

Md. Mateen Vs. State of Bihar

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SooperKanoon Citation : sooperkanoon.com/126751

Court : Patna

Decided On : May-23-1996

Judge : B.P. Singh and P.K. Sarkar, JJ.

Appeal No. : Criminal Appeal No. 15 of 1995 (R)

Appellant : Md. Mateen

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

B.P. Singh and P.K. Sarkar, JJ.

1. The appellant herein has appealed against his conviction and sentence by the 4th Addl. Judicial Commissioner, Ranchi, who found the appellant guilty of the offence under Section 302 IPC and sentenced him to rigorous imprisonment for life. The appellant was charged of offences under Section 302 and 304B IPC and was tried along with two others namely his mother Gosan Are and Anr. lady Mahabeen Khaton who were charged of the offence under Section 302/109 IPC. The appellant is an advocate by profession and the victim was his wife Sajda who is alleged to have been burnt to death by the appellant by setting her on fire at about 3 p.m. on the 4th of June, 1992. The ostensible reason for the appellant to commit the offence appears to be extra marital involvement with Mahjabeen (co-

accused), which was objected to by the deceased. The aforesaid Mahjabeen has been acquitted of the charge levelled against her and similarly Gosan Ara, mother of the appellant has been acquitted of the charge of the abetting the offence of murder.

2. The informant in this case was the father of the appellant, namely Md. Rais and it was on the basis of information given by his father that a formal First Information report was drawn up and the case was registered against the appellant. The aforesaid, Md. Rais who was examined as P.W. , 5 supported the prosecution case against the appellant even in his statement recorded by a Magistrate under Section 164 Cr. P.C However, at the trial, he resiled from his statement and was therefore, declared hostile. The prosecution case, however, depends mainly on the evidence of the minor daughter of the appellant and the deceased, namely, Shabana Praveen who was examined as P.W. 6. This witness was about 9 years old when she was examined as a witness 13th August, 1993 which means that she was about 8 years of age when the occurrence took place.

3. As noticed earlier, the First Information report was lodged by Md. Rais, P.W. 5 at about 4 P.M. on the 4th of June, 1992, the date of occurrence. The said report was lodged by him before Sub-Inspector of Police, N.K. Singh, P.W. 7 of the Dorands Police Station. In his report, Md. Rais stated that at about 3 P.M. his daughter-in-law Sajda Khatoon was in her room. Suddenly, he noticed flames coming out for the room and he also heard the cries of his daughter-in-law. He along with his family members went towards that room and found that the door was closed from the one side but was open from the other side. On alarm being raised, several persons had come from the neighbouring houses. When they entered the room, they found that his daughter-in-law was on fire. He extinguished the fire with the help of others. He went on to state that his son Md. Mateen (appellant) had been assaulting his daughter-in-law for the last several years and used to torture her. Even on the proceeding night, his son had assaulted his daughter-in-law and had again assaulted her in the morning. He always threatened to kill her. Today at about 3 P.M., his son had set his wife on fire with intention of killing her, as a result of which she had received extensive injuries and had become unconscious. His daughter-in-law had been sent for treatment to the

Ranchi Medical College and Hospital. His son did not like his wife and was a debauch. He was keeping another girl Mahjabeen with whom he had bad relation. The informant further stated that he was fully convinced that his son had set fire to the daughter-in-law with a view to kill her. His son had run away somewhere after setting his daughter-in-law on fire. The aforesaid report lodged by Md. Rais, P.W. 5 is witnessed by A.K. Naushad, P.W. 1. On the basis of the said report, initially a case under Section 307/326 IPC was registered but later on, after the death of Sajda, the appellant was ultimately charged of the offences under Sections 302 and 304B IPC while the remaining two co-accused were charged of the offence under Section 302/109 IPC for abetting the offence of murder,

4. The victim Sajda succumbed to her injuries at about 10 P.M. in the Ranchi Medical College and Hospital. Dr. Tulsi Mahto, . 4, an Assistant Professor of Forensic Medicine, conducted the autopsy on the dead body of Sajda Khatoon at 12.15 hours on 5.6.92. He found the following injuries on the body of the deceased.

