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**(2015) 12 AHC CK 0042**  
**In the Allahabad High Court**  
**Case No : Criminal Appeal No. 551 of 1983**

Jiya Lal

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 11-12-2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313  
Evidence Act, 1872 — Section 106  
Penal Code, 1860 (IPC) — Section 201, 302

**Citation :** (2016) 1 ACR 354 : (2016) 1 ADJ 847 : (2016) 93 ALLCC 267

**Hon'ble Judges :** S.K. Gupta and Naheed Ara Moonis, JJ.

**Bench :** Division Bench

**Advocate :** K. Kapoor, for the Appellant

**Final Decision :** Dismissed

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## Judgement

S.K. Gupta, J.—This criminal appeal arises out of the judgment and order dated 28.2.1983 passed by Additional Sessions Judge, Jalaun at Orai in Sessions Trial No. 139 of 1982 (State v. Jiya Lal) whereby the appellant was convicted and sentenced to undergo four years rigorous imprisonment under Section 201 I.P.C. and imprisonment to life for offence under section 302 IPC. Both the sentences were directed to run concurrently.

2. The prosecution case, in brief, is that the accused Jiya Lal was married to Smt. Phool Kunwar, daughter of Tulain about 10-15 years ago. He, however, developed some illicit relation with the wife of his brother. On 11/12-7-82 at about midnight accused Jiya Lal committed murder of his wife Smt. Phool Kumar in his house by throttling. After committing her murder, the accused in order to show it as suicide burnt the dead body of the deceased by sprinkling kerosene oil over it and lodged a false report with the police on 12.7.1982 at 10 A.M. In the report, the accused appellant stated that Smt. Phool Kunwar had a boil on her right thigh which could not be cured in spite of long treatment, as a result thereof his wife. Smt. Phool Kunwar committed suicide due to deep depression and dejection.

3. The police consequently registered a case and took up the investigation. The dead body of Smt. Phool Kunwar was then sent for Post Mortem examination. The result of post-mortem examination revealed that the cause of death was asphyxia because of blockage of the air passage at the neck by some external pressure. In view of this, the police submitted a charge sheet against Jiya Lal himself who had lodged the First Information Report.

4. The accused pleaded not guilty to the charges and claimed that he was innocent.

5. The prosecution had examined nine witnesses in this case. They are P.W. 1 Smt. Parwati, mother of the deceased, P.W. 2 Smt. Ramkali, sister-in-law of the deceased, P.W. 3 Baladhar, brother of the deceased, P.W. 4 Asharfi Lal, P.W.5, Dr. A.K. Tewari, who conducted the post-mortem examination of the deceased Phool Kunwar, P.W. 6 R.P. Arya, Investigating Officer, P.W. 7 Ram Sewak, scribe of F.I.R. (Ext. Ka 5), P.W. 8 Ramkesh and P.W. 9 Head constable Har Govind.

6. Out of the aforementioned witnesses first four i.e. P.W. 1 to P.W. 4 were declared hostile by the prosecution as they did not support prosecution version as was expected from them. The Prosecution allegation is that these witnesses have colluded with the accused and have for some consideration decided not to speak truth in the court.

7. P.W. 5 Dr. E.A.K. Tewari conducted the postmortem of the deceased Smt. Phoolkunwar on 12.7.1982 at about 12.45 P.M. According to him, the deceased was aged about 24 years. She was average built, young female who had died about 18 hours before the examination. According to him, the cause of death was asphyxia due to blockage of air passage at neck, due to some external pressure. The following relevant observations were noted in the post-mortem report by the P.W. 5 Dr. E.A.K. Tiwari;

"External Examination:--

(i) Rigor mortis passed off from upper extremity but was present in inferior extremity.

(ii) Eyes closed and conjunctive deeply congested.

(iii) Frothy blood coming out from nose and mouth

(iv) Tongue protruding about 1" between teeth.

(v) Lips and nails blue.

(vi) Faecal matter coming out from anal orifice.

(vii) Piece of charred cloth sticking to abdomen.

ANTE-MORTEM injuries were found on neck:--

(i) Internal examination of the neck showed muscles of both sides show

extravasation of blood which was also present by the side of trachea.

(ii) Fracture of thyroid bones.

(iii) Fracture of hyoid bones.

(iv) Mucus membranes of these and trachea deeply congested.

The neck also had IIInd and IIIrd degree postmortem burns.

(a) The external examination further showed that post mortem burns on face, both superior extremity, front upper part of chest. The burns on these part were of II and III degree.

