
(2007) 05 GAU CK 0003
In the Gauhati High Court
Case No : Criminal Appeal (J) No. 96 of 2007

Runa Nath @ Rina Nath

APPELLANT

Vs

State Of Tripura

RESPONDENT

Date of Decision : 10-05-2007

Acts Referred:

Penal Code, 1860 — Section 120B

Penal Code, 1860 (IPC) — Section 120B

Citation : (2010) 3 GLT 254

Hon'ble Judges : C.R.Sarma, J and I.A.Ansari, J

Bench : Division Bench

Advocate : R.C.Debnath, N.Guha, Advocates appearing for Parties

Judgement

C.R. Sarma, J.

1. By judgment and order, dated 10.5.2007, passed in Sessions case No.S.T.34 (NT/D) of 2006, the learned Additional Sessions Judge, North Tripura, Dharmanagar, has convicted the appellant, Smt. Runa Nath @ Rina Nath, under Section 120B of Indian Penal Code and sentenced her to suffer imprisonment for life. By the said judgment and order, the learned trial Judge has also convicted another accused, namely, Sri Kebal Nath, son of the present appellant, under Sections 302 and 201 IPC. The appellant's son, Kebal Nath, has not, however, preferred any appeal against his conviction and the sentence passed against him. This appeal would, therefore, remain confined to the present appellant's conviction under Section 120B IPC and the sentence of imprisonment for life, which has been passed against her.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be stated as follows:

Smt. Sabita Nath @ Jonali Thakuria (hereinafter referred to as "the deceased") was the wife of the appellant's son. Subal Nath, being a driver, by profession, used to stay away from his house leaving his said wife, in his parents' house, at

Barashol, under the Kadamtala Police Outpost. The said couple had two daughters, one aged about three and the other one aged about one and a half years. The deceased went missing from 27.5.03. On 2.6.03, Smt. Kalpana Nath (PW1), a neighbour of the deceased, was told by the appellant that her sons, namely, Mithu, Surajit and Kebal had killed her said daughter in law, Sabita Nath. Sri Satyabrata Nath, father in law of the said deceased, too told PW1 that the deceased was killed by giving pressure on her throat with an iron rod and that the dead body was thrown to a kachha well after severing her throat with a dao. According to PW 1, she was further informed by Sri Satyabrata Nath, father in law of the deceased, that at the time of killing the deceased, the present appellant, Ranu Nath, had taken the child of the deceased to the house of Smt. Sonamani Nama (PW 13). Having come to know about the killing of the deceased, PW 1 informed Smt. Bijita Nath (PW 4), whereupon Smt. Bijita Nath (PW 4) and others lodged a written information (Ext.6) with the In Charge, Kadamtala Outpost, indicating therein that Smt. Sabita Nath was missing from her house for the last 7/8 days and that her whereabouts were not known. The information, so lodged (Ext. 6), gave no indication that the appellant's daughter in law, Sabita Nath, had been done to death. On receipt of the said information, Police made a GD entry on 3.6.03 and launched investigation into the matter. During the investigation, the Investigating Officer could notice an abandoned well near the south western side boundary of the house of the appellant. As he found foul smell emitting from the well, a search was made and, on 04.06.2003, the dead body of the said deceased was recovered from the said well in presence of the witnesses and an Executive Magistrate (PW 18). After recovery of the dead body from the well, police prepared an inquest report, a sketch map of the place of occurrence, seized a dao measuring about twenty inches, one iron rod measuring about 3 cubits, from the house of Sri Kebal Nath on the same being shown by Sri Kebal Nath. On completion of the investigation, police submitted chargesheet against the appellant and five others, namely, Sri Lalit Mohan Nath, Sri Mithu Nath, Sri Satyabrata Nath, Sri Kebal Nath and Sri Surajit Nath (who was shown as absconder) for the offences under Sections 302/201/120B/34 IPC.

