

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 18.8.2017****Judgment delivered on 03.10.2017****CRA No. 655 of 2009**

1. Geetabai Sahu W/o Jeevrakhan Sahu, aged about 47 years,
R/o village Khartora, Thana Palari, District Raipur, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, PS Palari,
District Raipur, CG

---- Respondent**CRA No. 672 of 2009**

1. Jeevrakhan Sahu S/o Bhagat Sahu, aged about 55 years, R/o
Village Khartora, Thana Palari, District Raipur, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, PS Palari,
District Raipur, CG

---- Respondent**AND****CRA No. 814 of 2009**

1. Kakeshwar alias Kailash Sahu S/o Jivrakhan aged about 32
years R/o Village Khartora, Thana Palari, District Raipur, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, PS Palari,
District Raipur, CG

---- Respondent

For Appellants : Shri Anil Khare Sr. counsel with Shri
D.K. Gwalare, Advocate

For Respondent/State : Smt. Smita Ghai PL

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice R.P. Sharma,

CAV Judgment

Pritinker Diwaker, J

As the aforesaid three Criminal Appeals arise out of the same judgment dated 25.08.2009 passed by Additional Sessions Judge Baloda Bazar in Sessions Trial No. 30/2009 convicting accused/appellant Kakeshwar alias Kailash Sahu under Sections 302, 201; accused Jeevrakhan Sahu and Geeta Bai Sahu u/s 201 IPC, and sentencing accused Kakeshwar alias Kailash Sahu to undergo imprisonment for life with fine of Rs. 1000/- u/s 302 and rigorous imprisonment for seven years with fine of Rs. 1000/- u/s 201 and accused Jeevrakhan Sahu and Geeta Bai Sahu to undergo rigorous imprisonment for seven years with fine of Rs. 1000/- and rigorous imprisonment for three years with fine of Rs. 1000/- respectively plus default stipulations, they are disposed of by this common judgment.

2. Name of the deceased in present case is Priti Sahu wife of accused/appellant Kakeshwar alias Kailash Sahu whose marriage was solemnized in May 2003. Priti is said to have died on 21.09.2007 after suffering 100% burn injuries. Accused/appellants Jeevrakhan Sahu and Geeta Bai Sahu are the father-in-law and mother-in-law of the deceased respectively. Though Hemant Sahu – the brother-in-law and Kavita Sahu – the sister-in-law of the deceased were also made accused, they have been acquitted by

the Court below of all the charges levelled against them. On 21.09.2007 at 9.15 AM *merg* intimation Ex. P-30 was recorded at the instance of accused Jeevrakhan Sahu to the effect that apart from being an agriculturist he was also having a shop styled as Bhagat Krishi Kendra which was being looked after by his son Kakeshwar alias Kailash Sahu. *Merg* intimation further says that a day prior to the incident his son had been to Raipur in connection with his business and on his return at 10 PM all at home took food and retired to their respective rooms for sleep. Next morning at about 6 O'clock herdsman namely Parmeshwar Raut came to his house to untie the cattle but as the door in the veranda was not opening, he also went there and on seeing the smoke emanating from the toilet, they tried to open the door but as it was bolted from inside, accused Kakeshwar alias Kailash Sahu somehow opened it with the help of a wooden block by that time Priti had died and was burning. Information to this effect was given to the neighbours. Thereafter, inquest on the dead-body was conducted on the same day vide Ex. P-9 followed by postmortem examination carried out by Dr. Mamta Thakur (PW-3) and Dr. Dhan Singh Dhruv (PW-4) vide report Ex. P-3. After *merg* inquiry and receiving the postmortem report, FIR Ex. P-31 was registered on 01.10.2007 against accused/appellant Kakeshwar alias Kailash Sahu under Sections 302 and 201 IPC. On completion of investigation, charge sheet was laid by the police against five persons followed by framing of charge by the Trial Court against accused/appellant Kakeshwar alias Kailash Sahu u/s 302, 201 and 498-A whereas against the remaining ones u/s 201 and 498-A IPC.

3. In order to prove its case the prosecution has examined 22 witnesses in support of its case. Statements of the accused persons

were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case.

