

STATE OF RAJASTHAN

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v.

RAMANAND

(Criminal Appeal No. 357 of 2008)

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APRIL 11, 2017

**[ADARSH KUMAR GOEL AND UDAY UMESH LALIT, JJ.]**

*Penal Code, 1860:*

*ss. 302, 201 and 306 – Death of wife and daughter of the respondent-accused due to burn injuries – Report thereof Ext. D-1 was lodged by the respondent-accused to the Police stating that the deceased committed suicide – Thereafter brother of the deceased-wife lodged a written Report (Ext P-2) that she was harassed for dowry – After post-mortem Medical Board opined that cause of death to be Asphyxia due to strangulation and that burns were post-mortem in nature – Charge-sheets were filed u/ss. 498A, 302/34, 201 against the respondent-accused, his mother and brother, while other three brothers were charged u/s. 201/511 IPC – Trial court convicted the respondent-accused only u/s. 302 and 201 and acquitted the other accused of all the charges – High Court altered the conviction of respondent-accused u/s. 306 – On appeal, held: In view of medical evidence, the deaths could not be termed as suicide, hence conviction u/s. 306 not justified – Prosecution case was based on circumstantial evidence – The absence of evidence regarding dowry or related harassment nullifies the motive – Even if circumstances emerging from Ext. D-1 is taken against the respondent-accused, that by itself without any connecting material is not sufficient to bring home the case against respondent-accused – However strong the suspicion be, the respondent is entitled to benefit of doubt and cannot be convicted u/s. 302.*

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*Code of Criminal Procedure, 1973:*

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*s. 162 – Statement made under – Reliance on – Held: s.162 governs only the cases where statements are made to police “in the course of an investigation” under Chapter XII.*

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A            *Constitution of India:*

*Art. 136 – Jurisdiction under – Scope of – Held: Powers of Supreme Court in appeals filed u/Art. 136 are not restricted by the appellate provisions enumerated under Cr.P.C.*

B            **Dismissing the appeal, the Court**

C            **HELD: 1. The medical evidence on record is very clear and precise that deaths were as a result of strangulation, and not as a result of burn injuries. They died of strangulation and their bodies were sought to be set afire in order to create an impression as if they had died of burn injuries. The finding by the trial court was therefore completely correct. It is impossible to assume how the deceased could have strangled herself and then attempted to set herself afire. The view taken by the High Court is, therefore, wholly unjustified. Consequently there could not have been conviction of the respondent under Section 306 IPC. [Para 9][988-A-C]**

D            **2.1 The fact that the deaths are as a result of culpable homicide is beyond any doubt. The entire case of the prosecution on this count, rests purely on circumstantial evidence. It is true that the deaths have occurred in a room occupied by the respondent along with wife, and daughter. But no witness has been examined to suggest that the respondent was at or around his residence at the relevant time. The marriage was more than 10 years old and as such no statutory presumption on any count could be drawn, more particularly, when none of the prosecution witnesses had supported the case of prosecution as regards demands of dowry and harassment. Apart from strangulation marks nothing was found in the post-mortem report regarding any other bodily injury. The absence of any evidence as regards dowry or related harassment also nullifies the element of presence of any motive on part of the respondent. None of the prosecution witnesses alleged anything against the respondent nor are there any other supporting circumstances such as discovery of any relevant fact. [Para 10][988-C-F]**

E            **2.2 Ext. D-1 which was the reporting made by the respondent, undoubtedly shows that the respondent himself had opened the door and found the bodies of the deceased lying with**

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injuries. In the face of Ext.D-1 it is not possible to accept the assertion that the door was locked from inside and was pushed open by PW7 and others. Locking of door from inside would have been consistent with the theory of suicide but that theory stood demolished as a result of medical evidence.[Para 11][988-G-H; 989-A]

2.3 It cannot be said that in view of Section 162 Cr.P.C. Ext.D-1 could not be relied upon and read against the respondent. The terms of Section 162 are quite clear and govern cases where statements are made to a police officer "in the course of an investigation" under Chapter XII of Cr.P.C. Statement Ext.D-1 was neither given in the course of an investigation, nor could it be termed as a confession. Further, the cross-examination of PWs14 and 15 would show that the respondent stood by and relied upon that statement. Therefore, statement Ext.D-1 can be read in evidence. However, that by itself does not establish beyond any doubt that it was the respondent alone who was responsible for having caused the deaths of the deceased. Even if the circumstance emerging from Ext.D-1 is taken to be against the respondent, that by itself without any connecting material on record, is not sufficient to bring home the case against the respondent. [Paras 12, 13][989-B-D]

2.4 The circumstances on record do not rule out every other hypothesis except the guilt of the accused. However strong the suspicion be, the respondent is entitled to benefit of doubt and cannot be convicted under Section 302 IPC. [Para 15][990-C-D]

3. Though in a case where the prosecution is coming up against the acquittal of the accused and is praying for conviction on a graver charge, the accused is entitled to plead for acquittal. But powers of the Supreme Court in appeals filed under Article 136 of the Constitution are not restricted by the appellate provisions enumerated under the Code of Criminal Procedure or any other statute. When exercising appellate jurisdiction, the Supreme Court has power to pass any order. [Para 14][989-E-F]

*Chandrakant Patil v. State* (1998) 3 SCC 38 : [1998] 1 SCR 447 – relied on.

