

PRABHUDAYAL AND OTHERS

v.

STATE OF MAHARASHTRA

[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

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MAY 14, 1993

Indian Penal Code 1860—Ss. 302, 498A, 201 read with 34 and S. 306 read with 34—Burning of young married woman—Whether death by burning or strangulation—Whether suicide or homicide—Held, facts indicate homicide, and death by strangulation preceding burning.

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Circumstantial Evidence—Held, cumulative effect or circumstances negatives innocence of father-in-law and husband—Mother-in-law and Sister-in-law may not have participated, hence, acquitted.

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Sangita was married to accused 2 on 28th April, 1984. In the intervening night of 14/15 September 1984, the accused found Sangita burning. Sangita's body suffered 100% burns and the smell of kerosene was noticed even in the spot panchnama. There had been problems relating to dowry, and she had complained of ill-treatment and of being beaten because of failure to pay the dowry amount.

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The trial judge acquitted accused 1-4 - her father-in-law, husband, mother-in-law and sister-in-law respectively.

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The High Court examined the evidence afresh, while castigating the trial Judge for having gone merely on the statement of the Public Prosecutor that only a case under Ss. 306, 498-A and 34 was made out. The High Court convicted the accused under S.302 r/w 34, S.201 r/w 34 and 498-A r/w 34.

Partly dismissing the appeal, this Court.

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HELD : 1. It was a case of murder and not suicidal death.

It is not possible that there were no 'cries' from the deceased while she was burning. This is not possible even in a case of suicide.

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Some of the symptoms of internal and external injuries are common in

case of strangulation and burns. But some symptoms that occur in the case of strangulation, and not in case of burns, are present in this case.

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Dr. K.S. Narayan Reddy, The Essentials of Forensic Medicine and Toxicology 6th edn. p. 55, relied on.

2. The prosecution rests its case only on circumstantial evidence. Therefore, it is necessary to examine the impelling circumstances attending the case and examine whether the cumulative effect of those circumstances negatives the innocence of the appellants and serves a definite pointer towards their guilt and unerringly leads to the conclusion that with all human probability the offence was committed by the appellants and none else.

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State of U.P. v. Dr. Ravindra Prakash Mittal, JT (1992) 2 SC 114 at 121, applied.

Taylor, Medical Jurisprudence, relied on.

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On an appreciation of the circumstances which are established as being closely linked to one another, the complicity of appellants 1 and 2 is not in doubt. But it is not necessary that appellants 3 and 4 also participated in the murder of the deceased. They are given the benefit of doubt and accordingly acquitted.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 738 of 1992.

From the Judgment and Order dated 16.11.1992 of the Bombay High Court in CrI. A. No. 148 of 1989.

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A.N. Mulla, Ms. Shefali Khanna and J.M. Khanna for the Appellants.

S.B. Bhasme, S.M. Jadhav and A.S. Bhasme for the Respondents.

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The Judgment of the Court was delivered by

YOGESHWAR DAYAL, J. This is an appeal by the four accused persons against the judgment of the Bombay High Court dated 16th November, 1992. Appellant No.1 who was accused No. 1 was tried for the offence of having

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- A** committed the murder of his daughter-in-law Sangita, wife of appellant No.2 who was accused No.2, during the night between 14th September, 1984 and 15th September, 1984 at the residential house of the appellants at Murtizapur with common intention and also for having treated her with cruelty on account of dowry amount. In the alternative the appellants were also charged for the offence of having abetted the deceased Sangita in commission of suicide by subjecting her to cruelty. Appellant no.3, who was accused No.3, is the wife of accused No.1 and appellant No.4, who was accused No. 4, is their daughter. Appellants 1 to 4 are hereinafter called accused Nos. 1 to 4.

