;s grau n;acl [pwwer; 4-5 g (toxic dose)] as reported by G.S. Bumrah etal phosphide poisoning: A review in forensic sci Int. 214/2012).

After ingestion of aluminium phosphide, phosphine gas having garlicky or decaying fish odour is released by the action of dilute hydrochloric acid (gastric juice) content of the stomach. The gas phosphine acts as the respiratory poison. Even 20:100,000 parts of phosphine in air is reported to be fatal. [W. Popp et.al, phosphine poisoning in a German office, Lancet, 359, (2002): 1574] Phosphine is excreted through breath and urine. Phosphine causes wide spread organ damage due to cellular hypoxia as a consequence of non-competitive inhibition of the enzyme cytochrome oxidase of the mitochondria.

The exposure limits of phosphine gas have been defined as:

- *Permissible exposure limit (PET): 0.3 ppm ans an 8 hour shift.*
- *Short term exposure limit (STEEL): 1 ppm.*
- *Immediately dangerous to life and health: 200 ppm.*

- *Lethal in 30 min: 400 - 600 ppm.*

[A. wahals, M.S Zaheer, S. wahab, R.A Khan. Acute aluminium phosphide poisoning: Hongkong Journal of Emergency Medicine: Vol., 15(3), July: 2008].

Clinical Signs and Symptoms

The symptoms depend on the route of administration. Poisoning by inhalation produces nausea, restlessness abdominal pain, palpitation, pulmonary edema, cyanoses, hypotension, shock and cardiac arrhythmia, diarrhoea, tremors, convulsions, delirium, coma and death from respiratory and cardiac arrest.

Nausea, vomiting and abdominal pain are the earliest symptoms that appear after ingestion. Gastro intestinal symptoms which present in moderate to severe poisoning are excessive thirst, abdominal pain and epigastric tenderness while cardiovascular abnormalities seen are profound hypotension.

Nervous system main manifestations include headache, dizziness, altered mental status, convulsions and coma. Some rare findings in aluminium phosphide poisoning are muscular weakness, wasting tenderness in proximal lower limb muscles, bleeding diathesis due to capillary damage, acute adrenocortical insufficiency and pseudo-shock syndrome due to impaired fluid distribution which results in micro-circulatory failure.

Detection of Phosphine in poisoning cases

- 1. Visceval tissues or fluid either self or after addition of 2 ml of dilute hydrochloric acid emit a garlicky or fishy putrid characteristic odour of phosphine gas Limit of sensitivity: 0.1 to 5.0 ppm.*
- 2. Gutzeit Test:- Small quantity of tissues (10g) or 10 ml of body fluids (stomach contents) are taken in a gutzeit apparatus. Two pellets of pure zinc metal are added over the contents followed by 5 ml of dilute sulphuric acid. The evolved gas is purified by passing over lead acetate papers (to absorb sulphide gas) and passed through silver nitrate impregnated papers. A black stain*

indicates the presence of phosphine gas due to the formation of silver-phosphide.

3. Ammonium Molybdate method

[Manual of Analytical Toxicology - S.N. Tewari, B.P.R & D. Publication, Govt. of Indi. New Delhi 1976. pp 59-60]

Minced tissues (10g) or other biological material suspected to contain phosphine or phosphides are taken into a steam distillation flask mixed with an equal amount of water and then acidified with dilute sulphuric acid followed by steam distillation. The distillate is collected in an ice cold receiver containing 5 ml of 1% silver nitrate solution by dipping the adapter into the silver nitrate solution. In the presence of phosphide, the silver nitrate solution turns black forming silver phosphide precipitate. To this black precipitated material is added 5ml of concentrated nitric acid and boiled till the solution becomes practically colourless. Add 5ml of ammonium molybdate solution and heat for one minute. Appearance of canary yellow precipitate confirms the presence of phosphine (phosphide).

Autopsy tissues examination – findings

Post mortem examination in cases of suspected aluminium phosphide poisoning reveal a distinct garlic odour from mouth and close to the body. Face shows a lividity with distinct bluish - colouration and blood mixed with froth from and around nostrils. Internal examination reveals froth in trachia and adematons lungs with haemorrhages in the interlobular areas and at the ***Treatment***

To reduce the absorption of phosphine, gastric lavage with potassium permanganate (1:10,000) is done to oxidize phosphine to form non-toxic phosphate. This is followed by a slurry of activated charcoal (1 gm charcoal per kg body weight) given through mesogastric tube. Metabolic acidoses must be treated by administering sodium bicarbonate and shock should be treated with appropriate vasopressors. Milk, fat and saline emetics should not be given orally.

