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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: August 01, 2014

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CRL.A. 243/2013

MOHD. BILAL & ANR.

..... Appellant

Represented by: Mr.K.Singhal, Advocate with
Ms.Namita Wali, Advocate

versus

STATE

..... Respondent

Represented by: Ms.Aashaa Tiwari, APP
Insp.Sube Singh Rao, ATO, PS
Sagarpur

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CrI.M.B.No.785/2014

Since the appeal is being heard today on merits, instant application which seeks suspension of sentence pending hearing of the appeal is dismissed as withdrawn.

CrI.A.No.243/2013

1. If the warm hands of a Judge presiding over a sessions trial turn cold, Article 21 of the Constitution of India, which guarantees that no person shall be deprived of his personal liberty except according to procedure established by law becomes the first casualty.
2. A case of no evidence against appellant No.2, Ms.Beena Stella Rafi,

has ended in her being convicted for the offence punishable under Section 302 IPC. The unfortunate lady who was in Government service has lost her job on being convicted. The innocent lady had not only to spend time in jail but also finds herself without a job. There is not even a jot of evidence against her.

3. We have to re-emphasize that where there are more than one accused, it becomes the duty of the Court to list the incriminating circumstances against each accused and when learned Judges presiding over a Court of Session start speaking 'they' for 'him/her' while referring to the accused it commits the blunder, which has occurred in the instant case. If only the learned Judge who presided over the trial had kept in sight the guiding star that at a criminal trial circumstances emanating from the evidence against each accused had to be separately listed the error would not have taken place. The impugned judgment is replete with reference to appellant No.1, Mohd.Balil and in spite of no reference being made to appellant No.2 Ms.Beena Stella Rafi, save and except where the learned Judge has referred to the fact that there was a quarrel between appellant No.2 and her husband, even the appellant No.2 has been convicted without any finding as to what role was played by appellant No.2 in the commission of the crime.

4. The victim is Mohd.Rafi the husband of appellant No.2 and the father of appellant No.1. The undisputed place of the occurrence is the family house.

5. But what happened on the unfortunate intervening night of February 18, 2012 and February 19, 2012 when Mohd.Rafi died an unnatural death had to be discovered by the learned Trial Judge. The death was not accidental. It was not natural. But was it homicidal or suicidal was debated

before the learned Trial Judge. A facet of law emanating from Section 81 of the Penal Code was overlooked by all. Whether the death was the result of something done by somebody without criminal intention to cause harm and in good faith for the purpose of preventing or avoiding harm to some other person?

6. Mohd.Rafi, aged 60 years, was brought by his son Bilal (appellant No.1) to the casualty of LNJP Hospital at 2:05 Hrs. on February 19, 2012 i.e. at 2 hours past midnight. He was declared brought dead. Ct.Ajay Chaudhary PW-6 the duty constable at LNJP Hospital passed on said information to the duty officer at P.S. Darya Ganj who recorded said information vide DD No.4-A. SI Sumit Deshwal PW-11 was handed over DD No.4-A for investigation and he left the police station along with Ct.Gaurav (not examined). On learning that the body had already been sent to the mortuary he filled up the inquest papers Ex.PW-11/A for post mortem of the dead body to be conducted. Insp.Ravinder Kumar PW-13 was also passed on the information that Mohd.Rafi had been brought dead at the hospital. Since in the MLC Ex.PW-10/A of Mohd.Rafi, Dr.Navin Prakash Verma, the author of Ex.PW-10/A had not recorded having noted any injury on the person of the deceased, neither Insp.Ravinder Kumar nor SI Sumit Deshwal got registered any case because nothing suggestive of a crime having been committed was brought to their notice. He recorded a D.D. entry of their visit. As deposed to by the two, nobody came forward to tell them as to how the deceased died. The family members kept mum. It was only after Dr.Jatin Bodwal PW-9 conducted the post mortem at 11.00 A.M. on February 19, 2012 and authored the post mortem report Ex.PW-9/A, it surfaced that the matter required investigation. The reason was five external