(b) Abdomen and chest had IV and Vth degree burns on an area of 20cm x 10 cm.

(c) Left inferior extremity had IVth and Vth degree burns involving more than in leg leading to complete charring of the leg.

(d) Right lower extremity had IVth and Vth degree burns upto upper part of leg, lower 2/3rd of leg was almost completely charred and separated in the lower 1/3rd but attached by a few charred tags of soft tissues. Upper part of right thigh also showed IV degree burns.

(e) Buttocks and lower part of back did not show any sign of burns.

(f) Black soot was present covering burnt area. The total burnt area was about 70%. No vesicles found and no line of redness could not seen anywhere. No other mark of external injury could be seen.

The other important thing observed in the internal examination are:--

(a) Membrances congested.

(b) Brain-markedly engorged.

(c) Pleura congested.

(d) Larynx and trachea as described under neck.

(e) Bronchi contains frothy mucus.

(f) Right lung markedly congested exuding bloody froth.

(g) Left lung markedly congested.

(h) Left pericardium- congested.

8. The doctor in his statement said that burn injuries were definitely post-mortem injuries. Giving reasons for his opinion the Doctor said that no vesicles were found any where on the body and no line of redness could be seen anywhere.

9. The accused appellant in his statement under Section 313 CrPC has denied the

allegations of the prosecution and has stated that P.W. 8 Ramkesh was inimical to him as both were the witnesses of the opposite parties in their case between Badlu and Ram Sewak. He has further stated that since his marriage, his deceased wife Smt. Phoolkunwar was suffering from an acute boil on her thigh which could not be cured despite medical treatment including operations due to which she committed suicide.

10. After appreciating the entire evidence on record, the trial court came to the conclusion that the appellant is guilty for the offence punishable under Sections 302 and 201 IPC and accordingly, convicted him. Hence the present appeal.

11. Learned counsel for the appellant has submitted that a false, frivolous and concocted story has been set up by the prosecution and despite there being no material evidence against the appellant, he has been falsely convicted in the present case. It was further submitted that the appellant himself was the informant and immediately after the incident, he tried to rescue his wife when she set herself on fire. In the process of rescuing her, he also suffered burn injuries and thereafter he himself lodged the First Information Report regarding the incident. It was further submitted that there is no direct, cogent and convincing evidence against the appellant which may indicate that the appellant has committed the alleged offence. It was further submitted that all the four witnesses namely P.W. 1 Smt. Parwati, mother of the deceased, P.W. 2 Smt. Ramkali, sister-in-law of the deceased (Bhabhi), P.W. 3 Baladhar, brother of the deceased and P.W. 4 Asharfi Lal, before whom the appellant made extra judicial confession regarding the alleged incident, have turned hostile and have not supported the prosecution story. Despite the aforesaid fact, the court below without applying his mind arbitrarily and illegally convicted the appellant under Sections 302 and 201 IPC. It was further submitted that the opinion of the P.W. 5, Dr. A. K, Tewari, who conducted the post-mortem examination of the deceased Phool Kunwar is against the medical jurisprudence and his opinion cannot be taken as gospel truth. It was further submitted that due to intensive heat and burns suffered by the deceased Phool Kunwar, the thyroid bone of the deceased got fractured, as such, no role can be assigned to the appellant of causing murder of his wife. It was further submitted that P.W. 8 Ramkesh is a chance witness and in fact he has been set up by the prosecution to give credence to the prosecution story. It was further submitted that P.W. 8 Ramkesh was inimical towards the appellant as both were the witnesses of the opposite parties in the case between Badlu and Ram Sewak due to which he maliciously deposed against the appellant.

12. Per contra, Sri Rajeev Gupta, learned AGA has submitted that the appellant after strangulating the deceased, in order to conceal the evidence against him, caused burn injuries to the deceased and thereafter he himself lodged the FIR to establish a case of suicide and not homicide. He further submitted that P.W. 6 Mr. R.P. Arya, Investigating Officer, after investigation came to the conclusion that the appellant himself has committed the murder of his wife by strangulating her.

