

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1452 of 2019**

Arising Out of PS. Case No.-28 Year-2016 Thana- SALAIYA District- Aurangabad

Mahendra Ram Son of Late Arjun Ram Resident Of Village- Chain Math,
Police Station- Salsiya, District- Aurangabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ramchandra Singh, Adv. Mr. Shankar Kumar, Adv. Mr. Lal Bahadur Singh, Adv.
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 08-08-2023

Heard Mr. Ramchandra Singh, learned Advocate
for the appellant/Mahendra Ram and Mr. Dilip Kumar
Sinha, learned Additional Public Prosecutor representing
the State.

2. The appellant has been convicted under
Section 302/201 of the Indian Penal Code vide judgment
dated 23.10.2019 passed by the 4th Additional District &
Sessions Judge, Aurangabad in Sessions Trial No. 137 of



2017 / 01 of 2018 and by order dated 25.10.2019, he has been sentenced to undergo R.I. for life, to pay a fine of Rs. 5,000/- and in default of payment of fine, to further suffer S.I. for three months for the offence under Section 302 of the I.P.C. and R.I. for 7 years, a fine of Rs. 5,000/- and in default of payment of fine, to further suffer S.I. for three months for the offence under Section 201 of the Indian Penal Code. The sentences have been ordered to run concurrently.

3. The deceased is the daughter-in-law of the appellant. Along with the appellant, his brother/Satyendra Ram was also put on trial who has since been acquitted on the ground that he is an old person and that for the last 20 to 25 years, he had been residing separately from the appellant/Mahendra Ram.

4. The case was lodged by the maternal uncle of the deceased namely Shailendra Singh, who has been examined as P.W.4 at the trial. In his First Information Report, he has alleged that the deceased was married to



the son of the appellant more than seven years ago and after three to four years of marriage, the deceased was being subjected to ill treatment in her matrimonial home. On 11.10.2016, he learnt that the deceased was done to death by the appellant and his brother Satyendra Ram with the help of four to five other persons of the village. In order to screen the offence from the offenders, an attempt also was made to burn the dead body.

5. On the basis of the aforementioned written report, Salaiya P.S. Case No. 28 of 2016 dated 12.10.2016 was registered for investigation against appellant and his brother (since acquitted) under Sections 302, 201 and 34 of the I.P.C.

6. At the trial, though the P.W.4 has supported the prosecution case but has candidly claimed that information about the cause of death of the deceased was given to him by the son of the deceased who according to him was six years of age. Thus, assuming every part of the statement of P.W.4 to be true, he had not seen the



occurrence and the only source of information that the deceased was attempted to be strangled and then killed was from a six years old boy who, at the time of trial, had been residing with his maternal grand-parents.

7. P.W.4 has further stated before the Trial court that he and his family members had participated in the funeral and that he had not told the police officer registering the F.I.R. that he was informed by the son of the deceased. In the same breath, he has said that the son of the deceased who for most of the times lived with his maternal grand-parents and, on the date of his deposition before the Trial court, the son of the deceased had been residing with the maternal grand-parents only. He could not name any one of the villagers of the matrimonial home of the deceased who gave information about any ill-treatment to the deceased. The husband of the deceased, according to P.W.4, had been earning his livelihood at Surat. He did not know the whereabouts of the husband of the deceased. He had also no idea



whether the deceased was being maintained by her husband or the source with which the deceased had been maintaining herself and her son in the house while she was residing with the appellant (father-in-law).

8. These parts of his deposition clearly give us an inkling that he was not on visiting terms with the deceased or members of her matrimonial home and had relied upon the version of the son of the deceased, who may not have been present at the place of occurrence to tell the truth.

9. We are at a loss to understand as to who would have actually maintained the appellant in the absence of his son who had been at Surat with his present whereabouts not being known.

10. From the circumstances, it appears that the deceased was only a helping hand for the appellant, who in his old age was living without any family, specially a major son. There would have been no reason for the appellant to have harmed the deceased in any manner



whatsoever. However, such inferences would only be in the realm of speculation.

11. In order to test whether the P.W.4 has made a correct statement, we have carefully examined the deposition of the son of the deceased, the Doctors who constituted the Medical Team and conducted the postmortem on the dead body as well as Investigation Officer of this case.

12. To begin with, we have found the son of the deceased to be, though in a position to speak but, not understanding the nature and quality of the statement. At the trial, he has disclosed his age to be six years. He had deposed before the Trial court on 16th of March, 2018; whereas the occurrence is reported to have taken place sometimes in the year 2016. If the son of the deceased was six years of age in the year 2018, he would have been only four years old in 2016. Could he have been relied upon by P.W.4 to come to the conclusion that the deceased had been strangulated and thereafter burnt to



death? The answer is in the negative. It also appears from his deposition that he had been residing with his maternal grand-parents and spoke before the Trial court only what was told to him to speak. Even at the time of trial, he had not attained the maturity of a boy who could have been relied upon for bringing home any accusation against the appellant or for that matter any other accused person. All that he had to say to P.W.4 and the Court that his mother was killed by his grand-fathers; one being the appellant and other the brother of the appellant who has been acquitted.