injuries noted as under:-

- “1. Contused lacerated wound 2 cm x 0.25 cm x 0.25 cm, subcutaneous tissue deep, was present on the vertex in the midline.*
- 2. Contused lacerated wound 0.8 cm x 0.2 cm x 0.25 cm subcutaneous tissue deep, was present on the right parietal region, 1 cm from injury no.1.*
- 3. Pressure abrasion in the form of ligature mark was present horizontally on the front and side of neck, red in colour measuring 31 cm and width varying about 1.3 cm to 1.5 cm. In the midline, it was situated 6 cm below the chin at the level of thyroid notch and measures 1.5 cm in width. On the right side it was situated 1 cm below the right angle of mandible and measures 1.3 cm in width. On the left side it was situated 5 cm below left angle of mandible and measures 1.3 cm in width.*
- 4. Bruise 2 cm x 1 cm red, present on the right side of back of abdomen, 4 cm from midline.*
- 5. Bruise 1.5 cm x 0.8 cm red, present on the left side of back of abdomen, 2 cm from midline.”*

Internal examination evinced effusion of blood in posterior laryngeal wall with mid-line fracture of the thyroid cartilage with effusion at fracture lined associated. The cause of death was asphyxia as a result of ligature strangulation. To the credit of Dr.Jatin Bodwal we must note that in a well authored post mortem report he took the care to fill up the ‘*POST MORTEM EXAMINATION REPORT – DIAGRAM SHEET*’. He indicated thereon the situs of injury No.3 and brought out graphically therein what he had penned as external injury No.3. He brought out that the ligature mark was not present at the back of the neck. It was only on the front and both sides of the neck.

7. FIR for the offence of murder was registered and statements of the family members and people in the neighbourhood were recorded.

8. As we would be noting hereinafter, as we proceed to note the testimony of the witnesses, it was not clearly emerging as to how did the deceased die. And by this we mean whether appellant No.1 had intentionally strangled his father or was it that appellant No.1 was trying to pin down his father or confine him to prevent his father from injuring his mother i.e. appellant No.2 or injuring himself or whether the deceased tripped over a cable wire. The reason was that if the deceased was strangled with a ligature material, a ligature mark all around the neck would have resulted and in all probability a deeper ligature mark at the place of the neck where a knot was formed by the ligature material. The post mortem report clearly indicated that the ligature material was not encircling the entire neck. It did not traverse the back of the neck. Was it that somebody who while trying to arrest a violent person from being physical with somebody else or himself, used a wire or a rope : as a half loop thrown around the body of the victim, causing the death? Or was it that the deceased tripped. The body fell full weight on a cable wire?

9. Since the family members told Insp.Sube Singh that the deceased firstly hit himself with the lid of pressure cooker while in a fit of rage and then attempted to commit suicide using a cable wire, seizing the lid Ex.P-1 of the pressure cooker and a cable wire Ex.P-2, Insp.Sube Singh sought a clarificatory opinion from Dr.Jatin Bodwal vide Ex.PW-9/B, which reads as under:-

“To

*The HOD Forensic Science,
Maulana Azad Medical,*

College, New Delhi

Sub: Reg. Opinion about the recovered cable wire and Lid of pressure Cooker.

On receipt of DD No.4-A dated 19/02/12 SI Sumit Kumar reached JPN Hospital, Delhi where he came to know that one person namely Mohd.Rafi s/o Mohd.Safi R/o 2815 Gali Garhaiya, Kucha Challan, Darya Ganj, age 60 years was admitted in hospital by his son Bilal where the person was declared brought dead by the Doctor on duty and the dead body along with papers were sent to mortuary of MAMC, Delhi. On enquiry Mr.Bilal, son of the deceased, stated that there was a quarrel between his father and mother took place as he was informed by his wife, while he was present in the H.No.2814 adjoining his house. He came to his house and found that his father was quarrelling with his mother under the influence of alcohol. He thrown away the liquor of the bottle in the toilet which was in the hand of his father. On this his father Mohd.Rafi, went outside the house. At about 1 am to 1.15 am he found that his father was lying on the ground unconscious outside the house. He taken away his father to Khatija Hospital first then to JPN Hospital, Delhi. Further enquiry was conducted from other members of his family and spot was visited but nothing suspicious came into notice. The post mortem of the body was conducted in MAMC, Delhi on 19/02/12. The report of the post mortem has been obtained on dated 13/03/12. The Dr. has opined "The cause of death is asphyxia as a result of ligature strangulation via the injuries No.3 which is sufficient to cause death in the ordinary course of nature. All injuries are anti mortem in nature, fresh in duration prior to death. Injuries No.1, No.2, No.4 and No.5 were caused by ligature materials". From the opinion of post-mortem report No.147/2012 prima facie an offence U/S 302 IPC was made out and above cited case registered. During the course of investigation two accused have been arrested. The lid of Pressure Cooker and cable wire used during the commission of offence have been recovered and seized.