He further submitted that the fracture of Hyoid and Thyroid bones clearly establishes that it was a case of strangulation and not suicide. He further referred to the post-mortem report as well as the statement of P.W. 5 Dr. A. K, Tewari to indicate that the deceased was subjected to strangulation and all the symptoms found on the body of the deceased show that it was a case of strangulation and the burn injuries sustained by the deceased were post-mortem injuries and not ante-mortem injuries. In support of his contention, he further referred to the Modi's Medical Jurisprudence and Toxicology, 23rd Edition. It was further submitted that the defence has not placed any evidence on record to show that the informant had suffered any burn injuries while rescuing the deceased as it was being claimed by him. It was further submitted that the appellant, after strangulating the deceased, tried to mislead the prosecution by burning the body of the deceased and giving it the colour of suicide, as such, adverse inference should be drawn against him.

13. While referring to Section 106 of the Evidence Act, it was further submitted by the learned AGA that the appellant failed to show that the deceased sustain the fracture on his thyroid bone due to the intensive heat and burn. He further submitted that the prosecution witnesses namely P.W. 1 Smt. Parwati, mother of the deceased, P.W. 2 Smt. Ramkali, sister-in-law of the deceased, P.W. 3 Baladhar, brother of the deceased and P.W. 4 Asharfi Lal were won over by the appellant. In support of his contention, he referred to the Paragraph 4 of the statement of P.W. 2, Smt. Ramkali, sister-in-law of the deceased (Bhabhi) wherein it was stated by this witness that "Yeh Baat Sahi Hai Ki Biradari Ke Logo Ne Milkar Ab Hamara Aur Muljim Ka Rajinama Kara Diya". It was further submitted that after the incident probably some compromise was arrived at between the family members of the deceased and in-laws of the appellant owing to which P.W. 1 to P.W. 4 turned hostile.

14. Heard Sri Satyendra Narayan Singh assisted by Sri S.N. Mishra, learned counsel for the appellant, Sri Rajeev Gupta, Sri Rahul Asthana, Chandra Prakash Singh and Nikhil Kumar Singh, learned AGA and perused the entire material available on record.

15. The report with regard to alleged incident was lodged with the police on 12.7.1982 at 10 A.M. wherein it was alleged that the deceased Smt. Phool Kunwar had a boil on her right thigh which could not be cured in spite of a long treatment as a result the deceased Smt. Phool Kunwar committed suicide due to deep depression and dejection by setting herself on fire after sprinkling kerosene oil on her person.

16. The Investigating Officer after completing all the formalities recorded the statements of all the concerned witnesses i.e. P.W. 1 Smt. Parwati, mother of the deceased, P.W. 2 Smt. Ramkali, sister-in-law (Bhabhi) of the deceased, P.W. 3 Baladhar, brother of the deceased and P.W. 4 Asharfi Lal who made statements against the appellant and held him responsible for causing murder of the deceased.

17. The post-mortem of the deceased Smt. Phool Kunwar was conducted by P.W. 5, Dr. E. A.K. Tewari. According to him, the cause of death was asphyxia due to blockage of air passage at neck by some external pressure and in the internal examination of the deceased, inter alia, the fracture of hyoid and thyroid bones were found and the mucus membrane of the trachea was found deeply congested. Details of external injuries sustained by the deceased have already been mentioned in detail in the earlier part of the judgment, therefore, the same is not being reiterated.

18. P.W. 1 to P.W. 4 have been declared hostile although in their earlier statements under Section 161 CrPC, they accused the appellant of causing murder of the deceased.

19. It appears from the entire evidence available on record that P.W. 1 to P.W. 4 have been won over by the appellant. This fact cannot be ignored that the appellant had three children, therefore the in-laws of the appellant, in order to secure the better future of appellant's children (grand children of P.W. 1), might have been convinced to get him off the hook.

20. A perusal of the statements of P.W. 1 Smt. Parwati, mother of the deceased and P.W. 3 Baladhar, brother of the deceased that they had not visited the house of the deceased to see the dead body of the deceased appears to be totally an unnatural conduct. It is very difficult to believe that after the death of the deceased her mother, brother and sister would not go to her house to see her dead body before cremation. This apart P.W. 2 Ram Kali herself has uttered in her statement that "Yeh Baat Sahi Hai Ki Biradari Ke Logo Ne Milkar Ab Hamara Aur Muljim Ka Rajinama Kara Diya" and this part of her statement clearly indicates that some compromise had been reached between the in-laws of the appellant and the appellant on account of which they turned hostile.

