

1987 SCC OnLine AP 263 : 1988 Cri LJ 549

In the High Court of Andhra Pradesh at Hyderabad
(BEFORE AMARESWARI AND PANDURANGA RAO, JJ.)

Chenna Jagadeeswar and another ... Appellants;

Versus

State of Andhra Pradesh ... Respondent.

Criminal Appeal No. 165 of 1987

Decided on April 16, 1987



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The Judgment of the Court was delivered by

AMARESWARI, J.:— Dr. Jagadeshwar and his wife Saroja were accused Nos. 1 and 2 respectively in S.C. No. 150 of 1986 on the file of the First Additional Sessions Judge, Karimnagar. They were tried for several charges. Charges 1, 2, 3 and 4 were under S. 302, I.P.C. against both the accused, for having killed their four young children, Charge No. 5 was under S. 307, I.P.C. against accused 1 for attempting to murder his wife Saroja, accused 2 Charge No. 6 is under S. 309, I.P.C. against accused 1 for attempting to commit suicide and Charge No. 7 was against accused 2 under S. 309, I.P.C. for attempting to commit suicide. Accused No. 2 was acquitted of all charges excepting charge No. 7. She was found guilty under the said charge and released on probation of good conduct for a period of 2 years.

2. Accused 1 was found guilty of the 4 charges under S. 302, IPC and sentenced to imprisonment for life. He was also found guilty under Charge No. 6 and convicted under S. 309, IPC and sentenced to undergo simple imprisonment for 6 months. The sentences were ordered to run concurrently. With regard to charge No. 6 under S. 307 IPC for attempting to murder his wife Saroja, accused 2 he was acquitted. Against the conviction and sentences under S. 302, IPC and S. 309, IPC the first accused has preferred the appeal. The 2nd accused also challenges her conviction under S. 309, IPC. The first appellant Dr. Jagadeshwar is a young man aged about 35 years. He married Saroja, the daughter of P.W. 3, about 13 years prior the date of occurrence. At the time of marriage P.W. 3 gave an amount of Rs. 10,000/- besides other presentation. After marriage, he completed his M.B.B.S. course

mainly with the financial help from his father-in-law, P.W. 3. He set up practice at Malial, Jagtyal Taluk Karimnagar District and he was flourishing well. The evidence shows that he was getting an income of Rs. 500/- to Rs. 600/- a day. The appellant had four children Mrunalini aged 12 years, Mrudula 9 years, Mruthyunjaya 7 years and Mrunmaya 5 years.

3. With his earnings, the appellant purchased a plot in Jagtyal and he wanted to construct a house. In that connection, he performed a function on 13-8-1984, the day on which lines were drawn on the sopt. He invited all his relations. P.W. 3, his father-in-law, had not come for the function. Two days later, P.W. 2 a class mate and neighbour of accused 1 met P.W. 3 at Jagtyal and asked him why he did not come for the function at his son-in-law's place. P.W. 3 appears to have said that he had given him (A 1) enough and it is sufficient. P.W. 2 informed this to the first appellant. The first appellant heard and kept quiet.

4. P.W. 6 a maid servant of the appellants came as usual to report for work in the early hours of 19-8-1984. As the doors were still not open, she called out. There was no response. She scaled over the compound wall of the neighbours and entered the house. To her aghast she found the bodies of four children and the two accused lying unconscious. P.W. 6



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ran to the house of P.W. 1, a resident of the locality and informed him. P.W. 1 then went to P.W. 2. Both of them came to the house of the appellants and found Mrunalini, Mrudula and Mrutyunjaya dead and A-1 A-2 and Mrunmayi in an unconscious state. P.W. 2 took the three in a Tempo, belonging to P.W. 1 to the Government Hospital, Jagtyal. The Medical Officer attached to the Hospital P.W. 8 attended on them. He found the condition of A-1 not too happy and sent him to the Head Quarters Hospital, Karimnagar, after giving him some first aid. A-2 was in a semi-conscious stage. He gave a stomach-wash and some injections. Then he examined the boy Mrunmayi and found him dead. Thereupon, he sent Ex. P-13 intimation to the Jagyal Police Station.

