

(2019) 08 RAJ CK 0147
In the Rajasthan High Court
Case No : Criminal Appeal No. 675 Of 2014

Sahi Ram

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 201, 300, 302, 304I, 304II

Code Of Criminal Procedure, 1973 — Section 154, 157, 161, 174, 175, 313, 374(2)

Citation : (2019) 08 RAJ CK 0147

Hon'ble Judges : Sandeep Mehta, J;Abhay Chaturvedi, J

Bench : Division Bench

Advocate : H.S.S. Kharlia, Rishabh Handa, N.S. Bhati

Final Decision : Dismissed

Judgement

Sandeep Mehta, J

The appellant herein has been convicted and sentenced as below vide judgment dated 02.07.2014, passed by the learned Additional Sessions Judge, Suratgarh, District Sriganganagar in Sessions Case No.33/2012 (22/2011).

Offences Under Section

Sentences

Fine

Fine Default sentences

302 IPC

Life Imprisonment

Rs.5,000/

5 months R.I.

201 IPC

1 Year S.I.

Rs.1,000/-

1 month's S.I.

All the sentences awarded to the accused were ordered to run concurrently.

Being aggrieved of his conviction and sentences, the appellant has preferred the instant appeal under Section 374(2) Cr.P.C.

Brief facts relevant and essential for disposal of the appeal are noted hereinbelow:-

The SHO, Police Station Rajiyasar received a telephonic information on 02.03.2011 that a person named Sahi Ram, resident of Village Beermana had killed his daughter. On this information, the SHO proceeded to the place of incident at village Beermana on 02.03.2011 at 12.15 pm. where, Kesra Ram son of Ganpat Ram, by caste Kumhar, Resident of 10 D.O.L., Tehsil Gharsana, District Sriganganagar met him and submitted a written report (Ex.P/1) alleging inter alia that his daughter Tara Devi had been married to Sahi Ram (the accused herein). Two sons & two daughters were born out of the wedlock. Sahi Ram had burnt and killed his daughter Tara Devi upon which, Kesra Ram lodged a report against Sahi Ram. Sahi Ram was acquitted in the said case because of a subsequent compromise arrived at between the parties. After the decision, Sahi Ram's children from his wedlock with Tara Devi started living with him. The younger daughter Nirmala, who used to study in the VIIIth standard, was regularly in touch with the informant. On 02.03.2011, the informant received a call from Ram Kumar, neighbour of Sahi Ram, who disclosed that Sahi Ram had killed Nirmala by setting her to fire and that the dead body was lying in the outer room of his house. On receiving this information, Kesra Ram, his son Ram Swaroop and relatives Mainpal, Gopal Painsiya, Ram Kumar, immediately rushed to the village Beermana. There, his maternal grand-daughter Manju met them and apprised that she came to know that in the night of 28.02.2011, her father Sahi Ram had inflicted a lathi blow on the head of Nirmala and thereby she had expired. Thereafter, the dead body was concealed in the outer room of the house. When Manju inquired from Sahi Ram regarding the whereabouts of Nirmala, he evaded the issue stating that Nirmala gone to someone else's house. However, on the previous night, her father poured kerosene on the body of Nirmala and set it to fire. When she noticed smoke, she looked into the room and saw the dead body of Nirmala. She confronted Sahi Ram upon which, he confessed that he had killed Nirmala on the night of 28.02.2011 as he suspected her character and that he had set her dead body to fire so as to dispose it off. He threatened all the family members not to tell anyone about the incident. Manju further confided in Kesra Ram that she should be taken away as she was not willing to stay at Sahi Ram's house any longer. The informant checked the outer

room of the house and saw the dead body of Nirmala lying in a burnt condition. He alleged in the report that previously, Sahi Ram had killed his daughter Tara Devi and now he had killed his maternal grand-daughter Nirmala on the pretext of suspicion about her character. It was further alleged that Sahi Ram killed Nirmala by a lathi blow and set fire to the dead body to destroy the evidence.

On the basis of this information, an FIR No.45/2011 (Ex.P/22) came to be lodged at Police Station Rajiyasar, District Sri Ganganagar. The investigation was undertaken by Purshottam Das Sharma (PW-13), SHO, P.S. Raziyasar. He prepared the following documents at the spot by way of routine investigation:-

S. No.

Exhibits

Date and time

Description

1.

P/2

02.03.2011 at 1:15 pm

Seizure memo of the clothes of the deceased from the place of the incident.

2.

P/3

2.03.2011 at 1:30 pm

Seizure memo of the control soil from the house of the deceased.

3.

P/4

2.03.2011

Site inspection plan

4.

P/4A

2.03.2011

Site inspection Memo

5.

P/5

2.03.2011 at 12:30 pm

Seizure memo of the dead body.

6.

P/6

2.03.2011 at 1:00 pm

Panchayatnama Lash.

7.

P/7

2.03.2011

Fard Supurdagi Lash -Nirmala Devi.