3. The learned trial Judge framed a charge under Section 302 read with 34 IPC against accused Kebal Nath. Separate charges were framed against the other five accused persons, namely, Smt. Runa @ Rita Nath (i.e., the present appellant), Sri Lalit Mohan Nath, Sri Mithu Nath, Sri Satyabrata Nath and Sri Surajit Nath for committing offences under Sections 120B and 201 IPC. The learned Additional Sessions Judge also framed a separate charge against all the accused persons, except Sri Kebal Nath, under Section 114 IPC. The plea of the accused persons was a complete denial.

4. To bring home the guilt of the accused, the prosecution examined as many as 20 (twenty) witnesses including the Medical Officers (PW 16 and PW 17), who had performed the autopsy and the Investigating Officers of the case. At the close of the evidence for the prosecution, the accused persons were examined

under Section 313 CrPC and in their examination aforesaid, the accused persons denied that they had committed the offences alleged to have been committed by them. No evidence was adduced by the defence. Having found the accusedappellant guilty of the offence charged with Section 120B IPC, the learned Additional Sessions Judge convicted the appellant accordingly and recorded the sentence as mentioned hereinabove. While acquitting the other accused persons, who were tried in the same trial, the learned Sessions Judge convicted accused Kecal Nath for the offences under Sections 302 and 201 IPC and passed sentences against him accordingly. But, as already mentioned above, no appeal has been preferred by Kecal Nath against his conviction and/or the sentence. Aggrieved by order of conviction and the sentence passed against her, Kecal Nath's mother, Runa Nath @ Rina Nath, has, however, preferred this appeal.

5. We have heard Smt. N. Guha, learned counsel for the appellant, and Mr. R.C. Debnath, learned Special Public Prosecutor, for the State.

6. Appearing on behalf of the appellant, Smt. N. Guha, learned counsel, has submitted that, in the absence of any reliable direct or circumstantial evidence, the learned trial Judge convicted the appellant only on suspicion that on the night of the occurrence, the appellant had spent the night along with the elder daughter of the deceased in the house of a neighbour (i.e., PW 13) so that the said minor could not have seen the act of killing of her mother, Sabita Nath @ Jonali Thakuria. Smt. N. Guha, learned counsel for the appellant, further submitted that there was not even an iota of evidence to infer existence of any conspiracy between the appellant and the killers of the deceased and that the conviction of the appellant is based entirely on suspicion. It is contended that the conviction of the appellant, under Section 120B AIPC, bereft of any cogent and reliable evidence, cannot be allowed to stand in the eyes of law. The learned counsel has also argued that spending of the night by the appellant along with her grand daughter in the house of her neighbour (PW 13), who was a relative, cannot be sufficient evidence to conclusively hold that she had taken the said minor for the purpose of facilitating the killing of the said child's mother. The learned counsel further submitted that the evidence of PW 1, that the appellant and her husband, Sri Satya brata Nath, had divulged the killing of the deceased by their sons is not at all believable, because, as alleged, PW 1, after coming to know about the occurrence and involvement of the accused persons from the appellant as well as her husband, had informed the matter to Smt. Bijita Nath (PW 4) and Smt. Bijita Nath (PW 4), after getting the said information from PW 1, is claimed to have lodged a written complaint (i.e. Ext.6). According to the learned counsel, as the written complaint (Ext.6) was lodged after the disclosure made by the PW 1, there was no reason, not to mention, in Ext.6, the vital information that the deceased was killed by her family members and that the dead body was dumped in the well. According to the learned counsel, since Ext.6 was silent regarding killing and disposal of the dead body, the evidence of PW 1 that she came to know about the occurrence from the appellant as well as her

husband is not believable. The learned counsel strenuously argued that in order to establish the guilt under Section 120B IPC, the prosecution should have established, beyond all reasonable doubt, that there was an agreement between the parties towards the commission of the offences and that the parties concerned played their roles as per the agreement. It is contended that there is no evidence on record to suggest that the appellant had any knowledge or information that the deceased would be killed on the fateful night and that the removal of the minor daughter of the deceased was necessary to facilitate the killing and that in order to facilitate the killing of the deceased and as a part of the conspiracy to cause the death of the deceased, the appellant had spent the fateful night along with the minor in the house of her neighbour and relative (PW13).