(i) 'There is dermo-epidermal burn involving almost entire surface except sole of the feet and posterior aspect of the hand. The hair were fringed which emitted Kerosene like smell. All the organs were severely congested with cherry red colouration of blood and tissues. The stomach contained 150 C.C. of bellow's fluid with normal Mucosa. The uterus was normal and non pregnant. The urinary bladder was empty. The upper respiratory passage contained soot particles.

In his opinion death was due to shock as a result of which extensive burn injury suffered by the deceased.

5. P.W. 1 Abdul Kalique Naushad, who was a witness to the report lodged by the informant P.W. 5 turned hostile and did not support the case of the prosecution at the trial. In his examination-in-chief, he stated that he had seen Sajda Khatoon being removed to the hospital for treatment and she was in severely burnt condition, but he had not seen her earlier. It appears that in his statement under Section 161 Cr.PC he had claimed to have reached the place of occurrence and had seen the victim of fire.

6. P.W. 2 Md. Shamsul Hoda stated that on hearing the shrieks coming from the house of Md. Mateen, appellant he come running to his house. While he was entering the house of Md. Mateen, he saw him running away. After entering the house, he found the wife of Mateen in a burnt condition and was wreathing in pain. The father of Mateen namely, Rais Saheb told him that after all Mateen burnt his wife and ran away. He further deposed that in the morning, Mateen had assaulted his wife when he had others had tried to reason with Mateen. He also stated that Md. Mateen had illicit connection with a girl Mahjabeen Khatoon whom the witness knew. This was not like by deceased Sajda Khatoon. On the day of occurrence itself, the daughter of Mateen has stated that papa had sprinkled Kerosene oil on her Mummy and burnt her. This witness is also a witness to the seizure of certain items from the place of occurrence. This witness admitted that the father of Mahjabeen was his tenant and he stayed in his house along with his family members for about two years. However, after the date of occurrence, they had become scarce and had after removed their belongings from his house. He denied the suggestion that he wanted them to vacate his house but his tenant did not agree. He denied the suggestion that he falsely implicated Mahjabeen in this case so that her father may vacate the house. This witness asserted that such imputations were false and that there were other tenants in his house who had been tenants for about 40-50 years. This witness, however, candidly admitted that he had not told the police about the illicit connection between Mahjabeen and Md. Mateen. In cross-examination, an attempt was made to show that this witness was hostile to the appellant. A suggestion was made to him that his friend Tahir Saheb and purchased a plot of land measuring two kathas and the appellant has also purchased four kathas of adjacent land. The appellant wanted to purchase two kathas of land which had been purchased by Tahir Saheb. A dispute had arisen when Tahir Saheb wanted to put up a boundary wall which was objected to by the appellant. A suggestion was made that this witness had intervened on behalf of the aforesaid Tahir Saheb. The witness admitted the fact that his friend Tahir Saheb had purchased some land but denied the suggestion that any dispute had arisen between the aforesaid Tahir Saheb and the appellant and that he had intervened on behalf of Tahir Saheb. He stated that he had no enmity with the family of the appellant. He was a neighbour of the appellant and knew that the

appellant was a practicing lawyer. He further admitted that he had not seen the occurrence with his own eyes but he was told about it by the father of the appellant. His house was at a distance of about 50 yards from the house of the appellant. When he had reached the house of appellant on the date of occurrence several other persons has also come and the father of the I appellant had said in the presence of the persons assembled there that the appellant has set fire to his wife and ran away. This witness stated that the brother of Mahabeen was involved in a murder case and the appellant used to advise the family of Mahjabeen in that case. He however denied the suggestion that he wanted to evict Mahjabeen form his house and in that connection as well the appellant was rendering legal help to them. He also stated that when Nikki (Shabana Praveen) mentioned about her father setting her mother on fire, several other persons were present.

7. P.W. 3 Zulfikar Haidar claimed that at about 3 P.M. oh the date of occurrence, he was at his house and on hearing hulla he came out and saw that there was a crowd near the house of the appellant. The father of the appellant was very disturbed and when the questioned him he replied by saying that his son had killed his wife by burning her and that he had assaulted her in the morning as well and such assaults were usual. This witness saw the victim lady who was lying badly burnt.. This witness has also witnessed the seizure list seizing Kerosene Oil, broken bangles etc. This witness Claimed that he was living in a house by the side of the house of P.W. 2 Md. Shamsul Hoda. On hearing alarm, the ran to the house of the appellant and examined there for about one hour. The appellant was not present in his house. When he had seen the victim lady, the fire had been extinguished.

