

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.282 of 2015**

Arising Out of PS.Case No. -142 Year- 2000 Thana -MINAPUR District- MUZAFFARPUR

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Boxing Rai @ Ramakant Rai, Son of Late Ram Devan Rai, Resident of village Koili Bharav, P. S. Minapur, District Muzaffarpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Udit Narayan Singh-Advocate
Mr. Gajendra Kumar Singh-Advocate
For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 9-10-2017

Appellant, Boxing Rai @ Ramakant Rai has been found guilty for an offence punishable under Section 307 of the I.P.C. and sentenced to undergo R.I. for 10 years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for six months, under Section 326 of the I.P.C. sentenced to undergo R.I. for 10 years as well as to pay fine of Rs.25,000/-, in default thereof, to undergo S.I. for six months, under Section 448 of I.P.C. sentenced to undergo S.I. for one year with a further direction to run the sentences concurrently vide judgment of conviction dated 27.03.2015 and order of sentence dated 31.03.2015 passed by the 10th Additional Sessions Judge, Muzaffarpur in Sessions Trial No.425 of 2001.

2. Renu Devi (PW-9) gave her fard-bayan on 31.07.2000



while she was admitted at S.K.M.C.H., Muzaffarpur disclosing therein that for the present, she happens to be at her Naihar lying at village-Koili, P.S.-Meenapur. After meal, she slept at the verandah in the courtyard on 29.07.2000. Her mother was also sleeping there. Her husband works at Amritsar. Approximately, at 2.00 a.m., she felt inflammation whereupon awake and then, saw Boxing Rai @ Ramakant Rai and Sominder Rai, both sons of Ram Dewan Rai pouring some liquid over her body from a bottle and on account of severe burning sensation, she raised cry whereupon, both of them escaped. On hue and cry, her mother awoken, who also raised alarm attracting neighbours. Till then, she fainted. Today, she regained sense and then, found herself admitted at S.K.M.C.H. As she was unconscious so, she is unable to disclose the intermediary event, if any. Motive for the occurrence had been shown as seeing her mother a widow, the accused persons desired to get her marriage in his relationship which her mother declined and got her marriage at other place, in the aforesaid background, they developed a grudge and threatened and lastly, committed such activity with her.

3. Aforesaid fard-bayan was referred to local police, as a result of which, Meenapur P.S. Case No.142 of 2000 was registered. Consequent thereupon, investigation followed, concluded by way of submission of chargesheet only against the appellant named above.



After commitment, the trial proceeded.

4. From the record, it transpires that accused Sominder Rai was not sent up for trial. However, after examination of the witnesses, Sominder Rai was summoned under Section 319 Cr.P.C. Considering delay in his appearance, trial was bifurcated as Sessions Trial No.361 of 2005, wherein, it appears that after appearance of Sominder Rai, he faced trial and on account of some sort of relaxation having allowed at the end of the prosecution, he was acquitted. The original Sessions Trial proceeded and concluded in a manner, subject matter of instant appeal. The judgment and deposition of prosecution witnesses accordingly been exhibited at the end of the appellant. Though during course of examination of the concerned witnesses, aforesaid development has not been confronted.

5. Defence case, as has been pleaded while recording statement under Section 313 Cr.P.C. as well as mode of cross-examination is that victim/ informant Renu Devi happens to be married in the relation of the appellant and as she had developed intimacy with her brother-in-law for which, the informant as well as her mother were scolded by the appellant and his family members, on account thereof, this false case has been instituted taking benefit of an incidence which informant confronted while cooking during course of which, she got hot oil over her person causing severe injury.



Appellant had filed and exhibited the judgment, deposition of witnesses relating to Sessions Trial No.361 of 2005, whereunder co-accused Sominder Rai was acquitted.