The story of the prosecution was as follows:-

- C** The accused run a printing press at their residence. Marriage of accused No. 2 was settled with the 5th daughter of Madan Lal (PW. 8). Few days prior to the settlement of the marriage, marriage of her elder sister was also settled. As such marriages of both the daughters i.e. Sangita and Hemlata were celebrated at Paratwada on 28th April, 1984. Talk over the marriage had taken place about a month prior to the marriage and the same was finalised after about 2 or 3 days of such talks. At the time of finalisation, accused No. 1 demanded Rs. 20,000 by way of hard cash as dowry, besides other articles, and he himself had given such demands in writing vide Ext. 73. Though agreed, Madan Lal, father of the deceased could not give Rs. 20,000 at the time of marriage. He also could not give the gold agreed, though he assured to comply with the demands later on getting the crops.
- D** After the marriage, on account of the month of Shrawan, and as per custom, Sangita resided with her parents. It was during her stay after the marriage that she was found disturbed and sullen. Though she herself did not give out the reason therefor, but on insistence by the father to know the reason she told him that accused No. 1 had an evil eye on her and that other members of the family used to beat and ill treat her because of the failure on the part of Madan Lal to pay the dowry amount. Though Madan Lal assured that he would come down to Murtizapur and pursued the accused, but he could not visit Murtizapur. After the month of Shrawan, Sangita returned to Murtizapur but no communication was made about her safe return by the accused persons to her father. The accused persons had a telephone connection and Madan Lal (PW.8), two - three days prior to the date of the incident contacted accused No. 1 on telephone. Accused No. 1 talked angrily with Madan Lal. Madan Lal then requested accused No. 1 to call Sangita on telephone. Sangita came on phone and in answer to his query she broke down and started weeping and told Madan Lal as to why he did not send 'Ganesh Chaturthi Neg'. 'Neg' means a customary offer that the father of the bride has to pay on an auspicious day. It varies according to financial capacity of the father. He told

Sangita that he had committed a mistake and assured that he would be sending it immediately. On the next day he had got drawn a draft of Rs. 101/- on State Bank of India. Ext. 74-A is the said draft. It was thereafter when Madan Lal was on a visit to Amravati that Madan Lal received a message about Sangita having got burnt on 15th September, 1984.

During the night between 14th and 15th September, 1984 at about midnight the accused found Sangita not in her bed and smell of burning. They found that in the rear side open space Sangita was burning and lying down. According to the defence the doors were closed from inside and there was no access to the said open space. Accused No.1 informed the police about the occurrence that he had seen through the window opening on the open space. Accused No.1 at about 3.45 a.m. on 15th September, 1984 submitted a report (Ext.82) to the police wherein he had stated that about 2.10 a.m. in the night Sangita was found to be burnt and died in the bath-room. PW.9, Mundheh, the Investigating Officer, gave instructions to the accused persons not to disturb the situation. Initially on the report of the accused, accidental death was registered. PW9 when reached the spot on 15th September, 1984 at about 10.00 a.m. he made spot panchanama vide Ext.63. He also found a postcard, half burnt, (Ext. 62) by the side of the dead body. He thereafter drew inquest panchnama (Ext.64). PW. 5 Bhanudas acted as a panch. PW.9 having convinced that it was a case of murder, lodged a report on behalf of the State registering the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. Dr. Lande, PW.3, on 15th September, 1984 at about 5.00 p.m. conducted the post-mortem.

The Additional Sessions Judge on the basis of the material filed with the challan, on 30th September, 1984 framed a charge under Sections 302, 489-A and 201 read with Section 34 of the Indian Penal Code and thereafter recorded the evidence of PWs. 1 to 8. Thereafter by an order dated 22nd August, 1988 the trial court framed an additional charge for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. The accused persons challenged the framing of the additional charge before the High Court but the challenge was defeated. The accused persons were accordingly tried. Their defence through out was a total denial.

It appears that during arguments the Prosecutor did not think it proper to press for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. According to the Prosecutor the only case made out was for the offences punishable under Sections 306, 498-A read with Section 34 of the Indian Penal Code. The trial court endorsed the view of the Public Prosecutor and did not

- A discuss the relevant evidence at all on the charge of Section 302 and recorded a finding of acquittal in that behalf. He also held that the charge of Section 201 also did not survive.

- B The learned trial Judge also held that the prosecution has not been able to prove that the accused persons with their common-intention treated Sangita with cruelty or thereby abetted her to commit suicide. He accordingly acquitted all the accused persons for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

- C The State filed an appeal against their order of acquittal and the High Court on appeal castigated the trial Judge for having gone merely on the statement of the public Prosecutor without applying his own mind on the evidence. The High Court examined the evidence afresh.

- D The High Court posed a question as to whether the nature of death of Sangita was suicidal or homicidal and ultimately gave a finding that it was a case of homicidal death and found all the four accused guilty under Section 302 read with Section 34 and Section 201 read with Section 34. The accused were also found guilty under Sections 498-A read with Section 34. For the offence under Section 302 read with Section 34 all of them were sentenced to rigorous imprisonment for life and different fines. For the offence under Section 201 read with Section 34 all the accused persons were sentenced to rigorous imprisonment for three years and each of them was fined Rs. 1,000/-. For the offence under Section 498-A read with Section 34 all of them were sentenced to one year rigorous imprisonment and a fine of Rs. 2,000.