8. P. W. 5 Md. Rais is the father of appellant and the first informant. In his examination-in-Chief/he stated that on the 4th of June, 1992 at about 2.30 P.M.-3 P.M., his daughter-in-law Sajda Khatoon locked herself in a room and set herself on fire. She had committed suicide. This witness was declared hostile because it was on his statement that a case was registered against the appellant. In his statement before the police, he clearly alleged that his son had set his daughter-in-law on fire. Moreover, the statement of this witness was recorded by a Magistrate under Section 164 Cr.PC on the 8th of June, 1992, only four days after the

occurrence. In his statement under Section 164 Gr. P.C. this witness had clearly stated that his son was not on cordial terms with his daughter-in-law and he used to torture her. On the date of occurrence, when he heard some noise, he ran inside and saw that there was fire in the house. He tried to broken open the door. From the door on the other side, some people entered the room and extinguished the fire. The appellant was also there. He found his wife in a badly burnt condition. He clearly stated that his son had burnt his daughter-in-law and thereafter he absconded.

9. This witness was cross-examined by the Assistant Public Prosecutor and he admitted that he had signed the report sometime after the occurrence. He however, denied that he had told the police that upon seeing flame coming out from the room of Sajda Khatoon and on hearing her cries, he went there and found that the door of the room was closed from one side but was open on the other side. He denied having told the police that his son had been cruel to his wife or that the used to assault her. This witness vitally denied all that he had stated in the First Information report. So far as the statement recorded by the Magistrate is concerned, he stated that he had not stated before the Magistrate that the relationship between his son and daughter-in-law was not cordial and that his son used to torture her. This witness denied all the statements that he is said to have made before the Magistrate. He further stated that the police had forcibly taken his signature on the fardbeyan. Infact he had told the Police Officer in the Police Station that his daughter-in-law had committed suicide by setting herself of fire but the A.S asked him to go home assuring him that he would come there. Accordingly to this witness when he refused to sign the statement recorded by the police, he was slapped by the police officer. He further stated that when he was brought before the Magistrate by the Police, he had been threatened by the police that if he did not make the statement as told, he will also be involved in the case. When his statement was recorded by the Magistrate, the Police was present in civil dress. The Magistrate did not give him any opportunity to think over the matter., At the time when his statement was being recorded, he had fear of police.

10. The child witness, namely Shabana Praveen was examined as P.W. 6. The Court put questions to her to find out whether she was intelligent enough to

answer questions and only after being satisfied, the Court proceeded to record her statement. In her deposition, she stated that the occurrence took place at about 3.30 P.M. on the 4th of June, 1992. She was on the bed by the side of the bed of her mother. Her father came and pushed some cloth into the mouth of her mother and wrapped her in a quilt. He sprinkled Kerosene Oil and set her on fire. Even before this occurrence, her parents used to quarrel. Her father was fond of Mahjabeen. On earlier occasions also her father had assaulted her mother. After her father ran away many people came and the police also arrived. She was questioned by the police. Her mother who was burnt was taken for treatment. Her mother could not raise any alarm because she had been gagged. She also did not raise any alarm because her grand mother told her to keep quiet otherwise she will also be burnt. She further stated that she was examined and her statement was recorded in Court. When questioned by the Court as to whether she wanted to stay with her father and grand father or some where else, the girl replied by saying that she- wanted to stay with her NAM (maternal grand mother). After her examination-in-chief, the defence prayed for adjournment on the ground that the witness was to be cross-examined by a different advocate. Her cross-examination was, therefore, deferred to 23rd of August, 1993 by order dated 13.8.1993. Ultimately her cross-examination begun on the 2nd of September, 1993 and concluded on the 3rd of September, 1993.