4. Accused/appellant Kakeshwar alias Kailash Sahu has taken a specific defence in his statement recorded under Section 313 of the Code of Criminal Procedure that after the birth of first girl child he and the deceased were living happily but at the time when the second girl child was born deceased became weak. Further defence taken by him is that as the brother of the deceased died a suicidal death after jumping in front of the running train, she got mentally upset and used to keep his photograph in front of her bed. Her sister, aunt and maternal uncle are also said to have died a suicidal death by jumping into the well, by setting afire and by consuming poison respectively. Statement of the accused further says that as usual the deceased got up early in the morning on the date of incident also, and that on smoke being noticed by the herdsman emanating from the toilet which was bolted from inside, he (accused Kailash) along with his father broke it open with the help of wooden block and saw his wife burning. At that time, the people of the vicinity also came there and that on account of the door being hit by the wooden block, the chain of the door got broken-out. Thereafter, his father went to the police station, gave information about the incident to the police and then the parents of the deceased were called up. He has stated that three years prior thereto his father-in-law had borrowed Rs. 1,00,000/- from him and that his wife died only on account of the death of her brother.

5. After hearing the parties the Court below acquitted two persons namely Kavita and Hemant of all the charges levelled against them but has convicted and sentenced the

accused/appellants as mentioned above by the judgment impugned.

6. Counsel for the accused/appellants submit as under:

(i) That there is no eyewitness to the incident and the conviction of the accused/appellants is based solely on the circumstantial evidence, however, even the circumstances relied upon by the prosecution are not as such to hold the accused/appellants guilty of commission of the murder of the deceased.

(ii) That the prosecution has utterly failed to prove that the burn injuries suffered by the deceased are postmortem and since it was the burden on the prosecution to prove its case beyond all reasonable doubt, it cannot be shifted on the accused to prove their innocence.

(iii) That present is not a case where only the deceased and the accused Kailash were residing in the house but the other accused persons were there at the relevant time and therefore, it is difficult to say as to who has committed the murder of the deceased.

(iv) That on 26.9.2007 a letter (Ex. P-32) was written by the investigating officer (PW-20) to the autopsy surgeon (PW-4) mentioning therein that though in the postmortem report the burn injuries have been stated to be postmortem in nature but on spot inspection being made by him the situation was not found to be as such. The said letter also carries the reference of spot inspection being made by FSL expert Dr. Singh according to whom the death was suicidal in nature. Reply to this letter Ex. P-4 was given by PW-4 but it did not satisfy the query sought for.

(v) That in the course of investigation the report of the FSL expert Dr. Singh was though obtained by the prosecution, it has not

been exhibited may be for the reason that it favoured the accused/appellants.

(vi)) That no evidence has been adduced by the prosecution to hold the accused/appellants guilty under Section 201 IPC.

(vii) That all the accused persons have been acquitted by the Court below of the charge under Section 498-A IPC which makes it clear that no cruelty was meted out to the deceased.

(viii) That once the cruelty part loosens its hold, the motive part also vanishes as the prosecution has utterly failed to prove by leading cogent and clinching evidence as to for what the accused/appellants would have committed the crime in question.

7. On the other hand counsel for the respondent/State supports the judgment impugned and submits as under:

(i) That in the *merg* as also in the statement of accused/appellant Jeevrakhan a false information has been given that when the door of the toilet was opened, the body was burning because as per the postmortem report the deceased breathed her last sometime in the night itself and thereafter she was burnt by the accused/appellants.

(ii) That a false explanation has been offered by accused/appellant Kakeshwar alias Kailash Sahu in his statement recorded under Section 313 of the Code of Criminal Procedure that the deceased woke up early in the morning.

(iii) That it is not the case of prosecution that the door of the toilet was bolted from inside rather it is the case of the defence that as the door of the toilet was bolted from inside, it was broken open.

(iv) That had accused/appellant Jeevrakhan seen the deceased in burning condition, effort would have been made by him and the people of the vicinity to douse the fire.

(v) That none of the witnesses has stated that when the body was taken out of the toilet, it was burning because had this been the position, body could not have been taken out without the fire being extinguished.

(vi) That the postmortem burn has been duly proved by the prosecution not only on the basis of the report of the autopsy surgeon and also the query report given by him but also on the basis of circumstantial evidence.

(vii) That had deceased put herself afire, she should have involuntarily moved hither and thither in pain and agony and would not be lying on her back motionless, but in this case there was no sign or evidence of any such movement, screaming or shrieking by her while she was reeling under the terrible shock on being engulfed in flames.

