

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 964 of 2013

Arising Out of PS. Case No.-25 Year-2012 Thana- Gobardhana District- West Champaran

Nagendra Sah, son of Chandrika Sah, resident of village- Bakhari
Pacharukhiya, P.S. Gobardhana, District- West Champaran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. S.N.P. Sinha, Sr. Adv.
Mr. J.N. Sinha, Adv.
Miss Rashmi Bharti, Adv.
Mr. Vikash Mohan, Adv.

For the Respondent : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 22-04-2019

The sole appellant, husband of the deceased, after being convicted and sentenced for offence under Sections 302 and 201 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.'), has filed the present appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.').

2. The appellant by judgment dated 29-08-2013 has been convicted for offence under Sections 302, 201 of the I.P.C. and by order dated 30-08-2013 under Section 302 of the I.P.C., he has been sentenced to undergo imprisonment for life and to pay a fine



of Rs. 5,000/- (five thousand). In case of default in payment of fine, he has been directed to further undergo rigorous imprisonment for three months. Under Section 201 of the I.P.C. by the same order i.e. order dated 30-08-2013, he has been sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5,000/- (five thousand). In case of default in payment of fine, he has been directed to further undergo rigorous imprisonment for three months. All the sentenced were directed to run concurrently. The appellant has been convicted and sentenced in Sessions Trial No. 23 of 2013/11 of 2013 (arising out of Gobardhana P.S. Case No. 25 of 2012) by Sri Triloki Nath Tripathi, learned Adhoc Additional Sessions Judge-III, Bagaha, West Champaran (hereinafter referred to as 'Trial Judge').

3. Short fact of the case is that on 25-08-2012 at 10:00 hrs., the S.H.O, Gobardhana Police Station namely S.I. Rajan Kumar Pandey (P.W.10) recorded self statement disclosing therein that he himself on the statement of Mahesh Sah (P.W.5 'a'), son of late Shankar Sah, resident of Ramdhan Mandir, Bagaha, District- West Champaran had recorded *fardbeyan* and on 18-11-2011 registered Gobardhana P.S. U.D. Case No. 3 of 2011. During inquiry of the said U.D. Case, on examination of the case diary and *post-mortem* report, he perceived that in U.D. Case, witnesses



had disclosed that death occurred due to burn injury, however on examination of *post-mortem* report, it transpired that deceased Sita Devi died due to pressure on her neck by hard and blunt substance in the house of her in-laws in the village Bakhri Pachrukhiya i.e. the house of Nagendra Sah (appellant). In the said U.D. case, after orders of superior officers as well as in view of supervision note, U.D. case was directed to be converted and registered as case of murder. Accordingly, on the basis of *post-mortem* report and direction of inspector of police, the informant prepared self-written report for lodging a case. On the basis of said self-written report, on 25-08-2012, a formal F.I.R., vide Gobardhana P.S. Case No. 25 of 2012, was registered for offence under Section 302 of the I.P.C. against the appellant. In the case, name of deceased was Sita Devi (wife of appellant).

4. After conducting investigation, chargesheet in the case was submitted on 28-11-2012 against sole appellant under Section 302 of the I.P.C., whereupon on 05-12-2012, the learned Addl. Chief Judicial Magistrate, Bagaha took cognizance of the offence. Subsequently, on 17-12-2012, the case was committed to the court of sessions and thereafter, charge under Section 302 of the I.P.C. was framed on 14-03-2013 and again charge under



Section 201 of the I.P.C. was framed on 19-08-2013 against the appellant, which was denied by him and he claimed to be tried.

5. During the trial, to establish its case on behalf of the prosecution, altogether 11 witnesses were examined, who are P.W.1 Chandra Deo Mahto, P.W.2 Jaggu Yadav, P.W.3 Kismis Mahto, P.W.4 Prem Yadav, most of them were resident of village Pachrukhiya, which is the village of the appellant. P.W.5 Chandra Kali Devi is the mother of the deceased and P.W.5 'a' Mahesh Sah is the brother of the deceased. P.W.6 Vijay Kumar Gupta and P.W.7 Prabhu Sah are co-villagers of the appellant and they are witnesses to the inquest report. P.W.8 Devendra Prasad had produced *post-mortem* register. P.W.9 Dr. Ashok Kumar Tiwary has conducted *post-mortem* examination on the dead body of the deceased. P.W.10 Rajan Kumar Pandey is the S.H.O. of Gobardhana police station and he is informant of the case. P.W.11 Deokant Tripathi is also one of the investigating officer.