- F Learned counsel for the defence, however, submitted before the High Court that the charge under Section 302 read with Section 34 did not survive in view of the concession made by the Prosecutor and also in view of the framing of the additional charge under Section 306 read with Section 34. It was also submitted that the framing of the additional charge negated the theory of murder in pith and substance.

- G The High Court, however, negated this submission and on consideration of the evidence convicted all the accused persons as stated above.

- H Body of Sangita suffered 100% burn injuries and smell of kerosene was even noticed in the spot panchanama. The description 100% burn does not really fully

convey the condition of the body. As per the inquest report the dead body was lying on its back in the open court-yard at the back side of the house of the accused. Both the legs were partly stiffen. Both the hands were partly bent and lying at side. Hairs on the head burnt and even fleshy portion is also burnt at some places. There was slight hair at some portion of head. Complete body was burnt and skin on it also peeled up. Face had became red and black. Eyes were closed and burnt. Nose was burnt and blood was cozing from the nose and mouth. Tongue was slightly protruding out.

Brassier of the left side was totally burnt and right side was partly burnt. Ash of burnt cloth was visible on stomach. A partly burnt small piece of the border of saree was lying there. Some pieces of saree, burnt and sticking each other, were lying on the stomach. Skin on palm of both hands was peeled up and was appearing reddish. Skin on the complete body was burnt and peeled up. On observing the body by turning its upside down, the complete body was burnt from back side. On observing the private parts of the deceased through Pancha No. 3 it was stated that private parts were burnt and there was no injury and to ascertain the actual cause of death, the dead body was sent to the Civil Surgeon, Murtizapur for post-mortem. According to Dr. Lande, who conducted the post-mortem, on opening of trachea black particles were found. He recorded that probable cause of death was 100% burn with burn shock with asphyxix.

On the basis of medical evidence the High Court again felt the necessity to ascertain whether the act of pouring kerosene oil was voluntarily by the victim or the act of a third person. The High Court felt that the trial court has not even discussed the medical evidence or the inquest report and hastily reached the conclusion that it was a case of suicidal death. According to the High Court the entire approach of the trial court was thoroughly unsatisfactory and grossly erroneous. After going through the evidence the High Court gave the following findings :-

That the deceased could not control her emotional out-burst even during the presence of her father -in-law while talking on telephone. The deceased was a young girl of 20 years. A determination to suffer extreme pain in silence could not be a matter of speculation. "In third degree injuries, as per Dr. Lande, the victim suffers extreme pain. Such injuries will make the person to give out cries and shouts for help." The shouting and crying of the deceased was not only obvious but inevitable. Undisputedly, none had heard the cries or shouts of the deceased while she was in flames. This circumstance alone does not support the probability of suicidal death.

A The trial court has wrongly read the contents of letter Ext. 62 and its interpretation is highly illegal.

B Undisputedly Sangita returned from Paratwada after "Shrawani Mass" just a week before the incident, probably by 7th September, 1984. She was subjected to insinuation and accused used to refer her as "awara", "loafer", "badmash". She wanted to convey this to her father through post card (Ext.62) which seemingly not delivered. By this letter she requested her father not to visit Murtizapur. This letter never reached post office and the message could not be passed to Madan Lal, PW. 8. Before accomplishing her design to convey this message, she could not bring an end to her life. Sangita could not simply think of committing suicide while in possession of Ext.62.

C Sangita at the time of incident, as per the post mortem report, was having a pregnancy of 3-4 months and this is also not in tune with the act of commission of suicide.

D The Sessions Judge omitted to discuss the complete evidence of Dr. Lande and the post mortem report Ext.50. As per post mortem report the eye-ball and tongue of the deceased were protruding. Dozing of the blood was found from the nose and mouth. In case of death due to burning such injuries cannot be sustained.

E Sangita was assaulted before she was set on fire. There might be a definite attempt to cause death by strangulation before pouring kerosene oil on her person. Relying of the evidence of PW.1, Shivraj, a neighbour who heard a shriek of woman as a result of strangulation coming from the house of the accused. Taking into account the medical evidence read with the testimony of PW.1, Shivraj, Sangita met with the homicidal death.

F A ball of cloth half burnt was also found by the side of the body. The ball was used for gagging her mouth as a precautionary measure to handicap her from raising cries or shouts. PW.5, Bhanudas, had also noticed dragging marks in the court-yard and the deceased after assault was dragged and kept at the spot.

G While in flames Sangita did not make any movement. She was completely motionless.

H The latching of doors of the compound was not accepted as an act of the deceased. Latching of doors and pouring of kerosene after assault was a farcical venture skillfully and conveniently made to bring colour of suicide to the incident.