5. The Sub-Inspector of Police P.W. 18 after having made an entry Ex. P-13 in the General Diary went to the Hospital and recorded the statement of A-2, Ex. P. 86. On the basis of the statement, he registered Crime No. 191/84 against both the accused under Ss. 302 and 309, IPC. He prepared Ex. P. 87 the F.I.R. and sent it to the Inspector of Police, Jagtyal P.W. 20, who took up the investigation. On the point of jurisdiction, F.I.R. was sent to Kodimiyal Police Station and

Crime No. 94 of 1984 was registered.

6. The Circle Inspector of Police, P.W. 20 went to the Hospital and held an inquest over the dead body of Mrunmayi, deceased No. 1 from 10.30 to 12.30 P.M. Ex. P. 8 is the inquest report. The Body was thereafter sent for autopsy.

7. P.W. 20 then proceeded to the village and examined the scene of offence. On that on which Mruthunjaya was lying he found covers of Gardenal Tablets, some compose injections and some used ampoules of compose injections and a syringe. He found 13 sheets of papers which contained some writing EP 4 on the table near the cot. The same was seized under a panchanama 4. The empty ampoules, Gardenal tablets and the syringe were also seized under a panchanama Inquest was held on the three dead bodies from 1-15 P.M. to 3-45 P.M. He prepared the inquest reports Exs. p. 9, P. 10 and P. 11. He examined P.Ws. 2 and 3 at the inquest. Thereafter, he sent the three dead bodies for autopsy to the Government Hospital, Jagtyal. The Doctor P.W. 14 examined the dead bodies of the 4 children and basing on the reports of the Director, Forensic Laboratory, he opined that the 4 deceased died to Barbituric poisoning. He issued the Post mortem certificates Exs. P. 64, P. 67, P. 70 and P. 73. The reports of the Director of Forensic Laboratory are Exs. P. 65. P. 68, P. 71 and P. 74. According to the opinion of the Doctor, P.W. 14, Exs. P. 66, P. 69, P. 72 and P. 75, the 4 children died due to barbituric poisoning and if more than 4 tablets are taken by mouth, it causes the death of a person if he is below 17 years and that, in all the four cases more than 4 tables must have been administered to each child. The 4 deceased are below 17 years.

8. On 19-8-1984, accused 1 who was referred by P.W. 8 the Doctor at Jagtyal to the Govt. Hospital, Karimnagar, was admitted as an in patient in an unconscious state. In the reference Ex. P. 84, it is mentioned that it is a case of suspected phenobarbitone posioning. Ex. P. 85 is the case-sheet pertaining to the first appelliant. P.W. 17 treated him. On 22-8-1984 when the first appelliant was fully conscious a statement was recorded. The first appelliant was discharged on 29-8-1984.

9. P.W. 20 gave a memo to the First Class Magistrate to take specimen signatures of Accused 1. The Munsif Magistrate, Jagtyal took the writing of A-1 on three sheets under Exs. P. 22, P. 23 and P. 24 in the court in the presence of the Advocate of the accused on 12-10-1985. The Magistrate sent the three sheets and Ex. P. 4 to the hand-writing expert for his opinion. P.W. 13 the Assistant Director of State Forensic Laboratory compared Ex. P. 4 with Exs. P. 22 to P. 24 and some other papers Exs. P. 25 to P. 27 and gave an opinion Ex. P. 28 to the effect that they were similar. After investigation, P.W. 20 filed the charge-sheet on 31-1-1986.

10. The prosecution examined 22 witnesses in all. The accused when examined under S. 313, Cri. P.C. denied the offence. The first accused stated that, after he became a Doctor, he was keeping his earnings with P.W. 3 and there were some disputes between him and P.W. 3 regarding that money. He



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further stated that P.W. 7 who is a friend of P.W. 3 bore grudge against him as he did not oblige P.W. 7 in getting his son a share in a Medical shop which was opened opposite to his clinic and he was also not obliging P.W. 7 who was asking for his car often. He also stated that there was a controversy whether P.W. 7's son who is a Motor Vehicles Inspector belongs to backward class. P.W. 7 entertained a suspicion that he (A-1) was responsible for it. He further stated that P.W. 3 had two wives and his wife A-2 is the daughter of P.W. 3 through his first wife. P.W. 3 due to his love and affection towards his second wife neglected his first wife, the mother of A-2 and for that reasons, he was not looking after A-1 and A-2 well and P.Ws. 3 and 7 committed the offence and foisted the case against them. The accused had not examined any witnesses.