21. A perusal of the statement of P.W. 8 Ramkesh, who is an independent witness, clearly indicates that he had over heard the deceased and appellant quarreling and exchanging abuses and then in the morning he came to know that the deceased had died. Merely because P.W. 8 Ramkesh and the appellant were witnesses of opposite parties in a case between Badlu and Ram Sewak it cannot be a reason for P.W. 8 Ramkesh to implicate the appellant in a murder case. In fact he had not given any evidence directly against the appellant but were given by him against his relatives in a case between Badlu and Ram Sewak.

22. There is nothing on record to show that the appellant suffered any burn injuries while rescuing the deceased as it was claimed by him in the FIR. Had there been any injuries definitely the appellant would have produced the injury report on record. Nothing has been done by the defence in this regard, as such, the story set up by the prosecution that he tried to rescue the deceased and in that process he suffered burn injuries, is totally false, concocted and cannot be relied upon.

23. The main contention of the learned counsel for the appellant is that the court

below has blindly placed reliance upon the post-mortem report and the statement of P.W. 5, Dr. E. A.K. Tewari. We have carefully considered the submission of the learned counsel for the appellant in this regard. According to the doctor, the cause of death was asphyxia due to blockage of air passage at neck by some external pressure. No ligature mark was found on the neck of the deceased but it indicates that the strangulation was the cause of death of the deceased. The contention of the learned counsel for the appellant therefore has no substance at all and it deserves to be rejected. In this regard, it would also be useful to refer to the medico-legal aspect of the burns wherein distinction between ante-mortem and post-mortem injuries have been made. In Modi's Medical Jurisprudence and Toxicology, 23rd Edition, on page 637 with regard to medico-legal aspects of burns, it has been stated as follows;

#### "Medico-Legal Aspects of Burns

(i) Distinction between Ante-mortem and Post-mortem Burns People sometimes produce burns on a dead body to support a false charge of murder, and at other times the police remove a dead body while in the act of burning on a cremating pyre and send to the medical officer for post-mortem examination, when they suspect that the body is being hurriedly cremated to conceal the crime of murder. In both cases the medical officer should be prepared to tell the difference between ante-mortem and post-mortem burns.

The three main points to differentiate between the ante-mortem and post-mortem burns are :

- (a) line of redness;
- (b) vesication;
- (c) reparative processes.

(a) Evidence of Vital Reactions-Line of Redness : In the case of a burn caused during life, a line of redness involving the whole true skin is formed round about the injured part. It is a permanent line, persisting even after death, but redness or erythema, which is found beyond this line of redness due to distension of the capillaries, is transient, disappears under pressure during life and fades after death. The line of redness, being a vital function, separates living from dead tissue, and is often present in burns caused during life, though it takes some time to appear. It is, however, possible that it may be absent (in the case of a person of a very weak constitution who dies immediately from shock due to burns).

(b) Vesication : Vesication caused by a burn during life contains a serous fluid consisting of albumen, chlorides, and often a few polymorphonuclear white blood cells and has a red, inflamed base with raised papillae. The skin surrounding it is of a bright red or coppery colour. This is known as true as compared with false vesication which is produced after death. False vesication contains air only, but may contain a very small quantity of serum comprising a trace of albumen and

chlorides. Again, its base is hard, dry, horny and yellow instead of being red and inflamed.

(c). Reparative Processes : Reparative processes, such as signs of inflammation, formation of granulation tissue pus and sloughs, will indicate that the burns were caused during life. Burns caused after death show no vital reaction and have a dull white appearance with the openings of the skin glands colored grey. The internal organs are roasted, and emit a peculiar offensive odour. However, Spitz and Fisher have pointed out that it is not possible to establish, either with the naked eye or by histological examination, whether burns occurred shortly before death or soon after. Circumstantial evidence alone will provide the answer. Malik has described enzyme changes in the early phase of healing skin burns, in guinea pigs."

24. So far as ligature or finger marks are concerned, P.W. 5 had stated that the strangulation preceded the burns and the death had resulted due to strangulation, some read marks must have been formed on the neck, however in this connection P.W. 5 Dr. E. A.K. Tewari has explained that since the skin of the neck has also been affected by the fire and was burnt, the red lines were not visible. Therefore, we do not see any discrepancy in the opinion of the doctor in this regard. Admittedly, the skin around the neck was burnt as a result thereof injuries marks as well as skin got peeled off owing to which ligature or finger marks or red line could not be seen. Regarding the fracture of hyoid or thyroid bones, P.W.5 has clearly ruled out the possibility of this having resulted from the burning of the body and extreme heat. According to the doctor, the burn injuries on neck were only because of the second and third degree and it was not subjected to too much of heat, as such, the fracture of hyoid and thyroid bone could not have been caused due to heat.