The accused was arrested vide arrest memo (Ex.P/23) 03.03.2011 at 01.30 pm. He gave an information for getting recovered the lathi used to kill the deceased and a jerrycan. The informations were recorded in the memo (Ex.P/24) and in furtherance thereof, a stick of 'Keekar tree' and a jerrycan were recovered and seized vide seizure memos (Ex.P/9 & Ex.P/10) respectively. The dead body of Sushri Nirmala was subjected to postmortem and the medical officer issued the postmortem report (Ex.P/10) mentioning the time of death to be within 48 hours and that the burn injuries on the dead body were post-mortem in nature. After concluding investigation, a charge-sheet came to be filed against the accused appellant in the Court of the concerned Magistrate for the offences under Sections 302 and 201 IPC. As the offences were Sessions triable, the case was committed and transferred to the Court of the Additional Sessions Judge, Suratgarh for trial. The trial court framed charges against the accused for the above offences who pleaded not guilty and claimed trial.

The prosecution examined as many as 13 witnesses and exhibited 33 documents to prove its case. Upon being questioned under Section 313 Cr.P.C. and when confronted with the prosecution allegations, the accused denied the same and claimed to have been falsely implicated and, got examined four witnesses in defence.

After hearing and considering the submissions advanced by the prosecution and the defence counsel and, appreciating the prosecution evidence, the learned Trial Judge proceeded to convict and sentence the accused appellant as above. Hence this appeal.

Shri H.S.S. Kharlia, learned Senior Counsel assisted by Shri Rishab Handa, Advocate representing the appellant, vehemently and fervently urged that the entire prosecution case is false and fabricated. The FIR is an ante-timed document. The I.O. had actually recorded the statement of Manju (Ex.D/1) well before the FIR was registered and thus, as per Shri Kharlia, the said statement should have been treated to be the FIR of the incident. He urged that the fact mentioned in the statement of Manju regarding the accused having killed the

deceased by a single stick blow because he was suspecting her character, did not suit the prosecution theory and that is why, the statement of Manju so recorded by the I.O. at an earlier point of time, was not treated to be the FIR. He pertinently referred to the following documents:-

Ex.P/2- Seizure memo of clothes of Nirmala; Ex.P/3- Seizure memo of soil; Ex.P/4- Site Inspection plan

Ex.P/4A- Site Inspection Memo Ex.P/5- Fard Surathaal lash - Nirmala Ex.P/6- Panchayatnama Lash- Nirmala Ex.P/7- Fard Supardiginama Lash Ex.P/10- Postmortem report, and

Ex.D/1- Statement of Manju recorded under Section 161 Cr.P.C.

and urged that there is no reference of the FIR number in these documents and the place where FIR had been chalked and the FIR number were intentionally left blank in all these documents. Thus, as per Shri Kharlia, the FIR was not registered till these documents were prepared and is a post investigation document. In support of this contention, Shri Kharlia vehemently and fervently placed reliance upon the Supreme Court Judgment in the case of L/NK. Mehraj Singh Vs. State of Uttar Pradesh reported in 1994 Cr.L.R. (SC) 463 [(1994)5 SCC 188] and while referring to the observations made at Para 12 of the said Judgment, learned Senior Counsel submitted that non-mentioning of the FIR number in the contemporaneous documents, would lead to an inescapable conclusion that the FIR came to be drafted after due deliberations at a much later point of time and then, it was ante-time so as to give it the colour of a promptly lodged FIR. He further submitted that though the I.O. claims that the FIR was registered on 02.03.2011 but the same reached the Court of Magistrate concerned after significant delay i.e. on 03.03.2011 at 11.15 am. Thus, as per him, the FIR is an ante-timed post investigation document and the accused deserves to be acquitted by discarding the entire prosecution case which is founded on such a tainted document. Shri Kharlia further submitted that evidence of Manju (PW-2) is not reliable and that she was tutored by Kesra Ram to give evidence against the appellant. He urged that in the earlier incident involving death of Tara Devi, Kesra Ram and his family members were prosecuted at the instance of the accused appellant and that is why, in order to wreak vengeance, they tutored the girl to give evidence against the appellant.

In arguendo, the submission of Shri Kharlia was that the fact mentioned in the initial documents prepared by the I.O. i.e. the statement of Manju recorded under Section 161 Cr.P.C. i.e. Ex.D/1 and that the accused confessed to have inflicted a solitary lathi blow on the head of Nirmala because she was seen in a compromising position. Nirmala was a minor girl and thus, the appellant was justifiably provoked on seeing his minor daughter indulging in an immoral act and that the single stick blow given by the appellant to Nirmala was intended to chastise and not to kill her. Unfortunately and unintentionally, the blow landed on the vital organ i.e. brain and proved fatal. Thus, as per him, the conviction of the

appellant deserves to be toned down from that under Section 302 IPC to Section 304-I or II IPC. In support of this contention, Shri Kharlia placed reliance on the following judgments:

- (i) Saroj @ Suraj Panchal & Anr. vs. State of West Bengal reported in AIR 2014 Cr.L.J. (SC) 3134,
- (ii) Vijender @ Bijjo Vs. State (Govt. of NCT of Delhi) reported in AIR 2017 SC 701,
- (iii) State of Punjab vs. Jagtar Singh & Ors. reported in AIR 2011 SC 3028,
- (iv) Mangesh Vs. State of Maharashtra reported in AIR 2011 SC 637, and
- (v) State of U.P. vs. Lakshmi reported in AIR 1998 SC 1007, and urged that in all these cases, Hon'ble the Supreme Court was dealing with the almost identical facts wherein, the family members saw the girl in a compromising position with her lover/paramour and acting on a grave and sudden provocation, the death/deaths were caused and in each matter, the offence was suitably toned down. As per Shri Kharlia, the accused appellant was having no intention to kill his own minor daughter when he inflicted the solitary stick blow to her which unfortunately landed on some vital body part leading to her death. His submission was that even if the accused had not taken such defence or has taken a contrary defence, if the overall facts available on record support the defence theory and thus, the Court can infer the presence of these mitigating circumstances while dealing with the aspect of the offence to be applied. On these grounds, he implored the Court to set aside the impugned judgment and accept the appeal.