7. Controverting the above submissions advanced on behalf of the appellant, Mr. R.C. Debnath, learned Special Public Prosecutor, appearing for the State, has submitted that the fact that the appellant had taken away the minor and spent the night in her neighbour's house was sufficient to believe that the said act was done only to facilitate the killing of the deceased; and, hence, the learned trial Court has correctly taken the view that there is sufficient evidence to show that the appellant had entered into a conspiracy with the killers of the deceased to achieve the said purpose, i.e, the killing of the deceased. The learned Special Public Prosecutor further submitted that nonmentioning of the names of the accused persons and/or failure to indicate, in Ext. 6, that the said deceased had been done to death by the present appellant and her family members was not fatal for the prosecution. According to the learned Special Public Prosecutor, there was sufficient evidence against the appellant and, as such, the learned trial Judge had rightly recorded the conviction and the sentence too needed no interference:

8. In view of the rival submissions made by the learned counsel for both the parties and in order to appreciate the evidence on record, we deem it appropriate to turn to the evidence on record to briefly reappraise the evidence adduced by the prosecution.

9. PW1 (Smt. Kalpana Nath), a neighbour of the appellant as well as the deceased, being the first person to have received the information regarding the alleged crime, was the star witness in this case. She, in her evidence, stated that though, initially, the appellant had told her that her daughterinlaw (i.e the deceased) had filed the house leaving her children, yet after about 6 (six) days from the date, when her daughterinlaw had gone missing, the appellant disclosed to PW1 that her sons, namely, Mithu, Surajit and Kebal, had killed the deceased. This witness has further stated that Sri Satyabrata Nath (i.e the fatherinlaw of the deceased) had also divulged to her that the deceased was killed by putting pressure on her throat by means of an iron rod and that the dead body was thrown into the "kachha" well after serving her throat with a dao. She stated that, at the time of killing of the deceased, the appellant had taken the children

of the deceased to the house of a neighbour, namely, Sonamani Nama (PW 13). According to this witness, she, having come to know about the occurrence from the appellant and the appellant's husband (Satyabrata Nath), informed Smt. Bijita Nath (PW 4) of Nari Samiti (an organisation of women), about what she (PW1) had learnt and it was, then, PW4, who informed the police accordingly. PW 1 has further stated that, at the time of the incident, the deceased had two minor daughters, the elder of whom was threeandahalfyears old and the younger one was oneandahalfyears old.

10. Smt. Bijita Nath, deposing as PW 4, stated that Smt. Kalpana Nath (PW 1) had informed her that the fatherinlaw of the deceased had told her that the deceased was killed by his sons and his fatherinlaw by means of an iron rod and a dao and that the dead body was thrown into the well, which was covered by garbage and mud. According to this witness, after coming to know about the said incident from PW 1, she, on making query, found that the deceased was missing and that though, during her enquiry, the appellant told her that the deceased had gone to her parents' house she, sensing some foul play, informed the police who, subsequently, recovered the dead body from the well.

11. From the evidence of PW4, it is seen that her source of information was the alleged disclourse made by the appellant to PW 1 (i.e. Smt. Kalpana Nath). We propose to discuss the contradiction noticed in the evidence of the PW 1 and PW 4 at a later stage of this judgment.

12. Sri Paresh Chandra Nath, a neighbour of the deceased and the father of PW 1, deposing as PW 2, stated that he came to know about the killing of the deceased from her daughter (PW 1). According to this witness, the dead body of the deceased was recovered from the well, situated in the premises of the accused persons.

13. Smt. Manabi Nath, deposing as PW 3, stated that the elder daughter of the deceased, who was found crying, told her that she came to know from her grandmother (i.e the appellant) that her mother (i.e the deceased) was missing. According to this witness, on being asked, the appellant told her that her daughterinlaw had fled away, but she came to know from PW 1 that the appellant and her husband had told PW 1 that the accused persons had killed the deceased and thrown the dead body into a well.

14. Sri Sukanta Nath (PW 5) was present at the time of recovery of the dead body of the deceased from the well and preparation of the inquest report by the police. Proving the inquest report as Ext. 1 and his signature thereon as Ext. 1(1), this witness stated that on recorvey of the dead body, it was noticed that the throat of the deceased bore cut injury. According to this witness, the dead body could be identified to be that of the said deceased.