(viii) That to create a false evidence, the accused/appellants kept one jerrycan containing half a liter kerosene on the spot without there being any stains or spots over it whereas the entire room was filled with black soot and had it been a case of suicide, said jerrycan also would have been burnt as the intensity of heat was as such that the toilet seat was damaged but surprisingly the jerrycan remained intact. According to the State counsel, all this shows that the jerrycan was kept on the spot after killing the deceased by pressing her neck and then burning her body.

(ix) That referring to the report of FSL expert Ex. P-32 and paragraph No. 28 of the judgment impugned, the State counsel

submits that though one Dr. Singh inspected the spot and found it a case of suicide but no report to this effect was submitted by him. To verify this fact, the Court below also called the entire case diary but unfortunately it could not reflect any such report. State counsel has thus tried to axe down the argument advanced by the counsel for the appellants that it was a case of suicide.

(x) That if Dr. Singh had really inspected the spot and given the report, he should have been summoned by the accused/appellants to substantiate their defence.

(xi) That likewise the defence should also have examined the herdsman Parmeshwar Raut who is said to have come to the house of the accused/appellants early in the morning and saw the smoke coming out of the toilet, but he has been skipped for the reason best known to them.

(xii) That whatever explanation the *merg* contains is not the stand of the prosecution but the version of accused Jeevrakhan himself and the Police have just reduced the same to writing.

(xiii) That Dhan Singh (PW-6), Nirmala Sahu (PW-7), Parvati Choudhary (PW-8), Nand Kishore Sahu (PW-9) and Manjula Sahu (PW-12) have categorically stated that the deceased was subjected to cruelty by the accused/appellants and thus motive on their part to commit murder of the deceased also stands proved.

8. Heard counsel for the parties and perused the evidence available on record.

9. Tolaram Sahu (PW-2) is the witness to seizure made under Ex. P-2 who has stated that the door of the toilet was broken open and the seizure was made thereafter. Dhan Singh (PW-6) - the father of the deceased has stated that marriage of the deceased was

solemnized with accused/appellant Kakeshwar alias Kailash Sahu in May 2003 and that after the death of first born male child two issues, both female, were born to them. After the death of male child, the accused persons started harassing the deceased and using filthy abuses at her. He is also the witness to inquest Ex. P-9. In paragraph No. 19, this witness has admitted that in the year 2006 his son died after coming in contact with the running train. He has also admitted that his mother too died by jumping into the well as she was suffering from stomach-ache. Aunt of the deceased is also stated to have died after suffering burn injuries. According to him, when after sonography test the husband of the deceased came to know about the to-be-born female child for the second time, he insisted her for abortion but she refused for that and after delivery he and his family members started harassing her. Thereafter, he has given number of instances where his daughter was subjected to cruelty by the accused persons. Nirmala Sahu (PW-7) - the mother of the deceased has made almost similar allegations as have been made by her husband (PW-6). Parvati Choudhary (PW-8) - the neighbour of PW-6 has stated that when the deceased came to her parents' house, she had informed about the cruelty meted out to her by the accused persons. Nand Kishore Sahu (PW-9) - the brother of the deceased has also made similar statement like PW-6 and PW-7. He has also produced the diary written by the deceased marked as article "A" and seized vide Ex. P-13 according to which she was happy with her husband Kailash but had certain complaint about the attitude of other family members. Manjula Sahu (PW-12) - the sister of the deceased has also stated almost the same thing like PW-6, PW-7 and PW-9. Dr. Mamta Thakur (PW-3) is the witness who conducted postmortem

examination on the body of the deceased along with Dr. Dhan Singh Dhruv (PW-4) and gave her report Ex. P-3 which speaks as under:

“... It is 100% deep burn, eyes closed, burned skin, tongue protruded, breast burned and everted, ribs both side burned upto anterior artillery line, lungs exposed, burned, stomach wall burned and intestine blackening due to burn, burned genitalia, legs burned deep up to bone, right side tibia fibula broken, left side only tibia broken, lateral side muscles are attached slightly. Body was deeply burned and the skull congested. Ribs burned up to mid artillery line...”

Cause of death, as opined, was asphyxia and the burn was postmortem in nature.