25. We are not able to see any discrepancy or any inconsistency in the medical opinion of the doctor in this regard. The doctor E. A. K, Tewari, who conducted the post-mortem examination of the deceased Phool Kunwar, has very positively given opinion that burn injuries were post mortem injuries and were not ante-mortem injuries. There is nothing on record which may show that the opinion given by the doctor was against the medical jurisprudence. His opinion is also supported by the Modi's Medical Jurisprudence and Toxicology.

26. This apart, it is also very difficult to believe that any person who is merely suffering from a boil will take such an extreme step to end her life especially with three infants who were required to be taken care of. The appellant tried his level best to confuse and mislead the prosecution by concealing the evidence with regard to strangulation by setting the deceased on fire and was also successful to win over his in-laws. They probably, keeping in view the welfare of their grand children thought of forgiving the appellant for the murder of the deceased who was mercilessly murdered by the appellant.

27. In this connection, we may also refer also to the decision of the apex court in



the case of Mallella Shyamsunder Vs. State of Andhra Pradesh, , wherein it has observed as follows;

"It is very significant to note that the ante-mortem dermo epidermal burns are over lower half of face, neck and then down the body to the legs. If one is to pour kerosene on oneself, it is the normal human conduct to pour it over the head, and in any case, not to pour it on the face sparing the head."

In the present case also the deceased has not suffered burn injuries over the head, however, has suffered burn injuries on the rest of her body. Thus, the proposition laid down by the apex court in the aforementioned case (supra) is fully applicable in the present case and it cannot be believed that the deceased had committed suicide.

28. Learned counsel for the appellant has placed reliance upon the decision of the apex court in the case of Balaji Gunthu Dhule Vs. State of Maharashtra, wherein it has been held as follows;

"9). The High Court has also relied upon the postmortem report of the Doctor. In our opinion, since the entire evidence of the eyewitnesses has not been accepted by the High Court, it could not have merely relied upon the postmortem report to convict the appellant for an offence under Section 302 of the I.P.C. Further, in our view, the postmortem report should be in corroboration with the evidence of eye-witnesses and cannot be an evidence sufficient to reach the conclusion for convicting the appellant. In view of the above, we have no other alternative but to allow this appeal and set aside the judgment and order passed by the High Court convicting the appellant for an offence punishable under Section 302 of the I.P.C."

29. In our considered opinion, the factual position in the aforesaid case is demonstrably different and hence we have no hesitation in stating that the said decision is not applicable to the case in hand. In the present case, the circumstances from which the conclusion of guilt has been drawn is fully established and the facts established are distinguishable. The facts established are consistent with the hypothesis of the guilt of the accused and the circumstances are of conclusive nature, and the chain of evidence is complete and does not leave any reasonable ground for a conclusion consistent with the innocence of the accused.

30. From the facts and circumstances of the case and the material available on record, the only conclusion that can be drawn is that the deceased Smt. Phool Kunwar was murdered by the accused appellant Jiya Lal by strangulation and thereafter her body was put on fire. Medical evidence fully supports the prosecution case. Deceased died due to asphyxia as a result of ante-mortem injuries found on the body of the deceased i.e. blockage of air passage at neck due to some external pressure. P.W.-5 Dr. E. A.K. Tewari has fully supported this fact. In our considered view the trial court has rightly held the appellant guilty of committing the murder of Smt. Phool Kunwar and convicted and sentenced him

for the offence under Sections 302 and 201 IPC.

31. No other contention has been made by the learned counsel for the appellants.

32. Considering the entire aspects of the matter and looking to the circumstances, we are of the view that the judgment and order passed by the trial court is well discussed and the trial court has rightly held that the prosecution has succeeded to prove the guilt of the accused appellants beyond reasonable doubt. As such, the impugned judgment and order passed by the trial court is liable to be upheld and the appeal having no force is liable to be dismissed.

33. Accordingly the appeal is dismissed. Impugned judgment and order dated 28.2.1983 is hereby confirmed.

34. The appellant Jiya Lal is on bail. His personal and surety bonds are cancelled and he is directed to surrender before the Chief Judicial Magistrate concerned immediately to serve out the sentence imposed upon him by the trial court. In case he fails to surrender, as directed above, the Chief Judicial Magistrate concerned is directed to take coercive action against him in this regard.

35. Copy of this judgment along with lower court record be sent immediately to the Sessions Judge concerned for compliance.