

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.207 of 2011

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Nathufal, son of Late Halim, resident of Village - Mirzabari (Miryatola),
P.S. Kasba, District - Purnea

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranbir Singh-Amicus Curiae

For the Respondent/s : Mr. Aswani Kumar Sinha-(A.P.P.)

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH**

and

HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

(Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI)

CAV JUDGMENT

DATED- 14.12.2016

Sole appellant, Nathufal, who has been found guilty for an offence punishable under Section 302 of the I.P.C. and sentenced to undergo life imprisonment vide judgment of conviction dated 23.12.2010 and order of sentence dated 24.12.2010 by the Additional Sessions Judge, Fast Track Court-6, Purnea in Sessions Trial No.1017 of 2007/ 105 of 2009 challenged the same under present appeal.

2. Perwez Alam (PW-5) aged about 12 years, who happens to be son of the appellant had recorded his fard-beyan on 19.08.2007 at about 7.50 a.m. at his house alleging inter alia that in the preceding night he slept with his younger brother Maskur Alam.



PW-6 aged about 7 years in his room having east front, his father, mother along with younger sister slept in western room. At about 3.00 a.m., he awoke hearing cry of his mother coming from western room whereupon he rushed and then, saw his father Nuthfal, who was armed with *Dabiya* and was assaulting his mother. His mother was lying on the ground. His father had struck on neck, hand by *Dabiya* and caused her death. Soon thereof, he also inflicted injury on his own head by *Dabiya* and fell down. Blood was oozing out. He began to raise alarm over which neighbours came and have seen the occurrence. He along with neighbours perceived both of them dead. In morning, while both of them were being taken out, his father was found alive, whereupon villagers took him to Purnea for treatment. It has also been disclosed that no quarrel had happened amongst the father and mother.

3. On the basis of the aforesaid fard-beyan Kasba P. S. Case No.223 of 2007 was registered under Section 302 of the I.P.C. However, Section 309 of the I.P.C. was also added later on the prayer having been made by the I.O. during course of investigation. After completing investigation, chargesheet was submitted and the offences having been triable by the Court of Sessions, committed to the Court of Sessions where trial commenced and concluded with the result, subject matter of instant appeal.



4. The defence case as is evident from mode of cross-examination as well as statement having been recorded under Section 313 of the Cr.P.C. is of complete denial. It is also apparent there from that a theme of infidelity of wife has been advanced and further, in the aforesaid background unknown persons committed murder of deceased as well as also caused murderous assault over the appellant. However, neither DW nor any kind of document has been produced at his end.

5. It has been submitted on behalf of learned Amicus Curiae that prosecution case suffers from severe infirmities whereupon the judgment of conviction and sentence recorded by the learned lower Court happens to be impermissible. To substantiate such plea, it has been submitted that from the evidence of I.O., PW-14, it is apparent that he was properly informed regarding the occurrence and on account thereof, instead of registering Sanha, F.I.R. should have been registered. Furthermore, it has been submitted that present F.I.R. is hit by Section 162 of the Cr.P.C. in the background of the fact that just after reaching at the place of occurrence, the I.O. instead of recording fard-bayan of PW-5, proceeded with investigation whereunder prepared inquest report and sent the dead body for post mortem. Preparation of inquest report is an event of investigation, whereupon admissibility of



present F.I.R. as F.I.R. in terms of Section 154 of the Cr.P.C. loses its sanctity. Consequent thereupon, this case becomes headless on account of absence of F.I.R. and further, the aforesaid deficiency is bound to affect upon legality of the prosecution case.

6. It has further been submitted that neither fard-beyan nor the evidence of PW-5 as well as PW-6 happens to be appreciable in the background of their tender age and further, prone to tutory. The enemies of the appellant might have overpowered the PW-5 as well as PW-6 whereupon this case has purposely been filed with an allegation and in likewise manner, an explanation has been with regard to the injuries having been sustained by the appellant himself at the end of assault.

7. Apart from this, it has also been submitted that due to tender age of PW-5 and PW-6 whether they were able to see such nasty crime, more particularly having their presence at another room and further, having no source of light. PW-5 and PW-6 have not disclosed that they were just by the side of appellant as well as deceased and such close proximity have enable them to witness the occurrence.