6. From the L.C. Record, it is evident that altogether 15 witnesses have been examined. It is also evident that I.O., doctor have not been examined. It is evident from the chargesheet that I.O. as well as doctor have not been shown as chargesheet witness. It is further evident from the order dated 08.04.2010 that on a prayer made by the prosecution, summon was directed to be issued against the doctor as well as the police official, who had recorded the fard-bayan as well as I.O., but same was not issued. On the other hand, it is evident from the order dated 03.08.2010 that Dusti summon was directed to be issued, which the learned Additional Public Prosecutor received on the same day. It is surprising that no execution report is available on the record. In spite of summons having issued through Principal, S.K.M.C.H. at subsequent date, no execution report is on the record nor the Court cared, instead thereof, again Dusti Summon was handed over to the learned Additional Public Prosecutor, which he received on 27.04.2011 and then, by way of examining the formal witness, the learned Additional Public Prosecutor got his obligation discharged. After all, it was acid case victimizing a woman and so, it should have been proceeded with by the learned lower Court itself as well as by the prosecuting agency with utmost care and caution. It happens to be



an obligation on the part of the Court to do justice, which should not be only relating to the accused rather also concerning the prosecution, victim. After all, certain kinds of crime has got sufficient impact over society and Courts are expected to take notice thereof, while discharging their functions which the Apex Court had also considered in *Mukesh and another vs. N.C.T. of Delhi reported in 2017 (3) P.L.J.R. 248 (SC)*, popularly known as *Nirbhaya Case*. Virtually, by such activity the Court by its slackness, non-sensitization proceeded in a casual manner and in likewise manner, the prosecuting agency activated itself without insisting upon or taking sincere effort through its machinery in order to procure attendance of those important Government Officials, as a witness. In likewise manner, the prosecuting agency should have seen at an earliest with regard to lapses having committed at the end of the I.O. by way of non-citing himself as well as doctor to be chargesheet witness. The moot question for consideration is whether the justice be allowed to be thrashed due to lapses of the prosecution, though it happens to be obligation on the part of the prosecution to prove its case.

7. In order to substantiate its case, prosecution had examined altogether 15 PWs, who are PW-1 Bhikhari Rai, PW-2 Raj Kishore Rai, PW-3 Pramod Rai, PW-4 Laxmi Rai, PW-5 Suresh Rai, PW-6 Vijay Kumar Rai, PW-7 Moti Lal Rai, PW-8 Sonia Devi, mother of informant, PW-9 Renu Devi, victim/ informant, PW-10



Banarsi Devi, mother-in-law of informant, PW-11 Ramjori Devi, PW-12 Akhileshwar Rai, husband of informant, PW-13 Gita Devi, sister-in-law (Bhabhi) of victim, PW-14 Subhash Prasad, PW-15 Anjarul Haque. Side by side, also exhibited, Exhibit-1 series, signature over respective document, Exhibit-2 fard-bayan, Exhibit-3 injury report. Side by side, defence had also exhibited viz. Exhibit-A judgment of Sessions Trial No.361 of 2005, Exhibits-B,C,D,E depositions of respective witnesses, Exhibit-F charge, Exhibit-G Certified copy of statement recorded under Section 313 of the Cr.P.C., Exhibit-H Voter ID of Radhika Devi.

8. So far status of witnesses are concerned, PW-1 to PW-7, PW-11 did not support prosecution case as such, they were declared hostile while PW-14 and PW-15 are formal in nature. It is pertinent to note that PW-2 Raj Kishore Rai happens to be uncle of the victim and was also an attesting witness over the fard-bayan. As stated above, neither doctor nor I.O. has been examined. As such, evidence of remaining witnesses are to be seen in order to weigh the finding recorded by the learned lower Court.