Per contra, learned Public Prosecutor vehemently and fervently opposed the submissions advanced by Shri Kharlia. He submitted that the FIR was faithfully registered by the SHO at the time and place mentioned therein. He submitted that the non-mentioning of the number of the FIR in the contemporaneous documents is attributable to the fact that the written report had been sent from the spot to the police station for registration was received back by the SHO at the place of the incident after a significant gap of time. The constable, who carried the FIR to the police station, reported quite late and during this period, the I.O. had already started the process of investigation. Certain documents had been prepared wherein, the number of the FIR was left blank so that the same could be filled in later on. However, the SHO appears to have inadvertently missed out mentioning of the FIR number in various memorandums prepared even after the FIR had been received by him after registration. He urged that if at all, the defence was desirous of questioning the veracity of the prosecution case on this aspect, then, suggestions to this effect were required to be given to the SHO so as to seek his explanation. The SHO was asked about this omission only in reference to the document (Ex.P/7), to which, he gave a plausible explanation that he missed out mentioning number of the FIR in the documents owing to inadvertence.

Learned Public Prosecutor submitted that the informant is a very poor man belonging to a down-trodden section of the society and thus, there was hardly any possibility that he could have influenced the I.O. to ante-time the FIR so as to suit the prosecution story. Learned Public Prosecutor thus urged that there is no merit in the contention of Shri Kharlia that the FIR is an ante-timed document. Regarding the submission of Shri Kharlia that the offence, if any, would not travel beyond Section 304 Part-II I.P.C., the contention of learned Public Prosecutor was that in all the judgments cited by Shri Kharlia, the peculiar facts indicated that the incident took place at the spur of the moment wherein, either the deceased was/were seen by the family members/accused in compromising position and having been gravely and suddenly provoked, they took offensive measures leading to the offence. He urged that in the present case, neither the accused took any such defence nor is there any circumstance available on record which can justify the drawing of an inference that the incident took place all of a sudden or that the accused acted in the heat of the moment or on grave and sudden provocation on having his daughter, the deceased Nirmala in a compromising position. He thus urged that there are no mitigating circumstances available on record by which, the offence attributed to the accused appellant can be toned down. On these grounds, he sought dismissal of the appeal and affirmation of the impugned Judgment.

We have heard and considered the arguments advanced at bar and have minutely re-appreciated the entire evidence available on record.

Firstly, we proceed to deal with the argument of Shri Kharlia that the FIR is a post investigation document and that the prosecution case should be thrown out on this ground. The only suggestion to this effect which was given by the defence to the I.O. was that the document Ex.P/7 which pertains to the handing over of the dead body of Nirmala to the family members does not bear the FIR number. In addition thereto, Shri Kharlia drew the Court's attention to the memorandums (Ex.P/1 to Ex.P/6) and the postmortem report (Ex.P/10) claiming that none of these documents bear the FIR number and thus, it has to be inferred/presumed that the FIR was not registered by the time these documents came to be prepared. Suffice it to say that we find this argument of Shri Kharlia to be totally fallacious and devoid of merit. Firstly, we are of the view that the I.O. has given a plausible explanation that he had forwarded the written report (Ex.P/1) for registration to the police station with the constable Jaikaran who returned to the place of incident at about 3.45 pm. In the meanwhile, the I.O. had already started preparation of the spot documents. Manifestly, as the FIR had not been registered by then, the I.O. had no occasion to mention the number thereof in the documents prepared by him prior thereto. Regarding the documents prepared subsequently, i.e. Ex.P/7 and Ex.P/10, the I.O. has given an explanation that he missed out to mention the FIR number in these two documents owing to inadvertence.

Considering the fact that the parties belong to the marginalized strata of society,

we feel that no inference in this regard can be drawn that the I.O. was persuaded to intentionally ante-time the FIR so as to benefit the complainant party. The contention of Shri Kharlia regarding the FIR being ante-timed was based on observations made at paras 11 and 12 of Hon'ble Supreme Court's Judgment in the case of L/Nk. Mehraj Singh (supra) which are reproduced hereinbelow for the sake of ready reference:

"11. According to PW 3 Kamlesh, the deceased had left the house at 7 a.m. He would, therefore, have taken his food before leaving the house because it is not the prosecution case that food was served to him while he was in the fields. Death, according to the medical witness, could have occurred within about 2 or 2 1/2 hours from the time the deceased had taken food on account of the presence of 150 gms. Of semi digested food in the stomach of the deceased. According to PW3, however the occurrence took place at about 11.30 a.m. which would imply that the deceased took his food later and did not leave his house at 7 a.m. but at about 9.30 a.m. That is nobody's case. The effort on the part of Kamlesh PW to show that the occurrence took place at 11.30 a.m. appears to have been made because she wanted to back up the prosecution story by stating that the FIR had been lodged promptly at 12.45 p.m. by Makhar Singh and that she had seen the occurrence. According to the prosecution case PW8, the investigating officer, left for the place of occurrence after the case had been registered at the police station but we find that in the inquest report which was prepared by PW8 Sultan Singh, the investigating officer, at the spot the number of the FIR or the crime No. has not been given. Even the heading of the case, does not find mention in the inquest report. No explanation has been furnished for the omission of these vital matters from the inquest report. Was it because no FIR had actually been registered at the time as alleged by the prosecution and PW8 had reached the spot and, after, some consultations and deliberations it came into existence ? In this connection it is also relevant to note that copy of the FIR was not even sent to the medical officer along with the inquest report and the dead body for post mortem. The explanation of PW8 for not sending the copy of the FIR or mentioning the name of the case or the crime No. in the inquest report is wholly unacceptable and the High Court erred in accepting the ipse dixit of Sultan Singh PW8. It deserves to be noticed that in the inquest report even the name of the accused has not been mentioned. It also does not contain the names of the eye witnesses or the gist of the statement of the eye witnesses. It does not reveal as to how many shots had been fired or how many weapons had been used. The inquest report is not signed by any of the eye witnesses, although the investigating officer has categorically asserted that Kamlesh and Shiv Charan were present at the place of occurrence when he visited and he recorded their statements. If he had not actually recorded their statements, there is no reason why the details which we have found missing from the inquest report should not have been there. There is yet another factor which is very relevant. The prosecution led no evidence to show as to when did the copy of the FIR, Special Report, which was required to be despatched under the statutory provisions of

Section 154 Cr. P.C. read with 157 Cr. P.C. promptly, to the Magistrate was actually despatched. There is no evidence either to show as to when the copy of the FIR was received by the Magistrate. PW8 has remained singularly silent on this aspect of the case. According to PW3, the police inspector had taken her thumb impression at the site, but the prosecution has withheld that document from scrutiny of the courts, for reasons best known to it. The argument of Mr. Tewatia, the learned senior counsel that since no FIR had been registered till the investigating officer arrived at the spot and conducted the inquest proceedings, the thumb impression of PW3 was taken by the police on a document which was required to be used as a FIR, cannot be said to be without any merit. It was the duty of PW8 to explain as to on which document he had obtained the thumb impression of the widow of the deceased at the spot and produce that document for scrutiny of the courts. He did not do so.

12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr.P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR.

In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante timed and had not been recorded till the inquest proceedings were over at the spot by PW8."

We are compelled to note here that the above quoted ratio of L/Nk. Mehraj Singh's Judgment which was heavily relied upon by learned Senior Counsel, has been specifically over-ruled by Larger Bench of Hon'ble the Apex Court in the case of Radha Mohan Singh vs. State of U.P. reported in AIR 2006 SC 951 wherein, it was held as below:

"11. Learned Counsel has also submitted that as the names of the accused or the weapons carried by them and the names of the eye witnesses had not been mentioned in the inquest report, it clearly showed that by the time the inquest report had been prepared, viz., 8.30 a.m. on 15.3.79, the prosecution was not sure about its case and the FIR had not come into existence. In support of this contention strong reliance has been placed on some observations made by a two-Judge Bench of this Court in Meharaj Singh v. State of U.P. MANU/SC/0787/1994 : 1995CriL J457 of the reports which read as under:

...It deserves to be noticed that in the inquest report even the name of the accused has not been mentioned. It also does not contain the names of the eyewitnesses or the gist of the statement of the eye-witnesses. It does not reveal as to how many shots had been fired or how many weapons had been used. The inquest report is not signed by any of the eye witnesses, although the investigating officer has categorically asserted that Kamlesh and Shiv Charan were present at the place of occurrence when he visited and he recorded their statements. If he had actually recorded their statements, there is no reason why the details which we have found missing from the inquest report should not have been there....

and also the following observations made in para 12:

...Even though the inquest report, prepared under Section 174 Cr.P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW.8.

12. The provision for holding of inquest is contained in Section 174 Cr.P.C. and the heading of the Section is Police is enquire and report on suicide etc. Subsections (1) and (2) thereof read as under:

174. Police to enquire and report on suicide, etc.

(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives

information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate of the Sub-divisional Magistrate.

The language of the aforesaid statutory provision is plain and simple and there is no ambiguity therein. An investigation under Section 174 is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. It is for this limited purpose that persons acquainted with the facts of the case are summoned and examined under Section 175. The details of the overt acts are not necessary to be recorded in the inquest report. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who are the witnesses of the assault is foreign to the ambit and scope of proceedings under Section 174. Neither in practice nor in law it is necessary for the person holding the inquest to mention all these details.