The High Court then posed the question as to who is responsible for homicidal death of Sangita. It was held that it could not be an act of an individual. It was joint venture. There is no direct evidence. Undisputedly the payment of Rs. 20,000/- was not made nor the other items mentioned in Ext. 73 were given till the date of incident. On her second visit, the deceased had disclosed to her father, Madan Lal, that the members of in-laws' family had beaten and ill-treated her for the reason of non-fulfillment of dowry and other articles. A reading of the letter indicates that the accused persons had very serious grievance against Sangita and her parents for non fulfillment of dowry demands.

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Recovery of handkerchief at the instance of accused No. 1 in pursuance of a disclosure statement and the seizure thereof vide Ext.69 from a drawer of the table of the office. The handkerchief was smelling kerosene oil. It was concealed at a place which was not normally or ordinarily used for keeping the handkerchief.

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This handkerchief was used at the time of the incident.

None of the accused persons made any attempt to reach the spot even though they noticed the death of Sangita. They merely allowed the body to be burnt. Accused persons had quoted exact time of death in Ext.82 which means that they were mentally alert and conscious of the happening in the house.

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The refusal to disclose the death of Sangita to the chowkidar of the locality, PW.2, Bahadursingh. The meeting with chowkidar Bahadursingh was falsely denied in the statement under Section 313 of the Code of Criminal Procedure.

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Homicidal death occurred by Sangita while she was in their custody. The incident with its gravity and extent cannot in any manner go unnoticed. As such the accused persons were duty bound to offer plausible explanation. Their action was concerted, well thought out, well planned.

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With the aforesaid findings all the accused persons were found guilty by the High Court and the appellants have come up in appeal before this Court.

This court on application of appellant Nos. 3 and 4 i.e. mother-in-law and sister-in-law of the deceased, admitted them to be on bail.

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Apart from the inferences noticed by the High Court there are certain other features in the post mortem report Ext. 15 which may also be noticed at this stage. It is stated in paragraph 13 of the post-mortem report that the whole of skin of face

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- A was burnt and covered at places with black soot. Eye ball slightly protruding. Tongue was protruding from mouth. Blood stained discharge from nose and mouth. In paragraph 17 it is noticed hairs of the scalp, eye lashes, both ears, eyes, whole neck, whole chest, whole abdomen suffer from burns. Buttock and pubic hairs also burnt. Black soot was present over burnt area of face, chest, abdomen. In paragraph 19 it is stated Brain & Meninges congested. In paragraph 20 it is stated Larynx, Trachea and Bronchi-congested, on opening troches, black particles seen inside human. Right lung, left lung-congested. *Right ventricle of the heart was full whereas left was empty*. In paragraph 21 it is stated liver and gall bladder-congested, pancreas and suprarenals - congested, spleen - congested, kidneys - congested and bladder - empty, i.e. parenchymatous organs show intense venous congestion.

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Dr. K.S. Narayan Reddy, M.D., D.C.P., M.I.A.F.M., F.I.M.S.A., F.A.F.Sc., Professor of Forensic Medicine, Osmania Medical College, Hyderabad in his well known treatise THE ESSENTIALS OF FORENSIC MEDICINE AND TOXICOLOGY, Sixth Edition at page 255 gives descriptions of internal as well as external symptoms of manual strangulation. At page 255 while dealing with signs of asphyxia, the learned author observes : "The face may be livid, blotchy and swollen, the eyes wide open, bulging and suffused, the pupils dilated, the tongue swollen, dark-cloured and protruded. Petechial hemorrhages are common into the skin of the eyelids, face, forehead, behind the ears and scalp. Bloody froth may escape from the mouth and nostrils and there may be bleeding from the nose and ears. The hands are usually clenched. The genital organs may be congested and there may be discharge of urine, faeces and seminal fluid." While internal injuries described little later included as under :-

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"The larynx, trachea and bronchi are congested and contain frothy, often blood stained mucus. The lungs are markedly congested and show ecchymoses and larger subaerial hemorrhages. Dark fluid blood exudes on section. Silvery-looking spots under the pleural surface due to rupture of the air cells which disappear on pricking, are seen in more than 50% cases. The parenchymatous organs show intense venous congestion, and in young persons ecchymoses are usually seen on the heart and kidneys. The brain is congested and shows petechial hemorrhages. The right side of the heart is full of dark fluid blood and the left empty. Both the cavities are full if the heart stopped during diastole."