9. PW-8 had deposed that on the alleged date and time of occurrence, she was sleeping at the inner verandah of her house. Her daughter, daughter-in-law were also sleeping there. All of a sudden, her daughter shouted, whereupon she awaken and saw Boxing Rai @



Ramakant Rai and Sominder Rai running there from. She had seen one bottle lying near the place where her daughter was sleeping. She had also seen face as well as body of her daughter burnt due to pouring of acid. Her both eyes were damaged. Her daughter had disclosed that Boxing Rai and Sominder Rai, after sprinkling acid, ran away. She had further stated that her daughter was taken to S.K.M.C.H., Muzaffarpur, wherefrom was referred to Patna and then to Delhi wherefrom she was referred to Amritsar. Her treatment is still going on. Identified the accused. During cross-examination, she had admitted that the house of accused lies near about to her house. She had also disclosed that Raj Kishore Rai and Sikandar Rai happens to be her Dewar. They share common courtyard, but having a partition wall upto waist height. Then, there happens to be cross-examination over presence of houses of neighbours. She had further stated that as she was at hospital so, she is not aware with the fact whether police had recorded statement of those persons or not. She had further stated that victim happens to be her daughter. Her son and daughter-in-law are residing with her. Renu Devi (victim) has been married with Akhilesh Rai of Malahtoli. Her mother-in-law is Banarsi Devi while Ram Nandan Rai is the name of her father-in-law. She had further shown ignorance whether Boxing Rai (appellant) happens to be maternal grandfather of her son-in-law. Then again controverted the suggestion that appellant happens to be Nandoi of her daughter. She



had further stated that it was dark night. Her house is not electrified. Her house is not fenced from all around. Two rooms are present having door. At the time of occurrence, no door was affixed. She had further stated that there was no dispute since before with the accused. They were on visiting term, but at the time of marriage of Renu, there was dispute and on account thereof, they developed some sort of grievances her. The cause for strain relationship happens to be that accused persons were willing to get her marriage with son of Nand Rai of village-Gaus Nagar. Then had denied the suggestion that Girja Rai happens to be brother of Banarsi Devi and accused is married with daughter of Girja Rai. She had further stated that no male member was present on account thereof, they gone to bed early. At the time of occurrence, she was in deep slumber. She awoke after hearing alarm of her daughter. She had further stated that she had also sustained burnt while taking care of her daughter. She had seen the accused, but as she gone to her daughter in order to take care of, hence she had not charged them. On hue and cry, so many persons came. Accused persons succeeded in their escape before arrival of those persons. As she was engaged in caring her daughter on account thereof, she could not go in search of accused. She (victim) was taken to hospital. Police came in the village after 3-4 days, but as she was at S.K.M.C.H. on account thereof, she was unaware, who had shown the place of occurrence. Then, there happens to be contradiction.



10. PW-9 is the victim, who had deposed that during the relevant period, she was at her Naihar. On the alleged date and time of occurrence, she was sleeping. Her mother and Bhabhi were also sleeping near about. All of a sudden, she felt burning sensation whereupon, she awoken and then, saw Boxing Rai as well as Sominder Rai pouring acid from a bottle over her. She began to cry, whereupon her mother as well as Bhabhi came. Her neighbours also awoken and came. Till then, both the accused fled away. She became unconscious. She regained sense at S.K.M.C.H. where police came, recorded her fard-bayan whereupon, he put her signature. The event materialized during midst thereof, she happens to be unable to say on account of unconsciousness. During cross-examination, she had stated that this occurrence had taken place after one and half year of her marriage. She had further stated that she is unable to say how many brothers and sisters her mother-in-law has. She had further stated that there happens to be presence of 10-12 houses in between her house (Maika) and Boxing Rai. She is unable to name all of them. Then had disclosed the boundary of her house (Maika). Then had disclosed the topography of her house. Then had said that I.O. had gone to her village, whom she had shown the mat as well as cot. She is unable to say whether accused persons were carrying two bottles or one bottle. She had further said that on account of acid, her cloth as well as soil also burnt. She is unable to say whether those things were shown to