8. Not only this, it has also been submitted that even considering for a moment that appellant was responsible for causing death of deceased, he might have escaped from there instead of



endangering his life by way of self-inflicting injuries that too, over vital part of body. Therefore, such improbability suggest that PW-5 and PW-6 would not be the witness of occurrence and discarding their evidences nothing remains whereupon appellant could be identified to be the person responsible for causing death of Julekha Khatoon, his wife.

9. The further improbability in the prosecution case is coming out from the evidence of Bibi Asiya Khatoon, PW-11 from whose evidence, it is apparent that deceased had eight children, out of whom, three were major. At least, their presence were expected in case, such kind of occurrence had ever been committed at the end of the appellant. Their non-presence cast serious doubt over genuineness of prosecution version as flashed during course of trial. In the aforesaid facts and circumstances of the case, it is apparent that appellant had fallen victim of circumstance cleverly woven by his enemies and that being so, the judgment impugned did not justify its prevalence.

10. Coming to other evidence, it has been submitted that other witnesses are not at all inspiring confidence in the background of the fact that they have not supported the case of the prosecution being not an eye witness to occurrence. The aforesaid status is found further confounded from the evidence of the I.O.,



PW-14, who had not found a drop of blood in the room where occurrence is alleged to have taken place, though, as per prosecution evidence, the blood had oozed out from the injuries caused by sharp cutting weapon. So, cumulative effect of the lapses having on the part of the prosecution did not justify the findings so recorded by the learned trial Court.

11. On the other hand, the learned Additional Public Prosecutor, while refuting the submission having been made on behalf of appellant has submitted that it happens to be choice of the prosecution to produce the witnesses which in the opinion of the prosecution are relevant for substantiating the case and in likewise manner, the Court has to see whether from the evidence available on the record, prosecution has been able to substantiate its case as tendered before the Court.

12. In its continuity, it has been submitted that PW-5 and PW-6 though of tender age, but before their examination, their mental equilibrium were tested by the learned lower Court, which is found further magnified when their cross-examination is gone through. Had there been an event of tutoring, those witnesses would not have faced cross-examination with such vigour and vitality. Therefore, their evidences even taken independently clearly encircled the appellant to be the author of the crime.



13. It has also been submitted that defence could not dare to cross-examine these two witnesses, who are own sons of the appellant on the point of proper identification of the appellant to be author of the crime which is found corroborated with the other evidences available on the record at the end of the prosecution. From the evidence of PW-11, it is apparent that major sons of the spouses were not residing with them and the major daughter was already married since before occurrence. Therefore, their absence was clearly and properly explained.

14. It has also been submitted that prosecution happens to be fair in presenting the case, whereunder PW-5 as well as PW-6 clearly stated with regard to activity of Appellant, who after murdering the deceased, caused self-inflicted injuries over his persons, which never been challenged. Furthermore, it has been submitted that the activities of the accused was based upon his own mental perception which no one could perceive save and except from the circumstances. After murder of the deceased in order to give a different colour, the appellant inflicted injuries over his person in order to screen himself and that happens to be reason behind that even after so many hours, he still survived, whereupon was lifted to Sadar Hospital for treatment. That happens to be reason behind that during conduction of trial, the appellant did not



opt to call for injury report, examine the doctor, who had treated him, as, if so examined would have exposed the nature of injury sustained by him.

15. In order to substantiate its case, prosecution had examined as many as 14 PWs, out of whom, PW-1 Md. Sattar, PW-2 Md. Azizul Haque, PW-3 Faruddin, PW-4 Umesh Prasad Singh, PW-5 Perwez Alam, PW-6 Maskur Alam, PW-7 Md. Saifuddin, PW-8 Rizabul Haque, PW-9 Lal Bano, PW-10 Abdul Rashid, PW-11 Bibi Asiya Khatoon, PW-12 Dr. Brajesh Nandan Kumar, PW-13 Dr. Umesh Kumar and PW-14 Arbind Kumar, I.O. Side by side also exhibited documents such as fard-beyan (Exhibit-1), signature of Md. Saifuddin over seizure list (Exhibit-2), signature of Abdul Rashid over seizure list (Exhibit-2/1) and post mortem report marked as (Exhibit-3).