A *Sumer Singh v. Surajbhan Singh* (2014) 7 SCC 323 – referred to.

Case Law Reference

(2014) 7 SCC 323 referred to Para 8,  
[1998] 1 SCR 447 relied on Para 14

B CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 357 of 2008.

From the Judgment and Order dated 07.03.2006 of the High Court of Judicature for Rajasthan at Jaipur Bench in D. B. Criminal Appeal No. 20 of 2002.

C Puneet Parihar, Shiv Mangal Sharma, Milind Kumar, Advs. for the Appellant.

Sushil Kumar Jain, Sr. Adv., Puneet Jain, Ms. Chhaya Kirti, Shailender Sharma, Pankaj Sharma, Ms. Priyal B., Ms. Pratibha Jain, Advs. for the Respondent.

D The Judgment of the Court was delivered by

E **UDAY UMESH LALIT, J.** 1. The respondent was convicted by the Trial Court under Sections 302 and 201 IPC for having committed murder of his wife Anita and daughter Ekta and was sentenced to undergo life imprisonment for the offence under Section 302 and 3 years RI for that under Section 201 IPC in Sessions Case No.62 of 2000. In DB Criminal Appeal No.20 of 2002 preferred by the respondent, the High Court of Judicature for Rajasthan at Jaipur by its judgment and order dated 07.03.2006 acquitted him of the charges under Sections 302 and 201 IPC but convicted him under Section 306 IPC and sentenced him to undergo 5 years RI, which judgment is under challenge in this appeal by Special Leave.

F 2. On 21.09.2000 at about 9:11 p.m. a report Ext. D-1 was lodged by the respondent to the following effect:-

G To

The S.H.O.

P.S. Patan

Sir,

H Most respectfully I submit that my wife burnt to death this evening on 5.30 p.m. I was at my shop and my brother was also there.

My mother and younger brother's wife had gone to our house in Bihar. My wife was half mad. She was burnt to death. When the smoke arose in the house and sounds of the crying came out of the house, the neighbour came running to my shop and informed me. I went to the house, went up the stairs and pushed the door open. I saw my wife and daughter were burnt to death. The above report is produced. My marriage took place some 10 years ago on 21.09.2000.

Sd/-

Yours

Ramanand Agrawal  
S/o Shri Vishashwar Dayal  
R.S. Dabla”

3. The aforesaid report was registered in the Case Diary and appropriate steps under Section 174 Cr.P.C. were taken by PW14 Tulsi Ram who at the relevant time was Incharge of Police Station Patan. On the next day at about 6:15 a.m. a written report Ext. P-2 was received from PW2 Rakesh Agrawal, brother of deceased Anita that his sister and niece were burnt to death; that his sister was being harassed for dowry and that the respondent and his family members were responsible for the deaths of his sister and niece.

4. The report Ext. P-2 was received by PW15 ASI Rajendra Singh, pursuant to which crime was registered and investigation was undertaken. Inquest Reports Exts. P-6 and P-7 were prepared regarding the bodies of Anita and Ekta and they were sent for autopsy. Photographs of the bodies Exts. P-14 to P-19 were also taken and site plan Ext. P-21 at the place of occurrence was also prepared. The post-mortem on the bodies was conducted by a Board consisting of three doctors. As regards Anita, the report Ext. P-13 had following relevant observations:-

“Fairly built & nourished, P.M. lividity present on back of body. R.M. present all over the body. Partially burnt clothes are present on body. No smell like kerosene like substance. The whole body has burns (Post mortem in nature) except back of trunk and hips. Burns limited upto skin only. Hair of head & pubic area are partially burnt and axillary hair are totally burnt. Face is swollen. Tongue is protruded-swollen. Eyes are partially open conjunctive having patchial hemorrhage. Both hands are clinched. Bloody froth is coming out of both nostrils and mouth.”

A “In the opinion of the medical board the cause of death is Asphyxia due to strangulation (throatling)

- Burns are post-mortem in nature as there is no blister formation, no line of redness and no signs of inflammation.”