No known specific antidote is however, available for metal phosphide poisoning.

The average time interval between intake of poison and death is 3 hours with a range of 1 – 48 hours. 95% of the patients die within 24 hours and the commonest cause of death in this group is arrhythmia (any disturbance in the rhythm of the heart beat). Death after 24 hours is due to shock acedosis. ARDS (acute respiratory distress syndrome and arrhythmia. The mortality rate is highly variable, ranging from 37% – 100% and can reach more than 60% even in experienced and well equipped centres.

Autopsy tissues examination – findings

Post mortem examination in cases of suspected aluminium phosphide poisoning reveal a distinct garlic odour from mouth and close to the body. Face shows a lividity with distinct bluish - colouration and blood mixed with froth from and around nostrils. Internal examination reveals froth in trachia and adematons lungs with haemorrhages in the interlobular areas and at the margins of the lungs. Stomach usually contains grayish brown fluid or pasty material. Gastric mucosa becomes sluggish and the stomach wall appears thinned out. Lungs, trachia, myocardium, gastric mucosa, kidneys, liver, spleen and brain are congested. Infact almost all the vital organs become clogged in cases of alumunium phosphide poisoning. Heart is fall of dark blood. Tongue, Mouth and Esophagus are adematous and corroded. The mucous membrane of stomach is reuderred corrugated, loosened or hardened and enflamed along with intestines. Coagulative necrosis and congestion was observed in brain.

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63. Extracts from “Essentials of Forensic Medicine & Toxicology” by Dr K.S Narayan Reddy on Aluminium Phosphide including its symptoms. Method of chemical tests are extracted hereunder:

“Aluminum phosphide (ALP) is a solid fumigant pesticide, insecticide and rodenticide. In India it is available as white tablets of Celphos, Alphas, Quickphos, Phostoxin, Phosphotex, etc., each weighing 3 g. and has the capacity to liberate one gram of phosphine (PH_3). On coming in contact with moisture ALP liberates phosphine. Phosphine is a systemic poison and affects all organs of the body. The chemical reaction is accelerated by the presence of HCL in the stomach. ALP has garlicky odour. It is widely used as grain preservative. Phosphite and hypophosphite of aluminium which are non-toxic residues are left in the grains.

Absorption and Excretion: Phosphine is rapidly absorbed from the GI tract by simple diffusion and causes damage to the internal organs. It is also rapidly absorbed from the lungs after inhalation. After ingestion, some ALP is also absorbed and is metabolised in the liver, where phosphine is slowly released accounting for the prolongation of symptoms. Phosphine is oxidised slowly to oxyacids and excreted in the urine as hypophosphite. It is also excreted in unchanged form through the lungs.

Action: Phosphine inhibits respiratory chain enzymes and has cytotoxic action. It acts by inhibiting the electron transport resulting from preferential inhibition of cytochrome oxidase.

Fatal Dose: 1 tablet.

Fatal Period: One hour to four days. Majority die within 24 hours. Inhalation of phosphine at a concentration of 400 to 600 ppm is fatal within one hour.

Signs and Symptoms: They depend on the dose and severity of poisoning.

Inhalation: Mild inhalation exposure produces irritation of mucous membranes and acute respiratory distress. Other symptoms are

dizziness, easy fatigue, tightness in the chest, nausea, vomiting, diarrhoea and headache. Moderate toxicity produces ataxia, numbness, paraesthesia, tremors, diplopia, jaundice, muscular weakness, incoordination and paralysis. Concentration of PH₃ in air higher than 0.3 ppm cause severe illness. Severe toxicity produces adult respiratory distress syndrome, cardiac arrhythmias, congestive heart failure, pulmonary oedema, convulsions, and coma.

Ingestion: Mild intoxication produces nausea, vomiting, headache and abdominal pain, and the patients usually recover.

In moderate and severe poisoning, systemic manifestations are early and progressive and mostly fatal. G.I.T.: Nausea, vomiting, diarrhoea, retrosternal pain. C.V.S.: Hypotension, shock, arrhythmias, myocarditis, pericarditis, acute congestive heart failure. R.S. : Cough, dyspnoea, cyanosis, pulmonary oedema, respiratory failure. Hepatic : Jaundice, hepatitis, hepatomegaly. Renal: Renal failure. C.N.S. : Headache, dizziness, altered mental state, restlessness, convulsions, acute hypoxic encephalopathy, coma. Rare : Muscle wasting and tenderness and bleeding diathesis, due to widespread capillary damage. Cardiogenic shock is the most common cause of death. Complications include pericarditis, acute congestive cardiac failure acute massive gastrointestinal bleeding and ARDS. Mortality is high 35 to 100%.