15. PW 6 (Sri Nandalal Nath) stated that he was informed by Smt Bijita Nath (PW 4) that the latter was informed by Smt. Kalpana Nath (PW 1) that the deceased was killed by Kebal, Surajit and the members of her family during the absence of

the husband of the deceased. According to this witness, he came to know from others also that the members of the family of the deceased had killed her.

16. Sri Tapan Debnath, Sri ParendraNath and Sri Madan Chandra Nath were tendered as PWs 7 and 8 and 12 respectively. They stated nothing incriminating against the accused persons. Sri Ramdras Rabidas, deposing as PW 9, stated that, on being engaged by police, he recovered a female dead body from a well, which was covered by mud and garbage. PW 10 (Sri Anil Nath) stated that noticing a gathering in the house of the accused persons, he went there and saw the dead body of the deceased, which was taken out from a well. This witness also could identify the dead body of the deceased, which bore deep cut injury on her throat. According to this witness, after two days of the recovery of the dead body, police visited the house of the deceased along with accused Kebal Nath, who disclosed that he, along with his brother, Surajit Nath, had killed the deceased inside their dwelling house by putting pressure on her throat with an iron rod and that they, along with their father, Satyabrata Nath, had burned the dead body into the well by cutting the throat of the deceased. According to this witness, after the said disclosure, accused Kebal Nath had shown the "sabal" (i.e iron rod) and the dao, which were used in committing the offence and that the said articles were accordingly seized by the police in their presence. This witness identified the said weapons as Exts. 2 and 2.1. In his crossexamination, PW 10 stated that at the time of recovery of the dead body, though the appellant was also present, she did not utter a single word.

17. From the evidence of PW10, it appears that while in the custody of the police, accused Kebal Nath had made a confessional statement and led the police to the recovery of the weapons used in committing the offence.

18. Sri Debashish Debnath, deposing as PW 11, stated that accused Kebal Nath had told, in their presence, that he along with his brother had killed the deceased with an iron rod and a dao and that they had concealed the dead body in the well. Exhibiting the iron rod and the dao used in committing the said offence, this witness stated that the accused Kebal Nath had brought out the said articles, which were seized by the police in their presence.

19. As Kebal Nath, who stands convicted, as already noted above, has chosen not to prefer any appeal, we presently refrain from discussing the evidence regarding his said confession leading to the discovery of the weapons.

20. Smt. Sonamani Nama, deposing as PW 13, stated that the deceased was known to her and that the husband of the deceased was the younger brother of his wife as per their religious relationship and that on the day of killing of the deceased, the appellant, who is also his motherinlaw (religious relation), had spent the night in their house along with the elder daughter of the deceased. He stated that, subsequently, he came to know from others that the deceased was killed. This witness was duly crossexamined on behalf of the defence and he denied the defence suggestion that the appellant did not spent the said night, in

their house, along with the minor. From the crossexamination of this witness, nothing could be elicited to render his evidence disbelievable. In view of the above, there is sufficient corroboration from the evidence of PW 1 and PW13 that the appellant had spent a night, along with her granddaughter, in the house of PW 13. Sri Panna Ghosh (PW 14) is a photographer, whose service was utilised for taking photographs during the recovery of the dead body from the well.

21. Sri Anu Mia (PW 15), who was one of the Investigating officers at the initial stage, stated that some of the villagers had informed him about the fact that the said deceased was missing, whereupon he, after making an entry, in this regard, being GD Entry No.43, dated 2.6.03, made enquiry into the matter. During investigation, on 4.6.2003, he came to know from one Mrs. Kalpana Nath (PW 1) that the motherinlaw and the fatherinlaw of the deceased had told her (PW 1) that the deceased was killed by Kebal Nath and Surajit Nath and that the dead body was thrown into the nearby well. PW 15 further stated that the dead body was recovered from a well, which is situated within the premises of the house of the accused. Accordingly, this witness lodged an FIR, which he exhibited as Ext.4.