13. In *Podda Narayana v. State of A.P.* MANU/SC/0182/1975 : AIR1975SC1252 it was held that the proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. Their omission is not sufficient to put the prosecution out of Court. In *Shakila Khader v. Nausher Gama* MANU/SC/0168/1975 : AIR1975SC1324 the contention raised that non-mention of a person's name in the inquest report would show that he was not a eyewitness of

the incident was repelled on the ground that an inquest under Section 174 Cr.P.C. is concerned with establishing the cause of death and only evidence necessary to establish it need be brought out. The same view was taken in *Equal Baig v. State of Andhra Pradesh* MANU/SC/0172/1986 : 1987CriL J838 that the non-mention of name of an eye-witness in the inquest report could not be a ground to reject his testimony. Similarly, the absence of the name of the accused in the inquest report cannot lead to an inference that he was not present at the time of commission of the offence as the inquest report is not the statement of a person wherein all the names (accused and also the eye-witnesses) ought to have been mentioned. The view taken in *Podda Narayana v. State of A.P.* (supra) was approved by a three-Judge Bench in *Khujji @ Surendra Tiwari v. State of Madhya Pradesh* MANU/SC/0418/1991 : 1991CriL J2653 and it was held that the testimony of an eye-witness could not be discarded on the ground that their names did not figure in the inquest report prepared at the earliest point of time. The nature and purpose of inquest held under Section 174 Cr.P.C. was also explained in *Amar Singh v. Balwinder Singh* MANU/SC/0065/2003 : 2003CriL J1282 . In the said case the High Court had observed that the fact that the details about the occurrence were not mentioned in the inquest report showed that the investigating officer was not sure of the facts when the inquest report was prepared and the said feature of the case carried weight in favour of the accused. After noticing the language used in Section 174 Cr.P.C. and earlier decisions of this Court it was ruled that the High Court was clearly in error in observing as aforesaid or drawing any inference against the prosecution.

Thus, it is well settled by a catena of decisions of this Court that the purpose of holding an inquest is very limited, viz., to ascertain as to whether a person has committed suicide or has been killed by another or by an animal or by machinery or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence. There is absolutely no requirement in law of mentioning the details of the FIR, names of the accused or the names of the eye-witnesses or the gist of their statement nor it is required to be signed by any eye-witness. In *Meharaj Singh v. State of U.P.* (supra) the language used by the legislature in Section 174 Cr.P.C. was not taken note of nor the earlier decisions of this Court were referred to and some sweeping observations have been made which are not supported by the statutory provision. We are, therefore, of the opinion that the observations made in paras 11 and 12 of the reports do not represent the correct statement of law and they are hereby over-ruled. The challenge laid to the prosecution case by Shri Jain on the basis of the alleged infirmity or omission in the inquest report has, therefore, no substance and cannot be accepted."

(Emphasis supplied)

We record a strong exception to an overruled judgment being cited before us. The judgment in the case of *L/Nk. Mehraj Singh* does not lay down correct proposition of law and thus, cannot be relied upon. The argument based

thereupon is repelled.

The second limb of argument of Shri Kharlia for criticizing the FIR was that the same did not reach the Court of the concerned Magistrate promptly and thus, adverse inference needs to be drawn against the prosecution. This argument of Shri Kharlia was based on the Supreme Court Judgment in the case of Motilal & Anr. vs. State of Rajasthan, reported in AIR 2009 SC 2790. However, in a recent decision rendered by Hon'ble the Supreme Court in the case of Anjan Das Gupta vs. State of West Bengal, reported in AIR 2016 SC 5510, Hon'ble the Supreme Court considered this aspect and held as below:

"19. FIR as well as the inquest report both mentioned the accused Anjan Dasgupta. The inquest report has not been questioned on any account. The offence, having been committed at around 4-5 PM, registration of the FIR at the police station between 7.30 to 8.00 PM does not cause any reason to draw any adverse inference, more so, when after the occurrence, the deceased was taken to the nearby nursing home where he was declared dead and body remained there till the inquest was over. The another circumstance, which have been heavily relied by trial court and reiterated before us by learned counsel for the appellant is dispatch of the FIR to the Magistrate with delay. This Court in Pala Singh v. State of Punjab 1972 (2) SCC 640 has held that delay in forwarding the FIR to court is not fatal in a case in which investigation has commenced promptly on its basis.

20. The I.O. after receipt of the information of an offence by R.T. message had arrived at the scene on 17.40 hours, which clearly proves the prompt commencement of the investigation. FIR was dispatched on 22nd June, 2000 which has also been accepted by trial court. When no questions were put to I.O. in his cross-examination regarding the delay in dispatch, at the time of hearing, the accused cannot make capital of the said delay in forwarding the FIR. This Court in Rabindra Mahto and Another v. State of Jharkhand 2006 (10) SCC 432 has held that in every case from the mere delay in sending the FIR to the Magistrate, the Court would not conclude that the FIR has been recorded much later in time than shown. It is only extraordinary and unexplained delay, which may raise doubts regarding the authenticity of the FIR."

In a later case of Anjan Das Gupta, Hon'ble the Supreme Court held that even recording of the FIR is not a condition precedent for initiating criminal investigation. Delay in forwarding FIR to the Magistrate would not be fatal if investigation is commenced promptly. It is only extraordinary and unexplained delay, which may raise doubts regarding the authenticity of the FIR.

In an earlier decision rendered by Hon'ble the Supreme Court in the case of Shri Ram @ Shiv Ram & Anr. vs. State reported in AIR 1997 SC 3997, Hon'ble the Supreme Court held as below:

"17.. It is also true that there was a delay in forwarding the copy of the FIR to the Illaqa Magistrate but that circumstance would not demolish the other positive

and credible evidence on record. This would only show how in such a serious crime the investigating agency was not careful and prompt as it ought to be."