She however has stated in her court statement that no symptom was noticed on the neck of the deceased to show that her neck was pressed. She has admitted that in the case of suffocation there is possibility of froth and blood coming out of the mouth and nostrils but this thing was not mentioned in her report. Though it has been admitted by this witness that no symptoms of blood or froth were noticed by her yet she has expressed the possibility of the same, if any, being burnt and reduced to ashes as the body was 100% burnt. She has also expressed the possibility of suffocation by the pillow produced before her by the police. According to her, on account of the body being burnt 100% it had turned black, stomach was burnt but the intestines did not come out and were placed in order, but as the stomach was burnt they were quite visible. Liquid substance found in the stomach of the deceased is stated to have been not specified in the report of this witness but chemical examination thereof was advised. There is also an admission by this witness that 2-4 minutes after catching fire, one can reach the

stage of shock resulting in death. According to her, in case of burn with kerosene there is emission of carbon-monoxide gas which goes into the lung and blood by respiration process. She has also clarified that if one respire while burning, the symptoms of that gas are noticeable in the trachea and lung but all that would not be there if a dead person is burnt. In paragraph No. 16 this witness has however admitted that in this case the soots were noticed in the upper part of the trachea. According to her, the heart being cherry-red as was stated in the report, was due to burn. She has stated that if carbon- monoxide gas enters the body by breathing, the colour of the blood turns cherry-red. Suffocation is also stated to be the reason for cherry-red colour of the blood. On a question put to her by the Court below as to on what basis she had opined the burn being postmortem in nature though according to the police it was a case of suicide, she has given her answer saying that she had noticed the soots in the trachea of the deceased and not in any other part of the body and that on account of deep burn the back portion turned blueish and tibia and fibula got broken. According to this witness, on the body part of the deceased which was not burnt, no redness was found, and that if as a result of burn any redness (blackness) is there, in that event, the redness become invisible. In paragraph No. 19 this witness has clarified that though in the query report she has mentioned the fracture of tibia and fibula of both the legs whereas in the postmortem report she has mentioned the fracture of tibia of left leg only but according to her the things stated in the postmortem report only are correct. She has stated that a person burning dies due to shock within 2-4 minutes but still the body continues to burn, such burns after death are called postmortem burns. She has further stated that mere congestion is

not a determinative sign of the burns being antemortem or postmortem in nature but the other symptoms are also taken into consideration in so doing.

10. Dr. Dhan Singh Dhruv (PW-4) is the witness who also conducted postmortem on the body of the deceased along with Dr. Mamta Thakur (PW-3). This witness has stated that in the query report Ex. P-4 he has clarified that the burn was postmortem in nature and likewise in Ex. P-5 he has stated that the tibia and fibula bones were fractured due to burn. Kishore Soni (PW-18) is the witness who did initial part of the investigation and made seizure of one jerrycan containing half liter of kerosene, burnt match box and sticks, burnt clothes of the deceased, ash and wooden block In paragraph No. 15 he has stated that the wooden block was not used for opening the door but the door of the toilet was just knocked with it. This witness is stated to have been informed by the accused persons that the deceased set herself afire in the toilet after bolting the door from inside. According to him, it is mentioned in the statements of the witnesses that the chain of the toilet door could not be fastened from inside and that during investigation the chain hanging inside was seized by him and the said seizure memo was attached with the case diary but being un-necessary was not enclosed with the charge-sheet. According to this witness, as planned by the accused persons, the chain was put on the inner side of the door with the support of a piece of wood when the matter was under investigation. L.R. Giri (PW-19) is the witness who recorded *merg* Ex. P-30. Baldev Singh Thakur (PW-20) is the witness who recorded FIR Ex. P-31 and sought query report under Ex. P-32 which was given by the doctor (PW-4) marked as Ex. P-4. Rupesh Kumar Verma (PW-21) is the witness who conducted the inquest,

