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Manoj Kumar Rai Vs. State of U.P.

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Court : Allahabad

Decided On : Aug-13-1999

Reported in : 2000CriLJ877

Judge : B.K. Sharma, J.

Acts : Evidence Act - Sections 145; Indian Penal Code (IPC), 1860 - Sections 302, 304 and 504; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. Appeal No. 1450 of 1997

Appellant : Manoj Kumar Rai

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Lal Chandra Pandey, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

B.K. Sharma, J.

1. This is an appeal against the judgment and order dated 25-4-1997 passed by Sri B.G. Saxena, the then 1st Additional Sessions Judge, Azamgarh in S.T.N. 87 of 1994, under Section 304, IPC, whereby he convicted the accused-appellant

Manoj Kumar Rai of the offence Under Section 304, Part-I, IPC and sentenced him to undergo R.I. for a period of 10 years.

2. I have heard the learned Amicus Curiae appearing for the accused-appellant and the learned A.G.A.

3. There is no force in this appeal.

4. It is a case of patricide. The deceased in this case is Hari Nath Rai, aged about 40 years. The accused-appellant Manoj Kumar Rai is the son of the deceased from his first wife and on the date of occurrence he was about 20 years of age. The deceased had a daughter also from his first wife who is alive. After the first wife of the deceased died the deceased remarried Smt. Pushpa P.W. 2 Smt. Phuspha lived with the deceased. There is no issue from Smt. Pushpa. The informant in this case is Tilakdhari, father of the deceased and consequently real grand father of the accused-appellant. Apart from Hari Nath Rai (deceased) the informant Tilakdhari had 4 other sons namely Harivansh Nath Rai, Ram Het Rai, Mahendra and Hari Nandan Rai. Hari Nandan Rai was younger than the deceased.

5. Tilakdhari informant and his sons including the deceased and their family admittedly lived in the same house in village Madhasiya P.S. Tehbarpur as shown in the Site plan prepared by the I.O. There was a central Angan in the house and around it, there was constructed portion with a common roof.

6. The prosecution story was that Manoj Kumar accused-appellant was brought up with great affection because his mother had died and so he became wayword and used to roam here and there due to which he was given 2-4 slaps by the deceased at about 4-00 p.m. on the day immediately preceding the night of occurrence and later on, the deceased had persuaded and fed him, that at about midnight in the night of 20/21 -4-93 the deceased was sleeping on the roof, that Smt. Pushpa was sleeping with the deceased and the accused-appellant was made to sleep on the same roof at a little distance and the informant and others of the family were also sleeping at the same roof at different places, that at about mid- night the accused-appellant assaulted the deceased with a Moosal, that Smt. Pushpa cried and the

informant also wokeup and then the accused-appellant gave a Moosal blow on the right arm of the deceased, that Hari Nandan and Ram Hit Rai also came to the spot and snatched the Moosal from him, that the accused-appellant was arrested on the spot but he slipped away, when the vigil relaxed that there was bleeding from the head of the deceased and consequently, the informant and other proceeded in a Jeep for the hospital for treatment of the deceased but he died on the way and so the dead body of the deceased was brought back to the house and an FIR of the occurrence was lodged by Tilakdhari informant P.W. 1 at the police station on which a case under Section 304, IPC was registered against the accused-appellant. The investigating officer visited the spot and found blood on the roof at the place where the deceased was said to be sleeping at the time of occurrence and the Moosal used in the occurrence was also taken into custody by the police from his house, the necessary memo was prepared about both these recoveries.

7. The post mortem on the body of the deceased had taken place on 21-9-1993 at 4-50 which revealed the following ante mortem injuries.

Ante Mortem Injuries

1. Contusion 15 cm x 10.00 cm on the Rt. side of head just above the Rt. ear with a lacerated wound 3 cms x 1 cm x bone deep on the middle, 3 cm above the Rt. ear.

2. Contusion 16 cms x 10 cms on the back of Rt. upper arm in lower part just above Rt. elbow joint with a lacerated wound 1.0 cm x 0.5 cm x bone deep 4.0 cm above the Rt. elbow joint underlying fracture of lower end humerus bone.