Thus, aforesaid argument of Shri Kharlia is turned down as being devoid of merit.

It was the fervent contention of Shri Kharlia that the case is based on circumstantial evidence and the evidence available on record is not sufficient to link the accused appellant with the crime. It was his submission that the star prosecution witness Manju (PW-2) was tutored by the first informant Kesra Ram to give evidence against the appellant because the appellant had got registered a criminal case against Shri Kesra Ram for the murder of Tara Devi. In this regard, we have carefully perused the evidence of PW-1 Kesra Ram, PW-2 Manju, sister of the deceased, PW-9 Dr. Jayant Vyas, the medical jurist and PW-13 Purushottam Sharma, the SHO, Police Station Rajiyasar who accepted the FIR and conducted investigation of the case as well as the witnesses examined by the defence. Sufficient it to say that Kesra Ram is not an eye-witness of the incident. He simply received information regarding his grand-daughter Nirmala having been murdered on which, he reached the place of incident and submitted the written report (Ex.P/1) to the SHO. No suggestion whatsoever was given to Kesra Ram in his cross-examination that he or his family members, tutored Manju to give evidence against the appellant. Manju is the daughter of the accused appellant. She left with her father after the death of her mother Tara Devi.

Though the contention of the defence counsel was that the case for death of Tara Devi was registered against Kesra Ram at the instance of the accused appellant but, no corresponding documents were proved by the defence. Thus, there is no material on the record of the case to draw an inference that the accused was responsible for the prosecution of Kesra Ram and his family members in relation to the death of Tara Devi.

Manju (PW-2) deposed in her testimony that she came to know that her father had caused the disappearance of her sister Nirmala. She confronted her father about this fact on which, he gave an evasive reply that Nirmala had left for someone else's house and he would bring her later. On 01.03.2011, she asked her father as to the whereabouts of Nirmala on which, he threatened her to keep quiet and not to go out of the house or else, she too would be killed. On 02.03.2011, the witness woke up early in the morning and was thinking of going out to look out for her sister when she saw smoke coming out from the front room of their house. She opened the gate and saw the partially burnt deadbody of her sister. Her father came running and when she asked him, he stated that he had killed Nirmala by a stick blow on the head on 28.02.2011 and set the deadbody to fire. She was advised to keep silent for the fear of retribution and was also threatened. A suggestion was given to the witness that Nirmala was having an affair with Subhash which was not extended to the accused. The witness denied the suggestion. The defence theory which was put to the witness was that because the accused prevented Nirmala from marrying Subhash, she committed suicide by setting herself to fire. However, as has been noted above,

the medical evidence deposed by Dr. Jayant Vyas (PW-9), clearly falsifies this suggestion. Nirmala's cause of death was a head injury inflicted by a blunt weapon and the burn marks were postmortem in nature. The witness was also given a suggestion that she was giving the evidence against her father on the pressure of her grandfather and Mama. However, she denied this suggestion. Otherwise also, we are convinced that the evidence of this witness is absolutely truthful and convincing. It is absolutely impossible to believe the defence theory that Sushri Nirmala committed suicide. If at all any such incident had taken place on 28.02.2011 into the house, the accused would be definitely aware of the same and in the natural course of human conduct, he would have taken steps to report the matter to the police. However, his rank silence in this regard speaks volume about his guilt. The statement of Manju gives ample evidence regarding the extra-judicial confession made by the accused to her and we have no reason to doubt the same.

PW-9 Dr. Jayant Vyas was a Member of the Medical Board which conducted postmortem upon the body of the deceased Nirmala aged 16 years, and issued the postmortem report (Ex.P/10). The cause of death of Nirmala was opined to be neurogenic shock as well as the bleeding caused by the blunt weapon located on the back side of the head underneath on which the bone was fractured. The entire body other than lower limbs were burnt and the burns were postmortem in nature. Other than giving a suggestion regarding the absence of the FIR number in the requisition to conduct postmortem, no significant questions were put to the doctor so as to cast a doubt on the genuineness of his testimony. We have thus no hesitation to hold that from the medical evidence, it is duly proved that the death of Nirmala was homicidal in nature.

PW-13 Purushottam Sharma, the I.O. undertook the requisite steps in the investigation. He was questioned extensively regarding the absence of the FIR numbers in the relevant documents. We have already discussed this circumstance and find the same to be insignificant in light of the explanation given by the witness.

So far as the evidence of the defence witness (DW-1) Sunita Devi wife of the accused is concerned, she stated that Nirmala was carrying on an affair with Subhash Meghwal. The family members counselled her but she persisted with this affair. She went away saying that she was going to study and did not return back. They made a search but the girl could not be traced out. Later on, they saw the deadbody of Nirmala lying in the room which was closed from inside. The witness stated that the girl committed suicide by setting herself to fire because of her affair with Subhash Meghwal. As we have discussed above, the medical evidence bellies this theory.

Dr. Sher Singh (DW-2) was examined for the purpose of giving evidence regarding possibility of detection of the blood group, however, his evidence appears to be absolutely insignificant for deciding the case at hand.