11. The learned Sessions Judge accepted the case of the prosecution in relation to A-1 and convicted him under S. 302, IPC for the murder of the four children and sentenced him to undergo imprisonment for life. However, he acquitted A-1 on the charge under S. 307, IPC for attempt to kill A-2. Both A-1 and A-2 were found guilty of attempting to commit suicide by taking gardenal tablets and each of them were convicted under S. 309, IPC. A-1 was sentenced to undergo rigorous imprisonment for 2 years and A-2 was released on probation of good conduct for 2 years on her executing a bond of a sum of Rs. 2,000/-.

12. The question for consideration is whether the conviction and sentence imposed by the learned Sessions Judge are justified and whether the prosecution brought home the guilt of the accused beyond all reasonable doubt.

13. The case mainly rests on circumstantial evidence. Naturally, where the children are killed in the night in their own house there can be no direct evidence. P.W. 6 Narasamma is a maid-servant of the accused. She deposed that the accused had two sons and two daughters and about two years prior to her giving evidence, she came for work as usual on a Sunday. She found the four children dead and A-1 and A-2 in an unconscious state. (She is examined on 30-9-1986.) She further deposed that when she cried out, there was no response

from the house, that she went into the house and found the children dead and A-1 and A-2 in an unconscious state.

14. P.W. 1 stated that P.W. 6 came and told him that the children of the accused have fallen down and that she is afraid that he came to the house of the accused and saw the dead bodies of the three children and A-1 and A-2 lying on the floor. He got his 2 wheeler Tempo to take them to Jagtyal Hospital and placed A-1 and A-2 and Mrunmayi and he was at the house watching the dead bodies of the other children.

15. P.W. 2 deposed that P.W. 1 came and told him that the children of A-1 died and asked him to come and see them and when he went there, he found the 3 children of A-1 had died and A-1 and A-2 and the youngest of the children were in an unconscious state and he took them to the Hospital at Jagtyal and the Doctor told him that the boy also died. From the evidence of P.Ws. 1, 2 and 6 it is clear that the children of A-1 and A-2 died in the house of the accused on the night of 19-8-1984. P.Ws 9, 10, 11 and 12 are the police constables, who took the dead bodies of the four deceased to the Government Hospital, Jagtyal, for post mortem examination on 19-8-1984. P.W. 14 deposed that he conducted the post-mortem examination on Mrunmayi and he did not find any external or internal injuries. He sent the viscera to the Forensic Laboratory and as per the report of the Director of Forensic Laboratory Ex. P. 65 the viscera contained phenobarbitone a derivative of Barbiburic acid. Basing on that report, P.W. 14 opined that Mrunamayi died due to barbituric poisoning. He also conducted post-mortem on the dead body of Mrudula. He did not find any external or internal injuries except one injection mark over the left upper arm. He issued the post-mortem certificate, Ex. P-67 that he sent the viscera to the Director of Forensic Laboratory and basing on Ex. P. 68 the report of the Director, Forensic Laboratory, he gave his opinion Ex. P. 69 that Mrunalini died of barb it uric Poisoning.

16. P.W. 14 conducted post-mortem examination on the dead body of Mrudula,



another daughter of A-1. He found no external or internal injuries. He preserved the viscera, pieces of small intestine, liver and kidney and sent the viscera to the Director of Forensic Laboratory and basing on Ex. P. 71, the report of the Director, he opined in Ex. P. 72 that the death was due to barbituric poisoning. Similarly he conducted post-mortem examination on Mruthyunja. He repeated the same process. He issued the post-mortem certificate Ex. P. 73 and he gave his opinion Ex. P. 75 that Mruthyunjaya also died due to barbituric poisoning basing on the

report of the Director of Forensic Laboratory. Ex. P. 74, the Director's evidence and Exs. P. 64 to P. 75 establish that the children died of barbituric poisoning and they did not die of any injuries and their death was 12 to 18 hours prior to the post-mortem examination.