police or not, but till today, she has kept the cloth. She had further stated that she is frequently visiting outside for her treatment. She had further stated that she happens to be two sisters and one brother. Her elder sister Nilam has been married with Vinay Rai. She had further stated that he used to visit her Naihar. Then had stated that Boxing Rai was on visiting term, but after her marriage, strain relationship developed amongst them. Then, there happens to be contradiction. Then had stated that at the time of occurrence, she was in deep slumber and during course thereof, she felt burning sensation. She awoke and seen them pouring acid and thereafter, became unconscious. She had further stated that it was moonlit night, there was sufficient light to identify. Accused persons have not covered their face. Then had said that when she saw, accused persons were in front of her adjacent to cot. At that very time, they were pouring acid. Her mother as well as Bhabhi had not tried to apprehend the accused. Then, she denied the suggestion that appellant Boxing Rai had acted as a middleman during course of negotiation of her marriage. She also denied the suggestion that as she had developed illicit relationship with her brother-in-law on account thereof, Boxing Rai scolded her. It has also been suggested that her face burnt on account of sprinkling of hot oil during course of preparation of vegetable. Furthermore, the Court had also observed her face completely burnt as well as her right eye badly affected.



11. PW-10 is Banarsi Devi, mother-in-law of the victim. She had deposed that one person from the sasural of her son came and informed regarding condition of her daughter-in-law whereupon, her son gone there after hiring a jeep, took her daughter-in-law to medical college, she had also gone to medical college where her treatment was going on. She had further stated that neither her daughter-in-law nor her Samdhini had disclosed anything to her regarding the occurrence. Then had declined to have stated before the police anything, whereupon, she was declared hostile. During course of cross-examination, she has admitted that Boxing Rai happens to be her brother's son-in-law. She had further stated that Boxing Rai had acted as middleman during course of negotiation of marriage of her son.

12. PW-12 is the husband of informant, who had deposed that he was engaged at Amritsar. However, at the time of occurrence, he was at his sasural. Boxing Rai and Sominder Rai poured acid over his wife as a result of which, his wife sustained burn injury, identified the accused. During course of cross-examination, he had stated that he was employed at Punjab for the last eight years. Soon after the occurrence, his wife resides with him. He had further stated that he took away his wife to Amritsar for treatment where she was treated for a year. She was treated at Delhi at Government Hospital. He had papers concerning the same. Before Amritsar, she was being treated at Delhi in Government Hospital. He had papers relating to the same.



Before Delhi, she was treated at Patna at Government Hospital. She was treated at Delhi near about six months. She was treated for 15-16 days at Patna. She remained at S.K.M.C.H. for about a month. All documents are along with him, save and except the papers by which doctors from S.K.M.C.H. Medical College had referred to Patna as the same was retained by them. He had not shown documents to the police during course of investigation. Then had denied the suggestion that Boxing Rai had acted as middleman. Then had admitted that Girja Rai happens to be brother of his mother, but he had shown ignorance relating to marriage of his (Girija) daughter Radhika Devi with accused Boxing Rai. Then had stated that his statement was recorded by the police. He had further stated that he was at her sasural on the alleged date and time of occurrence. Then there happens to be contradiction. Then had stated that on the alleged date and time of occurrence, he was sleeping at darwaza of his sasural lying two laggi away from the place where his wife was sleeping. Then had stated that his wife cried, whole night. He had not tried to apprehend the accused. He had further stated that due to acid, bed as well as cot both burnt.

13. PW-13 is the sister-in-law (Bhabhi) of the victim. She had deposed that on the alleged date and time of occurrence, she was sleeping in inner verandah of her house. Boxing and Sominder poured acid over body of her sister-in-law (Nanad) Renu Devi, whereupon she shouted. She awoken thereupon and had seen both the



accused indulged in such activity. She had tried to apprehend Boxing, but he managed to escape. Face, eye of Renu Devi burnt due to acid. She was taken to hospital where she was treated and then, she was referred to Patna, to Delhi and to Amritsar. She had given her statement before the police. At Para-7, she had disclosed that she was married in the Year 2013, but the defence got it erased when in subsequent para, she had stated that on the alleged date and time of occurrence, she was at her house (sasural). She had further stated at Para-10 that so many persons have made statement before police in her presence. At Para-15, she had stated that she awoken from the sleep after hearing cry of her Nanad. At that very time, accused persons were there, who escaped there from subsequently. It was moonlit night. Then had denied the suggestion that it was Amawasya. She had further stated that at that very time, lamp was burning in a room. In Para-16, she had stated that she was sleeping along with her Nanad at some distance. In Para-19, she was cross-examined that how many bottles of acid were kept, she answered unable to say. One bottle was lying in the courtyard and another at the door. She was unaware whether police had seen those bottles or not or whether taken away by the police or not. Then had detailed with regard to treatment of her Nanad having at different places.