3. Abrasion 1.0 cm x 1.0 cm on the back of left hand, 2.5 cm below left wrist joint.

8. Internal Examination showed fracture of right temporal bone Laceration of membranes in the right side. In the brain, there was subdural haematoma with laceration of brain matter of right side due to depressed bony fracture. Stomach was filled with one fibre semi digested food material, rice and Dal, Small intestines filled with gases and faecal matter. Probable time since death was about half day.

In the opinion of the doctor, the death was caused due to Coma and ante mortem injuries. The duration was broadly consistent with the prosecution story.

9. The ocular testimony in this case was given by Tilakdhari informant P.W. 1, real father of the deceased and grand father of the accused-appellant and Smt. Pushpa P.W. 2, widow of the deceased and at the same time step mother of the accused-appellant. Their evidence is fully corroborated by the medical evidence. The testimony of the informant is also corroborated by the FIR lodged by him at the police station nominating the accused-appellant who was his own real grandson as the sole assailant. The presence of Tilakdhari informant P.W. 1 and Smt. Pushpa Devi P.W. 2 at the roof of the house where the inmates slept in the night in those days in the ordinary course was quite natural. Not a word was put to by the informant or Smt. Pushpa in their cross-examination by the defence to suggest that they were not present at the spot at the time of occurrence. So they were competent witnesses about the occurrence. They being members of the same family there was no question of non-identification of the assailant. It was never the case of the defence at the trial or even before this Court that the deceased was assaulted and done to death by some unknown assailant or unknown assailants who came from outside and managed to escape after assaulting and causing injury to him.

10. The prosecution evidence is also corroborated by the finding of blood on the roof of the house at the scene of occurrence. None of the ocular witnesses has suggested anywhere in cross-examination-that actually no blood was found at the alleged scene of occurrence and no blood was taken in custody by the investigating officer. The Investigating Officer had entered the witness box and testified to having found blood on the roof where the occurrence is said to have taken place and that he had scratched the blood and sealed it and made a memo (Ext. Ka-13) about it. He had not suggested in his cross-examination that actually he did not find any blood on the roof but that he had found it elsewhere or on the ground on any place inside or outside the house in question.

11. About the time of occurrence, also there was no suggestion made to the ocular witnesses challenging it.

12. Another point of importance which must be placed on record is that the accused-appellant has nowhere denied his presence at the scene of occurrence were he was expected to be present in the ordinary course of living jointly in the house along with his sister, step mother, grand father, father (deceased) paternal uncles and the other family members in that joint family.

13. The prosecution has set up a motive in the occurrence. It was that the accused-appellant having been brought up with excess love and affection consequent upon the death of his natural mother he had started living a wayward life and used to roam about here and there and due to that reason, he was slapped 2-4 times by the deceased and later on, the deceased persuaded him and fed him in the evening. On this point there is evidence of Tilak Dhari P.W. 1. In this cross-examination, he as not suggested anywhere that the accused-appellant was not being treated kindly or that he had not been living the type of life as alleged or that he was not slapped for it and reprimanded. Whatever suggestion was made by the defence, was made about the occurrence. Under these circumstances, it is immaterial that Smt. Pushpa P.W. 2 did not testify on the general mode of the living of the accused-appellant and did not testify to the slapping incident and consequent efforts at repprochement. In her cross-examination, she stated that the accused-appellant used to have quarrel with other members of the household. This statement is in line with the testimony of the informant. She did say in her cross-examination, 'Mere Pati Ney Kabi Bhi Manoj Ko Nahin Mara'. However, this statement does not go to belie the testimony of the informant on the point of motive. This statement only meant that the deceased had not beaten the accused-appellant in her presence. Here it may be mentioned that some cross-examination was made from the informant on the point of scolding of the accused-appellant by the deceased. In his cross-examination, the informant testified that whenever the deceased scolded the accused-appellant, he (the accused-appellant) got slightly enraged. Asked about the immediate motive flowing from the slapping by the deceased, the informant said that he could not tell as to what entered in the mind of the accused-appellant that he assaulted the deceased. It was elicited from him that the accused-appellant did not lose his temper on being scolded by him (the witness). Despite all these, in the cross-examination no suggestion was made that the slapping incident did not take place. If we take it that Smt. Pushpa P.W. 2

suppressed the fact of the scolding of the accused-appellant by the deceased off and on, the accused does not stand to gain an inch.