16. Now, coming to the status of the witnesses, it is evident that though PW-1 had confirmed presence of dead body of Julekha Khatoon, he declined to support his status as a hearsay witness, whereupon was declared hostile and the same status also happens to be with regard to PW-9 Lal Bano. PW-2 Azizul Haque, PW-3 Faruddin, PW-7 Saifuddin, PW-8 Rizabul Haque and PW-11 Bibi Asiya Khatoon are hearsay witnesses, while PW-4 Umesh Prasad Singh is a formal witness. During course of conduction of



post mortem, a board was constituted and PW-13 Dr. Umesh Kumar was designated an observer during course of post mortem, which was conducted by PW-12 Dr. Brajesh Nandan Kumar. The post mortem was conducted on 19.08.2007 and following ante-mortem injuries were found over the dead body:-

(i) *A sharp cut wound 6" x 7" x muscle deep over left arm.*

(ii) *A sharp cut wound 3" x 5" x bone deep over left elbow, only skin muscle attached.*

(iii) *A sharp cut wound size 3" x 1 ½" x bone deep, Trachea and Oesophagus with cut, only muscle and skin attached back side of neck.*

(iv) *A sharp cut wound size 3 ½" x 1 ½" x 1 ½" over left side of neck.*

(v) *A sharp cut wound 4" x 3 ½" x 1 ½" over back of neck.*

(vi) *A sharp cut wound 1 ½" x ½" x skin deep.*

(vii) *A sharp cut wound 1" x skin deep ½" over right side of face.*

(viii) *A sharp cut wound 2" x 1 ½" x muscle deep over right side of neck.*

The doctor had opined that time elapsed since



death is within 24 hours and in the opinion of the doctor, the cause of death was due to haemorrhage and shock due to above mentioned injuries which were caused by sharp cutting weapon such as Dabiya. Thus, the P.M. Report very much proved that the deceased Julekha Khatoon has been killed with a sharp cutting weapon like Dabiya and she met with a violent end. The time of the examination and the time elapsed since death of the post mortem was very much in consonance with the time of the occurrence of this case. There is no inordinate delay in P. M. examination to cast any doubt about its veracity. During course of cross-examination, it is evident that defence had not challenged presence of ante-mortem injuries as well as the opinion regarding cause of death as well as estimated time of death.

17. Now, coming to ocular evidence, first of all, status of PW-5 as well as PW-6 is to be taken note of. Admittedly, they both happen to be of tender age. Mere being a tender age would not discard their presence as a witness. What is required is to see whether their evidence happen to be reliable one, inspire confidence or it should be thrown away being unreliable, tutored. At the time of adjudging, the Court has also to see whether they are competent enough to understand. From the deposition of PW-5 as well as PW-6, it is evident that learned lower Court had framed questionnaire



which was placed before the respective witnesses and on the basis thereof, the learned trial Court had found these witnesses capable of understanding and then, recorded their evidences.

18. In ***Ranjeet Kumar Ram @ Ranjit Kumar Das vs. State of Bihar with Pandit @ Sanjay Mahto etc. vs. State of Bihar and Chintoo Singh vs. State of Bihar reported in 2015 CRI.L.J. 2944***, it has been observed:-

“14. At the time of occurrence, as well, while deposing in Court, Rubi Kumari (PW2) was aged only seven years. Evidence of the child witness and its credibility would depend upon the circumstances of each case. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one. Before PW2 was examined as a witness in the court during trial, her statement under [Section 164 Cr.P.C.](#) was recorded by the Judicial Magistrate (PW13). In his evidence PW13 has stated that he tested the understanding of witness Rubi Kumari (PW2) and after being satisfied about her understanding, recorded her statement under [Section 164 Cr.P.C.](#) When PW2 was



examined as a witness in the court during trial, the trial judge had also put preliminary questions to the child witness Rubi Kumari (PW2) and satisfied that she was capable of understanding the questions put to her. When the trial court has ascertained the discernment of PW2 and has formed an opinion that PW2- Rubi Kumari is competent to testify and then recorded her evidence, we see no reason to discredit PW2's testimony. PW2 though sole witness, by concurrent findings courts below found her evidence unassailable and we find no ground to take a different view."