17. P.W. 14, the Doctor, further stated that the Gardenal Tablets contained Phenobarbitone and if more than four gardenal tablets are taken by mouth, they may cause the death of a person, if he is aged below 17 years and that in all the post-mortem examination cases referred to him, more than 4 gardenal tablets must have been administered to each child. In the cross-examination, P.W. 14 deposed that the report of the Director of Forensic Laboratory mentions phenobarbitone and it does not mention any other thing namely, about the compose in the viscera sent by the Medical Officer. He said that the injection mark can be visible on the person depending upon the gauge of the needle used and that he gave his opinion based on the report from the Forensic Laboratory, Hyderabad. He denied the suggestion that there was no injection marks on Mrunalini. From the evidence of P.W. 14 there is no doubt that the four deceased died of barbituric poisoning and gardenal tablets contain phenobarbitone. The reports from the Forensic Laboratory Exs. P. 65, P. 68 P. 71 and P. 74 disclose that phenobarbitone, a derivative of barbituric acid, is found in the viscera i.e. stomach, piece of small intestine, liver and kidney of the children of the accused. P.W. 14's evidence also shows that, if more than 4 tablets of gardenal are taken by mouth, it causes the death of a person below 17 years. All the 4 children are below 17 years. Thus it cannot be disputed that the 4 deceased children of the accused died on the night of 19-8-1984 due to barbituric poisoning.

18. P.W. 2 was class-mate of A-1. He deposed that the four children of A-1 were with A-1. He lives at a distance of 600 yards from A-1's house, P.W. 3 is the father-in-law of A-1 A-2 is the daughter through his first wife Yashoda. His evidence shows that he performed the marriage of A-1 and A-2 more than 10 years ago and he gave Rs. 10000/- besides other presentations at the time of marriage. Later A-1 studied M.B.B.S. and set up practice at Mallial and A-1 was having two sons and two daughters. P.W. 1 deposed that A-1 was practising at Mallial since 5 or 6 years and he was getting an income of Rs. 500/- to Rs. 600/- a day. The evidence of P.Ws. 1 to 3 shows that A-1 is a M.B.B.S. Doctor practising medicine for about 5 or 6 years prior to the date of occurrence. P.Ws. 5 and 7 are the persons in whose presence inquest was held by P.W. 20, the Circle Inspector P.W. 7 is a panch witness in whose presence P.W. 20 seized the letter Ex. P. 4 and also five empty ampoules of diazapam injection U.S.P. compose M.O. 4(a); two empty ampoules of Metocolopremids injection B.P. Perinerm M.O.

15;20 sheets of Phenobarbitone tablets; I.P. Gardenal each sheet containing 10 tablets 12 sheets of Phenobarbitone without tablets M.O. 5(a) another sheet with tablets M.O. 5(b) one compose injection ampoule, syringe with needle with its metal box M.O. 6 the pillow cover M.O. 14 with vomiting and the pillow M.O. 3 under the Panchanama Ex. P. 9 P.W. 7 stated that he was present along with 2 others at the inquest held over the dead bodies of the 3 children along with P.Ws. 1 and 6 that there was vomiting on the pillow on the cot on which the dead body of Mruthyunjaya was found, that there were some pills on the table by the side of the cot some gardenal tablets, some compose injections, some unused ampoules of compose injection and one syringe. He also said that there some unused tablets and a syringe with a metal box and some 13 papers written in green ink on the table. P.W. 7 signed on all the papers. The inquest report is Ex. P. 9 and it was written after the inquest was held over the dead body of Mrutyunjaya and for the seizure of the other M.Os. Ex. P. 4 is the sheets of papers in



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green ink. P.W. 7 admitted the contents of Ex. P. 9. P.Ws. 7 and 20 also deposed about the inquest over the dead bodies of the other 3 children and the recovery of the M.Os.