Post-mortem Appearances : Garlic-like odour is present at the mouth and nostrils and in the gastric contents. Blood-stained froth is found in the mouth and nostrils. Mucous membrane of the lower part of oesophagus, stomach and duodenum are congested. Decreasing congestion of the G.I. tract is seen in the small intestine. The lungs, liver, spleen, kidneys, adrenals and brain are congested. Centrizonal haemorrhagic necrosis of the liver may be seen.

Histopathology : (1) Stomach : Congestion, oedema, leucocytic infiltration, sloughing of gastric mucosa. (2) Lungs : Congestion, oedema, desquamation of respiratory epithelium, thickened alveoli, lymphocytic infiltration. Kidneys : Congestion, necrosis, tubular degeneration and regeneration. Adrenals : Congestion, haemorrhage, necrosis, area of lipid depletion in cortex. Heart : Congestion, oedema,

fragmentation of fibres, focal necrosis, leucocytic infiltration. Brain : Congestion, oedema.

Chemical Test: 5 ml. of gastric aspirate and 15 ml. of water are put in a flask and the mouth is covered with a filter paper impregnated with silver nitrate (0.1N). The flask is heated at 50°C for 15 to 20 minutes. If phosphine is present, the filter paper turns black. (2) A piece of filter paper impregnated with 0.1 N silver nitrate solution is used in the form of a mask through which the patient breathes for 5 to 10 minutes. The filter paper turns black, if phosphine is present. (3) The filter paper impregnated with AgNO_3 (0.1N) is used in the form of face mask and the patient is asked to breathe in and out of this filter paper for 15 to 20 minutes. Presence of PH_3 is indicated by the blackening of filter paper. In breath, the test is positive only in patients who have ingested more than six gm. of ALP.

Treatment: (1) Gastric lavage with potassium permanganate is done and repeated 2 or 3 times to oxidise the poison. (2) Give activated charcoal 100 g. orally to adsorb phosphine. (3) Antacids reduce symptoms pertaining to the stomach and reduce absorption of phosphine. (4) Liquid paraffin is given for excretion of ALP and phosphine from the gut. (5) There is no specific antidote. (6) Magnesium sulphate reduces organ toxicity, corrects hypomagnesaemia and arrhythmias. The usual dose is one g. repeated for the next two hours, and then 1 to 1.5 g. every 6 hours for 5 to 7 days in the form of continuous i.v. infusion. (7) To treat shock 4 to 6 litres of fluids are to be administered during the first 3 to 6 hours; of this 50% must be normal saline. (8) Low dose dopamine infusion, 4 to 6 microgram/kg/min is useful (9) I.V. hydrocortisone, 400 mg. every 4 to 6 hours is highly effective. It reduces the dose of dopamine. (10) Hypoxia is treated with oxygen. (11) Shock should be treated with fluids and hydrocortisone. (12) Metabolic acidosis should be corrected with i.v. sodium carbonate. Peritoneal or haemodialysis is useful.

Poisoning is usually suicidal, occasionally accidental and rarely homicidal.”

64. It is evident that the tests for determining the presence of Aluminium Phosphide as cited in the aforesaid authorities are not depicted in the FSL Report/Exh Ka 14. Further, a notable characteristic of the poison as opined in “Essentials of Forensic Medicine & Toxicology” by Dr. KS Narayan Reddy is that death by consumption of Aluminium Phosphide is mostly suicidal. Consumption of Aluminium Phosphide by accident is a remote possibility in view of the pungent nature of the substance.

65. The discussion also has the benefit of good judicial authorities in point.

66. While discussing the nature of aluminium phosphide the Supreme Court in **Jaipal vs. State of Haryana reported at 2003 1 SCC 169** held as under:

“18. Our attention was invited, as was done in the High Court and the trial court, to a paper entitled “Toxicology — Acute Aluminium Phosphide Poisoning in Northern India” written by Dr Mitra Basu and Prof. S.B. Siwach, Head, Department of Medicine, Postgraduate Institute of Medical Sciences, Rohtak and published in Current Medical Journal, Vol. I, No. 5, July 1995. The authenticity of this article has not been doubted by the High Court nor questioned either in the High Court or in this Court. The learned authors have noticed the aluminium phosphide having emerged as a major health problem in northern India when these cases first started coming in 1984 and hardly any literature being available earlier on this malady. In Postgraduate Institute of Medical Sciences, Rohtak about 2000 cases were reported which were all suicidal.