The following queries may please be opined:-

(1) Whether injuries No.1,2, 4 and 5 caused on the body of deceased are possible from the recovered Lid of pressure Cooker.

(2) Whether the injury No.3 caused on the body of deceased are possible from the recovered cable wire.

(3) Whether injuries No.1,2, 4 and 5 caused on the body of deceased are self inflicted or otherwise.

(4) Any other relevant information may please be provided.

The sealed lid of pressure cooker and cable wire along with relevant documents are being sent for opinion.”

10. The reason for seeking the opinion was obviously to elicit a response from an expert on whether injuries No.1, 2, 4 and 5 could be self inflicted and whether injury No.3 could be caused from the cable wire recovered.

11. Dr.Jatin Bodwal gave an opinion Ex.PW-9/C that injuries No.1, 2, 4 and 5 could be possibly caused when a lid of a pressure cooker is used as an object to cause the injury and as regards injury No.3 he opined that said injury was possible to have been caused from the cable wire Ex.P-1.

12. Insp.Sube Singh sought a further clarificatory opinion vide Ex.PW-9/E because the learned APP, a fact recorded in Ex.PW-9/E, was confused on the opinion that the cable wire Ex.P-1 could have caused injury No.3; and the reason for the confusion was that the ligature mark on the neck was not straight and was not around the entire neck. From the fact that the thyroid cartilage had a fracture, an issue was arising : whether the

strangulation was by applying pressure on the neck when the body was lying face up. If the wire was the ligature material, the learned APP had opined that the manner of strangulation possible was only when the body was lying face down and somebody looped the wire from the front of the neck and pulled it from the back. The clarificatory opinion sought from Dr.Jatin Bodwal as per Ex.PW-9/E, is as under:-

“To

*The HOD Forensic Science,
MAMC Delhi*

Subject: Reg. Subsequent opinion about the recovered cable wire.

On receipt of DD No.4A dated 19-02-2012 SI Sumit Kumar reached JPN Hospital Delhi where he came to know that one person namely Mohd.Rafi s/o Mohd.Safi r/o 2815 Gali Garhaiya, Kucha Challan, Darya Ganj, Delhi age 60 years was admitted in hospital by his son Bilal where the person was declared brought dead by the doctor on duty. The post mortem on the body was conducted vide No.147 dated 19-02-2012. On the receipt of PM Report FIR was registered and the weapon of offence cable wire and lid of cooker was recovered. Later on, the subsequent opinion was taken from your department vide your Dy.No.FM/XII/(MLW)/10/OPN/W-CL/37/FM dated 26.03-2012 by the Dr.Jatin Bodwal. After the completion of the investigation the case file was sent for checking in the prosecution branch central. The APP has raised the following objections to be clarified and taking further opinion:-

- 1. The cable wire of about 2.5 M is seized as weapon of offence by which deceased was alleged to be strangulated. The post mortem finding do not support that this wire can be used for strangulation because in*

post mortem report the ligature mark is not straight rather it also goes to both sides of neck and the pressure applied was sufficient to break neck thyroid cartilage. It is possible if the neck of a person lying on the ground facing the death and neck is pulled from behind. In PM report the abrasion are present on neck. So it is apparent that body was lying facing up and pressure was applied on neck for strangulation. This situation is possible only by straight hard rod like object not by flexible wire.

2. Therefore, you are requested that whether in such situation the strangulation is possible and in what manner by the recovered wire.”

13. Dr.Jatin Bodwal gave an opinion Ex.PW-9/F as under:-

“Response to query No.1 and No.2 is, abrasion on the back and ligature mark on neck are two different injuries which occur due to separate events. So, it is possible that ligature mark on neck can be caused by wire.”