11. In her cross-examination, she stated that she was staying with her Khala, Khalu and her maternal grand mother. She was shocked by the death of her mother. Very often, her maternal grand mother, her Khala and Khalu also talked about the occurrence. The date of the occurrence 4th June, 1992 was mentioned in the course of such discussions and that is why she remembered the date of occurrence. Her Khala and Khalu did not visit her father house because their relationship was strained- She further explained that there were four rooms in her house. Two rooms were occupied by her two uncles, namely, Nasim and Perwez, while the 3rd room was occupied by her grand father and grand mother. One room was occupied by her father and his family member. She admitted that she had told the police that her father and mother lived in the same room and that before the occurrence, her father had asked her and his two other children to go out of the house. She had also told the police that her father had set his mother on

fire after wrapping her in a quilt. She knew that Mahajabeen was a tenant in the house of Shamshul Hoda. The father of Mahjabeen used to consult her father in connection with the criminal case against his son. Her father also looked after other cases of Mahjabeen's family and they used to consult her father now and then. The father of Mahjabeen used to consult her father whenever he had dispute with his landlord. Sometimes, Mahjabeen and her mother used to come with Mahajabeen's father. Her mother did not approve of Mahjabeen coming to her house and she used to tell her father not to permit her to come to the house as the result would be very bad. Her father used to say that since he was an advocate, he had to look after their cases. This used to annoy her mother and she used to threaten her father. Even Shamshul Hoda, P.W. 2 did not approve of her father giving advice to Mahjabeen. She admitted that for the first time, she has stated in Court that her father was fond of Mahjabeen. She further stated that her Khala, Khalu and maternal grand mother loved her and like a good girl, she obeyed their orders. Whenever her father used to assault her mother, her body used to get swollen but she never reported this matter to the police. She asserted that even before the police and the Magistrate, she had stated that she was in the bed which was by the side of the bed of her mother. She further stated that after the death of her mother, her maternal uncle looked after her. Her Khala and Khalu were also of great help. The room occupied by her parents had two doors, one which opened on the road towards north and the other opening in another room towards the south. This other room was occupied by her grand father (Md. Rais, P.W. 5). This witness stated that she had come from Pan-Posh in Orissa only a month before the occurrence. Earlier she as well as her brother and mother had gone to Pan-Posh but whereas she and her brother had come back, her mother had remained at Pan-Posh for almost three years. Before the occurrence, her father had brought her as also his children from Pan-Posh. 8-10 days after the occurrence, she had again gone back to Pan-Posh.

12. On the date of occurrence, after her mother had been removed to the hospital, she had gone to the neighbouring house of aunt Baby. After the police had left, her Khala and Khalu had come from Kanke and took her to Kanke. On the next day, her maternal grand mother and uncle had come to her father's house and then they came to Kanke where they stayed for 8-10 days. During this period, her

statement was reported before the Magistrate. Thereafter she had gone with her maternal grand father and grand mother to Pan-Posh.

13. In this case, the Investigation Officer was examined as P.W. 7. The trial Court had adversely commented on his conduct and we also find that this Officer took no interest in the matter and only complied with formalities without making a sincere attempt to find out the true facts. Apart from recording of the report lodged by P.W. 5 and seizing some items from the place of occurrence, he does not appear to have made any effort to contact the deceased who was being treated at the Ranchi Medical College and Hospital. He had been informed that the deceased had been sent for treatment to the Ranchi Medical College and Hospital but he made no effort to contact the victim with a view to get the true facts. He had never gone to the Ranchi Medical College and Hospital in the course of investigation. He did not even record the statement of the doctor who was treating the victim, though the victim died in the night 5-6-1992, he came to know about her death on the next day. He never went to the hospital to find out when the victim had died He did not record the statement of the persons who had taken the victim to the hospital: He did not make any effort to find out in which ward of the hospital, the victim was being treated, nor did he try to find out under whose treatment, the victim was. Even after he came to know that the victim had died, he never went to the hospital though he knew that it was a part of his duty to go to the hospital. He did not get the post-mortem examination conducted and did not even go to the hospital to obtain the post-mortem report or the inquest report. The postmortem report and inquest report were sent to him by the Bariatu police station. The cross-examination of this witness fully establishes the fact that he really took no interest in the matter and it is difficult to express any opinion about his motives. The trial court has commented that such a person should not be appointed the Investigation Officer in any case. We are of the view that the matter requires serious consideration by the Director General of Police because such in-different attitude on the part of the Investigating Officer may lead to serious miscarriage of justice. In the instant case, an attempt should have been made by the Investigating Officer to get the dying declaration of the victim recorded by a Magistrate. Far from doing so, he did not even care to meet the victim in the hospital nor did he ever go to the hospital at any stage. The conduct of the

Investigating Officer must be condemned in the strongest terms.