22. Md. Basir Ali, then Block Development Officer, Kadamtala, deposing as PW 18, stated that the dead body of a female was recovered from the well on 4.6.03 and that the autopsy on the same was performed by a team of three Medical Officers in his presence. He further stated that the inquest on the dead body was also done "in his presence. He proved the inquest report as Ext. 1 and his signatures thereon as Ext. 1(1) and 1(2).

23. PW 16 and PW 17 are the Medical Officers, who had performed the autopsy. From the evidence of the said Medical Officers, it appears that the post mortem examination of the dead body of the deceased was conducted by a team of three Medical Officers. PW 16 stated that the cause of the death was due to severing of bilateral carotid vessels, which was ante mortem and homicidal in nature, caused by sharp cutting weapon. According to the said Medical Officer, the time of death was more than 72 hours prior to the examination. PW 16 opined that the injury was caused by a sharp cutting weapon like dao (Ext. 1), which was shown to him. He further stated that the injury, found on the throat, was sufficient to cause the death.

24. In his crossexamination, PW 16 witness stated that though, generally, post mortem is done in the hospital morgue, the post mortem examination, in this case, was done at the site, where the dead body was recovered. No suggestion was offered to this witness regarding identity of the dead body; PW 17, another member of the team of the Medical Officers, conducting the autopsy, stated that the autopsy was done on the dead body of the deceased, namely, Sabita Nath @ Jonali Thakuria, aged about 21 years. This witness proved the post mortem report as Ext.5 and his signatures thereon. PW 17 denied the defence suggestion that the dead body, which had been examined by them, was not the dead body of the deceased. Supporting the evidence of PWs 16 and 17, the then Block Development Officer (PW 18) stated that autopsy on the dead body was a

done near the place from where the dead body was recovered. The PW 10 (Anil Nath), in his evidence, clearly stated that the dead body was recovered from the well and that the same was identified to be the dead body of deceased Sabita Nath. PW 6 too stated that the dead body was identified as the dead body of the deceased Sabita Nath. No suggestion was put to PW 6 and PW 10 denying the identity of the dead body. The PWs 6 and/or 10, being independent witnesses from the neighbourhood, clearly identified the dead body and there is nothing on record to suspect their evidence. Their evidence, regarding the identity of the dead body, stood, thus, uncontroverted. Hence, it has been established that the dead body of the said deceased was recovered from the well. It has also been established that the autopsy on a dead body was performed by a team of the Medical Officers in presence of the PW 18 near the place, where the dead body was recovered. Therefore, considering the entire evidence on record, more particularly, the evidence of PWs 6,10,16,17 and 18, it can be safely concluded that the autopsy on the dead body of the said deceased was done on 4.5.03. From the medical evidence, it appears that the injury, sustained on the neck, could have been caused by dao, like M Ext. 1. According to the medical evidence, the cause of the death was the injury sustained by the deceased on her neck. The medical evidence on record, thus, proves that the death of the said deceased was homicidal in nature.

25. PW 19, one of the Investigating Officers, submitted the chargesheet against the accused persons. PW 20 (Sri Bidhu Bhusan Das), another Investigating Officer, stated that on 3.6.09, he received an information from one Smt. Bijita Nath and others that the said deceased had been missing, he, having made GD entry being Entry No.94, dated 03.06.2009, in this regard, deputed one ASI, namely, Ami Mia (PW 15) to investigate into the matter. According to this witness (PW 19), after disinterring the dead body from the well, he made arrangement for post mortem examination of the dead body in presence of the Executive Magistrate, Md. Basit Ali (PW 18), and prepared the inquest report (Ext. 1). This witness stated that, on his arrest, accused Kebal Nath, upon interrogation, admitted that he and his brother, Surajit Nath, had killed the deceased by putting pressure with an iron rod on her throat and concealed the dead body, in an old well, severing the neck of the deceased. The only question to be answered, in this appeal, is whether the appellant, who had spent the fateful night, in the house of PW 13, along with her minor elder grand daughter, had entered into any conspiracy with the killers of the said deceased.