14. Regretfully, Dr.Jatin Bodwal gave an evasive reply and did not deal with the queries put to him in Ex.PW-9/E.

15. The matter went for trial. Mohd.Bilal and his mother Beena Stella Rafi were charged for having murdered Mohd.Rafi, the father of Mohd.Bilal and the husband of Beena Stella Rafi.

16. Mst.Amna PW-1, the wife of Mohd.Bilal initially deposed in harmony with her statement made to the investigating officer under Section 161 Cr.P.C. She said that on the date of the occurrence she was in her house with her mother-in-law and her sister-in-law Saima. They were watching television. Her father-in-law came home at about 11.00 P.M. and requested her mother-in-law to serve him dinner. Her mother-in-law refused to serve dinner telling Mohd.Rafi that he had consumed liquor at which her father-in-

law got annoyed and picked up the lid of pressure cooker and started hitting himself. She then turned hostile and said that she did not tell the investigating officer that when the quarrel between her father-in-law and mother-in-law was on she rang up her husband who came and intervened. She denied that she told the investigating officer that her husband picked up the bottle of liquor and threw the liquor in the toilet at which her father in law started filthy abuses. She was confronted with said statements allegedly made by her to the investigating officer and recorded in her statement under Section 161 Cr.P.C. She claimed in her testimony that after the altercation her father-in-law left. After some time she heard her husband calling for her mother-in-law and as she, her sister-in-law and mother-in-law rushed out they saw her father-in-law hanging from a cable wire entangled in iron rods affixed in the window of the house opposite to their. Her husband had caught hold her father-in-law from his legs. Her father in law was made to lie on the bed. Her mother-in-law gave cardiac massage to revive her father-in-law because she was a nursing sister in LNJP hospital. Her father-in-law was removed to Khandija hospital from where he was taken to LNJP hospital.

17. Faisal PW-2 deposed that Mohd.Bilal was his friend and resided in his neighbourhood. On the day of the incident along with their friends Amzad, Shazid, Samad, Sham, Bilal and he were sitting at his house when past midnight Bilal received a call from his wife informing that his parents were quarrelling. Bilal left their house and he heard Bilal calling for his mother. They all came out from their house and saw Bilal's father hanging with a cable wire which was tied on the window frame. Bilal was holding his father by the legs. They lifted Bilal's father and made him lie on the bed. Bilal's

mother tried to revive her husband by cardiac massage. Father of Bilal was taken to the hospital. Mohd.Amzad PW-3 deposed in sync with Faizal PW-2 and so did Abdul Samad PW-4.

18. Dr.Jatin Bodwal PW-9 proved the post mortem report Ex.PW-9/A and his opinion Ex.PW-9/C as also the further subsequent opinion Ex. PW-9/F. In his examination in chief that injuries No.1, 2, 4 and 5 could not be self inflicted but during cross examination admitted that injuries No.1 and 2 could have been self inflicted and were possibly caused from the circumferential edge of the lid Ex.P-1 of the cooker. He also admitted that injuries No.4 and 5 were blunt injuries which could have been caused by blunt force trauma.

19. SI Sumit Deshwal PW-11 and Insp.Sube Singh PW-15 deposed facts which we have already narrated hereinabove concerning the investigation conducted by the two.

20. When the incriminating circumstances were put to Beena Stella Rafi, she admitted that she was in the house and that she had an altercation with her husband who was alcoholic and was suffering from chronic tuberculoses. On the day of the incident he insisted on consuming alcohol. When stopped he became irritated and hit himself with the lid of the pressure cooker and left the house. Her daughter-in-law telephoned her son who was present in the neighbourhood in the house of his friend. After 5 of 10 minutes she heard her son shouting in the street and she came out. She saw her son holding legs of her husband who was hanging from a cable wire. Friends of her son came there and got him down. Being a nursing sister she tried to revive her husband. Her husband was taken to Khatija hospital and then to LNJP hospital where he died. Mohd.Bilal also took said

stand. Mohd.Bilal said the same thing in his statement.

21. Saima the sister-in-law of Amna PW-1, was examined as DW-1. She deposed that her father was a chronic patient of tuberculosis and was a chronic drinker. She said that she was present in the house when the incident took place. She corroborated what her mother and brother said concerning the incident when they were examined under Section 313 Cr.P.C. Mohd.Bilal also examined himself as a witness and deposed as per what he and his mother stated when examined under Section 313 Cr.P.C.