14. In his statement under Section 313, Cr. P.C., the accused-appellant was put question No. 3 about his being brought up with excess love and affection due to the death of his mother and due to which he became wayward and used to roam here and there. He admitted the death of his mother and denied the rest.

15. Then there was question about the incident of his slapping and he made a total denial of the same. In my view, this denial does not inspire confidence. There is no reason to doubt the evidence about motive.

16. It has been argued that in the FIR it was said that the daughter of the deceased and he himself raised an alarm, while at the trial the informant has testified that Smt. Pushpa cried whereupon he also woke up. There is no real discrepancy between the two. Moreover, if there was any discrepancy, unless it was pointed out to the informant and unless he was given an opportunity to explain it, his testimony could not be contradicted under law.

17. The learned Amicus curiae for the accused-appellant has pointed out that the informant claimed that he had got it mentioned in the FIR that he had reached at the spot at the call of Smt. Pushpa but actually it was not mentioned in the FIR. The FIR was not read over and shown to him to contradict him as per the procedure laid down in Section 145 of the Indian Evidence Act. Even otherwise also it was not necessary that every detail is written in the FIR. As a matter of fact, there is no inconsistency between what has been stated in the FIR and what has been stated at the trial by the informant.

18. It has been argued by the learned Amicus curiae that while the nearest Government Hospital was available just one and half miles away, the informant claims that he took the injured to the District Hospital which was 4-5 Kose away from the village of occurrence. It was nowhere suggested to the witness in cross-examination that actually he had carried injured only to the hospital Tehbarpur but had falsely testified to taking the injured, in the District Hospital which was far away to explain the delay in the FIR. The factum of taking the injured to the District

Hospital for treatment not having been challenged at the trial, it cannot be said that there is anything unnatural or improbable about this conduct of the informant. Every body knows that in such a case where the deceased had serious injury in the head, the primary health centre, even though, nearby could not have rendered any medical help and could have only referred the case to the District Hospital thereby delaying medical help to him. The informant has not tried to invent any lame excuse for the delay in going to the police station to lodge the FIR. The facts of the case themselves were such that no one could expect any member of the family to go to the police station promptly for longing the FIR. If the deceased had died due to the assaults by the accused-appellant, side by side with this fact, there was the stark fact that the accused-appellant was the real grandson of Tilakdhari informant and real nephew of the 4 brothers of the deceased. The FIR could have been lodged with great promptitude only if the informant who was lodging it was having a grudge of his own against the accused-appellant as distinguished from the disgust and annoyance which was a natural result of the act of the accused-appellant in inflicting injuries on the body of the deceased. The fact that the FIR was lodged with delay only shows that it was lodged with the greatest of reluctance and further that it was lodged against the accused-appellant only because the accused-appellant was the culprit and none-else. The informant had nothing to gain but only to lose by the implication of the accused-appellant in the FIR. Obviously, the FIR was lodged against the accused-appellant because the bitter truth could not be swallowed.

19. It has been argued that the FIR was not in existence when the inquest proceedings were taken by the investigating officer and that it was subsequently that the FIR came into existence and was ante timed. In support of this contention reliance was placed on the fact that in the inquest report while the crime number of the offence under Section 304, IPC was written as it was in the chick report of the case, the offence under Section 504, IPC too was mentioned while it was not mentioned in the chick report and further that the distance of police station was recorded in the inquest report as 3 kms. South East while in the chik report it was recorded as 1/2 kms. towards East. The investigating Officer has pointed out the discrepancies but he has satisfactorily refuted the suggestion that the FIR was not in existence at the time of the inquest proceedings and that it was lodged later on

and got ante timed, and explained the position. Firstly, he has stated that the offence under Section 504, IPC was mentioned in the inquest report and some other papers too by way of clerical error. There is nothing doubtful about this explanation. In the case of homicide there was no occasion for presuming that an offence under Section 504, IPC would also get attracted. Then about the distance of the scene of occurrence from the police station, he has stated that he has recorded on his own estimate. This explanation also we do not have any reason to doubt. In this case it is to be kept, in mind that in case, the FIR has been prepared subsequently and ante timed, then it would not be shown in the chick report as of 9-30 a.m. But would have been shown in the early hours of the morning itself. So there is no reason to accept the defence argument on this point.