19. Apart from this, it would also be seen whether those two tender age witnesses, on the aforesaid score were subject to tutoring and for that, apart from evidence of other witnesses, who consistently said that on alarm raised by these two witnesses, they came to place of occurrence where they were informed by these two witnesses regarding the activities of the appellant causing death of deceased Julekha Khatoon as well as also causing self-inflicted injuries. Subsequently, evidence of PW-11 Bibi Asiya Khatoon, who happens to be maternal grand mother of these two witnesses, is also to be seen. From her evidence, it is apparent that in the night



itself, these two witnesses came to her place and disclosed that murder has been committed by the appellant. The aforesaid theme has been brought up by the defence itself during course of cross-examination at Para-2. From Para-2, it is also evident that her house lies 20-22 houses away from the house of deceased. Had there been no such kind of occurrence, the aforesaid PW-5 and PW-6 would not have rushed to the place of their maternal grand mother at such wee hours where they would have some sort of consoling patting on account of activity of their father against their mother. Apart from this, had there been some other persons responsible for causing murder of deceased as well as having murderous attack upon the appellant, these two PW-5 and PW-6 could not have pin-pointed the appellant to be the author of the crime being their father. The conduct of the PW-5 and PW-6 have also to be perceived, who faced such horrifying situation at such tender age in the night that too, by their father. All this ultimately, led them to shift their presence to the place of maternal grand mother, who immediately rushed before arrival of the neighbours. Therefore, the evidences of the PW-5 and PW-6 is to be seen in the aforesaid background. As stated above, PW-5 had stated that while he along with his brother was sleeping in Eastern room, he awoke after hearing alarm and then, had seen that his father was giving Dabiya blow on his



mother. Her neck and hand were cut. He began to cry on which, his father had directed to leave, otherwise he would also be murdered. His father had locked the room after murdering his mother. Police had come and recorded his statement. He had identified his father. During cross-examination, he had stated that two children have slept with his mother. He had further stated that there was no bamboo door affixed in the room in which he was sleeping, but there was bamboo door in the room in which his parents had slept. At Para-3, he had stated that firstly he was outside his mother's room, then he went inside the room and at that very moment, his father was giving the blows. His mother was slowly succumbing. At that very time, his brothers and sisters were also there. In Para-4, he had stated that his mother had worn Sari and blood had spread on it. His mother had slept on bed. Blood had spread over the floor. He is unaware to say whether police had taken away cloth or not. His father himself inflicted his injuries. He had enquired from his father why he had committed murder of his mother on which his father scolded. Then his father locked his room from inside. Soon the people assembled and cut the bamboo door, whereafter they were taken out. So, from his evidence, it is evident that neither there happens to be any kind of contradiction/ development nor any kind of infirmity is found with regard to his as an eye witness to



occurrence.

20. PW-6 is Maskur Alam, younger brother of PW-5. He had stated that he was sleeping along with his brother Perwez Alam. On hue and cry, he awoke and saw his father engaged in assaulting his mother by Dabiya. His father scolded him as he tried to ingress. In the morning, he had seen his mother dead while father was alive. During cross-examination, he had deposed that there was no quarrel amongst the spouse. He had further stated that his father was of sound mind. He stated that as soon as he awoke he went to the room of his mother. He had gone along with his brother. At that very moment, door was shut. Even on their alarm at that very time, none had come. Police had come in the morning. Before coming to police, door was broken by the villagers in the night itself. By the link people went inside the room, his mother had died, his father was weeping. People had enquired from his father why he is weeping, but he did not answer. So, from his evidence, it is apparent that nothing has been extracted at his end to disbelieve his evidence save and except minor infirmity, in consonance with the evidence of PW-5, which was bound to occur as it depends upon individual perception including that of age of the witnesses.

21. PW-14 is the I.O., who had stated that on 19.08.2007 at about 5.30 a.m., he was informed that the husband



had murdered his wife in village Mirzabare with Dabiya and further caused self-injury also, whereupon Sanha was entered. Thereafter he along with police party as well as Chaukidar, reached the place of occurrence, prepared inquest report, seized Dabiya, in respect whereof, seizure list was prepared. He also recorded fard-beyan of Perwez Alam (Exhibit-1) took up investigation. Dead body was sent for post mortem. With regard to accused, the villagers have disclosed that he was taken to Purnea, came back to the police station. Again, he proceeded with investigation, took further statement of the informant, recorded statement of the witnesses. Inspected the place of occurrence and detailed the same. He had further disclosed that dead body was found in the western room of the house. He had further stated that blood was found at the place of occurrence. Dabiya was also found there for which seizure list was prepared. He took the accused into custody at Sadar Hospital Purnea. He received the post mortem report and after discharge of accused from hospital, was remanded. Then, after completing the investigation, chargesheet was submitted. During cross-examination at Para-16, he had stated that he had not mentioned with regard to presence of door. In Para-17, he had further stated that he had not incorporated Sanha in the case diary. In Para-19, 20, 21, 22, the defence had drawn attention of statement of the witnesses over



motive disclosing infidelity of the deceased. He further stated that he had not made investigation on that time.