6. Besides oral evidence, documentary evidence has also been brought on record, which are:

- (i) Signature on the inquest report marked as Ext.1 and Ext.2 respectively,
- (ii) *post-mortem* examination report - Ext.3,
- (iii) formal F.I.R. - Ext.4,
- (iv) self written report, which is the basis of the F.I.R., as Ext.5.
- (v) From the defence side, *fardbeyan* of U.D. Case No. 3 of 2011 has been brought on record, as Ext.A.



7. After examination of the prosecution witnesses, the appellant was questioned with the incriminating circumstances and evidences brought on record against him and his statement under Section 313 of the Cr.P.C. was recorded on two dates i.e. 12-07-2013 and 21-08-2013, in which, he denied the charge and claimed to be innocent and also claimed that he would examine the defence witnesses.

8. On behalf of defence, three witnesses were examined, who are D.W.1 Satish Prasad (own brother-in-law of the appellant), D.W.2 Ramchander Prasad and D.W.3 Umesh Kumar (uncle of the deceased). Despite the fact that all the oral evidences brought either from the prosecution side or defence side was suggestive of innocence of the appellant, the learned Trial Judge, on the basis of medical evidence and circumstances, has passed the judgment of conviction and sentence, which has been assailed in the present appeal.

9. Sri Suraj Narayan Prasad Sinha, learned senior counsel assisted by Miss Rashmi Bharti, learned counsel for the appellant, after placing entire evidence, has argued that there is no substantial evidence on record and the learned Trial Judge, only on the basis of evidence of doctor, has passed the judgment of



conviction and sentence, which is not sustainable in the eye of law. He submits that medical evidence is only corroborative evidence, which without substantial evidence, cannot be considered as the basis for conviction and sentence. Only on the basis of medical evidence, in absence of any oral and substantial evidence, the judgment of conviction and sentence cannot be approved. It has further been argued that only circumstance against the appellant is that the deceased was wife of the appellant and she died in his house, otherwise there is no other evidence. He further submits that the prosecution has miserably failed to bring on record any motive for committing the crime. He submits that in absence of establishing motive, there was no requirement for application of Section 302 of the I.P.C.

10. Sri Sinha, learned senior counsel for the appellant further submits that there is apparent inconsistency in between the oral evidence and the medical evidence. In sum and substance, it has been argued that all the witnesses, whether examined on behalf of the prosecution or defence, have come out with specific case that the deceased died due to burn injury and witnesses are consistent on the point that while the deceased in the night was boiling milk, she was caught by the fire and died due to such burn injury. It has further been argued that even mother of the deceased



namely Chandra Kali Devi, who has been examined as P.W.5 and own brother namely, Mahesh Sah, who has been examined as P.W.5 'a' have supported the defence version that daughter of P.W.5 died due to burn injury, since she was caught by fire while she was boiling milk. Even defence witness i.e. D.W.3 who is none else, but uncle of the deceased has supported the defence version that death was accidental and it was not murder. Accordingly, it has been argued that in any event, the learned Trial Judge was not required to pass the judgment of conviction and sentence only relying on the medical evidence, which according to him, is treated as corroborative evidence. Accordingly, it has been argued that the judgment of conviction and sentence is liable to be set aside.

11. Sri Ajay Mishra, learned Addl. Public Prosecutor admits that none of the witnesses have come out with a case that the deceased was burnt to death by the appellant and oral evidence goes in favour of the appellant, but fact remains that circumstances are very much evident, which is indicative of the fact that death of deceased had not occurred due to accident, but death was caused due to strangulation. He submits that oral evidence may speak lie, but circumstances never speak lie. According to him, the *post-mortem* report i.e. Ext.3 is itself indicative of the fact that death of deceased had not occurred due to burn injury, rather the deceased



died due to strangulation and after death, her dead body was burnt. He has also referred to the evidence of doctor, who conducted *post-mortem* examination namely, Dr. Ashok Kumar Tiwari. In his cross-examination, besides corroborating the fact that the deceased was done to death by strangulation and thereafter, her dead body was burnt, Sri Ajay Mishra, learned Addl. Public Prosecutor has drawn out attention to paragraph-8 of the cross-examination of the Doctor i.e. P.W.9., which is quoted hereinbelow:-

“8. Signs of asphyxia was there, base particle enters in body if body remains alive during burning. I had not found any sign of ante-mortem burn injury. As such, no carbon particle was possible into dead body.”