26. From the above discussed evidence on record, it transpires that none except PW 1 and PW 13 stated anything against the present appellant. PW 1, in her crossexamination, denied the suggestions, put to her on behalf of the defence, that she had falsely deposed, that the appellant and her husband had told her about the occurrence. The appellant also, in her statement under Section 313 Cr.P.C, denied all the allegations brought against her. According to the PW1, the appellant and her husband had told her about the killing of the deceased by their sons and also about the disposal of the dead body into the well. PW 4, on coming

to know about the said occurrence from PW 1, had lodged the information (Ext.6) with the police. But, absence of any mention about such disclosure, in the Ext.No.6, raises doubt about the veracity of the prosecution version regarding the disclosure made by the appellant. There was no reason not to mention, in the Ext. No. 6 the vital information revealed by the appellant to the PW 1. PW 4 contradicting the evidence of PW 1, stated that the PW 1 had told her that the fatherinlaw of the deceased had informed PW 1 that the deceased was killed by his sons and that, on being so informed, she went to the house of the deceased and enquired from the appellant about the whereabouts of the deceased and, upon such enquiry being made, she was, according to this witness, informed by the appellant that the deceased had gone to her parents' house. This witness, nowhere, stated that PW 1 had informed her that the appellant had told PW 1 that her sons had killed the deceased and that the appellant had spent the night, along with her grand daughter, in the house of the PW 13. If the appellant had disclosed before PW1 about the involvement of her sons in the murder of the deceased and also about her spending the night in the house of the PW 13. as claimed by the PW 1, and if she (PW 1) really had passed the said information to the PW 4, there was no reason to withhold such vital information from her written complaint (Ext.No.6) as well as her evidence given on oath. A careful reading of Ext.6 and the evidence of PW 4 lead one to conclude that the said informant (PW 4) had no information about the involvement of the appellant and/or about the disclosure made by her. The evidence, given on oath, by PW4 indicates that only the fatherinlaw of the deceased had told PW 1 that he (i.e., the fatherinlaw of the deceased) and his sons had killed the deceased. If PW1 had obtained any information from the appellant regarding the involvement of the accused persons including the appellant, there was no reason not to pass the said information to PW 4 and in that event, PW 4 would have naturally said that she came to know from PW 1 regarding involvement of the appellant and her sons. The source of PW 1 was the appellant, while the source of information for PW 4 was PW1. If PW1 is believed, both the appellant and her husband had made the disclosure and accordingly, she had informed PW 4. But. according to PW 4, only the husband of the appellant had made the disclosure to PW 1. The evidence of PW 4 does not indicate about the involvement of the appellant.

27. In view of the above, the logical conclusion would be that either the appellant did not make any disclosure to PW 1 or that PW 1, for reasons best known to her, had withheld from PW 4 such disclosure made by the appellant. Therefore, we notice material contradiction in the evidence of the PW 1 and PW 4 on the vital point, which throws doubt about the prosecution version regarding involvement of the appellant. For this, we find it hard to believe such uncorroborated evidence of PW 1 with regard to the alleged disclosure made by the appellant.

28. PW15 (I.O) exhibited the information lodged by him on 4.6.03 as FIR. He visited the place of occurrence after receiving the information (Ext.6) lodged by PW 4 and others on 2.6.03. PW4 lodged Ext.6 after making an enquiry herself on receiving information from PW 1 as regards the alleged killing of the said

deceased. Therefore, Ext.6, having been lodged at the first point of time, should be treated, and ought to have been treated, as the FIR, for, this information moved the machinery of investigation into action. Absence of any indication, regarding the disclosure made by the appellant to PW 1, in the FIR (Ext.6), fortifies the doubt regarding disclosure made by the appellant.