and according to him he found the body of the deceased in the toilet in squatting posture with head leaning forward, right palm supported against the floor and the left palm having bent supported against the toilet floor. Body was smelling kerosene and a jerrycan containing half a liter kerosene and the burnt match sticks were also found there which were seized by PW-18. Dr. Sunanda Dhenge (PW-22) though was not cited as a witness initially, on application being moved by the prosecution under Section 311 of the Code of Criminal Procedure she was examined as its witness. She has proved her report Ex. P-34 dated 27.11.2007 and stating that burn of the deceased is postmortem in nature but the cause of death required some more information from the doctors regarding injury on tibia and fibula. She has further stated that the death of the deceased took place somewhere else but she was burnt in the toilet. According to her, looking to the shattered toilet seat and smoke it is sure that she was shifted to the toilet, kept with her back against the wall, inflammable liquid – kerosene or diesel which can be ascertained from the report of FSL, was poured on her and then she was put on fire. She has also stated that the photographs revealed that the toilet walls were covered with smoke but surprisingly the container kept there was as it is without any black spots and this shows that it was kept there afterwards otherwise it would have been affected with the flames and smoke. Her report further says that though the dimension of the door and the toilet was not disclosed to her yet it is not possible for one person to carry the dead-body in such a congested place. Further, according to the report, the dead-body being in the sitting posture was not possible unless something like iron rod or bamboo was used before burning her. It however required exact

measurement of the spot. Moreover, something like bamboo must have been used for deflection of body for burning the posterior part otherwise it would have remained unburnt or half burnt. According to the report, the wall behind the body shows the patches of skin of the back, and all this shows that more than one person were involved in the crime in question.

11. It is relevant to note that this report has been given by this witness on the request of father of the deceased (PW-6) and that too on the basis of photograph of the deceased and the spot. This report was given on 27.11.2007 and by that time the charge-sheet was already filed. We are conscious of the fact that this report was given on the basis of photographs of the deceased and the spot and that the conviction of the accused/appellants cannot be based thereupon, but something meaningful can definitely be culled out of it necessary to draw a just and reasonable conclusion.

12. Ex. P-11 is the memorandum of accused Kakeshwar alias Kailash Sahu wherein it is stated that he had pressed the nose and mouth of the deceased with the help of a pillow and after a while when she died, he shifted her to the toilet, made her sit against the wall, poured kerosene or the diesel from the jerrycan and set her on fire. Based on this memorandum, one pillow was seized under Ex. P-14 but there is no evidence to show that the said pillow was used in the commission of crime in question.

13. Now to hold the guilt or innocence of the accused/appellants in the crime in question the most crucial question is whether medical evidence of the doctors conducting necropsy on the dead-body (PW-3 and PW-4 herein) is reliable and acceptable and whether there is any probability of suicide? Determination of such

question needs recapitulation of the medical evidence though at the cost of repetition.

14. Postmortem report Ex. P-3 submitted by Dr. Mamta Thakur (PW-3) and Dhan Singh Dhruv (PW-4) jointly shows the body of the deceased to have 100% deep burn, eyes were closed, skin was burnt, tongue was protruded, breasts were burnt and everted, both ribs were burnt, lungs were exposed and burnt, stomach wall, genitalia and legs up to the bone were burnt and intestines got blackened due to burn, burned deep up to bone, right side tibia fibula and left side tibia were broken, left side only tibia broken and lateral side muscles were attached slightly. As per this report cause of death was asphyxia and the burn was postmortem in nature. Though the doctor (PW-3) has admitted that she did not notice any symptom indicative of neck of the deceased being pressed yet at the same time she has expressed the possibility of suffocation with the help of pillow produced before her by the police for examination. Further, in support of her opinion about asphyxia to be the cause of death she has stated that on account of pressure employed on mouth and nostrils asphyxial death can be possible. According to this witness, on account of burn the colour of heart had turned cherry-red. Such discoloration of blood, according to her, could also be there if one breathes in carbon- monoxide gas or undergoes some suffocation.

15. Let us first consider whether the factual findings at the postmortem examination of the deceased and the evidence of doctors (PW-3 and PW-4) are supported by medical jurisprudence. Taylor's Principles and Practice of Medical Jurisprudence, Thirteenth Edition 1984 by Keith Mant, Vol. I stated at page 282 that asphyxia being a condition in which there is an inadequate supply of oxygen

to the tissues. It may be defined as a state in which the body lacks oxygen because of some mechanical interference with the process of breathing. At page 283 it is further stated that cyanosis indicates the blue colour of the skin, mucous membranes and internal organs, notably spleen, liver and kidneys. The capillary dilation that accompanies a reduction in oxygen tension promotes stasis and therefore a vicious cycle of sub-oxygenation of the blood commences. The return of blood to the heart is diminished. The resultant impaired oxygenation leads to further capillary dilation, further stasis, with deepening cyanosis – probably results from a combination of stasis and hypoxia. Fluid exudes into the tissue spaces.

