

---

**(2014) 02 RAJ CK 0071**  
**In the Rajasthan High Court**  
**Case No : Criminal Appeal No. 28 of 2005**

Kapoor Chand @ Kapoora Ram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

---

**Date of Decision :** 07-02-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 201, 302

**Citation :** (2014) 1 RLW 848

**Hon'ble Judges :** Govind Mathur, J; Atul Kumar Jain, J

**Bench :** Division Bench

**Advocate :** T.S. Champawat and Chandra Sen Rathore for B.S. Rathore, Advocate for the Appellant; K.R. Bishnoi, Public Prosecutor, Advocate for the Respondent

---

## Judgement

Atul Kumar Jain, J.—This appeal has been filed by accused-appellant Kapoor Chand @ Kapoora Ram against the judgment dated 27.11.2004 passed by the Addl. Sessions Judge (Fast Track) No. 1 Sirohi, camp Abu Road in Sessions case No. 67/2004, titled as the State of Rajasthan vs. Kapoor Chand @ Kapoora Ram, whereby the accused-appellant was convicted and, sentenced as follows:-

Both the substantive sentences were ordered to run concurrently.

The trial judge has found the accused-appellant guilty of causing murder of his wife by strangulating her and then after burning the dead body of his wife so as to cause disappearance of evidence of murder. The accused-appellant had taken the defence that his wife Mst. Shakuntala was suffering from mental disorder and because of that mental disorder, she had committed suicide by burning herself and when he tried to save his wife from burning, he himself got some bum injuries on his body.

2. In his appeal, the appellant has argued that the judgment of the trial judge is totally against the facts as well against law. He has argued that the trial judge

has not scrutinized the prosecution evidence in the true perspective. He has not taken into account the checks and counter checks that were available on record. The case hinges upon circumstantial evidence and the circumstantial evidence has not been properly evaluated by the trial judge. It has further been argued by the accused-appellant that the circumstances on which the trial judge had relied to convict him, do not form a complete chain to base the conviction. It has further been argued that there were no symptoms of strangulation and there were no external injuries and so in absence of any injury of larynx, trachea and thyroid bone, it cannot be said that the death was by strangulation. It has also been argued by the accused-appellant that the injuries on the fronto-parietal region including hematoma was found on the body of deceased which rules out the case of strangulation because these injuries were not explained by the prosecution. It has also been argued by accused-appellant that if two doctors have been examined, then the statement of the doctor which favours the accused, should be accepted. It has also been argued by him that the notes prepared at the time of the postmortem prior to the preparation of the post-mortem report should have been exhibited in evidence and in their absence, post-mortem report should not be read in evidence. It has also been argued that the story of extra-judicial confession of accused-appellant, allegedly made before Shanker Lal (P.W. - 1), is not correct. It has also been argued by the accused-appellant that no motive has been alleged against him to cause murder and further the absence of FSL report also weakens the prosecution story. A case of pure suicide has been converted into a case of murder and so it has been argued by him that he should be acquitted. We have heard both the parties and perused the record of the case. We have also perused the impugned judgment. Apparently, we have to decide whether it was a case of suicide or it was a case of murder. In the circumstances of the case, the most important witness in the case is P.W. - 8 Dr. Kusum Aggarwal. She has stated that in the capacity of the Chairman of the Medical Board, consisting of Dr. Heera Lal and Dr. Sumer Singh, she had examined the dead body of Mst. Shakuntala and conducted the post-mortem of her body. She has stated that following injuries were found on the body of Mst. Shakuntala:-

3. In her cross-examination, Dr. Kusum Aggarwal emphatically denies the fact that symptoms of death by strangulation and death by the effect of carbon-monoxide are similar. She says that because of strangulation, there was bleeding from nose of Mst. Shakuntala. She says that in case of death by strangulation, there may be bleeding from mouth as well as from ears also, but in this case there was bleeding from mouth and not from ears as was mentioned in the post-mortem report also. She emphatically states that first the lady was strangled and after her death by strangulation, her body was burnt because the burn injuries on the dead body appeared to have been caused after her death. Post-mortem Report (Ex. P. 1) has been exhibited by Dr. Kusum Aggarwal and she denies the suggestion that there is any difference between notes prepared by her before preparing formal post-mortem report and in Ex. P. 1. She also states that

there was fracture of cricoid cartilage. She has stated in her post-mortem report that on dissecting the neck, subcutaneous haemorrhage was found present underneath ligature marks. The learned trial judge had discussed the evidence of Dr. Kusum Aggarwal in light of post-mortem report (Ex. P. 1) and the trial court has also discussed at length the statement of other witness Dr. Sumer Singh (P.W. - 4), who also exhibits the injury report of accused Kapoora Ram as Ex. P. 2, according to which Kapoora Ram had only two burn injuries, one on little finger of left hand and another on right elbow. It appears that there is apparently no contradiction in the statements of P.W. - 4 Dr. Sumer Singh and P.W. - 8 Dr. Kusum Aggarwal. Thus, the statements of these two expert witnesses fully support the prosecution story of murder by strangulation and then burning the dead body to cause disappearance of the evidence of murder.