12. According to learned Addl. Public Prosecutor, if oral evidence is belied by medical evidence, then in such circumstances, the Court may prefer to rely on the medical evidence. In support of his submission, Sri Ajay Mishra, learned Addl. Public Prosecutor has relied on a judgment of the Supreme Court reported in **2017 (1) PLJR (SC) 177 (Mahavir Singh vs. State of Madhya Pradesh)**. He has specifically referred to paragraph-22 of the judgment, which is quoted hereinbelow:-

“22. The position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallized to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that



becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved [See : *Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259]”

13. Sri Mishra, learned Addl. Public Prosecutor, with a view to persuade the Court that in the present case, death had occurred due to asphyxia by strangulation not by burn injury, has placed reliance on a judgment of the Supreme Court reported in **AIR 1992 Supreme Court 1175 (Mulak Raj vs. Satish Kumar & Ors.)** and he has referred to paragraph nos. 9, 13 & 17 of the judgment, which are quoted hereinbelow:-

“9. These conditions vary because of the circumstances that the assailants usually employ considerably more force than would appear to be necessary to ensure that death takes place. In general terms the mark of the neck is usually of the same width as the constricting object and the depth is about half its diameter. Regarding finger-nail marks it was stated that in manual strangulation the marks of bruising will be on the front or sides of the neck, chiefly about the larynx and about it. Marks of pressure of fingers may, however be slight. The distribution of these marks when present will vary with the circumstances, and factors which will affect it include the relative position of the assailant and victim, the manner of gripping the neck, being greater if the grip is shifted or has been reapplied if the victim struggles, and the degree of pressure. The solid tissues of the neck are of extreme importance in cases of suspected strangulation. The solid structures comprise the hyoid bone and the cartilages forming the larynx. If the body is found to have died with marks on the neck which indicate manual strangulation and this is subsequently



confirmed in the mortuary and laboratory the case must be regarded as a killing by another person. It is inconceivable that anyone could die from compression of the neck by his own hand because loss of consciousness would cause relaxation of the constricting fingers.

13. Regarding the distinction between anti-mortem and post-mortem burns, he pointed out the lines of redness, of vasication and reparative processes as distinctive features. He elaborated the same later. A reading of it gives the distinction and would be concluded thus:

1. Ante-mortem burn injuries are characterised by the presence of burnt carbon particles (soot) in the trachea which is absent in the case of post-mortem burn injuries.
2. Carbodyhaemoglobin is present in the heartblood in ante-mortem burning which is absent in case of post-mortem burning.
3. Ante-mortem burns are usually red owing to the tendency of the system to rush blood towards the injured parts for repairs, which is distinctly different from post-mortem burns which are hard and yellowish in colour.
4. Blisters are prominently present in ante-mortem burns. Some blisters may appear in post-mortem burns, but there are distinctly different from ante-mortem burns, where blisters are full of protein rich fluid that contains a substantial amount of white cells, caused by the tendency of the system to rush in white cells to fight against infection. The presence of protein is so high that it becomes solid on heating. Post-mortem blisters hardly contain any protein in their fluid and



whatever fluid is contained has so little protein that on heating only a faint opalescence is seen. The fluid in post-mortem blisters does not contain any white blood cells.

5. In ante-mortem burns, reparative enzymes are present in the vicinity of burnt areas as the reparative enzymes would try to repair the burnt areas. Their presence could also be used for predicting the time since the person was burnt. Various enzymes appear at the following time:

- a) Enzyme esterase- 30 minutes.
 - b) Leucine aminopeptidase - 2 hours approx.
 - c) Acid Phosphatase - 3 hours approx.
 - d) Alkaline Phosphatase - 6 hours.
- Reparative enzymes are not detected in post-mortem burns.