B The report Ext. P-12 regarding Ekta made following observations:-

“Fairly built & nourished, P.M. lividity present on back of Body, R.M. present all over body. Partially burnt clothes are present on body. No smell like kerosene, like substance. The whole body has burns (P.M. in nature) except back of trunk and hips. Burns limited upto skin only. Hair of head burnt partially. Face is swollen. Tongue is protruded-swollen. Eyes are partially open. Conjunctive having patechial hemorrhage. Both hands are clinched. Bloody froth is coming out of both nostrils and mouth.”

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D “In the opinion of the Medical Board the cause of death is Asphyxia due to strangulation (throating). Burns are post mortem in nature, as there is no blister formation, notice of redness and no sign of inflammation.”

5. After completion of investigation, charge-sheet was filed against six persons including the present respondent. The charges were framed against the respondent, his mother Narangi Devi and brother Vinod Kumar for the offences under Sections 498A, 302/34, 201 IPC while his other brothers Mukesh Kumar, Moolchand and Mahesh Kumar were charged for the offences under Section 201/511 IPC. They were tried in the court of Additional Sessions Judge, Neemka Thana, in Sessions Case No.62 of 2000. The prosecution examined fifteen witnesses. PWs 1, 2, 3, 4 and 5, namely, father, brother, mother, cousin and brother-in-law respectively of deceased Anita did not support the case of prosecution as regards demands of dowry or harassment. PW7, Nandlal, neighbour also turned hostile but in cross-examination stated that when the cries were heard coming from the house, he was amongst the persons who had gone to the house and opened the door. According to him the door was bolted from inside. PW10 Dr. Surendra Kumar Meena, one of the members of the Board which conducted post-mortem proved report Exts. P-12 and P-13 and stated that the cause of death was asphyxia because of strangulation and that Anita and Ekta were done to death first and thereafter their bodies were sought to be set on fire. PW12 Mahesh Sharma, photographer proved photos Exts.P-14 to P-19. PW14 Sub-

Inspector Tulsī Ram in answer to queries in the cross-examination stated, A  
“Before the registration of First Information Report, Ramanand had given  
me an application. This application is attached with the case diary.  
Aforesaid application was made under Section 174 of Cr.P.C, which is  
Ext.D-1”. Similarly PW15, Sub-Inspector Rajendra Singh in his cross-  
examination stated; “Before going to spot report Ext. D-1 had already B  
been received. The report was submitted before S.H.O.”

6. After considering the material on record including the medical  
evidence, the trial court found that both Anita and Ekta were killed by  
strangulation and that the case was of culpable homicide. As regards  
the involvement of the accused in the crime in question, it was observed C  
that there was nothing on record to suggest the involvement of accused  
Nos.2 to 6. Further, all the relations of deceased Anita having turned  
hostile and not supported the case of prosecution as regards demands of  
dowry, no offence under Section 498A was found to be have been  
established. The trial court further observed that motive for the crime D  
was also not established and in any case the death of Anita had occurred  
10 years after the marriage. While acquitting rest of the accused, the  
trial court convicted the respondent under Sections 302 and 201 IPC  
and sentenced him to suffer life imprisonment under Section 302 IPC  
and to suffer three years imprisonment under Section 201 IPC.

7. The respondent, being aggrieved filed DB Criminal Appeal E  
No.20 of 2002 in the High Court which found that charge under Section  
302 IPC was not established against the respondent. However, it was  
of the view that the circumstances on record clearly showed that the  
respondent was guilty of the offence under Section 306. Thus, while  
acquitting the respondent of the charges under Sections 302 and 201 F  
IPC it convicted him under Section 306 IPC. The respondent having  
remained in custody for more than five years and four months, the sentence  
was reduced by the High Court to the period already undergone.

8. This appeal, at the instance of State of Rajasthan challenges  
the correctness of the decision of the High Court. Relying on the decision G  
of this Court in *Sumer Singh v. Surajbhan Singh*<sup>1</sup> Mr. Sushil Kumar  
Jain, learned Senior Advocate appearing for the respondent contended  
that he was entitled to submit that the respondent ought to be acquitted  
of all the charges.

<sup>1</sup> (2014) 7 SCC 323

A 9. The medical evidence on record is very clear and precise that  
deaths were as a result of strangulation. Having gone through the post-  
mortem report, the testimony of PW10 Dr. Surendra Kumar Meena and  
the photographs Exts.P14 to P19, it is very clear that the deaths of Anita  
and Ekta were not as a result of burn injuries. They died of strangulation  
B and their bodies were sought to be set afire in order to create an impression  
as if they had died of burn injuries. The finding by the trial court was  
therefore completely correct. It is impossible to assume how Anita could  
have strangled herself and then attempted to set herself afire. The  
view taken by the High Court is, therefore, wholly unjustified.  
C Consequently there could not have been conviction of the respondent  
under Section 306 IPC.