19. We may briefly sum up the opinion of the learned authors from their published paper. Phosphine gas (active ingredient of ALP) causes sudden cardiovascular collapse; most patients die of shock, cardiac arrhythmia, acidosis and adult respiratory distress syndrome (ARDS). Aluminium phosphide is available in the form of chalky-white tablets.

When these tablets are taken out of the sealed container, they come in contact with atmospheric moisture and the chemical reaction takes place liberating Phosphine gas (PH₃) which is the active ingredient of ALP. This gas is highly toxic and effectively kills all insects and thus preserves the stored grains. When these tablets are swallowed, the chemical reaction is accelerated by the presence of hydrochloric acid in the stomach and within minutes phosphine gas dissipates and spreads into the whole body. The gas is highly toxic and damages almost every organ but maximal damage is caused to heart and lungs. Sudden cardiovascular collapse is the hallmark of acute poisoning. Patients come with fast, thready or impalpable arterial pulses, unrecordable or low blood pressure and icy-cold skin. Somehow these patients remain conscious till the end and continue to pass urine despite unrecordable blood pressure. Vomiting is a prominent feature associated with epigastric burning sensation. The patients will be smelling foul (garlic-like) from their breath and vomitus. Many of them will die within a few hours. Those who survive for some time will show elevated jugular venous pressure, may develop tender hepatomegaly and still later adult respiratory distress syndrome (ARDS), renal shutdown and in a very few cases, toxic hepatic jaundice. The active ingredient of ALP is phosphine gas which causes extensive tissue damage. A spot clinical diagnosis is possible in majority of cases of ALP poisoning. However, ALP on account of its very pungent smell (which can drive out all inmates from the house if left open) cannot be taken accidentally.”

67. The aforesaid holding in Jaipal as regards aluminium phosphide was reiterated in **Darshan Singh vs. State of Punjab** reported at **2024 (3) SCC 164**.

68. The post mortem report records that the body of the deceased did not bear any marks of physical injuries. There is merit in submission on behalf of the appellants that the aluminium phosphide was not administered forcibly. Further in view of above stated authorities there is little likelihood of the

same being consumed accidentally. The aforesaid fact gravely dents the prosecution case .

V. Confrontation of the Doctor with FSL

69. The doctor who had conducted the postmortem was never confronted with the F.S.L. report which opines that the Viscera sample contained Aluminium Phosphide. It was incumbent upon the prosecution to confront PW-4 with the F.S.L. report/Exh Ka-14 and verify whether symptoms or effects of poisoning by Aluminium Phosphide were present in the body or not and whether the same were reflected in the Post Mortem report.

70. In the facts and circumstances of this case the Viscera report cannot be treated as conclusive evidence of poisoning by aluminium phosphide. The reliability of FSL report depicting poison is strengthened after the doctor who conducted the post mortem is confronted with the same. During the aforesaid confrontation the doctor will be alerted to the findings in the post mortem report in light of the FSL report. Responses of the doctor will be elicited on whether the post mortem report independently corroborates the opinion of poisoning in the FSL report.

71. P.W.4 has only mentioned in general terms that there was a possibility of the deceased having been poisoned.

VI. Cause of Death

72. The postmortem report opines that the cause of death could not be ascertained. P.W. 4 in his testimony also stated that no conclusion on the cause of death could be derived after the postmortem. The FSL report has been found to be inadmissible in evidence and has been discarded. P.W. 4 was never

confronted with the FSL report. Moreover P.W. 4 under cross-examination has testified that there were symptoms of food poisoning. Prosecution evidence with regard to cause of death lacks certainty and is unreliable. The prosecution has failed to establish the cause of death of the deceased by poisoning.

VII. Burden of prosecution regarding safe keeping of viscera sample

73. Viscera sample was preserved at the time of the post mortem on 21.07.2013, and the said Viscera sample was received by the F.S.L. on 16.08.2013. The viscera sample was examined at the FSL on 18.09.2014. There is no evidence in the record regarding the manner of preservation of the aforesaid sample after it was drawn at the time of post mortem. Evidence in the record does not disclose as to whether the Viscera sample was kept under controlled lab conditions so as to render it fit for examination at a later date by the F.S.L.