14. This brings us to a consideration of the defence witnesses examined by the defence. D.W. 1 Md. Parwez Akhtar is the brother of the appellant. He stated that at about 4.30 P.M. on the date of occurrence, while he was coming to his house, he learnt about the victim having set fire to herself. On coming to know that she has been removed to the Ranchi Medical College and Hospital, he rushed to the hospital. At the hospital, he met Nasim (his brother) and Badrudoja at the gate who took him to the victim in the ward. The victim was naming her daughter and son. When this witness asked her as to how this happened, she told her that she was very angry and out of anger she had burnt herself. The statement was made in the presence of Nasim and Badrudoja. Badrudoja was a house surgeon in the hospital. After sometime, he came back to his house. This witness stated that after reaching his house, he did not meet the police, neither did he meet any neighbour at this house. He knew Badrudoja for three years and he also knew that he was at Patna but he did not know his address. He was told by a resident of medical hospital that Badrudoja lived in Patna. The statement of the victim was not recorded in writing. No police Officer was present. He denied the suggestion that he was not speaking the truth as the victim was not a position to speak. Third witness, however, admitted that he was making this statement for the first time in Court. He had not mentioned about it in writing or had complained about the matter to any authority before this day.

15. Md. Nayeem D.W. 2 a neighbour of the appellant. He stated that on the date of occurrence on hearing the noise outside, he came to the house of the appellant and found that the wife of the appellant was bevening. The fire was extinguished by the women in the house and a blanket was thrown on the victim. Thereafter the victim was removed to the Ranchi Medical College and hospital in a Car. On the way, he asked the victim as to why she had done so. to which she replied by saying that what she had done was right and that her Coffin will be carried on the shoulder of her husband. He claimed that he was the first person to reach the house of the appellant on hearing the noise. After the date of occurrence, he never met the appellant as he did not consider it necessary to meet him. On the date of occurrence, when he had returned to his house after about 1 1/2 hours, he found

that the police was searching for the appellant. He never appeared before the police, even though, he knew that a case has been registered against the appellant. He had given no intimation to the police either orally or in writing as he did not consider it necessary. He further admitted that what he stated in Court on that day, he had not stated before any member of the public or a Magistrate before that date. He was speaking for the first time in Court. He denied the suggestion that the victim was not in a position to make a statement as she was unconscious.

16. On an overall appraisal of the evidence on record, it appears to us that the prosecution rests on the evidence of child witness P.W. 6. The father of the appellant Md. Rais, P.W. 5, no doubt lodged the report with the police implicating his son. Four days later in his statement before the Magistrate as well he supported his statement made in the First Information report. However, at the trial he resiled from his earlier statements and denied each and every statement he had made earlier. He deposed at the trial to the effect that his daughter-in-law had committed suicide and not that she was burnt to death by her husband. The first Information report cannot be used as substantive evidence, nor can his statement under Section 164 Cr.PC be used as substantive evidence. His earlier statement can only be utilised for the purpose of corroborating or contradicting his statement in Court. Applying this test, we must hold that Md. Rais, P.W. 5 is a thoroughly unreliable witness and no importance can be attached to his statement in Court. This however does not help the case of the prosecution because even if we disbelieve P.W. 5 who has been declared hostile, the converse cannot be accepted as true in the absence of consent and reliable evidence on record. We must, therefore, hold that the evidence of P.W. 5 Md. Rais does not help the prosecution and the witness has proved himself to be utterly unreliable.