DW-3 Mohd. Niwaz gave evidence that Sahiram's first wife had died. A case was registered in which Sahi Ram was acquitted. Sahi Ram's daughter wanted to marry a boy of different caste. Sahiram reprimanded her and thus she committed suicide. Sahi Ram had gone to his field. The police opened the door which was closed from inside. However, as we have already discussed, the defence theory that the deceased Nirmala committed suicide by setting herself to fire, is totally false and fabricated. Similar were the statement of Nanu Kanwar (DW-4). Thus, the evidence of these witness is totally unreliable and unworthy of credence.

DW-3 Dr. Ashok Kumar, who was working in the Regional Forensic Science Laboratory, Jodhpur gave evidence regarding liquid present in the jerrycan which was seized by the I.O. during investigation. In cross-examination, the witness admitted that in the jerrycan and in the clothes of the deceased as well as the ashes recovered from the place of incident, presence of traces of kerosene was noticed. Thus, the evidence of this witness does not help the defence in any manner.

The last submission of Shri Kharlia to assail the impugned judgment and for toning down the charge, was based on the Supreme Court Judgments in the cases of Saroj @ Suraj Panchal (supra), Vijender @ Bijjo (supra), State of Punjab vs. Jagtar Singh (supra), Mangesh (supra) and State of U.P. vs. Lakshmi (supra). The basic thrust of Shri Kharlia was that the accused acted under grave and sudden provocation while giving a solitary stick blow to the deceased and that the assault which resulted into her death was unintentional and thus, the offence would not travel to beyond Section 304 Part-II I.P.C.

We have given our thoughtful consideration to the ratio of the above referred Supreme Court judgments and find that the facts discussed therein are totally distinguishable from the facts of the case at hand. In all those cases, pertinent defence was taken by the accused that he/ they acted under grave and sudden provocation while inflicting the blows to the deceased because either the deceased person had been seen by the family members (accused) in a compromising position or that an altercation took place amongst them owing to such circumstances which led to the crime. In the case at hand, none of these circumstances exist.

Since, there is no eye-witness to the occurrence, and as the case proceeds on circumstantial evidence, the precise manner in which, the incident took place would be within the exclusive and special knowledge of the accused.

We are conscious of the fact that the accused has taken no such defence that he inflicted the solitary stick blow to his own minor daughter because he had seen her in a compromising position with some boy in the neighbourhood. His defence was purely one of denial. Shri Kharlia of-course tried to refer to a part of the 161 Cr.P.C. statement of Manju (Ex.D/1) wherein, it is mentioned that Nirmala had been killed because the accused suspected her character. However, law is well settled that the investigational statement of a witness is not admissible for any

purpose whatsoever as the same does not constitute substantive evidence. If at all, the accused was desirous of taking any such defence, he should have come forth with this pertinent theory when examined under Section 313 Cr.P.C., or at least, such a suggestion could have been given to the prosecution witnesses in their cross-examination.

The accused upon being questioned under Section 313 Cr.P.C., offered a bald denial and claimed that he had been falsely implicated. He did not kill the girl. The defence witness Mohd. Niwaj (DW-3) was made to say that Nirmala wanted to marry a boy of different caste, Sahi Ram scolded her and due to this, she committed suicide. Sunita Devi (DW-1) being the wife of the appellant herein, also stated that Nirmala committed suicide because she wanted to marry Subhash Meghwal and the family members were not agreeable to their relationship.

Manifestly thus, the accused has not only tried to conceal the truth but also took an improbable defence in his statement under Section 313 Cr.P.C. The evidence of the defence witnesses is totally false. It is well established from the prosecution evidence that the accused, firstly killed his minor daughter by giving her a stick blow on the head which fact is duly established by the postmortem report (Ex.P/10) and the evidence of the Medical Officer (PW-9) Dr. Jayant Vyas who clearly stated that the deceased was having a lacerated wound on the back of her head and the bone underneath was fractured. The burn injuries were all post-mortem in nature. Due to the burns, the muscles had been destroyed and the bones were exposed. Thus, from the suggestions given by the defence to the prosecution witnesses and the evidence of the defence witness, we find no such mitigating circumstance by which, this Court can be persuaded to accept the defence contention that the accused acted in grave and sudden provocation while giving the fatal stick blow to his own minor daughter the deceased Nirmala and that the offence attributed to him should be toned down to a lower degree from the charge under Section 302 IPC.

Hon'ble the Supreme Court examined the aspect of toning down of the offence from the charge under Section 302 IPC in a case of single blow. While examining the issue in the case of *The State of Rajasthan vs. Kanhaiya Lal* (Criminal Appeal No.645/2019) decided on 10.04.2019, Hon'ble the Supreme Court held as below:

"6.2 Now so far as the main reason given by the High Court while converting the conviction from Section 302 of the Indian Penal Code to Section 304 Part I of the Indian Penal Code i.e. it was a case of a single blow is concerned, it is required to be noted that the deceased had died because of single injury caused on his head by the Accused by an axe. The aforesaid can hardly be a ground to convert the conviction from Section 302 of the Indian Penal Code to Section 304 Part I of the Indian Penal Code.