14. Although the independent witnesses have gone volte-face to the prosecution. PW-9, the victim stood firm with regard to



activity of accused when she awoken after feeling burn sensation due to pouring of acid by the accused persons. PW-13 also corroborated the same. PW-8, the mother of the victim also stood on same scale. However, PW-10, the mother-in-law of victim admitted presence of victim at S.K.M.C.H., but did not support the prosecution version whereupon was declared hostile. She, however, during cross-examination, admitted relationship of appellant to be son-in-law of her bother, as well as acted as middleman during course of negotiation of her son marriage which her son, PW-12 denied. Though PW-12 claimed to be present at the P.O. on the fateful day, however, PW-9 was not at all cross-examined over presence of her husband (PW-12) at her Maika on the fateful day.

15. From the evidence, it is evident that all the witnesses, who had supported the allegation happen to be the family members. As the occurrence took place inside the house whereupon, there happens to be no occasion to doubt over their status as well as testimony as their presence was but natural. Apart from this, it is also evident that victim (PW-9) was not at all challenged on the score of identification. Moreover, the co-villagers known to each other are very much accustom to see and identify their co-villager on their gait, appearance, other activity even at night in absence of source of light. The light of galaxy, would be sufficient enabling the person to identify a co-villager. Apart from this, family members should not be



considered as an interested witness. The aforesaid concept has been highlighted by the Apex Court in ***Gangabhavani v. Rayapati Venkat Reddy and others reported in A.I.R. 2013 SC 3681***, it has been held:-

EVIDENCE OF A RELATED/INTERESTED WITNESSES:

“11. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon.

(Vide: [Bhagalool Lodh & Anr. v. State of U.P.](#), AIR 2011 SC 2292; and [Dhari & Ors. v. State of U. P.](#), AIR 2013 SC 308).

12. [In State of Rajasthan v. Smt. Kalki & Anr.](#) AIR 1981 SC 1390, this Court held:

“5A. As mentioned above the High Court has declined to rely on the evidence of P.W. 1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased"For, in



*the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents.” (Emphasis added) (See also: *Chakali Maddilety & Ors. v. State of A. P.*, AIR 2010 SC 3473).*

13. [In Sachchey Lal Tiwari v. State of U.P.](#), AIR 2004 SC 5039, while dealing with the case this Court held:

“7.Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by



will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The expression 'chance witness' is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence."

14. In view of the above, it can safely be held that natural witnesses may not be labelled as interested witnesses. Interested witnesses are those who want to derive some benefit out of the litigation/case. In case the circumstances reveal that a witness was present on the scene of the occurrence and had witnessed the crime, his deposition cannot be discarded merely on the ground of being closely related to the victim/deceased."

16. The status of the injured witness has times without number been considered by the Apex Court whereunder, it has been held that sole evidence of an injured in case, inspires confidence, happens to be sufficient to record conviction on the background of the fact that being a victim of a crime, his evidence should not be disbelieved unless and until, there happens to be cogent material on



the record suggesting the evidence intermingle with grudge as well as false implication. In ***Mukesh and another v. State of N.C.T. of Delhi reported in 2017(3) P.L.J.R. 248 (SC)***, it has been held:-

“79. The evidence of an injured witness is entitled to a greater weight and the testimony of such a witness is considered to be beyond reproach and reliable. Firm, cogent and convincing ground is required to discard the evidence of an injured witness. It is to be kept in mind that the evidentiary value of an injured witness carries great weight. In *Mano Dutt and another v. State of Uttar Pradesh*[(2012)4 SCC 79], it was held as under:

“31. We may merely refer to *Abdul Sayeed v. State of M.P.*[(2010)10 SCC 259] where this Court held as under:

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his



actual assailant(s) in order to falsely implicate someone. 'Convincing evidence is required to discredit an injured witness.' [Vide *Ramlagan Singh v. State of Bihar*[(1973)3 SCC 881], [Malkhan Singh v. State of U.P.](#)[(1975)3 SCC 311], [Machhi Singh v. State of Punjab](#)[(1983)3 SCC 470], [Appabhai v. State of Gujarat](#) [1988 (Supp.) SCC 241], [Bonkya v. State of Maharashtra](#)[(1995)6 SCC 447], [Bhag Singh v. State of Punjab](#)[(1997)7 SCC 712], [Mohar v. State of U.P.](#)[(2002)7 SCC 606], [Dinesh Kumar v. State of Rajasthan](#)[(2008) 8 SCC 270], [Vishnu v. State of Rajasthan](#)[(2009) 10 SCC 477], [Annareddy Sambasiva Reddy v. State of A.P.](#)[(2009) 12 SCC 546] and [Balraje v. State of Maharashtra](#)[(2010) 6 SCC 673]

29. While deciding this issue, a similar view was taken in [Jarnail Singh v. State of Punjab](#)[(2009) 9 SCC 719] where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:

'28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. [In](#)



[Shivalingappa Kallayanappa v. State of Karnataka](#)[1994 Supp.(3) SCC 235] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. [In State of U.P. v. Kishan Chand](#)[(2004)7 SCC 629] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide [Krishan v. State of Haryana](#)[(2006)12 SCC 459]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.'

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a



consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

To the similar effect is the judgment of this Court in Balraje (supra).”

17. The court had on an occasion to see injured while she was examined as PW-9, the Court had found her face as well as right eye burnt on account of acid. The defence also could not deny presence of injury though with an explanation that as during course of cooking, victim had sustained injury on account of sprinkling of hot cooking oil and as appellant had scolded on account of illicit relationship with her brother-in-law got this case filed, that means to say, injury is not denied. Moreover, as the injury is not under controversy on account thereof, having been exhibited by a formal witness is not going to axe upon the interest of the accused. Furthermore, the Hon’ble Apex Court had considered the issue in **Kehar Singh and Ors. Vs. the State (Delhi Admn.) [AIR 1988**



Supreme Court 1883] and our attention has been drawn to the following passage from paragraph 320 of the judgment, which reads as follows:

“It is not necessary to confirm the finger prints on the sten-gun, as that of the accused when it is proved that sten-gun was delivered to him. The examination of the bullets recovered from the body of Mrs. Gandhi for the traces of blood or tissues is also unnecessary, since one of the bullets taken by the Doctor tallied with the sten-gun (Ex. P. 4). Equally, limited post-mortem examination conducted by Dr. Dogra would not affect the merits of the case. It is not always necessary to have a complete post-mortem in every case. Section 174 of the Code confers discretion to the Police Officer not to send the body for post-mortem examination if there is no doubt as to the cause of death. If the cause of death is absolutely certain and beyond the pale of doubt or controversy, it is unnecessary to have the post-mortem done by Medical Officer. In the instant case, there was no controversy about the cause of death of Mrs. Gandhi. A complete post-mortem of the body was therefore uncalled for.”

(Underlining our)

We do not find any substance in this submission of Mr. Prasad and the authority relied on is clearly distinguishable.

18. After taking into consideration the evidence on the record, it is apparent that intention of the appellant to have murderous attack upon the victim is not at all found substantiated nor



it could be gathered from the evidence that they have acted with a knowledge that the injury will ultimately led to death and that being so, the conviction and sentence recorded by the learned lower Court relating to Section 307 of the I.P.C. is not at all found substantiated. That being so, the finding relating thereto is set aside. So far remaining parts are concerned, same appears to be based upon proper appreciation of the evidences available on the record and having impairing of one of the eyes including injury over face of a woman and that being so, is affirmed, as a result of which, with the aforesaid finding, this appeal is hereby dismissed. Appellant is under custody, on account thereof, will remain till saturation of the sentence.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	07.09.2017
Uploading Date	09.10.2017
Transmission Date	09.10.2017