22. From the evidence led at the trial and even assuming that the witnesses, having a motive to save Mohd.Bilal, deviated from what the investigating officer claimed was told to him during investigation and as recorded by him in the statements of the witnesses under Section 161 Cr.P.C., we do not find even a jot of evidence to implicate Ms.Beena Stella Rafi the wife of the deceased. Her name is spoken of by the witnesses with reference to a verbal spat she had with her husband because the husband was a drunkard and was insisting on consuming liquor in the mid-night and as any wife would do she protested. All witnesses have spoken in unison that when the husband and wife were quarrelling Amna rang up Mohd.Bilal to come to the house; a natural thing for a young daughter-in-law to do. The only further reference to Ms.Beena Stella Rafi is of giving cardiac massage to her husband when he was made to lie on the bed after the cable wire was removed from his neck. Ms.Beena Stella Rafi is a para-medic; working as a sister nurse with LNJP hospital.

23. Having perused the impugned judgment, we find that the learned Trial Judge has simply noted the evidence and disbelieved the defence that the deceased, in a fit of rage, firstly injured himself using the lid Ex.P-1 of a

pressure cooker and then went out of the house, picked up a cable wire and hung himself. The learned Trial Judge has highlighted that Mohd.Bilal was seen holding his father from the legs when his father was seen hanging near a window opposite the house. But nowhere do we find that the learned Trial Judge has discussed as to what was the participative role of Ms.Beena Stella Rafi. A reading of the judgment makes it clear that the learned Trial Judge has understood the singular to mean the plural. The learned Trial Judge has understood 'him' to mean 'they'; the learned Trial Judge has read the evidence as if reference to Mohd.Bilal i.e. 'him' was a reference to Mohd.Bilal and his mother Ms.Beena Stella Rafi i.e. 'they'.

24. Ms.Beena Stella Rafi is thus entitled to an honourable acquittal and we emphasize not on account of her entitlement to a benefit of doubt. Not a peg has been laid by the prosecution on which the guilt of Beena Stella Rafi can be nailed.

25. As regards Mohd.Bilal, the evidence which has surfaced in the testimony of the witnesses is that when Amna rang him to inform that his parents were quarrelling he was in the company of his friends Faizal, Mohd.Amzad, Abdul Samad, PW-2, PW-3, and PW-4 respectively. He left their company and went to his house. His shouts to his mother were a summons for his mother, his wife Amna and his three friends to come out. They saw the deceased hanging from rods protruding from a window with a cable wire around his neck with Mohd.Bilal holding his father's legs. The deceased was brought down and made to lie on a bed. Beena Stella Rafi, a trained nurse, could not revive her husband in spite of cardiac massage. We take the ocular testimony of the witnesses with a pinch of salt because all of them had a motive to save Mohd.Bilal. We take it that what Amna told the

investigating officer in her statement under Section 161 Cr.P.C. was a correct narrative of the incident. As per the statement when her husband returned to the house on being summoned by her because her father-in-law and mother-in-law were quarrelling, the first thing her husband did was to throw the liquor in the bathroom which infuriated her father-in-law who picked up the lid of a pressure cooker and started hitting himself and while doing so her father-in-law hurled filthy abuses. Her father-in-law went out of the house followed by her husband. They heard the shrieks of her husband and went outside and she saw her father-in-law hanging from a cable wire entangled in iron rods affixed in the window of the house opposite theirs.

26. No witness has deposed that the wire cable was forming a noose around the neck of the deceased and thus it cannot be inferred that the wire cable formed a complete loop, as akin to a hang-mans noose, around the neck of the deceased. Indeed it did not for the reason the post mortem report Ex.PW-9/A clearly records that the contused lacerated wounds and the ligature marks were present only in the front and the side of the neck and not the back. This means that Mohd.Rafi was not hung with the ligature material forming a loop around his neck. We further have the fact that the ligature marks were horizontally placed around the sides and the front of the neck. The ligature marks were non-continuous placed high up in the neck between the chin and the larynx. It is obvious that the deceased Mohd.Rafi did not hang himself i.e. he did not try to commit suicide. The cable wire Ex.P-2 has a length of 2.5 meter, a fact recorded in Ex.PW-9/E. Could it have happened that as the deceased, in a fit of rage, walked angrily out of the house, it being past mid-night, he stumbled and the wire cable came in

the line of his neck and as he plunked down, the wire cable looped around the side of the neck and due to the body weight, the resultant thrust damaged the thyroid region resulting in asphyxia? There could also be another possibility : of the deceased trying to injure himself and Mohd.Bilal acting in good faith tried to restrain his father and thought it prudent to confine his father's movement by lassoing him using the wire cable and in the process Mohd.Rafi getting choked?