6. Signs of infection in a burn injury only lead to the conclusion that the burn injury is anti-mortem in nature as there cannot be infection in a post-mortem burn injury, only putrefaction. Since infection occurs roughly 36 hours after the burn, one can easily predict the time since the burn injuries occurred.

17. The question then is, who is the author of the murder? The contention of Sri Lalit is that the respondent had no motive and the High Court found as a fact that the evidence is not sufficient to establish motive. The case is based on circumstantial evidence and motive being absent, the prosecution failed to establish this important link in the chain of circumstances to connect the accused. We find no force in the contention. Undoubtedly in cases of circumstantial evidences motive bears important significance. Motive always locks up in the mind of the accused and some



time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case. The question, therefore, is whether Satish Kumar alone committed the offence of murder of his wife? In this regard Sri Lalit pressed into service the evidence of DW. 4, the uncle of the respondent who stated that the 1st respondent, his brother and father were in the shop at the relevant time and that the respondent also stated so in his statement under S. 313 C.P.C. This evidence clearly establishes that the respondent was not at home when the occurrence had taken place. This evidence has to be considered in the light of the attending circumstances and the conduct of Satish Kumar. It is established from the evidence that the deceased and the first respondent alone were living in the upstairs room. The occurrence took place in the broad day time in their bed room. The deceased at that time was having three months old child. What had happened to the child at the time when the ghastly occurrence had taken place is anybody's guess. Normally three months child would be in the lap of the mother unless somebody takes into his/her laps for play. It is not the case. It would be probable that after the murder, the child must have been taken out and the dead body was burnt after pouring kerosene and lighting fire. Therefore, the one who committed the offence must have removed the child later from the room. Admittedly the day of occurrence is a Sunday and that too in the afternoon. Therefore, the shops must have been closed. DW-2, Post Office Superintendent, examined by the defence, categorically admitted that the handwriting of all the four telegrams was of the same person. Satish Kumar admitted that he issued two telegrams including the one to PW-15 and the two were issued by his father. Therefore, four telegrams were issued by the 1st



respondent alone. When the wife was practically charred to death an innocent and compassionate husband would be in a state of shock and would not move from the bedside of the deceased wife and others would attend to inform the relations. It is also his case that he phoned to the police station and informed of the occurrence. Evidence is other way about. An attempt was made to have the matter compromised, but failed. Thereafter they were found to be absconding. The evidence of DW-4 (maternal uncle) that the 1st respondent was in the shop thus gets falsified and his is a purgered evidence. This false plea is a relevant circumstance which militates against his innocence. The death took place in the bedroom of the spouse and the attempt to destroy the evidence of murder by burning the dead body; the unnatural conduct of Satish Kumar, immediately after the occurrence; the false pleas of suicide and absence from house are telling material relevant circumstances which would complete the chain of circumstantial evidence leading to only one conclusion that Satish Kumar alone committed the ghastly offence of murder of his wife, Shashi Bala.”

14. By way of referring to aforesaid judgments and fact of the present case, particularly the fact disclosed in the *post-mortem* report as well as evidence of P.W.9/doctor, who conducted *post-mortem* examination, Sri Ajay Mishra, learned Addl. P.P. submits that it is apparent that in the case in hand, burn injury is the *post-mortem*, whereas asphyxia caused by strangulation is *ante-mortem* injury. He has further argued that the case is based on circumstantial evidence and prevailing circumstance against the appellant is that:

- (i) the appellant is the husband of the deceased,



- (ii) his wife died while she was in the house of the appellant, and
- (iii) post-mortem report is specific that it was not an accidental death, rather death was caused due to asphyxia caused by strangulation.

15. He further submits that the doctor in his evidence has deposed that burn injury is the *post-mortem* injury. Meaning thereby that after the deceased was done to death, her dead body was burnt by the appellant. On aforesaid ground, it has been argued that though in the case, oral evidence goes in favour of the appellant, but the medical evidence itself is sufficient to persuade the Court to disbelieve on such oral evidence and on the basis of medical evidence, the learned Trial Judge has rightly passed the judgment of conviction and sentence, which requires no interference.

16. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after going through the same, *prima facie*, we are of the opinion that the learned Trial Judge has committed no error in passing the judgment of conviction and sentence. However, before proceeding, it would be necessary to discuss certain evidence, which has been brought on record.

17. In the case, alleged occurrence had taken place on 17-11-2011 at 9:00 PM. The wife of the appellant namely Sita



Devi died. Thereafter, brother of the deceased was informed and in the morning, he informed the police that his sister died due to burn injury, while she was boiling milk. Accordingly, on the basis of information given by the brother of the deceased, an U.D. case, vide U.D. Case No. 3 of 2011, was registered. Thereafter, inquest report was prepared and dead body was sent for *post-mortem* examination. During inquiry of the U.D. case, the officer incharge obtained *post-mortem* examination report, which was reproduced in the case diary, and after examining the case diary and *post-mortem* report, the investigating officer, who was S.H.O. Gobardhana Police Station, noticed that it was not an accidental death, rather it was a case of murder and as such, on 25-08-2012, he lodged a case on the basis of his self written statement, vide Gobardhana P.S. Case No. 25 of 2012. In the case, copy of U.D. case i.e. U.D. Case No. 3 of 2011 has been brought on record and got marked as Ext. 'A' through D.W.1. During the trial, almost all the prosecution witnesses consistently deposed, as if, death had occurred due to accident. Since in such cases, evidence of mother of the deceased was necessary, it would be appropriate to refer to the evidence of the mother of the deceased namely Chandra Kali Devi, who has been examined as P.W.5.



18. P.W.5 in her evidence has deposed that her daughter Sita Devi was married about 11 years back with the appellant in the village Pachrukhiya. She deposed that in the night of the date of occurrence, while she was boiling milk for her child, her sari caught with the fire and thereafter, she died due to burn injury.

19. Similarly, P.W.5'a' Mahesh Sah, brother of the deceased, in his evidence has stated that his sister was married about 10-11 years back with the appellant and she died in her in-laws' house. He stated that telephonically he got information, then he went there and saw that his sister had died. He further deposed that while boiling milk, she was caught with the fire and she died.

20. The evidence of mother and brother of the deceased i.e. P.W.5 and P.W.5'a' indicates, as if, both were witness to the occurrence. On examination of their evidence, it is difficult to infer as to whether such information was made on the basis of information, being provided by other or they were actual witness to the occurrence. In any event, they have deposed in favour of the defence and as such, there is no reason to raise any question on their evidence. Even other witnesses, who were resident of the appellant's village, almost in similar manner, have deposed, as if, they were witness to the occurrence and they stated that the



deceased died when she was caught with the fire while she was boiling milk.

21. P.W.6 Vijay Kumar Gupta and P.W.7 Prabhu Sah, both co-villagers of the appellant, have proved their signature on the inquest report, which were marked as Ext.1 and Ext.2 respectively. At this juncture, it would be appropriate to discuss about the inquest report, ofcourse it has not been formally proved. On examination of column 4 of the inquest report, it is evident that the deceased was having black hair and she was 4'6" (i.e. 4 feet & 6 inch). In column 5, there is indication that the deceased was completely burnt from leg to her neck. Meaning thereby that on face and hair, there was no such burn injury. In column 8, there is reference of kerosene oil. Those facts itself explain many concealed facts, which have further been corroborated during *post-mortem* examination. Since all other witnesses, almost in similar manner, have deposed, we think that it would be futile exercise to reiterate their evidence, but in nutshell they have deposed like P.W.5 and P.W.5'a'. In such situation, the evidence of doctor, who conducted *post-mortem*, has got much relevance, since it is his evidence, which had persuaded the learned Trial Judge to pass the judgment of conviction and sentence.



22. Dr. Ashok Kumar Tiwary on 18-11-2011 was posted as I/C Deputy Superintendent, Sub-divisional Hospital, Bagaha and on the same date at 1:30 PM, he conducted autopsy on the dead body of Sita Devi, wife of the appellant and he noticed following facts:-

1. Height – 4’ 6”
2. Hair – Black
3. Mouth – Open
4. Both eye – closed
5. Tongue - protruding from mouth

Post-mortem – burn affecting whole body except soles of the feet and head and face.