16. At page 286 it is also stated of the distinction between suffocation and strangulation that conditions associated with mechanical asphyxia include suffocation where the interference with the process of breathing is at the level of the nose or mouth; strangulation where there is compression of the neck, either by (a) the human hand (manual strangulation or throttling); (b) a ligature. In page 287 it is stated that the head and face may show intense congestion and cyanosis with numerous petechiae. Blood exudes from the mouth and nose. Blood tinged frothy fluid is present in the air passages.

17. Here the doctor (PW-3) has admitted in her evidence that in the event of suffocation froth and blood may come out of the mouth and nostrils but in the case in hand no such thing came to her notice. She however has stated that even if such froth and blood came out of the mouth and nostril of the deceased, the same might have been burnt and reduced to ashes. Though this witness is stated to have noticed soots in the trachea, it was only on the

upper part and it had not reached up to the lower part. This apart, fracture on tibia and fibula of the deceased was also noticed by the autopsy surgeon which could be on account of exposure of the body to intense heat and handling the body while being taken out of the toilet and then shifted to mortuary for autopsy. Likewise, discoloration of blood as opined by the autopsy surgeons is possible in the case of asphyxia, be it is because of strangulation, suffocation etc. Medical evidence also speaks of suffocation with the help of pillow seized by the police to be one of the causes leading to the death of the victim. The symptoms detailed in the postmortem report opining the burns to be postmortem in nature also get re-affirmation from the query report Ex. P-4. Report of the Forensic Expert Ex. P-34 though obtained on the request of the father of the deceased, also states the burns suffered by the deceased to be postmortem in nature.

18. Further, the absence of burn on the back of the deceased even after being burnt 100% also indicates that she could not have committed suicide by pouring kerosene of her own and then setting herself afire. Had she herself done so, the back portion could not have remained unburnt. Furthermore, the victim inhaling smoke also vomits presumably due to the bouts of coughing and regurgitation of stomach contents mixed with the soot may be found in the smaller bronchi, in the depths of lungs. However, in this case PW-3 and PW-4 have asserted that there was no symptoms of vomiting at all. These two witnesses have however expressed the possibility of the vomits being burnt in the intense fire, even if present. In other words no sign of vomit was found by these witnesses, which lends support to the case of the prosecution that the burning was after the death of the victim. In fact the

opinion in Taylor's Medical Jurisprudence is rather in support of the case of the prosecution than that of the defence, which reads as under:

“Not uncommonly the victim who inhales smoke also vomits and inhales some vomit, presumably due to bouts of coughing, and plugs of regurgitated stomach contents mixed with soot may be found in the smaller bronchi, in the depths of the lungs.”

19. Dealing with a case having similar circumstances and taking support from the Taylor's Medical Jurisprudence it has been held by the Apex Court in the matter of **State of UP v. Dr. Ravindra Prakash Mittal** reported in **AIR 1992 SC 2045** as under:

32. In the present case, PW-1 has asserted that there was no symptom of vomiting at all, which fact lends assurance to the prosecution case that the burning was after the death of the victim...

34...There are two important features appearing from the medical evidence appearing from the medical evidence which would go in support of our conclusion : (1) that the dead body was found inside the scorched cot frame, (2) the back portion of the body was not burnt indicating that the deceased could not have poured the kerosene over her body. Further, had the deceased put her to death by burning herself she should have involuntarily moved hither and thither under the agony, and would not be lying on her back motionless. A careful scrutiny reveals that there was no sign of involuntary movement or any evidence of screaming and shrieking by the victim while she was reeling under the terrible shock and agony on being engulfed in flames which are not the normal symptoms in a case of this nature, leaving apart the question of homicide or suicide. The traces of the barbiturates in the visra does not in any way militate against the prosecution and from that no adverse inference could be drawn.”

20. Let us now advert to the ocular evidence in respect of other surrounding circumstances so as to formulate an opinion whether the burns on the body of the deceased were ante-mortem or postmortem in nature.