22. From the evidence available on the record as well as from the statement of the appellant under Section 313 Cr.P.C., there happens to be no dispute with regard to presence of appellant at the place of occurrence. It is also not under dispute that appellant was along with deceased in a room where occurrence took place. That being so, in terms of Section 106 of the Evidence Act, it was obligatory on the part of the appellant to have some sort of explanation on that very score. Even considering for a moment, none was ready to depose, he himself would have come forward to explain the death of his wife.

23. In ***Ratnesh Kumar Pandey v. State of Uttar Pradesh*** reported in (2015) 3 SCC 536, it has been held:-

“10. The question for consideration is: whether the chain of circumstances noted and found proved against the appellant leads to the only hypothesis in respect of the guilt alleged against the appellant? With that perspective in mind, when we consider the circumstances noted by the trial court which we have in seriatim referred to in the earlier part of the judgment we find that



when the appellant and the deceased were living together immediately before the death of the deceased the whole burden was upon the appellant to show as to who else was responsible for the killing of the deceased. Except the evidence relating to the prior grievances expressed on behalf of the deceased to PW 1 as regards the beatings inflicted on her by the in-laws of the deceased there was no other version placed before the court for implicating anybody else to have any grievance as against the deceased. Keeping the said situation in mind when we consider the circumstances noted by the courts below which were duly supported by the legally acceptable evidence on record, it will have to be stated that the burden was heavily upon the appellant to show that he had nothing to do with the killing of the deceased.”

24. In ***State of Rajasthan v. Kashi Ram reported in (2006) 12 SCC 254***, it has been held:-

“23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of [Section 106](#) of the Evidence Act itself are unambiguous and categoric in laying



down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by [Section 106](#) of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. [Section 106](#) does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain.



The principle has been succinctly stated in Naina Mohd., reported in AIR 1960 Madras, 218.”

25. Now, the question remains whether in the facts and circumstances of the case, it should be held that the fard-beyan is hit by Section 162 of the Cr.P.C. in the background of preparation of inquest report before recording of the fard-beyan.

26. None of the witnesses have stated like so nor cross-examination has been made to this effect. PW-14, I.O. in his examination-in-chief had stated that after reaching at the place of occurrence, he prepared inquest as well as seizure list. However, when the place of occurrence was inspected, there happens to be specific disclosure that in the western room, dead body was found, where he also found blood. He also found Dabiya. Had there been some sort of confusion, the defence could have cross-examined in order to have proper explanation at the end of PW-14 on the score. As there has been no cross-examination on that very score, the defence would not get liberty to agitate the same. Moreover, theme of investigation and further, the stage wherefrom it commences has been thoroughly discussed in ***Ashok Kumar Todi vs. Kishwar Jahan and others reported in (2011) 3 SCC 758***, it has been held:-

“47. [Section 2\(h\)](#) of the Code defines investigation which reads as under:



"2.(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf"

48. Under the scheme of the Code, investigation commences with lodgment of information relating to the commission of an offence. If it is a cognizable offence, the officer-in-charge of the police station, to whom the information is supplied orally has a statutory duty to reduce it to writing and get the signature of the informant. He shall enter the substance of the information, whether given in writing or reduced to writing as aforesaid, in a book prescribed by the State in that behalf. The officer-in-charge has no escape from doing so if the offence mentioned therein is a cognizable offence and whether or not such offence was committed within the limits of that police station. But when the offence is non-cognizable, the officer-in-charge of the police station has no obligation to record it if the



offence was not committed within the limits of his police station. Investigation thereafter would commence and the investigating officer has to go step by step.

49. The Code contemplates the following steps to be carried out during such investigation:

(1) Proceeding to the spot;

(2) ascertainment of the facts and circumstances of the case;

(3) discovery and arrest of the suspected offender;

(4) collection of evidence relating to the commission of the offence which may consist of—

(a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit,

(b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial; and

(5) formation of the opinion as to whether on



the material collected there is a case to place the accused before a Magistrate for trial and, if so, to take necessary steps for the same by the filing of a charge-sheet under [Section 173](#).