4. When a person dies because of burns, then blisters appear on the body of deceased, but if a dead body is burnt then blisters do not appear and only the blackening of skin appears in such cases. Similarly, if a lady is burnt alive, then her hair get curled but if a dead body is burnt then the hair do not get curled. In the present case also, there were no blisters on the body of Mst. Shakuntala at the time of her post-mortem and her hair were also straight as mentioned in the post-mortem report. Fracture of cricoid cartilage and ligature mark also appeared to be ante-mortem and so in the circumstances of the case, it can be said that the defence raised by the accused-appellant in this case does not match with the statement of these expert witnesses.

5. In F.I.R. (Ex. P. 11), which had been lodged by the accused-appellant himself, he states that his wife Mst. Shakuntala was suffering from mental disorder and in the night of 15.3.2004 at about 2.30 a.m., he found that his wife had burnt herself. He says that he immediately rushed to extinguish the fire and thereafter he called Himmat Ram (P.W. - 5) and Heera (P.W. - 6), but when three of them reached the spot, his wife was found dead. In his statement recorded u/s 313 of Code of Criminal Procedure, the accused-appellant has repeated the same story. He has stated that previously also his wife had attempted suicide in her mental disorder.

6. Himmat Ram (P.W. - 5) is cousin brother of accused-appellant. He has been declared hostile and he has been confronted with his police statement Ex. P. 3. He admits that in his police statement, he did not say that he had seen Mst. Shakuntala alive while burning. To help the accused-appellant, he states in his court statement that he had seen Mst. Shakuntala alive while she was burning. Similarly, P.W. - 6 Heera is also distant cousin of accused-appellant and he has also been declared hostile. He has also been confronted with his police statement Ex. P. 4 and he admits that in his police statement Ex. P. 4 he had not said that Mst. Shakuntala was dead before he reached the spot. In this court statement, to help the accused-appellant, P.W. - 6 Heera has stated that they had reached the spot when Mst. Shakuntala was alive and was burning. In the opinion of this Court, statements of P.W. - 5 Himmat Ram and P.W. - 6 Heera are not reliable at

all. They are interested witnesses, who want to save the accused-appellant from punishment for the crime, he had committed.

7. The next important witness in this case is P.W. - 13 Kumari Sumitra, a child of 12 years, reading in class VIth in her village. She states that deceased Mst. Shakuntala was her step mother. She states that on hearing the cries of her father in the midnight, she went upstairs, where she found her step mother running from one corner to other corner in a burnt condition. She states that her father was trying to extinguish the fire. This witness too has been declared hostile by the prosecution. She was confronted with her police statement Ex. P. 18 and she admits that in her police statement, she never narrated the story that she had seen only the dead body of her mother and she had not gone upstairs and she had not heard the cries of her mother. Apparently, a girl of 12 years, whose step mother is no more, real mother is living with her second husband and whose father is in jail, will try her best to save her father from the clutches of law and in the circumstances of the case, we do not think it fit to rely upon the statement of Kumari Sumitra (P.W. - 13).

8. The next important witness in this case is P.W. - 1 Shanker Lal, in whose presence extra-judicial confession was allegedly made by the accused-appellant. He is brother of deceased Mst. Shakuntala. He states that on receiving telephonic information about the death of his sister, he had gone to the village of accused-appellant along with his mother Mst. Dharmi (P.W. - 2), where he found his sister dead. He states that there were burn injuries on the body of Mst. Shakuntala and there were ligature marks on her neck. He states that when he asked his Bahnoi (accused-appellant) about the cause of death of his sister, then he fell down at his mother's feet begging for his forgiveness and told while weeping that he has killed his wife by strangulating her only because of doubts. He states that then after, his mother became unconscious. He also states that Mst. Shakuntala had left twins of about six months at the time of her death. He emphatically denies the fact that if his sister had been suffering from any mental disorder. He also denies the suggestion that previously also Mst. Shakuntala had attempted suicide by eating "Kachhua Chhap Agarbatti" or being treated in the hospital of Swaroopganj by a nurse, namely, Devki. It is pertinent to mention here that no such nurse has been examined in defence by the accused-appellant. In his cross-examination, he further states that there was no blister on the body of the deceased but her skin was burnt badly and ligature marks on her neck were apparent. He also denies the suggestion that a news of bad character of his sister Mst. Shakuntala has been spread in the media soon after her death. In the circumstances of the case, after going through the statement of this witness, it appears possible that the accused-appellant might have murdered his wife because of his doubts on her character and soon after her death, he might have made extra-judicial confession also in presence of Shanker Lal (P.W. - 1) and Mst. Dharmi (P.W. - 2).

9. P.W. - 2 Mst. Dharmi who is mother of deceased Mst. Shakuntala, also states

that when she reached the spot and when she asked her son-in-law about the cause of death of her daughter, he started apologizing for the incident. In her cross-examination, she has not been shattered at all from her examination-in-chief.