13. Thus, we are forced to take recourse to a detailed analysis of the deposition of the I.O. of this case namely Dilip Kumar Manjhi who has been examined as P.W.10.

14. On 12.10.2016, he was posted as Officer in-charge of Salaiya police station and claims to have learnt on telephone at 8.30 in the morning on 12.10.2016 that a lady in village Chai has immolated



herself. This information was reduced into a station diary entry and the necessary information was forwarded to the superior police officer. In order to verify the correctness of the information received by him, he proceeded to the place of occurrence, where he found the deceased dead. He conducted the inquest report in which he noted that some part of the body of the deceased was found to have been burnt. The bed which was in the room was not found to be burnt. The dead body was sent by him for postmortem examination.

15. Though there is no other evidence for us to test the correctness of the information provided by the I.O. but, it definitely carries a great weight in the circumstances.

16. During his cross-examination, the P.W.10 has stated that he learnt from the villagers that the deceased was seen by the appellant in a compromising position with one person of the village namely Abhay Kumar Singh @ Mukhia. Ashamed by this and also being



chastised by other members of the family and society, perhaps the deceased tried to kill herself and also became successful at that.

17. As noted above, this was only the rumour which was afloat in the village about which no one else except the I.O. has communicated to the court.

18. The husband of the deceased was never investigated.

19. We have nothing on record to give us any idea whether the deceased was living on her own or was being maintained by her husband. Whether the relationship of husband and wife subsisted is also not clear to us.

20. The house of the parents of the deceased also was never visited by the I.O. Even though, he had heard the rumour that the deceased had tried to commit suicide but did not bother to take the statements of the villagers regarding such information. The father of the deceased is alive but he has not made any statement



before the police nor has he been brought as a witness in the case.

21. The other witnesses, namely, Bhim Sen Singh (P.W. 1), Chandan Kumar Roushan (P.W. 5), Pintu Kumar (P.W. 6) and Pramod Kumar (P.W. 7) have been declared hostile.

22. Surjeet Kumar (P.W. 2) though has supported the fact that the deceased was killed but he had no idea as to who had killed her or in what circumstances did the deceased die. The deceased stood in the relation of sister-in-law to P.W. 2.

23. Thus, the evidence of P.W. 2 is also of no advantage to us for getting to the root of the matter as to who was responsible for the death of the deceased.

24. The *post-mortem* examination appears to have been done by set of three doctors. Surprisingly, even though the burn injuries were found on the body of the deceased and absence of any injury on any part of her body, but the three doctors could not ascertain the



cause of death. Precisely for this reason, the *viscera* was preserved. The Trial Court does not appear to have awaited or called for the *viscera* report or even if he did, it does not find mention in his judgment.

25. The burn injuries, according to two of the doctors, were found to be *post-mortem*. How could it have happened? If the deceased had made attempts at immolating herself, the burn injuries would have been *anti-mortem*. There is no explicit cause of death on record. The allegation of the deceased having been strangled is also not borne out by the medical testimony. The hyoid bone was found to be intact. Then, what could have been the possible reason for the burn injuries to have been *post-mortem*. This makes us disbelieve the opinion of the doctors, who though are experts witnesses, but appear to be toning the line of the Investigating Officer, who has registered a case of the death of the deceased because of throttling and then burning.



26. Apart from this, we must indicate that the story of ill-treatment after three to four years of the marriage of the deceased with Mithlesh Ram, who was neither made an accused nor was investigated in any manner at any point of time was stated by P.W. 4 for the first time while lodging the F.I.R. Had it been true, the parents of the deceased would have made a complaint. The deceased herself would have made a complaint, if she had not been treated well. That the husband was not available in the village and was not to be heard of, is again another indicator of the fact that he had not been residing with his wife. In that case, there could only be two inferences that either the deceased had accepted it as *fait accompli* and was completely on her own with the only protective cover of her father-in-law or that the deceased was being maintained by her husband from Surat.

27. In this circumstance, the rumour learnt by the Investigating Officer, an independent person, though



completely unconfirmed that the deceased tried to immolate herself because of shame on being caught *in-flagrante delicto*, may carry some weight.

28. The cause of death, therefore, remains unconfirmed, untested and unverified.

29. Since the conviction is under Sections 302/201 of the I.P.C., the link evidence should be complete. The prosecution has, according to us, completely failed to discharge its burden of proving the case beyond all reasonable doubts.

30. As we have noted, the deceased died a homicidal death, but who caused it is still in the wraps.

31. For the aforementioned reasons, we set aside the judgment of conviction dated 23.10.2019 and the consequent order of sentence dated 25.10.2019 passed by the learned Additional District & Sessions Judge-IV, Aurangabad in Sessions Trial No. 137 of 2017 / 01 of 2018, arising out of Salaiya P.S. Case No. 28 of 2016, dated 12.10.2016, and acquit the appellant of the



charges levelled against him.

32. The appellant/Mahendra Ram is in custody.
He is directed to be set at liberty forthwith unless his detention is required in any other case.

33. The appeal stands allowed.

34. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

35. The records of this case be also returned to the Trial Court forthwith.

36. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Vipul M. Pancholi, J)

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AFR/NAFR	AFR
CAV DATE	NA
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