[Vide [H.N. Rishbud & Anr. v. State of Delhi](#), AIR 1955 SC 196, [State of M.P. v. Mubarak Ali](#), AIR 1959 SC 707 and [Navinchandra N. Majithia vs. State of Meghalaya and Ors.](#), (2000) 8 SCC 323)]”

27. Preparation of inquest is a step independent of lodging of F.I.R. and in some circumstances precede F.I.R., as it is not a substantive piece of evidence and has to be carried out in accordance with Section 174 of the Cr.P.C. It is relevant only to the extent to identify the corpse and as to whether the death is homicidal, suicidal, and accidental. As such, presence of inquest prior to recording of F.I.R. will not nullify legality of the F.I.R. In ***Sambhu Das @ Bijoy Das and another vs. State of Assam reported in (2010) 10 SCC 374***, it has been held:-

“21. Admittedly, the inquest report was prepared by PW-8 at 9.30 P.M. and the formal FIR is lodged by PW-1 at 11.30 P.M. The learned senior counsel Shri M.N. Rao, by



placing his fingers on the admission made by PW-8 in his evidence would contend, that, FIR loses its authenticity if it is lodged after the inquest report is recorded. This submission of the learned counsel is a general proposition and may not be true in all cases and all circumstances. This general proposition cannot be universally applied, by holding that if the FIR is lodged for whatever reason after recording the inquest report the same would be fatal to all the proceedings arising out [of the Indian Penal Code](#), 1860.

22. The Inquest Report is prepared under [Section 174](#) Cr.P.C. The object of the inquest proceedings is to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what the cause of death is? The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, is foreign to the ambit and scope of the proceedings under [Section 174](#) Cr.P.C. The names of the assailants and the manner of assault are not required to be mentioned in the inquest



report. The purpose of preparing the inquest report is for making a note in regard to identification marks of the accused. The inquest report is not a substantive evidence. Mention of the name of the accused and eye witness in the inquest report is not necessary. Due to non-mentioning of the name of the accused in the inquest report, it cannot be inferred that FIR was not in existence at the time of inquest proceedings.

23. Inquest report and post mortem report cannot be termed to be substantive evidence and any discrepancy occurring therein can neither be termed to be fatal nor even a suspicious circumstance which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. The contents of the inquest report cannot be termed as evidence, but they can be looked into to test the veracity of the witnesses. When an officer incharge of Police Station receives information that a person had committed suicide or has been killed or died under suspicious circumstances, he shall inform the matter to the nearest Magistrate to



hold Inquest. A criminal case is registered on the basis of information and investigation is commenced under [Section 157](#) of Cr.P.C. and the 13 information is recorded under [Section 154](#) of Cr.P.C. and, thereafter, the inquest is held under [Section 174](#) Cr.P.C.

24. This Court, in Podda Narayana Vs. State of Andhra Pradesh [AIR 1975 SC 1252], has indicated that the proceedings under [Section 174](#) Cr. P.C. have limited scope. The object of the proceedings is merely to ascertain whether a person has died in suspicious circumstances or an unnatural death and if so, what is the apparent cause of the death. The question regarding details as to how the deceased was assaulted or who assaulted him or under what circumstances, he was assaulted is foreign to the ambit and scope proceeding under [Section 174](#). Neither in practice nor in law was it necessary for the Police to mention these details in the Inquest Report. In George Vs. State of Kerala AIR 1998 SC 1376, it has been held that the Investigating Office is not obliged to investigate, at the stage of Inquest, or to



ascertain as to who were the assailants. In Suresh Rai Vs. State of Bihar AIR 2000 SCC (Cri)764, it has been held that (SCC p. 89, para 15)

“15... under [Section 174](#) read with [Section 178](#) of Cr. P.C., Inquest Report is prepared by the Investigating Officer to find out prima facie the nature of injuries and the possible weapon used in causing those injuries as also possible cause of death.

25. This Court has consistently held that Inquest Report cannot be treated as substantive evidence but may be utilized for contradicting the witnesses of the Inquest. [Section 175](#) Cr. P.C. provides that a Police Officer proceedings under [Section 174](#) may, by an order in writing, summon two or more persons for the purpose of the said investigation. The provisions of [Sections 174](#) and [175](#) afford a complete Code in itself for the purpose of inquiries in cases of accidental or suspicious deaths.”