10. P.W. - 3 Mst. Divya is sister of deceased Mst. Shakuntala. She also denies the suggestion that Smt. Shakuntala was undergoing any mental disorder. She denies the suggestion that Mst. Shakuntala had been alive till the public reached the house of accused-appellant that night or that she might have died after the people reached there. She also denies the suggestions that some time earlier, Mst. Shakuntala had eaten "kachhua Chhap Agarbabi" to commit suicide. Thus, Mst. Divya (P.W. - 3) appears to be a reliable witness. She fully supports the prosecution story.

11. P.W. - 7 Shyam Lal is a hostile witness, who admits the signature on site plan (Ex. P. 5), memo. of description (Ex. P. 6) of dead body, Panchyama (Ex. P. 7) and memo. of handing over of dead body (Ex. P. 8). He states that no recovery of rope ("rassi") was made in his presence from the spot. This witness cannot be said to be an important witness and he does not assist the court any way. Similarly, P.W. - 10 Thana Ram, LC, P-11 Talka Ram, HC and P.W. - 12 Shivilal, LC are also not important witnesses because these three witnesses relate to FLS report while the FSL report has not been exhibited in this case.

12. The last important witness in this case is P.W. - 9 Paras Ram, the then SHO of Police Station, Rohida. He states that on 15.3.2004 he was posted as SHO of Police Station, Rohida, when at 4.05 a.m. in the morning, he received a telephonic information that wife of Kapoor Chand Chhipa had died because of burn injuries and her dead body is lying in the house of Kapoor Chand Chhipa. He states that on receiving information, he entered it in daily diary Ex. P. 9 and then he reached the spot where accused-appellant Kapoor Chand had given him the written report Ex. P. 10. He states that he had prepared Ex. P. 6 memo. of description of dead body, Ex. P. 7 Panchyama of dead body, Ex. P. 5 site plan and then he seized one burnt wire of electricity, two pieces of rope ("rassi"), one plastic container through seizure memo. Ex. P. 5. He states that postmortem of dead body was conducted by the Medical Board and then after the dead body was handed over to accused-appellant Kapoor Chand. He further states that the Medical Board had opined that it was a case of murder and after committing murder by strangulation, the dead body was burnt. F.I.R. No. 43.2004 (Ex. P. 10) is said to have been registered by this witness under Sections 302 and 201 IPC. He further states that accused-appellant Kapoor Chand was also having two superficial burn injuries, one on his right elbow and another on little finger of his left hand.

13. P.W. - 9 Paras Ram further states that he had seized a lathi also on the information of the accused-appellant. This witness has been confronted with the photos of the site, which have been exhibited in this case, but nothing important has come out in his cross-examination. Thus, it can be said that P.W. - 9 Paras

Ram, Investigating Officer of the case has also fully supported the prosecution story and from his cross-examination nothing in favour of the accused-appellant has come out.

14. Then we would like to discuss the defence statement of D.W. - 1 Mohan Lal, who is father of the accused-appellant. He has tried to save his son from punishment, but his statement is not reliable at all. He states that he had gone to see the dead body of Mst. Shakuntala in presence of Mool Singh. It is pertinent to mention here that Mool Singh, A.S.I. has not been examined as a defence witness in the case. D.W. - 1 states that Mst. Shakuntala had tried to commit suicide on an earlier occasion also. He has not been able to substantiate this allegation also against the deceased. Apparently, being the father of the accused appellant, he wants to save his son from the clutches of law, but he has not been found successful.

15. P.W. - 2 Prafull Kumar, Photographer could have been examined by the prosecution but he has been examined by the defence and photos Ex. D. 2 to Ex. D. 11 have been exhibited by him. This witness also has not been able to assist the court any way.

16. Thus, in the circumstances of the case, after hearing both the parties in detail and after going through the record, this Court is of the firm opinion that Mst. Shakuntala was killed by her husband, who is accused-appellant before us, medical evidence is fully supportive of the prosecution story, ligature marks on the neck of the dead body with fracture of cricoid cartilage near the ligature marks also prove the story of strangulation and death by asphyxia caused by strangulation. It has also been proved beyond doubt that burn injuries be on the dead body were caused after her death. Apparently, the accused-appellant had murdered his wife by strangulating her and thereafter to save himself from punishment, he had tried to cause disappearance of evidence by burning the dead body and in this process, he might have suffered two superficial burn injuries on his right elbow and little finger of left hand. The trial court has properly appreciated the evidence of both the parties in true perspective and the well reasoned judgment of the trial court cannot be said to be against the facts or against the law. Charges of Secs. 302 and 201 of Indian Penal Code have been proved beyond reasonable doubt against accused-appellant Kapoor Chand @ Kapoora Ram in the trial court and so there appears no reason to take a different view from the trial court and hence the conviction and sentence passed against the accused-appellant by the trial court do not deserve any interference by this Court. The sentence awarded by the trial court is also quite proportionate to the crime and so this appeal is bereft of any force, which deserves dismissal and hence the same is hereby dismissed. The record of the lower court be sent back with a copy of this judgment immediately. Two copies of the judgment should be sent to the Superintendent, Central Jail, Jodhpur, out of which one copy of the judgment be supplied to the accused-appellant.