29. There being no direct evidence, the prosecution attempted to establish the circumstance, that the appellant spent the night with her grand daughter in the house of the PW 13, for the purpose of facilitating the killing of her daughterinlaw by her sons. From the evidence of PW 13, it stood proved that the appellant spent the fateful night in the house of PW 13. For the purpose of using the said circumstantial evidence against the appellant and in order to hold her guilty of the offence under Section 120 B IPC, the prosecution is required to prove that she had left her house, along with her grand daughter prior to the occurrence for the purpose of facilitating the killing of the deceased. This burden squarely lies upon the prosecution. PW 1, in her crossexamination, stated that she did not enquire from the appellant the time and the dale of killing the deceased. There is no evidence on record indicating the precise time of killing the deceased. PW 13, in whose home the appellant had spent the night, did not state the time at which the appellant had gone to her house. Therefore, though PW 13 stated that the appellant had spent the night, along with her grand daughter, in her house, there is no evidence on record to show that the appellant had left her house prior to the occurrence. Only a positive answer to the question, as to whether the appellant had left her house following a conspiracy to kill the deceased, can lead to the conviction of the appellant under Section 120 B IPC.

30. Section 120 A, which defines criminal conspiracy, reads as follows:

" When two or more persons agree to do, or cause to be done

(1)an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

31. Section 120B IPC prescribes the punishment to be imposed for committing an offence under Section 120 A IPC.

32. Under Section 43 IPC, an act would be illegal if it is an offence or it is prohibited by law.

33. The principles, regarding appreciation of evidence in a case under Section 120 A IPC, have been laid down by the Supreme Court in various cases.

34. In the case Ashok Datta Naik Vs. State, reported in 7979 CrLJ. (NOC) 95it has been held:

"To establish a charge of criminal conspiracy the prosecution must prove agreement between two or more persons to do or cause to be done some illegal act; such agreement which is the essence of the offence of conspiracy, is not always capable of proof by direct evidence because the agreement is entered into secretly. In fact, in cases of conspiracy one seldom comes across direct evidence. One has to often look at the circumstances to see whether conspiracy actually exists. In other words, conspiracy is generally a matter of inference deducible from certain criminal acts of the involved parties."

35. In the case of State (N. C. T. of Delhi) Vs. Navjot Sandhu, reported in 2005 Cr.L.J. 3950, the Supreme Court discussed the principle regarding appreciation of evidence on record in a case under Section 120 AIPC and held that those, who commit an offence(s), pursuant to conspiracy by indulging in various overt acts, will be individually liable for such offence(s) in addition to being liable for criminal conspiracy but, the nonparticipant conspirators cannot be found guilty of the offence or offences committed by the other conspirators.

36. Referring to Halsbury's Laws of England, the Supreme Court, in the above referred, case observed:

"Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law. The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied or in part express and in part implied....and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be."

37. In the said case, the Supreme Court referred to the following observations, made in Kehar Singh's case, 1988(3) SCC 731

"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed., nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough."

38. In the case of State of Tamil Nadu through the Superintendent of Police Vs. Nalini & Ors., reported in 1999 Cr.L.J. 3124, the Supreme Court observed:

"It is the agreement which is the sine qua non of the offence of conspiracy. Suspicion howsoever strong, does not take the place of proof."

"There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another; amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant fact is that all means adopted and illegal acts done must be and purported to be in furtherance of the

object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are coparticipants in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested."

39. In view of the above principles and the law laid down by the Supreme Court in various cases, as to what constitute an offence under Section 120 A IPC, it becomes clear that there must be an agreement or consent to commit an offence, and it must be proved that all the persons, accused to be conspirators, worked to achieve a common object. It is not necessary that all the conspirators must know each and every minute details regarding conspiracy, but there must be unity of object or purpose. Each of the conspirators may play different/separate role in order to achieve the common goal of the conspiracy. In such a case, though each one may not know the secrets, relating to the commission of an offence, the role, to be played by each of them to achieve the purpose, must be known to each other and the conspiracy continues until it is broken up. In order to enter into an agreement to commit an offence, there shall be a meeting of minds of two or more persons sharing information as regards the commission of an illegal act.

40. Regarding the method of proving criminal conspiracy, the Supreme Court, in the case of Navjot Sandhu (supra), observed:

"Mostly, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. Usually both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused. (Per Wadhwa, J. in Nalini's case (supra) at page 516) The well known rule governing circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable evidence and "the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and not other hypothesis against the guilt is possible."