20. It has been argued that the informant has stated at one place that the accused-appellant was arrested and kept seated at the door and then stated that he had run away from the house when the members of the family departed from there and that he also stated that he does not remember when he ran away. There is nothing suspicious about this statement. In the ordinary course of human conduct, one could easily understand that the accused-appellant managed to escape as soon as supervision relaxed.

21. It is true that the Moosal which is a material exhibit in this case has not been sent to forensic laboratory for examination of blood stains thereon which was a lapse of the I.O. But it was not fatal for the prosecution. The evidence of the doctor, who conducted the post mortem on the dead body of the deceased was fully consistent with the infliction of injuries on the head and the right upper arm of the deceased by this weapon.

22. Then it has been argued by the learned Amicus curiae for the accused-appellant with great vehemence that the real sister of the accused-appellant who on the prosecution case was an eye-witness of the occurrence has not been examined at the trial by the prosecution and that this omission on the part of the prosecution casts a grave shadow of doubt over the prosecution story. This argument has no substance. Even while, it may be argued against Smt. Pushpa that she was a step mother of the accused-appellant, nothing could be argued

against the informant who was the real grand father of the accused-appellant. For him this issue of the deceased would be as dear as the brothers of the deceased and the issues of those persons and the same would be the position of the other persons of the family who were present at the time and place of occurrence on the roof where the occurrence took place and so each one of them was a competent witness of the occurrence including the real sister of the accused-appellant, but there could be no purpose in duplicating the evidence of the house holders. If the accused-appellant felt so inclined he could move the learned Sessions Judge for calling his sister to the witness box as a defence witness or as a Court witness. In my view, nothing revolved on the non-examination of the real sister of the accused-appellant at the trial by the prosecution.

23. Much argument has been advanced that the accused-appellant has been falsely implicated in this case with a view to digest the land of his share. There was nothing on the record from any side to show that the accused-appellant had any land in his own name. There could be agricultural land separately belonging to the grand-father Tilakdhari P.W. 1 and there could be ancestral and joint family property also. It is not clear on the record about the defence properties regarding the family whose ancestor was Tilakdhari informant P.W. 1. He stated that he has got 10-12 bigha of land with him which might have even his personal property. He further stated that in the name of the deceased, there was only one biswa of the land. It has come in the evidence of Smt. Puspha P.W. 2, the second wife and now the widow of the deceased that the deceased was having joint family with his brothers and that the land of the share of the deceased came to be about, 14 bighas, However, from this it did not follow that everybody or somebody in the family wanted to digest that land in the lifetime of the deceased or after it. Smt. Pushpa P.W. 2 has categorically stated that all the men of her Sasural (father-in-law's house) wanted to keep her with all 14 bighas of land of the share of her husband. It was only natural because after the particide by the accused-appellant, one of the families would think of giving land of the deceased to his son who had committed his homicide. The case against the accused-appellant was a very tight one and there was no escape for him. However, defence pleas of different kinds have been raised for him from time to time. These stands were so much inconsistent with each other that the only inference was that the prosecution case

alone is true and that the defence is totally false. The first stage which was available to the accused-appellant to set up a defence case at the trial was when his real grandfather Tilakdhari was in a witness box as P.W. 1. It was asked from him whether the accused-appellant used to get irritated by his scolding to which he replied in the negative. So also, it was elicited from him that he could not tell as to what entered in the mind of the accused-appellant that he took the life of the deceased. Earlier it was elicited from him that when the deceased scolded him (the accused-appellant) he some times got enraged a little. However, no definite plea of his unsoundness of mind was taken at this stage. At the close of the cross-examination of the informant, it was suggested that no such occurrence had taken place at all and that the accused-appellant has been falsely implicated in this case to digest the land standing in the name of the deceased. The informant had refused this suggestion. This suggestion would mean that after the death of the deceased, the accused-appellant was made the accused in the case to digest the land of the share of the deceased which devolved on the accused-appellant but then this plea does not meet the question as to who committed the homicide of the deceased, if not the accused-appellant. It is not a case where the accused said that he was away from the scene of occurrence and so could not be expected to say definitely as to how the deceased actually died and could only put forward a hypothesis on the basis of the information received. On the other hand, it is a case where the accused-appellant fully admits his presence at the spot. This is not an inference by implication. It is a direct and positive stand of the accused-appellant in his statement under Section 313, Cr. P.C. in reply to question No. 5 put to him about the occurrence itself. His reply was :-- 'Maln Ghatna Keydin Apne Pita Key Sath So Raha Tha. Meri Sauteli Man Ney Mujhey Jagaya'. So whatever plea about the manner in which the deceased received his injuries has to be either wilfully true of false.