74. Furthermore, even the F.S.L. report does not disclose the state of the sample at the time of receipt. The lab conditions in which the sample were kept in the F.S.L. are also absent in the prosecution evidence. This fact assumes significance since the Viscera sample was examined after more than one year after it was receipt. The possibility of degradation of viscera sample during this long gap so as to render it unfit for laboratory testing/evaluation is a real one.

75. The F.S.L. was under an obligation of law to record the state of sample at the time of receipt and its fitness for purposes of testing. The laboratory conditions which are conducive for safety and fitness of the sample for future testing should have been certified by the F.S.L. expert. Inappropriate conditions

which are unsafe for the viscera sample may render it unfit for future testing.

76. The burden is on the prosecution to prove that storage conditions were safe and appropriate for preservation of the viscera sample for future testing. The prosecution has failed to discharge the said burden. In these circumstances, it cannot be held that the sample was kept in safe and proper lab conditions which were conducive to protecting the sample for the purposes of lab testing at a later date.

VI. Defence 313 Cr.P.C.: Credibility

77. The accused when alerted to the incriminating circumstances in proceedings under Section 313 Cr.P.C. gave satisfactory responses. The accused persons have successfully established that they had rushed the deceased to the hospital and ensured that prompt medical attention was given to him. These facts have been corroborated in the prosecution evidence. Further contrary statements made by the PW 1 and PW 2 have already been disbelieved.

Judgement of the trial court

78. The learned trial court erred in law by believing the testimonies of P.W.1 and P.W.2 who were in fact unreliable witnesses. The trial court also acted contrary to law by relying on the FSL report which as seen earlier was inadmissible in evidence. The learned also neglected to consider the responses of the accused in the proceedings under section 313 CrPC in proper perspective.

79. The judgment rendered by the learned trial court is perverse and contrary to the evidences in the record. The impugned judgment is in teeth of established principles of criminal law.

The impugned order dated 27.06.2016 in Sessions Trial No. 547 of 2013 (State Vs. Ashok Kumar and Another) is liable to be set aside and is set aside.

Conclusions:

80. In the wake of the preceding discussion this Court finds that the prosecution has failed to prove the charges under Sections 328/34 IPC and 302/34 I.P.C. against the appellants, namely, Gyanmati @ Sangathiya and Ashok Kumar @ Putti Lal beyond reasonable doubt. The appellants, namely, Gyanmati @ Sangathiya and Ashok Kumar @ Putti Lal are honourably acquitted of the charges which were laid against them by the trial court and which are the subject matter of these appeals.

81. The Criminal Appeals are **allowed**.

82. The appellants in the respective appeals, namely, Gyanmati @ Sangathiya and Ashok Kumar @ Putti Lal shall be forthwith released from prison and set forth at liberty unless required in any other criminal case.

83. A copy of this judgment translated in Hindi to be served upon the appellant by the Secretary, District Legal Services Authority.

Suggestions:

84. The conduct of investigations and prosecution in the instant case has exposed some of the faultlines in the criminal justice system. Some suggestions are made accordingly to strengthen the process of investigations and conduct of prosecutions and the criminal justice system. The suggestions are as under:

I. Conclusions in the FSL report expert report have to be supported with specific reasons. The reasons include the scientific criteria adopted, laboratory tests, and other material and scientific protocols followed in testing the sample and which form the basis of the conclusions in the FSL/ Expert Report.

II. The credentials/qualifications and experience of the expert who has authored the FSL Report/ expert report will be disclosed in the FSL/expert report.

III. The details of safe preservation of the samples (in the instant case, it was the viscera report) and the fitness of sample for testing shall also be recorded in the expert report.

IV. Strict SOPs for receipt and transfer of samples to be attested by the laboratories/ experts shall be laid down and revealed in the prosecution evidence. The aforesaid procedures shall contain appropriate safeguards against tampering or degradation of the samples.

V. The doctors who have conducted the post mortems shall also be confronted with the findings of the FSL.

VI. The competent authorities including Director General of Police, Directors of Forensic Science Laboratory shall ensure proper training of officials and experts for implementation of the above said safeguards in order to uphold the law and prevent the miscarriage of justice.

(Divesh Chandra Samant,J.) (Ajay Bhanot,J.)

July 17, 2026

Ashish/Dhananjai/Vandit