27. The two possibilities loom large in the backdrop of some very tell tale evidence which has emerged. Mohd. Rafi was aged around 60 years. The post mortem report records that his weight was 54 kg. and his height was 162 cm. For a man of his height the weight was less than normal. The post mortem report records that the cut section of the right lung evinced fibrocaseous necrosis. It corroborates what was said by Mohd.Bilal, Beena Stella Rafi and Saima that Mohd.Rafi was suffering from tuberculosis.

28. The post mortem report records that the pressure abrasion in the form of ligature mark was horizontally present on the front and side of neck, red in colour, measuring 31 cm with width bearing 1.3 cm to 1.5 cm. In the mid-line it was situated 6 cm below the chin at the level of the thyroid notch. On the right side it was 1 cm below the right angle of the mandible and on the left side was situated 5 cm below left angle of mandible. A person who lunges forward and the neck comes in the right of way of a wire cable would obviously receive an injury on the front of the neck. As the body falls, face down towards the ground, and as the wire cable due to force moves downward, it starts forming a loop and if the body tilts towards the left, the wire cable due to resistance causes pressure on the left side of the neck, towards the lower portion of the left side of the neck and resultantly on the

upper side of the right side of the neck. Injury No.3 recorded in the post mortem report evidences said fact.

29. One thing is clear. If there was an intention to kill the deceased, the wire cable would have formed a complete loop around the neck and then forming a knot, with the ends being pulled; death resulting. This has certainly has not happened. Further, if it was a case of manual strangulation there would have been some resistance and the width of the ligature mark would not have been between 1.3 cm to 1.5 cm. In all probability it would have been more.

30. The general appearance of a body where death is due to asphyxia is : (i) a puffy face, (ii) prominent and open eyes (in some cases they may be closed), (iii) conjunctivae are congested and pupils are dilated, (iv) blue lips, (v) petechiae in the eyelids and conjunctivae, (vi) tongue often swollen, bruise protruding, (vii) hands usually clinched. None were noted in the post-mortem report.

31. Modi in the treatise 'Medical Jurisprudence and Toxicology (22nd Edn. at page 269) writes: '*Accidental strangulation is rare, but it may occur when an article of clothing, a neck band, a cord or a chain is tightly drawn round the neck all of a sudden, as occasionally seen in mill workers who are caught by moving belts. This may occur in an epileptic or an intoxicated person who may be helpless in extracting himself from such tight encirclement of the neck. It may also occur when a string used in suspending a weight on the back, slips from across the forehead and compresses the neck. This is easy to conjecture, if the body has not been disturbed after death.*'

32. In the instant case the family members and the neighbours

immediately removed Mohd.Rafi to the hospital.

33. The benefit of doubt must be given to Mohd.Bilal who claims that he saw his father hanging from the cable wire, a fact corroborated by his friends PW-2 to PW-4 as also his wife PW-1 and his sister DW-1. He caught his father from his feet, as claimed to have been seen by the five witnesses. We re-emphasize that the post mortem report rules out manual strangulation because there are no ligature marks at the back of the neck. It is unfortunate that the good work done by the investigating officer who sought two clarificatory opinion from the doctor who conducted the post mortem did not result in the doctor applying himself as an expert. He gave evasive replies. He ducked the question put to him when the opinion was sought vide Ex.PW-9/E on the point as to what would be the inference to be drawn keeping in view that the ligature mark was not detected at the back of the neck. It was present only in the front and the sides of the neck. It was indicated to the doctor that asphyxia would normally be the result of the neck being pulled from behind. The doctor was indicated that to a reader it was apparent that the body had to be with the face downward when strangulation was taking place. Regretfully, Dr.Jatin Bodwal in his opinion Ex.PW-9/F gave an evasive reply. It needed an explanation from the side of the prosecution as to what was the effect of there being no ligature mark on the back of the neck and the cause of death being asphyxia. No explanation being brought on record by the prosecution. The benefit must go to Mohd.Bilal.