17. We are then left with the deposition of the child witness P.W. 6. We have cautioned ourselves that the testimony of a child witness is at times dangerous to rely upon. Very often, a child may seek from imagination, or he may be tutored by those who are interested in falsely implicating a particular person or persons. The fear is that a child witness may give to the court an imaginary or a tutored version and the Courts must be cautious against this tendency of a child witness while considering her evidence, we have taken care to scrutinise her testimony with a

view to rule out the possibility of tutored evidence getting acceptance of this Court. Reading the deposition as a whole, the witness gives the impression of being an intelligent child capable of understanding the questions put to her. Her answers are forthright and does not give any impression that she was speaking from imagination. She has categorically denied the suggestion that she had been tutored by the persons with whom she was living. The witness, however, has not hesitated in answering questions put to her as regards her relationships with her maternal grandfather and grandmother, her Khala and Khalu and with also witness Shamsul Hoda, P.W. 2. In reply to questions put to her she emphatically stated that she was loved by her Maternal grandmother, her Khala and Khalu and that she obeyed them. She was also candidly stated that they used to discuss about the death of her mother and that she as well as her maternal grandmother and her family members were shocked by the incident. There is no inconsistency between her statement before the police, her statement recorded under Section 164 Cr.PC by the Magistrate and her deposition in Court. She has been throughout consistent so far as the core of the prosecution case is concerned. It is no doubt true that at the trial she introduced her paternal grandmother into the picture by saying that she had asked her not to raise alarm otherwise she would also be burnt like her mother. The trial Court has given to Gosan Ara, mother of the appellant, the benefit of this omission in the earlier statement of the witness. However, her statement with regard to the manner in which her mother was burnt by her father is consistent. We are, therefore, satisfied that the evidence of P.W. 6 is reliable and is not a result of tutoring. She has deposed true facts which she has witnessed.

18. Learned Counsel for the appellant submitted that there was really no need for the appellant to kill his wife because being a Muslim, he could have divorced her. It is not for us to find the reason why a person acts in a particular manner. If one is so rational, one may find no reason to kill anyone. The evidence on record however discloses that their relationship was not cordial and in the past as well the appellant had maltreated his wife by beating her now and then. In addition the liaison of the appellant with Mahjabeen was not approved by his wife and this led to further bitterness. These circumstances which are established on record provide sufficient material to establish a motive for the offence, though in a case of this

nature, where the prosecution has examined a child witness to prove the occurrence, proof of motive is not necessary.

19. It was then submitted that Md. Rais, the father of the appellant, had been forced to sign the First Information report as also¹ to make a statement before the Magistrate under Section 164 Cr.PC. In our view, the prosecution case is neither proved nor disproved by P.W. 5 and we have already rejected his evidence finding him to be an unreliable witness. There appears to be no reason why the police would have forced him to lodge a false report. In fact Md. Naushad, P.W. 1, who is a witness to the First Information report has not stated in the course of his deposition that P.W. 5 was forced to give a wrong report. P.W. 1, as noticed, has been declared hostile but even so he did not say that the report was obtained under pressure and that it was not a voluntary statement of the informant. In fact P.W. 1 though declared hostile admitted the fact that he was told by Md. Rais, P.W. 5 that the appellant had been saying that he would burn his wife and he had ultimately done so. It would thus appear that even a witness hostile to the prosecution has stated that the father of the appellant had told him that his son had carried out his evil designs by burning the victim. The submission, therefore, that the First Information report was obtained under pressure and was not a voluntary statement does not appear to be true. In any event, this First Information report can only corroborate or contradict the informant and therefore, cannot be treated as substantive evidence. We, therefore, do not place any reliance on the First information report while considering the truthfulness of the prosecution case..

Similarly the criticism levelled by counsel that the Magistrate had not given sufficient opportunity to the witness P.W. 5 before recording his statement under Section 164 Cr.PC and that the witness was under fear of police when his statement was recorded, would have been significant if P.W. 5 has made a confessional statement under Section 164 Cr.PC. These considerations lose their significance in a case where the statement of a witness is recorded who is not making a confessional statement. In any event, as we have observed earlier, neither First Information report nor the statement of P.W. 5 recorded under Section 164 Cr.PC can be used as substantive evidence against the appellant and we therefore leave these statements out of consideration.

20. Counsel for the appellant then submitted that there was no evidence to establish the presence of the appellant in the house at the time of occurrence. The submission overlook the evidence of an eye witness P.W. 6. Moreover, P.W. 2 a neighbour who had rushed to the house of the appellant on hearing alarm has stated in clear terms that while he was entering the house he saw the appellant running away. We are satisfied that having regard to the facts of the case, the appellant had sufficient opportunity to slip away even before the witness assembled and it may be that while doing so he was noticed by P.W. 2.