19. P.W. 8 is the Medical Officer, Jagtyal. He attended on A-1, who was brought in an unconscious state. On the same day, he also examined A-2 who was in semi-conscious state. He treated A-1 and A-2 by giving stomach wash. He gave the necessary injections. He sent A-1 to the Head quarters Hospital, Karimnagar, as his condition was not happy. P.W. 17 the Doctor at Karimnagar stated that, in the reference made to the Govt. Hospital by P.W. 14, it was mentioned that it was a case of Phenobarbitone poisoning and that he gave the necessary treatment and A-1 was discharged on 29-8-1984. Ex. P. 85 is the case sheet of A-1. From the evidence of P.Ws. 8 and 17, it is clear that A-1 was treated for barbit one poisoning and he became alright. From this evidence, it can be said that A-1 and A-2 had taken phenobarbitone tablets. As gardenal tablets contain phenobarbitone and they were found in the room of A-1 and A-2 where they were found lying unconscious, it can be safely presumed that A-1 and A2 took gardenal tablets and became unconscious and that A-1 and A-2 were treated for phenobarbitone poisoning and they became alright. From this evidence, it is clear that the 4 children died in the house of the accused itself, the only inference possible is that the accused had given the gardenal tablets. A-1 is a Doctor whereas A-2 is an illiterate lady. She does not

know anything about the gardenal tablets or the effect of taking such tablets. In the circumstances, the learned Sessions Judge presumed that it was A-1 who has given gardenal tablets to his 4 children and A-2, and that thereafter, he himself took them and the gardenal tablets given by A-1 caused the death of the 4 children. We agree with the view taken by the learned Sessions Judge in this regard.

20. The learned counsel for the appellants Mr. C. Padmanabha Reddy submitted that it is quite possible that A-2 had administered the tablets and therefore, the benefit of doubt must be given to the first accused. We are unable to agree. A-1 who is a Doctor and an adult male member of the house would not have kept quiet, if A-2 indulged in administering poison to his children and A-2 herself could not have done so as she knows nothing about the medicine or the tablets. There was also used syringe and an injection mark on the upper arm of one of the children. A-2 under no circumstances could have given the injection, in the absence of any evidence to show that she knows how to give injections even though she is not a Doctor.

21. The fact that A-1 had taken gardenal tablets is established beyond any doubt. P.W. 8 the Doctor sent the intimation slip Ex. P. 13 to the Police after treating A-1 and A-2 at 9 A.M. P.W. 18 deposed that on 19-8-1984 at 9.05 A.M. he received Ex. P. 13 from the Government Hospital and entered it in the General Diary of his Station. In Ex. P. 13 the cause of A-1 being brought to the Hospit at was shown as suspended phenobarbitone poison. Ex. P. 13 therefore, lends support to the prosecution case that A-1 had taken gardenal tablets.

22. P.W. 11 had recorded a statement of A-2 Ex. P. 86 and he registered Ex. P. 86 as Crime No. 191/84 under Ss. 302 and 309, IPC. against A-1 and A-2. Ex. P. 87 is the F.I.R. P.W. 18 deposed that as the slip Ex. P. 13 sent by P.W. 8 did not reveal a cognizable offence, he did not issue F.I.R. on it. As there was no other person to say about the incident, he recorded the statement of A-2 who was conscious, that no one was present and that neither the father of A-2 nor the brother of A-1 were present then. He denied the suggestion that the brother of A-1 and father of A-2 were present at the Hospital and he avoided to record their statements. However, the learned Sessions Judge held that Ex. P. 86 cannot be used against A-2 and it cannot also be used to corroborate the evidence of other witnesses.