6.3 In the case of *Arun Raj* (Supra) this Court observed and held that there is no fixed Rule that whenever a single blow is inflicted, Section 302 would not be

attracted. It is observed and held by this Court in the aforesaid decision that nature of weapon used and vital part of the body where blow was struck, prove beyond reasonable doubt the intention of the Accused to cause death of deceased. It is further observed and held by this Court that once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows.

6.4 In the case of Ashok Kumar Magabhai Vankar (Supra), the death was caused by single blow on head of the deceased with a wooden pestle. It was found that the Accused used pestle with such force that head of the deceased was broken into pieces. This Court considered whether the case would fall Under Section 302 or Exception 4 of Section 300 of the Indian Penal Code. It is held by this Court that the injury sustained by deceased, not only exhibits intention of Accused in causing death of victim, but also knowledge of Accused in that regard. It is further observed by this Court that such attack could be none other than for causing death of victim. It is observed that any reasonable person, with any stretch of imagination can come to conclusion that such injury on such a vital part of the body, with such a weapon, would cause death.

6.5 A similar view is taken by this Court in the recent decision in the case of Leela Ram alias Leela Dhar (Supra) and after considering catena of decisions of this Court on the issue on hand i.e. in case of a single blow, whether a case falls Under Section 302 or Section 304 Part I or Section 304 Part II, this Court reversed the judgment of the High Court (in that case also the judgment impugned was from the Rajasthan High Court) and convicted the Accused for the offence Under Section 302 of the Indian Penal Code. In the same decision, this Court also considered Exception 4 of Section 300 of the Indian Penal Code and observed in paragraph 21 as under:

21. Under Exception 4, culpable homicide is not murder if the stipulations contained in that provision are fulfilled. They are: (i) that the act was committed without premeditation; (ii) that there was a sudden fight; (iii) the act must be in the heat of passion upon a sudden quarrel; and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner.

7. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the reasoning given by the High Court while converting the conviction from Section 302 to Section 304 Part I, the reasons stated in paragraph 15 of the impugned judgment and Order, we are firmly of the view that the judgment of the High Court is manifestly perverse and is totally contrary to the evidence on record. As per the deposition of PW1 Dr. K Asif, the deceased sustained following injuries:

- 1 . Incised wound 7 cm x 0.5 cm skin deep and bone visible on the middle part of the head.
2. abrasion 1 cm x 0.5 cm on the middle portion of right leg.

As per PW15 Dr. Anees Ahmed, a fracture of 4 cm length was found in the parietal and occipital. He also stated that the said head injury was sufficient to cause death in the ordinary course of nature. Thus, the Accused used a deadly weapon-axe on the vital part of the body-head, which proved to be fatal.

8 . Another reason given by the High Court is that there was no repeated injury. Aforesaid can hardly be a ground to convert the conviction from Section 302 to Section 304 Part I of the Indian Penal Code. A single blow on the vital part of the body like head and that too by deadly weapon-axe and used with force which proved to be fatal, was sufficient to hold that it was a case of murder within the definition of Section 300 of the Indian Penal Code.

8.1 Another reason given by the High Court is that in the morning on the day of the incident, there was an altercation between the Accused and the deceased and so it can be said that in the circumstances of the case there was no intention to cause death on the part of the Accused but the fact by which the death was caused appears to hold down that the intention of causing such bodily injury as was likely to cause death. The aforesaid is contrary to the evidence on record. It is required to be noted that it is not a case on behalf of the Accused that there was an altercation between the Accused and the deceased at the time of commission of the offence. The altercation, if any, had taken place, in the morning and much earlier than the time of incident. Merely because the altercation might have taken place much earlier and not immediately prior to and/or at the time of commission of the offence, it cannot be inferred that there was no intention on the part of the Accused to cause death of the deceased. Therefore, on the aforesaid ground, the High Court has committed a grave error in converting/altering the conviction from Section 302 of the Indian Penal Code to Section 304 Part I of the Indian Penal Code. Thus, we are of the view that the judgment of the High Court is manifestly perverse and is totally contrary to the evidence on record. The High Court has committed a grave error in altering the conviction from Section 302 of the Indian Penal Code to Section 304 Part I of the Indian Penal Code and therefore the interference of this Court is warranted to obviate a complete failure of interest of justice."

On applying the principles enunciated by Hon'ble the Supreme Court in the above decision, to the case at hand, we find that there is nothing on record which can persuade the Court to believe that the accused acted under any of the mitigating circumstances which could bring his action within the exceptions provided below Section 300 IPC and, hence, there is no reason for us to accept the contention of Shri Kharlia that the offence attributed to the accused should be toned down from that under Section 302 IPC to one under Section 304 Part I of the IPC.

Considering the well established facts that the accused, firstly killed his own minor daughter by giving her a stick blow and thereafter concealed her deadbody inside a room; misled the family members and then, set the body to fire in an attempt to destroy the evidence, give rise to a clear inference regarding his ill and evil intention of killing the girl and trying to destroy the evidence. Thus, we

are of the firm view that the impugned judgment does not suffer from any infirmity, illegality or shortcoming whatsoever warranting interference.

Hence, we affirm the impugned judgment dated 02.07.2014, passed by the learned Additional Sessions Judge, Suratgarh, District Sriganganagar. The appeal being devoid of merit is hereby dismissed.

Record be returned to the learned trial court forthwith.