D 10. The question then arises whether the respondent was guilty  
of the offence under Section 302 IPC read with Section 201 IPC. The  
fact that the deaths are as a result of culpable homicide is beyond any  
doubt but the question is whether the respondent could be said to be  
author of the crime. The entire case of the prosecution on this count  
rests purely on circumstantial evidence. It is true that the deaths have  
occurred in a room occupied by the respondent along with wife, Anita  
and daughter Ekta. But no witness has been examined to suggest that  
E the respondent was at or around his residence at the relevant time. The  
marriage was more than 10 years old and as such no statutory  
presumption on any count could be drawn, more particularly, when none  
of the prosecution witnesses had supported the case of prosecution as  
regards demands of dowry and harassment. Apart from strangulation  
marks nothing was found in the post-mortem report regarding any other  
bodily injury. The absence of any evidence as regards dowry or related  
F harassment also nullifies the element of presence of any motive on part  
of the respondent. None of the prosecution witnesses alleged anything  
against the respondent nor are there any other supporting circumstances  
such as discovery of any relevant fact.

G 11. We are, therefore, left with the only material, namely Ext.D-1  
which was the reporting made by the respondent. It undoubtedly shows  
that the respondent himself had opened the door and found the bodies of  
Anita and Ekta lying with injuries. In the face of Ext.D-1 it is not possible  
to accept the assertion that the door was locked from inside and was  
pushed open by PW7 and others. Locking of door from inside would  
have been consistent with the theory of suicide but that theory stood

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demolished as a result of medical evidence. We are, therefore, persuaded to accept what emerges from Ext.D-1 that the respondent himself had opened the door and found the bodies having burnt.

12. Relying on Section 162 Cr.P.C. Mr. Jain, learned senior Advocate submitted that Ext.D-1 could not be relied upon and read against the respondent. The terms of Section 162 are quite clear and govern cases where statements are made to a police officer "in the course of an investigation" under Chapter XII of Cr.P.C. Statement Ext.D-1 was neither given in the course of an investigation, nor could it be termed as a confession. Further, the cross-examination of PWs 14 and 15 would show that the respondent stood by and relied upon that statement. We do not see any difficulty why statement Ext.D-1 could not be read in evidence.

13. However, that by itself does not establish beyond any doubt that it was the respondent alone who was responsible for having caused the deaths of Anita and Ekta. Even if the circumstance emerging from Ext.D-1 is taken to be against the respondent, that by itself without any connecting material on record, is not sufficient to bring home the case against the respondent.

14. Mr. Jain, learned Senior Advocate is right in his submission that in a case where the prosecution is coming up against the acquittal of the accused and is praying for conviction on a graver charge, the accused is entitled to plead for acquittal. While considering similar plea for acquittal, though this Court negated the plea on facts, the legal position was summed up by this Court in *Chandrakant Patil v. State*<sup>2</sup> as under:

"7. Powers of the Supreme Court in appeals filed under Article 136 of the Constitution are not restricted by the appellate provisions enumerated under the Code of Criminal Procedure or any other statute. When exercising appellate jurisdiction, the Supreme Court has power to pass any order. The aforesaid legal position has been recognized by a Constitution Bench of this Court in *Durga Shankar Mehta v. Raghuraj Singh*<sup>3</sup> and later followed in a series of decisions (vide *Arunachalam v. P.S.R. Sadhanantham*<sup>4</sup>, *Delhi Judicial Service Assn. v. State of Gujarat*<sup>5</sup>).

<sup>2</sup> (1998) 3 SCC 38

<sup>3</sup> AIR 1954 SC 520

<sup>4</sup> (1979) 2 SCC 297

<sup>5</sup> (1991) 4 SCC 406

A           **9.** It is now well nigh settled that Supreme Court's powers under Article 142 of the Constitution are vastly broad-based. That power in its exercise is circumscribed only by two conditions, first is, that it can be exercised only when Supreme Court otherwise exercises its jurisdiction and the other is that the order which Supreme Court passes must be necessary for doing complete justice in the cause or matter pending before it.....”

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C           **15.** In view of medical evidence on record, the deaths could never be termed as a case of suicide and consequently the conviction of the respondent under Section 306 was wholly unjustified. At the same time there is nothing on record to conclusively establish that the respondent was the author of the crime. The circumstances on record do not rule out every other hypothesis except the guilt of the accused. However strong the suspicion be, in our view, the respondent is entitled to benefit of doubt and cannot be convicted under Section 302 IPC.

D           **16.** Thus, while rejecting this appeal, we acquit the respondent of the charge under Section 306 IPC. The appeal is disposed of in these terms.

Kalpna K. Tripathy

Appeal disposed of.