23. P.W. 16, the Judicial Magistrate of First Class, Jagtyal took the handwriting of A-1 Exs. P. 22 to P. 24 on 12-10-1985 in the open court in the presence of the advocate of the accused, Mr. P. Narasinga Rao. The Magistrate sent Ex. P. 4 and Exs. P. 22 to P. 24 to the Director of Forensic Laboratory, Hyderabad, for his opinion. P.W. 13, the Assistant Director State Forensic Laboratory deposed that he compared the writing on the

papers seized from the house of the accused under Ex. P. 4 and the writings on the papers taken by the Magistrate under Exs. P. 22 to P. 24 and he opined that Ex. P. 4 and Exs. P. 22 to P. 24 are written by one and the same person. The opinion sent by P.W. 13 in Ex. P. 28. In Ex. P. 28 he had given the reasons for his opinion. He referred to several letters in the disputed as well as the admitted signature and said that most of the letters are similar and there are no differences.

24. In Ex. P. 4, the writer whoever it is incriminated himself in the crime. But, it is argued by Mr. C. Padmanabha Reddy, the learned Counsel for the appellants, that Ex. P. 4 does not contain the signature of A-1 and the opinion of the handwriting expert cannot be taken as substantive evidence and it can be used only for the purpose of corroboration. Ex. P. 4 was seized by P.W. 20 in the presence of P.W. 7 but P.W. 7 does not say who wrote Ex. P. 4. P.W. 3 who stated before the Police that Ex. P. 4 is in the handwriting of A-1 did not stick to that version during the trial. He was treated as a Hostile witness and the portion of the earlier statement was marked as Ex. P. 6. P.W. 4 also did not support his earlier version and he was treated as hostile and Ex. P-7 is the portion of the Statement made under S. 161, Cri. P.C. P.W. 2 also was treated as hostile. Thus, P.Ws. 2, 3 and 4 who were examined to identify the handwriting of A-1, did not support the case of the prosecution and there is no other evidence in the case to identify the handwriting in Ex. P. 4. Hence, in the absence of any direct and substantive evidence, we are of the view that the opinion of the handwriting expert is of no use. The learned Sessions Judge also did not place reliance on Ex. P. 4.

25. P.W. 4 deposed that A-1, A-2 his four children and himself went to Jagtyal on the previous day to see a picture and when the lights of the car failed, he went to get them rectified and after getting them repaired, he returned to the picture palace. Then the brother-in-law of A-1 took A-1, A-2 and their children to his house for food and after they returned, he and they went to Malial by Car and he left A-1, A-2 and their children in the house and went home and the next morning when P.W. 6 called him, he went to P.W. 2 and from there to the house of the accused. From this evidence, it is contended that P.W. 3 had two wives and A-2 is his daughter by the first wife and P.W. 3's son who is an R.M.P. Doctor bore grudge against the family of the accused and after taking A-1 and A-2 to his house he must have served them food containing poison and the 4 children died and A-1 and A-2 became

unconscious. We find it difficult to believe this story as highly improbable. If really A-1 A-2 and the children had food at the house of the son of P.W. 3 who is an R.M.P. Doctor in the previous night the first accused would have stated so in his examination under S. 313, Cr. P.C. The first accused though stated that the younger wife of P.W. 3 bears grudge against A-1 and A-2 and that P.Ws. 3 and 7 got the case foisted against them did not refer to the fact that they had food at the house of either P.W. 3 or his son an R.M.P. Doctor on the previous night. P.W. 2 deposed that, when he asked P.W. 3 why he did not come to the place where A-1 was starting construction of his house, P.W. 3 said that he had helped him enough. The evidence of P.W. 2 shows that A-1 and P.W. 3 were not having very cordial relations. Therefore it is improbable that the son of P.W. 3 through his second wife would have invited A-1 and A-2 and their children to his house for food and A-1 and A-2 would have gone to the house of P.W. 3 for dinner on that night. There is absolutely no material to come to the conclusion that P.W. 3 or his son got poisoned food served to the accused and to their four children on the night of 19-8-84.

26. The evidence shows that the four children of the accused died due to taking of gardenal tablets and that A-1 and A-2 have also taken gardenal tablets. This incident happened in the house where A-1 and A-2 and the children were living. The children were alive on the previous evening and what happened in the night is a matter known only to the inmates. In the absence of any acceptable explanation by the accused, there is no other inference except that the 4 children died as a result of poisoning by A-1.