28. After giving our anxious thoughts as well as minute scrutiny of the evidences available on the record, it is apparent that



prosecution succeeded in proving its case which found additional support from conduct of the appellant failing to explain in terms of Section 106 of the Evidence Act.

29. Thus, instant appeal sans merit and is accordingly, dismissed. While going through operative part of the sentence, it is evident that learned lower Court had not inflicted sentence of fine against the appellant. For better appreciation, Section 302 of the I.P.C. is quoted below:-

“302. Punishment for murder.—Whoever commits murder shall be punished with death, or I[imprisonment for life], and shall also be liable to fine.”

30. The Hon’ble Apex Court at an earlier occasion was confronted with the aforesaid event and reported in *M/s. Rajasthan Pharmaceutical Laboratory, Bangalore and others, Appellants v. State of Karnataka, Respondent. And M/s. Manoj Drug House and others, Appellants v. State of Karnataka, Respondent And Jethmal Jain, Petitioner v. Union of India and another, Respondents reported in A.I.R. 1981 SC 809* and reported in *Zunjarrao Bhikaji Nagarkar, Appellant v. Union of India and others, Respondents reported in A.I.R. 1999 SC 2881*, has observed that where fine happens to be along with sentence, then in that event, fine has to be inflicted:-



“37. Penalty to be imposed has to be in commensurate with the gravity of the offence and the extent of the evasion. In the present case, penalty could have been justified. Appellant was, however, of the view that imposition of penalty was not mandatory. He could have formed such a view. Under [Section 325](#) Indian Penal Code, a person found guilty "shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine". [Section 63](#) IPC provides that where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive. A single Judge of the Patna High Court in [Tetar Gope vs. Ganauri Gope](#) [AIR 1968 Patna 287] took the view that expression "shall also liable to fine" in [Section 325](#) IPC does not mean that a sentence of fine must be imposed in every case of conviction in that section. He said :

"Such an expression has been used in the penal Code only in connection with those offences where the legislature has provided that a sentence of imprisonment is compulsory. In regard to such offences, the legislature has left a



discretion in the Court to impose also a sentence of fine in appropriate cases in addition to the imposition of a sentence of imprisonment which alone is obligatory."

38. We do not think that the view expressed by the Patna High Court is correct as it would appear from the language of the section that sentences of both imprisonment and fine are imperative. It is the extent of fine which has been left to the discretion of the court. *In Rajasthan Pharmaceuticals Laboratory, Bangalore & Ors. vs. State of Karnataka [(1981) 1 SCC 645]* this Court has taken the view that imprisonment and fine both are imperative when the expression "shall also be liable to fine" was used under Section 34 of the Drug and *Cosmetics Act*, 1940. In that case, this Court was considering *Section 27* of the *Drugs and Cosmetics Act*, 1940, which enumerates the penalties for illegal manufacture, sale, etc., of drugs and is as under -

"Whoever himself or by any other person on his behalf manufacture for sale, sells, stocks or exhibits for sale or distributes -

(a) any drug -

(i)



(ii) without a valid licence as required under clause (c) of [Section 18](#),

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to ten years and shall also be liable to fine :

Provided that the court may, for any special reasons to be recorded in writing, impose a sentence of imprisonment of less than one year:...."

39. This Court said that the High Court imposed a fine of two thousand rupees on each of the three appellants for the offence under [Section 18\(c\)](#) of the Act when [Section 27\(a\)\(ii\)](#) makes a sentence of imprisonment of not less than one year compulsory for such offence in addition to fine unless for special reasons a sentence of imprisonment for lesser period was warranted. It would, thus appear that this Court was of the opinion that in such a case the imprisonment and fine both are imperative."

31. Accordingly, learned lower Court should have inflicted fine also, but on that very score, it may not be legal and proper to remit the matter. Consequent thereupon, apart from there



being sentence of imprisonment for life, appellant is also slapped with a fine appertaining to Rs.10,000/- (ten thousand) and in default thereof, will undergo simple imprisonment of one year additionally. First and last page of the judgment should be made available to the learned Amicus Curiae for getting his remuneration.

(Aditya Kumar Trivedi, J)

(Samarendra Pratap Singh, J)

(Samarendra Pratap Singh, J)

Vikash/-

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