21. A submission was sought to be urged on the basis of the medical evidence on record that the burns found on the body of the deceased were first degree burns. It was submitted by counsel that if really the husband intended to burn his wife to death, he would have caused third degree burns and not first degree burns. We do not wish to comment on the opinion of the doctor but the fact remains that the burn injuries caused to the victim were extensive in nature and resulted in her death despite treatment given to her. It cannot, therefore, be said that the burn injuries were not such as could cause the death of the victim in ordinary course. Infact she died of such burn injuries which is itself of proof of the fact that the burn injuries suffered by her were sufficient to cause her death in ordinary course. So far as the appellant is concerned, he had done all that he could do. There was nothing more that he could do after sprinkling Kerosene oil and setting her on fire. Whether the injuries caused to his wife were first degree burns or 3rd degree burns, were matters beyond his control and may be, on account of timely intervention, the fire was extinguished before it could cause 3rd degree burns. Unfortunately, the injuries suffered during this period proved fatal.

22. It was then Submitted that the child witness P.W. 6 gave a tutored version to the Court. She admitted that her Khala, Khalu and maternal grand mother frequently talked about the incident and that was the reason why the date of incident got fixed in her memory. It was also submitted that the child witness admitted that she was loved by her maternal grand mother as well as Maternal uncle and aunt and she as a child beyond them. In our view, these facts are not sufficient to establish that the witness was giving a tutored version. It is natural that for sometime after such ghastly incident, members of the family must have been

talking about it. That is but natural and cannot, by any stretch of imagination, be construed as an attempt to tutor a child witness. The fact that the child witness admitted that she obeyed her maternal grand mother etc. is also not of much help to the defence. After all the girl was only about 8 years old and she was expected to obey he elders.

23. The credibility of the child witness was sought to be impeached by reference to her earlier statement made in the course of investigation. It is rather distressing that in this State, a witness is never confronted with the statement made earlier, which is a condition of Section 145 of the Evidence Act. Without confronting the witness with his statement, a mere suggestion is put to the witness and his answer is elicited. Thereafter similar question is put to the Investigating Officer when he is examined at the trial and his answers are elicited as to whether the witness had or had not made a certain statement before him. The practice followed by the Courts must be deprecated because in no case we have found compliance of Section 145 of the Evidence Act. When the credibility of a witness is sought to be impeached by reference to an earlier statement made by him under Section 161 Cr.PC; law requires that the witness should be confronted with his statement so that he has an opportunity to explain. In such cases, the court is also required to mark the portion of the statement to which witness is confronted to record his own comments as to whether the earlier statement does or does not contain the statement suggested by the cross-examining counsel. If this is not done and the confronted portion is not marked by the Court, it would be difficult for this Court to verify whether such statement was or was to made earlier by the witness. If the portion of the statement itself is not marked by the Court, the Court would never come to know as to whether the witness was speaking the truth or the Investigating Officer was speaking the truth. We, therefore, takes this opportunity of directing the Courts to take notice of the provision of Section 145 of the Evidence Act and to comply with the said provision strictly. In every case where the witness is confronted with his statement earlier made, the portion of the statement with which he is confronted must be duly marked for identification and must be shown to the witness before eliciting his reply. The Court must also record its observation in the deposition sheet itself as to whether such statement finds place or not in the earlier statement of the witness under Section 161 Cr.PC

24. Counsel for the appellant submitted that P.W. 6 had not stated earlier that her mother was wrapped in a quilt before sprinkling of Kerosene Oil and setting her on fire. Even assuming it to be so, having regard to the age of the witness and her State of mind, if this fact was missed by her, that would not discredit her testimony if otherwise found to be reliable. The omission is not such as to render the witness untrustworthy. It was then submitted that so far as Paternal grand mother, Gosan Ara is concerned, her name was mentioned for the first time by the witness at the trial. This witness has asserted in her deposition that she could not raise any alarm because her grand mother had threatened her that if she did so, she will also be burnt like her mother. One cannot ignore the fact that this child witness must have been under a state of shock soon after the occurrence and her statement was recorded by the police within two hours of the occurrence. In such a state of mind, it was really not expected of a child to give all detailed of the occurrence and as long as she stated the basic facts about the manner in which her mother was set on fire by her father, a minor omission will not make her testimony suspect. If any event Gosan Ara has been acquitted by the Trial Court on account of such omission. So far as the appellant is concerned, the case as against him is not affected by such omission.