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Whereas in burn injuries, the learned author at pages 237-238 observes, "the

brain is usually shrunken, firm and yellow to light brown due to cooking. The dura matter is leathery." (dura matter is meninges of the brain). If the death has occurred from suffocation, aspirated blackish coal particles are seen in the nose, mouth and whole of the respiratory track. Their presence is proof that the victim was alive when the fire occurred. The pleurae are congested or inflamed. The lungs are usually congested, may be strunken and rarely anemic..... Visceral congestion is marked in many cases..... The heart is usually filled with clotted blood. The adarnels (glands above kidneys) may be enlarged and congested.

Some of these symptoms or internal and external injuries are common in case of strangulation and burn like face is swollen and distorted, the tongue protruded, the lungs are usually congested, visceral congestions is marked in many cases.

What is to be noticed in the present case is that there are hardly "any cries" as per the defence also by the deceased. This is not possible even in a case of suicide. Even if the burns are inflicted with suicidal intent the victim is bound to cry out of pain. Admittedly there was no cries and, therefore, it was not a case of suicidal burn but the deceased was put in a condition where she could not cry and yet get burnt by third party.

As is clear from the aforesaid commentary of Dr. K.S. Narayan Reddy that if it was a case of merely burns the blood of the heart would have got clotted. Even the post-mortem report does not say that asphyxis was due to burn. Coupled with all the internal injuries which occur in the case of strangulation, are present in this case.

As pointed out by the High Court there is no direct evidence to connect the appellants with the offence of murder and the prosecution entirely rests its case only on circumstantial evidence. There is a series of decisions of this Court propounding the cardinal principles to be followed in cases in which the evidence is of circumstantial nature. It is not necessary to repapitulate all those decisions except stating the essential ingredients as noticed by Pandian, J. in the case reported as *The State of Uttar Pradesh v. Dr. Ravindra Prakash Mittal*, JT (1992) 2 SC 114 at 121, to prove guilt of an accused person by circumstantial evidence. They are :-

"(1) The circumstance from which the conclusion is drawn should be fully proved ;

(2) the circumstances should be conclusive in nature ;

A (3) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence ;

(4) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused."

B Now let us examine the impelling circumstances attending the case and examine whether the cumulative effect of those circumstances negatives the innocence of the appellants and serves a definite pointer towards their guilt and unerringly leads to the conclusion that with all human probability the offence was committed by the appellants and none else.

C There is no doubt that when the incident occurred there was no outsider in the house. The circumstances which are established as having closely linked up with one another may be noticed :

D 1) The motive for the occurrence.

2) The place where the tragic incident occurred was in possession and occupation of the appellants.

E 3) The occurrence had happened in the wee hours when body else would have had ingress at the place where the incident allegedly occurred.

4) The appellants admit their presence.

F 5) The positive features, which occurred, had it been a pure case of burning, there would be evidence of vomiting.

6) The positive opinion of the doctor that the death was due to asphyxix as well apart from 100% burns.

G 7) The deceased was carrying fetus of 3-4 months old.

H 8) The extensive use of kerosene as seen from the burn shows that the deceased was practically

drenched as sort of a bath with kerosene.

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- 9) Total absence of any shout or cries except one which was heard by way of strangulation by PW. I.

- 10) Blood in heart was not found clotted. Right ventricle heart was full of blood but left ventricle was empty.

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- 11) Besides total burning of neck was to destroy evidence of attempted strangulation.

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- 12) In burn brain is usually shrunken and firm whereas in strangulation it is congested.

As noticed by Pandian, J. in the aforesaid decision, opinion of Taylor in *Medical Jurisprudence* is quoted below. It reads thus:

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"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."

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By the time a person could take a bath of kerosene she is likely to get fainted and would not be in a position thereafter to burn herself. A total burning of the face and the neck shows that even at portions where she was not wearing any clothes were not burnt. It could only be possible if she had poured kerosene on her head and face also.

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It is not understood as to how the unposted post card found near the dead body was not burnt when the whole body had got burnt. It in fact indicates that the planting of the post card was to show that it was a case of suicidal death.

In passes all human probabilities that the appellants have satisfied themselves by watching through the window the burning of daughter-in-law without any due and cry or without and serious attempt to save her.

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We are thus satisfied that it was a case of murder and not suicidal death. So far as the accomplicity of appellants 1 and 2 are concerned, there is no doubt. But

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A it is not necessary if appellant Nos. 3-4 i.e. mother-in-law and sister-in-law of the deceased have also participated in the murder of the deceased.

For the aforesaid reasons we dismiss the appeal on behalf of appellant Nos. 1 and 2 but give benefit of doubt to appellant Nos. 3 and 4 and accept the appeal on their behalf. They are accordingly acquitted. The convictions and sentences of

B appellant Nos. 1 and 2 are upheld.

U.R.

Appeal dismissed.