24. In view of the above, it became all the more important to see as to what defence the accused-appellant has set up from time to time. We have noted the initial position of the accused-appellant in the cross-examination of the informant that no such occurrence took place. After it the last suggestion was that the deceased fell down from the roof and died and that he has been falsely implicated. The witnesses refuted the suggestion, to quote his words 'Yah Kahna Bhi Galat

Hai Ki Hari Nath Chhat Sey Gir Kar Mar Gaye Tatha Abhiyukt Ko Galat Fansa Diya.'

It thus, means that the case taken at that stage was of suddenly falling from the roof and consequent death for which no one was responsible and that he has been falsely implicated in the case. In support of this plea, the learned Amicus curiae for the accused-appellant has placed reliance on the opinion of doctor S.N. Dwivedi (P.W. 4) in his cross-examination that the injuries of the deceased could come by fall from the roof on bricks and stones lying on floor. First of all it is to be stated that the doctor has been rather-too much charitable to the accused appellant in having given this opinion. Furthermore, from the side of the defence, there is no suggestion made much less evidence led at any stage to specify the place where according to it the deceased fell on the floor and received injuries. Furthermore, there is absolutely nothing by way of suggestion to any of the ocular witnesses or to the I.O. that any bricks and stones were lying on the floor inside or outside the said house. So merely because of such a half hearted suggestion, the Court could not conjecture much less hold the death of the deceased by an accidental fall.

25. Since the grandfather of the accused-appellant Tilakdhari, P.W. 1 was the informant the import of the suggestion of false implication, made to him would be that it was he who falsely implicated the accused-appellant and it also involves that he falsely implicated the accused-appellant wilfully because his (informant's) presence at the scene of occurrence is established by the prosecution evidence beyond doubt and there is nothing in this cross-examination to dispute or challenge his presence at the spot. The suggestion that came from the side of the accused appellant was that he has been falsely implicated by the informant to grab the land of his share. It makes no sense. As noted earlier, he had 5 sons and all of them lived together with him in the large family house and so if out of them the deceased died, he could not get anything out of that land. Even if, the accused-appellant was excluded from inheritance, his widow remained so there was nothing which he could got. It may be noted that he has not suggested that any of his sons was interested in grabbing the share of the land of the deceased in the ancestral/ joint family land, It is here (sic) that Smt. Pushpa was step mother of the

accused-appellant. It may also be that some times the steps mother did not see kindly towards the issues of her husband from his first wife but there is no hard and fast rule about it. There could be no presumption in this regard. It is also to be noted that there was no suggestion made to the informant in his cross-examination that there was bad blood between the accused-appellant and Smt. Pushpa Devi. There was also no suggestion made to him that Hari Nandan, his (the informant's) Younger son wanted to snatch the share of the deceased's agricultural land.