25. Counsel for the appellant then submitted that in a case of this nature, the Court should not rely upon the testimony of the child witness and must look for corroboration from other evidence. In this connection, be relied upon a decision of the Supreme Court reported in 1995, (Supplement IV) Supreme Court cases, 417.1 have carefully perused the judgment and find that the facts of that case were quite different and the observations of the Supreme Court were made in entirely different circumstances. In that case, the Court found that the child witness had made several statements which did not give a consistent version of the occurrence. The Court also found traces of tutoring on certain aspects of the case and further it was found that the witness has stated certain facts of which ordinarily a child of her age would not be aware. Such facts suggested that possibility of tutoring could not be ruled out. It was, under these circumstances, that the court was of the opinion that implicit faith and reliance could not be placed on her testimony since it was not corroborated by any independent and reliable evidence.

In the instant case, the facts are quite different. The statement of the child witness recorded in the course of investigation, her statement recorded under Section 164 Cr.PC by a Magistrate and her deposition in Court are quite consistent. The statements made before the police and the Magistrate earlier are not very lengthy statements. While deposing in Court, large number of questions were put to her and she was cross-examined at length. When such large number of questions are put to a witness he is bound to answer them and when subjected to such lengthy cross-examination, some omissions may be pointed out in her earlier statements. If these omissions are not of any significance, the testimony of the witness cannot be doubted. Her deposition that it was her father who sprinkled Kerosene Oil on her mother and set her on fire is consistent. It is true that she had perhaps not mentioned anything about her paternal grand mother to the police in the course of investigation, though we are not sure as to what she had really, stated before the police. She was never confronted with her statement recorded under Section 161 Cr.PC and only a suggestion was made that she had not mentioned the fact that her paternal grand mother prevented her from raising alarm with a threat that she will also be burnt if she did so. Without confronting the witness with her earlier statement, the Investigating Officer was questioned as to whether this witness had said so and he stated that she had not said so. In any event, the benefit of such omission has been extended to Gosan Ara, the maternal grand mother. There is nothing else which may suggest that the witness was tutored. It was submitted that the witness has mentioned in the course of her deposition that his father was fond of Mahjabeen. The statement does not appear to be untrue and other witnesses have also stated so. Even though, a child of about 8 years of age, the witness had been noticing frequent quarrels between her parents on the issue of Mahjabeen and therefore; she may have got the impression, not wrongly, that her mother protested the visits of Mahjabeen to their house of the contact maintained by her father with Mahajabeen. In these circumstances, it cannot be said that the said statement have been the result of tutoring. Similarly the fact that the child witness was taken away by her relatives and stayed with her maternal grand parents in Orissa, cannot by itself persuaded us to jump to the conclusion that she must have been tutored. After all, she had to stay with her relatives as she could not stay in her parental home on account of the ghastly incident. In such circumstances it

would not be proper for the Court to infer that she was tutored merely because she was staying in the house of her maternal grand parents.

26. Counsel then submitted that the possibility of suicide cannot be ruled out. The deceased must have got disgusted with the behaviour of her husband whose loyalty to her was also doubtful. In these circumstances, she had reasons to commit suicide. In a case of this nature, where direct evidence is available and the daughter of the deceased has given an eye witness account of the incident, it is not possible for the Court to conjuncture what else could have happened. In view of the evidence on record, it must be held that this was not a case of suicide.

27. After giving the evidence on record, our most careful consideration, we are satisfied that the child witness P.W. 6 is a truthful witness and she has neither deposed on the basis of her imagination, nor has she given a tutored version. Considering her age, she has stood the test of cross-examination well and we find no reason to discard her testimony. We, therefore, do not find any ground to allow the appeal of the appellant.

28. This appeal is accordingly dismissed.

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