34. We have found one possibility emerging : of the deceased tripping over the cable wire and in the process getting strangled.

35. What if Mohd.Bilal used the wire rope to arrest his father walking

away in anger but before that hitting himself with the lid of the pressure cooker. Seeing his father walking away after injuring himself and in anger, it would lurk in the mind of Mohd.Bilal that if allowed to walk away there was a possibility that his father would injure himself more. In good faith, for the purpose of preventing his father to harm himself, Mohd.Bilal used the wire rope as a lasso to arrest the movement of his father and in the process the cable wire strangled Mohd.Rafi. We have to keep in mind that the deceased was a patient of tuberculosis and even a momentary snuff of oxygen to the body could be fatal. At best it would be a case of causing death by negligence and no more, for which the punishment under the Penal Code is imprisonment up to two years. Mohd.Bilal has undergone imprisonment for more than two years.

36. But we need to speak a little more with reference to Section 81 of the Penal Code which reads as under:-

“81. Act likely to cause harm, but done without criminal intent, and to prevent other harm.-

Nothing is an offence merely by reason of its being done with the knowledge that it is like to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.”

37. If a person acts in good faith to prevent harm to another person, and that other person could be the victim himself if the victim is trying to harm himself, and in the process the doer commits any offence, by virtue of Section 81 of the Penal Code the person concerned does not commit an offence. The genesis of the principle of law in Section 81 of the Penal Code is ‘*quid necessitas non habet legem*’ - necessity knows no law. Whilst

under no circumstances can a person be justified in intentionally causing harm, but where harm is caused without any criminal intention, and merely with the knowledge that an offence is likely to ensue, the person is not held responsible for the result of his act, provided the act was done in good faith and to avoid or prevent harm to a person or property.

38. Criminal intention simply means the purpose or design of doing an act forbidden by the criminal law without just cause or excuse. An act is intentional if it exists in idea before it exists in fact; the idea realizing itself in the fact because of the desire by which it is accompanied. Section 81 of the Penal Code operates as an immunity even if knowledge is attributed to the doer of the act that his act is likely to cause harm. Criminal law recognizes three degrees of knowledge. The first is actual knowledge which may be inferred from the conduct of the accused. The second kind of knowledge consists of wilful blindness, where a person realizes the risk that a surrounding circumstance may exist and deliberately refrains from making inquiries, the result of which he may not care to have. The third knowledge, described as constructive knowledge, exists where a person did not know, but ought to have known. This knowledge is attributed if the doer fails to make the inquiries which a reasonable and a prudent person would make. It is distinguishable from wilful blindness in that the failure to inquire is not deliberate.

39. Section 81 of the Penal Code is applicable where knowledge attributable is of any one of the kind of knowledge which criminal attributes and recognizes.

40. If Mohd.Bilal used the cable wire as a lasso to prevent his father, who was seething in anger, to walk away with the possibility of the father further

injuring himself looming large in the mind of Mohd.Bilal, causing the unintentional death by strangulation of his father, the peculiar facts of the instant case would warrants he to be given the benefit of Section 81 of the Penal Code.

41. If we do not give the benefit of Section 81 of the Penal Code to Mohd.Bilal, the offence committed by him is of causing death of his father by an act of negligence. He has suffered incarceration for more than two years. If we give him the benefit of Section 81 of the Penal Code, he would be entitled to an acquittal. We grant him the latter.

42. The appeal is allowed. The impugned judgment dated February 02, 2013 convicting the appellants is set aside. So is the order on sentence dated February 04, 2013. Mohd.Bilal and Beena Stella Rafi are acquitted of the charge framed against them. Bail bond and surety bond furnished by Benna Stella Rafi who was admitted to bail pending hearing of the appeal are discharged. Mohd.Bilal shall be set free if not required in any other case. Since he is in jail, two copies of the present decision shall be sent to the Superintendent Central Jail Tihar, one for his record and other to be supplied to Mohd.Bilal.

43. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 01, 2014
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