On dissection:- 1. No sign of subcutaneous burn present,
2. Subcutaneous Echymosis around neck 3” width larynx and 1st tracheal cartridge broken.
3. Major airways contained froth stained with blood.
4. Lungs and rest of the viscera congested but intact except neck structures.
5. Cardiac chambers - full of blood.
6. Stomach & bladder – empty.
7. Both external and internal genitalia – NAD.
All findings are ante-mortem in nature.

CAUSE OF DEATH - *Asphyxia due to pressure around neck by hard & blunt substance.*

TIME SINCE DEATH- 12 to 24 hours.”

23. He further stated that the *post-mortem* report was in his pen and signature and it was marked as Ext.3. In his cross-examination in paragraph – 8, which has already been quoted hereinabove, he has specifically deposed that the deceased was done to death by strangulation and thereafter, her dead body was burnt.



24. On examination of the evidence of P.W.9, there is no reason to doubt that it was not a case of death by Asphyxia due to strangulation. It is also evident that on the basis of evidence of P.W.9 as well as Ext.3 i.e. *post-mortem* report that firstly the deceased died and thereafter, she was burnt. The evidence of P.W.9 and *post-mortem* report (Ext.3) explicitly speaks that it was not a death due to accident, rather firstly deceased was murdered by strangulation and thereafter, her dead body was burnt. In the inquest report, it has been noticed that the dead body at the time of inquest was found lying on a cot. Nothing has been indicated as to whether nearby the dead body, there was any sign of burn or not. It is common knowledge that if death occurs due to burn injury, the deceased before death would run hither and thither and in such circumstances, there is every possibility of noticing mark of burn or smoke on other places also, however; nothing has been indicated in this case. The oral evidence regarding catching fire by the deceased while boiling milk is further demolished on examination of the post-mortem report. Had it been catching fire at the time of boiling milk, the flame would have proceeded from bottom to top. In such situation, after death due to such burn injury, the hair of the deceased would have been burnt, whereas, in inquest report, it



has been indicated that the dead body was having black hair, which was also noticed at the time of *post-mortem*. It can be inferred that after death, in lying position, the dead body was burnt and this is the reason that the deceased was having burn injury from leg to only neck. The accidental death has been disapproved by the doctor/P.W.9 and *post-mortem* report, which categorically speaks that firstly death had occurred, thereafter burn injury was given on the deceased. The burn injury was *post-mortem* and asphyxia by strangulation was *ante-mortem*.

25. In view of aforesaid facts and circumstances, there is no reason to place reliance on any of the oral evidence, whether evidence of prosecution witnesses or defence witnesses. It goes without saying that a man/woman may speak lie, but circumstance never speaks lie. If circumstance is specific, in such situation, instead of relying on oral evidence, the Court may lean towards circumstantial evidence.

26. Sri Ajay Mishra, learned Addl. Public Prosecutor has rightly placed reliance on the judgment of the Hon'ble Supreme Court in **Mahavir Singh's case** (*supra*) in paragraph – 22 of the judgment, which has already been quoted hereinabove. Besides this, regarding giving burn injury after death, the learned Addl. Public Prosecutor has rightly placed reliance on **Mulak**



Raj's case (*supra*) and we have already quoted hereinabove the relevant paragraphs of the said judgment.

27. In view of aforesaid facts and circumstances, we are of the considered opinion that even though oral evidence of the witnesses as also evidence of mother and brother of the deceased goes in favour of the defence, on the basis of such credible admissible medical evidence, we may not rely on the oral evidence and prefer to rely on the medical evidence and we may approve the judgment of conviction and sentence.

28. Accordingly, the judgment of conviction dated 29-08-2013 and order of sentence dated 30-08-2013 passed in Sessions Trial No. 23 of 2013/11 of 2013 (arising out of Gobardhana P.S. Case No. 25 of 2012) by Sri Triloki Nath Tripathi, learned Adhoc Additional Sessions Judge - IIIrd, Bagaha, West Champaran is, hereby, approved and appeal stands dismissed.

(Rakesh Kumar, J.)

(Anil Kumar Sinha, J.)

Anay

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