21. From the record it is revealed that a day prior to the incident i.e. on 20.9.2007 accused Kakeshwar alias Kailash Sahu - the

husband of the deceased returned from Raipur at 10 PM and after taking dinner he retired to his room for sleep along with his wife and on 21.9.2007 at about 6 AM herdsman Parmeshwar Raut saw smoke emanating from the toilet. Thereafter, when accused Kakeshwar along with other family members went there, the door of the toilet being bolted from inside was broken open with the help of a wooden block the deceased was found dead but body was still burning. How can it be that all this happened without being within the personal knowledge of accused Kakeshwar – the husband who had spent the whole night with her in the same room. Even the other accused persons who were sleeping in the same house did not come forward with any explanation as to how the death of the deceased took place particularly when they all including the deceased took dinner together. However, no explanation of any sort has come from them in this respect. Since such crimes are generally committed in complete secrecy within the four walls of the house, it becomes next to impossible for the prosecution to collect each and every evidence to reach the truth. Even the people of vicinity whose evidence may lend some assistance generally show their reluctance to stand by the prosecution, may be, to avoid the legal intricacies and antagonistic terms with the neighbours. Thus Keeping in mind all these crucial probabilities, the pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof on the prosecution is allowed to be wrapped in the pedantic coverage, the offenders in serious offences would be

the major beneficiaries and the society would be the casualty. While expounding the obligation of the accused to prove his innocence and not throwing entire burden of doing so on the prosecution the Apex Court has held in the matter of **Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681** as under:

“13. The demand for dowry or money from the parents of the bride has shown a phenomenal increase in last few years. Cases are frequently coming before the Courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in Court as they want to keep aloof and do not want to antagonize a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.

14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC 315 quoted with approval by Arijit Pasayat, J. in *State of Punjab vs. Karnail Singh* (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the

burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

20. In *Ram Gulam Chaudhary & Ors. v. State of Bihar* (2001) 8 SCC 311, the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused, however, offered no explanation as to what they did after they took away the boy. It was held that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they have murdered the boy. It was further observed that even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference.

21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See *State of Tamil Nadu v. Rajendran* (1999) 8 SCC 679 (para 6); *State of U.P. v. Dr. Ravindra Prakash Mittal* AIR 1992 SC 2045 (para 40); *State of Maharashtra v. Suresh*

(2000) 1 SCC 471 (para 27); Ganesh Lal v. State of Rajasthan (2002) 1 SCC 731 (para 15) and Gulab Chand v. State of M.P. (1995) 3 SCC 574 (para 4)].

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of Himachal Pradesh* AIR 1972 SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* (1992) 3 SCC 106 the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P. v. Dr. Ravindra Prakash Mittal* AIR 1992 SC 2045 the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of Tamil Nadu v. Rajendran* (1999) 8 SCC 679 the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was

the accused (husband) who was the perpetrator of the crime.”

22. Similar view has been taken by the Apex Court in the matter of **State of WB v. MIR Mohammad Omar and others** reported in **(2000) 8 SCC 382** where it has been held as under:

“33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reach a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the court to draw the presumption that the accused have murdered him. Such inference can be disrupted if accused would tell the court what else happened to Mahesh at least until he was in their custody.

35. During arguments we put a question to learned senior counsel for the respondents based on a hypothetical illustration. If a boy is kidnapped from the lawful custody of his guardian in the sight of his people and the kidnappers disappeared with the prey, what would be the normal inference if the mangled dead body of the boy is recovered within a couple of hours from elsewhere. The query was made whether upon proof of the above facts an inference could be drawn that the kidnappers would have killed the boy. Learned senior counsel finally conceded that in such a case the inference is reasonably certain that the boy was killed by the kidnappers unless they explain otherwise.

36. In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows: "When any fact is especially within the knowledge of any person, the burden of proving that

fact is upon him."

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference."

23. Evidence of father of the deceased makes it clear that after the death of male child, two female children were born to deceased through accused Kakeshwar and that since thereafter the accused persons started misbehaving with the deceased. Evidence further goes to show that before the birth of second female child, accused Kakeshwar made her undergo sonography test and after coming to know about the to-be-born female child, he insisted for abortion which was refused by the deceased. Thereafter, number of instances have been referred to by this witness where the deceased was subjected to cruelty by the accused persons. Harassment at the hands of the accused persons has come from other witnesses being (PW-7, PW-8 and PW-9) also. In these circumstances, a presumption can safely be drawn that after the death of first male child and birth of first female child, the accused-husband might be aspiring for a male child and it is for that he got done the sonographic sex determination test of the deceased and on coming to know the things going against his wishes, he nurtured the opinion of getting rid of her for ever. Though a letter said to have been written by the deceased (Article-A) has been produced by the defence to show the relations between her and the accused-husband were cordial cannot be significantly related to the present incident as it was written three years prior thereto. The bitterness, as per the evidence of the witnesses, between the two appears to

have crept in only after the detection of to-be-born female child on radiological examination of the deceased and the subsequent refusal of the demand for its medical termination made to her by the accused-husband.