27. It is submitted by Mr. C. Padmanabha Reddy the learned counsel for the appellants



that the children themselves might have taken the tables. A-1 and A-2 would have certainly prevented the children from taking these tablets if they had attempted to do themselves and under no circumstances, all the children would have taken more than 4 gardenal tablets and all by themselves. The evidence of P.W. 14 shows that Mrunalini had an injection mark over the left upper arm. Hence, it can be said that she was given an injection before her death. The injection could not have been taken by the child or given by A-2. A-1 being a Doctor, knows that effect of gardenal tablets. A-2 does not know anything about it. So among A-1 and A-2, it can be said with reasonable definiteness that A-1 is the culprit. A-2 might have been a silent spectator. The circumstances are inconsistent with the innocence of A-1. They cannot

be explained in any hypothesis except the guilt of A-1, A-2 the mother could not have given the gardenal tablets to her children to murder them. The learned Sessions Judge was therefore right in giving benefit of doubt to A-2 for the charge under S. 302, IPC and convicting A-1 alone.

28. There is no doubt that A-1 and A-2 have also taken gardenal tablets in an attempt to commit suicide. But it is contended by the learned counsel for the appellants that S. 309 IPC is ultra vires as violative of Art. 19 and 21 of the Constitution and the conviction and sentence under the said charge are unsustainable. He submitted that a Division Bench of the Bombay High Court held so. The decision of the Bombay High Court, we understand is not reported in any of the law journals, though it is reported in the press. From the sub-missions of the learned counsel, we understand that the Judgment is based on the principle that the right to live include the right not to live or to put it positively the right to die and S. 309, IPC which aims at punishing the person who desires not to live is unconstitutional.

29. S. 309 of the I.P.C. is as follows:

“309. Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.”

30. Emile Durkheim, an eminent sociologist of the 19th century gave a comprehensive definition of suicide. “The term suicide is applied to all cases of deaths resulting directly or indirectly from a positive or negative act of the victim himself, which he knows will produce this result. An attempt is an act thus defined but falling short of actual death.”

31. There may be so many reasons for committing suicide. It may be an act of a sickly person, committed in a state of delirium. It may be a self-centred phenomenon, arising out of aberrations in individual behaviour. It can be the result of a social mala adjustment. After all a man's mental stability is conditioned by the changing developments around him and the social millieu is destined to leave its impact on man especially when he has to struggle for his survival. It may be committed due to some of the proximate problems prior to suicide family dissensions, incurable ailments and guilt complex. There may be many who are prone to egoistic tendencies and they cherish their individualism as sacrosanct, they fell dejected. Their will to live and struggle to survive wane quickly. High individualism may lead to suicide. Sometimes a person kills himself an agesture of sacrifice. “Sati” in India and ‘Harakiri’ in Japan are well known. In primitive societies, men of old age embraced death so that they were not a

burden to society. In case there is nothing to look forward to with hope and nothing to look back with satisfaction. If the society imposes regulation on individuals and when these check valves weaken, the individuals become nameless and anonymous entities and let themselves go without restraint only to land in the pit of dejection and depression. Sometimes fatalism leads to suicide when there is no escape from discipline and regimentation people may resort to suicide. Many problems like poverty, deprivation, disappointment and several social mal-adjustments are sought to be solved by suicide.

32. In the case, which arose before the Bombay High Court, a Constable of Maharashtra Police who became mentally ill after a road accident, wanted to make a living by putting up a vegetable stall. But the Municipality would not grant him a licence. The Municipal Commissioner refused to grant him an interview. In sheer desperation, the



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Constable poured kerosene on his body and was about to commit self-immolation, but the security staff stopped him. He was prosecuted for attempting to commit suicide under S. 309, IPC. His wife filed a petition for quashing the proceedings on the ground that S. 309, IPC was violative of Art. 19 and 21 of the Constitution. The contention was 'the right to life' also connotated 'the right to end one's life. It was forcefully put forth that the State had no right to compel a citizen to continue his life when it could not provide the necessary wherewithal to sustain himself. The Bombay High Court accepted the contention of the petitioner and quashed all proceedings under S. 309, IPC. As violative of Arts. 19 and 21 of the Constitution.