41. Therefore, the circumstances, leading to the guilt of an accused must be proved by cogent and reliable evidence. No amount of suspicion, howsoever high, can be sufficient to hold a person guilty of an offence charged with.

42. In order to establish the charge of conspiracy, in the present case, the prosecution is required to establish, by adducing cogent, reliable and substantive evidence, that the appellant, in association with other accused persons, had entered into an agreement to kill the deceased and that she had played her role by taking away the elder minor daughter of the deceased to facilitate the killing of the deceased by her sons. Hence, we may pose to question as to whether the

appellant had spent the night, in the house of her neighbour, to achieve the common object of killing of the deceased. To answer this question against the appellant, it is necessary to ascertain if the removal of the minor was essential to achieve the said object, and if so, whether she had left her house with the minor prior to killing or alter the killing. If she had gone to the house of PW 13 prior to the killing, this can be a circumstance raising suspicion about her involvement in the conspiracy; but if she left her house alter the killing, the answer to the said question will certainly go in her favour. Admittedly, the appellant did not kill the deceased. It is alleged that she had facilitated the killing by taking away her grand daughter.

43. As discussed above, there is no evidence on record to show that the appellant had left her house prior to the killing of the deceased. The prosecution failed to adduce any reliable evidence to show that she had left her home with the minor with an object to facilitate the killing. In view of absence of evidence to indicate that the appellant had left her house prior to the killing of the deceased as a consequence to the conspiracy to kill the deceased, the mere suspicion that she had spent the night with her grand daughter, in the house of the PW 13, with a view to facilitate the commission of the alleged offence(s) cannot be sufficient to hold that she had done so after entering into a conspiracy with her sons to kill the deceased. There is also no evidence to show that, in order to kill the deceased, a minor, aged about threeandhalfyears old. was required to be kept away. The said taking of the minor can, at best, raise suspicion against the appellant. In the absence of any cogent evidence, this suspicion cannot become substitute of substantive legal proof to base conviction. Fact remains that it was the appellant, who had first disclosed that her daughterinlaw was killed by her sons, who were certainly dearer to her. There is nothing on record to show that she had any compelling circumstances to disclose the same implicating her sons. If she had any intention to suppress the commission of the crime or if she had any nexus with the crime, she could have remained silent. But she voluntarily came forward to disclose the matter. Her conduct leads to an inference of her innocence rather than guilt. The fact remains that the appellant was known to the members of the family of PW 13 and she was related to them on the basis of certain religious relationship. As discussed earlier, from the evidence of PW 13, though it stood established that the appellant had spent the night along with her grand daughter in the house of the PW 13, there is no other evidence regarding involvement of the appellant in the act of putting to death her daughterinlaw. There is nothing on record to show that the appellant had the prior knowledge or information regarding the intention of her sons to cause death of the deceased. In the absence of sufficient, cogent and reliable evidence, in this regard, on definite conclusion can be reached that the appellant had spent the night, in the house of the PW 13, along with her grand daughter, pursuant to any criminal conspiracy. The question, raised in this case, was whether the spending of the night by the appellant, along with her granddaughter, in the house of PW 13, was an independent act or it was an act

related to the commission of the murder of the said deceased. There is no evidence of physical manifestation of agreement or communication between the accusedappellant and the murderers of the said deceased.

44. In the light of the above discussion, the emerging circumstantial evidence that the appellant had spent the fateful night, along with her said grand daughter, in the house of PW 13. does not inspire confidence to conclusively hold, to the exclusion of any other hypothesis relating to her innocence, that the appellant had conspired with her sons to kill the said deceased and that she had taken away her said grand daughter to facilitate the execution of the said conspiracy of killing the said deceased. Therefore, we do not find it safe to hold that the prosecution could prove the guilt of the appellant beyond all reasonable doubt. Situated thus, we are firmly of the view that the benefit of doubt should go in favour of the appellant.

45. In the result, the appeal is allowed. The impugned judgment and order, dated 10.05.2007, passed in Sessions case No. ST 34 (NT/D) of 2006, shall accordingly stand set aside. The appellant is directed to be set at liberty forthwith unless she is required to be detained in any Court with any other case.

46. Return the lower Court records.