24. The argument advanced by the counsel for the appellants that on account of untimely accidental demise of her brother, grandmother and aunt the deceased used to remain depressed and ultimately decided to end her life also, appears to be absurd because she was a fully grown up lady and must have already come across several ups and downs here and there and therefore, could not have lost her mental equilibrium by such things putting her smooth and comfortable life at stake, if it was really so.

25. Evidence further indicates that at the time of inquest, the dead-body was found in the toilet in squatting posture with head leaning forward with her right palm supported against the floor and the left one being bent and supported against the toilet floor. This circumstance also dissuades this Court from accepting the argument of the counsel for the accused/appellants that it is a case of suicide. It is for the reason that if the deceased set herself afire after pouring kerosene, immediately after being in flames she must have run for safety hither and thither crying for help and would not have permitted her incineration till death without reacting in any such manner. That apart, from the inquest report it is further clear that a jerrycan containing half a liter kerosene and the burnt match sticks were also found on the spot. It appears a bitter pill to swallow for this Court that in a situation where on account of the raging flames the deceased suffered 100% burns but yet the jerrycan that too containing half a liter kerosene, which otherwise should have

been reduced to an unshaped lump, remained intact. This obviously shows that the said jerrycan was kept on the spot after incineration of the deceased just to paint a picture of suicide.

26. This Court is not in agreement with the argument of the counsel for the accused/appellants that since the accused persons have been acquitted of the charge under Section 498-A IPC based on the same set of evidence, they are entitled for acquittal of the charge under Section 302 IPC also. Since the evidence in relating to cruelty or harassment with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or on account of failure by her or any person related to her to meet such demand might not have been sufficient, they came to be acquitted of the said charge. However, it does not mean that the charge under Section 302 IPC is also not made out against the accused/appellants for the simple reason that both these offences are distinct in nature and the prosecution has adduced cogent and clinching evidence to prove their guilt of killing the deceased. Defence has not even bothered to examine Dr. Singh who is said to have inspected the spot and given his report that it was a case of suicide. The herdsman who first saw the smoke coming out of the toilet could have been of some help to the defence but he too has not been examined.

27. Considering the evidence adduced by the prosecution as also the defence, we are of the considered opinion that in the given facts and circumstances of the case, there is no reason for us to draw an opinion other than the one given by the doctor showing the burn as postmortem in nature on the basis of which the finding to that effect has been recorded by the Court below.

28. Thus in view of the evidence adduced by the prosecution, medical and ocular, this Court is of the opinion that the deceased was first killed and then consigned to the flames in a bid to eliminate evidence. This was done by none else but accused-husband Kakeshwar alias Kailash Sahu. Evidence is however not there to the effect that the other two accused persons namely Geeta Bai Sahu and Jeevrakhan Sahu were also instrumental in executing the act they have been convicted for by the Court below because in the previous night they were elsewhere though in the same precinct whereas the deceased spent the whole night, asleep or awake, in another room along with her husband. They could therefore not be aware as to what went on between their son and daughter-in-law in the preceding hideous hours. Thus, giving benefit of doubt, inculcation of the in-laws (Geeta Bai Sahu and Jeevrakhan Sahu) in the offence u/s 201 IPC is liable to be set aside.

29. As a net conclusion, Criminal Appeal No. 814/2009 preferred by accused Kakeshwar alias Kailash Sahu is dismissed with the affirmation of the judgment impugned as far as it relates to him. Being already behind the bars, no order to catch and dispatch him inside is necessary. Criminal Appeal Nos. 655/2009 and 672/2009 preferred by Geetabai Sahu and Jeevrakhan Sahu are however allowed and the judgment impugned pertaining to them is set aside. Acquittal of the charge u/s 201 IPC to follow. They are already out on bail and hence no order is needed to set them free etc.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.P. Sharma)
Judge