33. Now Arts. 19 and 21 of the Constitution Art.: "19(1) All citizens shall have the right

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (g) to practice any profession or to carry on any occupation, trade or business."

34. Article 21:

"21. No person shall be deprived of his life or personal liberty except according to procedure established by law."

35. From these Articles, it is seen that the right to life is not specifically mentioned. But, in a broader sense, unless a man is assured of physical existence there can be no other fundamental right and since the State exists for the common good of the citizens, no Constitution can ignore the right of the citizens to life though it may not be explicitly explained. In these circumstances, it is rather difficult to hold that the right to life impliedly guaranteed by the Constitution includes the right to die. Many thefts are committed due to the unhealthy co-existence of the nouveau riche. But on that social ground, the offences against property cannot be pardoned. Can the parents who are responsible for the life of their children be said to have a right to dispose of the life of their children because they have created it. Then there are cases of hunger strikes, threatened self-immolations and other potentially employed situations. If S. 309 I.P.C. held to be ultra vires, no action can lie taken against the people resorting to these practices, on the ground that they have a right to dispose of themselves. It is true that, if a person is sick, we treat him, we do not punish him. Every case under S. 309 IPC may not lead to a punishment. S. 309 IPC by no means mandates that a Court should punish attempted suicide, it only lays down the upper limits of such punishment. But there are other acts which provide a discretion to the Court. Ss. 3, 4 and 13 of the Probation of Offenders Act, 1958 confers a wide discretion on Court either to bind such a person to Psychiatric care or release him with an admonition. S. 12 of the Act enables court to ensure that no stigma or disqualification should attach to such a person notwithstanding anything contained in any other law. The Courts have sufficient power to see that unwarranted harsh treatment or prejudice is not meted out to those who need care and attention. India is still a Country where its women folk who constitute the majority are illiterate and tradition-bound. The Community, caste and family still have the precedents over the individual. In this environment the women may be subjected to barbaric and inhuman pressures.

36. If S. 309 is to be held illegal, we are highly doubtful whether S. 306, IPC could survive. Thus people who actively assist and induce persons to commit suicide may go scot-free. It is true that a Society which is indifferent to improving the living conditions of distressed persons cannot with justification punish them at self-help or self-deliverance. But the question is whether it is right for the State to adopt the position that those unable to lead a dignified life are welcome to depart it.

37. It is a paradox that society will neither provide sustenance nor allow the sufferer to die. In this complexity of social mal-adjustments, the best safeguard is the Court which should exercise and temper its judgment with humanity and compassion. In a Country like India,

where the individual is subjected to tremendous pressures, it is wise



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to err on the side of caution. To confer a right to destroy one-self and to take it away from the purview of the Courts to enquire into the act would be one step down in the scene of human distress and motivation. It may lead to several incongruities and it is not desirable to permit them. We, therefore, hold that S. 309 I.P.C. is valid and does not offend Arts. 19 and 21 of the Constitution.

38. In the instant case, the first appellant having killed his four children, attempted to commit suicide for reasons which are not clear. The trial court imposed a sentence of 6 months S.I. In the circumstances, we think it reasonable to reduce the sentence to 3 months S.I. The sentences to run concurrently.

39. The 2nd appellant has been convicted by learned Additional Sessions Judge, for the offence punishable under S. 309 IPC. It is seen from the evidence on record that A-2, who was sent in an unconscious condition to the Government Hospital, Jagtyal, was given a stomach wash and as soon as she regained consciousness, she has given Ex. P. 96 statement to the Inspector of Police which constitutes the first information in this case. In that statement she has stated that on account of family disputes, they have entered into a suicide pact as a result of which herself and her children have consumed the tablets given by her husband. This statement given by A-2 at the earliest opportunity rules out the death of A-2 due to homicide or by accident. Therefore, we hold that the conviction of the 2nd appellant under S. 309 IPC is perfectly justified and confirm the same. Having regard to the facts and circumstances of the case, we do not think that the order of the learned Sessions Judge in releasing the 2nd appellant on probation of good conduct needs interference. With the above modification, the appeal is dismissed.

40. *Appeal dismissed.*

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