26. Then when Smt. Pushpa P.W. 2 entered the witness box, it was extracted from her that no quarrel had ever taken place between her and the accused-appellant though he often used to quarrel with the other members of the house. She stated on oath that the deceased never maltreated the accused-appellant. It was elicited from her that her husband's real younger brother Hari Nandan had retired from Army and had come back to life in the family house before her marriage with the deceased. It was elicited from her that Harinandan was 2 years younger than her husband. She stated in her cross-examination that her relations with Harinandan were like her husband's younger brother (Dewar). It was, however, not suggested to her that she had an illicit relationship with Harinandan. She has suggested in her cross-examination that Harinandan has committed the murder of the deceased. This suggestion was an afterthought after the suggestion that was made to the informant in his cross-examination that the deceased had fallen to the ground and that thus his death was not homicidal but was accidental. It is to be noted that though the accused-appellant was admittedly present at the spot at the time the deceased received injuries, there was no mention in the defence suggestion as to by what weapon and in what manner, Harinandan had inflicted injuries on the body of the deceased which resulted to his death. It was also not suggested to her as to why her Dewar Harinandan had committed the murder of the deceased. It was also not suggested to her that she had illicit relations with Hari Nandan and for that reason Harinandan eliminated the deceased. So there was no motive set up for Harinandan to commit the murder of the deceased, when Smt. Pushpa was in the witness box. Further, a suggestion made to her in her cross-examination was that the other house holders and she herself acting jointly to save Harinandan falsely implicated Manoj Kumar Rai accused appellant in this case i.e. instead of one culprit of the house-hold, another person of the same

household was substituted and falsely implicated in this case for this homicide. There was no reason advanced for such a substitution. There was no allegation made by the defence that there is any enmity between other house-holders and the accused-appellant.

27. It may also be mentioned here that in her cross-examination an attempt was made to develop the plea of unsoundness of mind of the accused-appellant but that plea was never specifically taken. Only it was elicited from Smt. Puspha that in her presence, the accused-appellant had never assaulted any one of the household prior to the present occurrence. This could only mean that something happened which unbalanced him but then no suggestion was made that he did the homicidal act under a grave and sudden provocation nor it was specifically suggested that he was a person of unsound mind in the days of occurrence or on the date of occurrence. Smt. Pushpa Devi has stated in her cross-examination, 'Vah Mansik Roop Sey Sahi Tha'. It cannot be taken to mean that the defence case was that he was of an unsound mind. Now when the case came to the stage of the statement of the accused-appellant, under Section 313, Cr. P.C., the defence was charged further. In reply to question No. 5 about the actual occurrence he stated that on the date of occurrence, he was sleeping on the roof and her stepmother awakened him. He did not, however, say that his step mother approached him with an illicit design or that she had any illicit connection with him which resulted in the said occurrence. It is, therefore, astonishing as to why he gave this statement and what was his purpose in saying so. The amicus has not made any argument about this reply. It cannot even be taken that while the occurrence was taking place the accused kept on sleeping and that it was after the occurrence that Smt. Pushpa awakened him and does not say what he saw on being awakened in reply to question No. 11 (if he has anything further to say), he initially stated in the negative but after it he has again been put the same question as question No. 12 and in reply to it, he gave the following statement :

'Meri Sauteli Man Pushpa ka Samabandh Merey Chacha Harinandan Sey Tha Jo Phauj Sey Retire Ho Kar Ghar Aaye They. Merey Chacha Harinandan va Meri Sauteli Man Pushpa Ney Milker Merey Pita Ko Chhat Sey Dhakel Diya Jissey Unhey Kafi Chotey Aayee Aur Unhin Choton Sey Merey Pita Hari Nath Ki Ghatna

Key Din Mritu Ho Gayee. Merey Hissey Ki 14-15 Bighe Jamin Harapney Key Liye Merey Chacha Hari nandan Ney Mujhey Jhutha Fasaya Hai. Ghatna Sey Do Sal Pahiley Pushpa Ki Shadi Merey Pita Sey Huee Thi.'

I have considered this statement very carefully. He alleges that his step mother Smt. Pushpa had illicit relations with his younger paternal uncle Harinandan. As noted earlier, no suggestion about illicit relationship has been made to Tilakdhari P.W. 1 informant who was the grand father of the accused-appellant and father of the deceased and from whom any such illicit relationship if it existed could not have remained hidden. Then the alleged illicit relationship was to be suggested to Smt. Pushpa when she was in the witness box. The fact that it was not suggested even to her only shows that up till then, no such plea was in the mind of the accused and it was only at the conclusion of his statement under Section 313, Cr. P.C. that he concocted such a defence and placed it before the Court.

28. Then we have noted that the suggestion of Tilakdhari informant P.W. 1 in his cross-examination was that the deceased suddenly fell down from the roof to the ground and died as a result thereof and no other suggestion was made to him to show how the injuries on the body of the deceased were received and then when Smt. Pushpa Devi was in the witness, box, a contradictory suggestion was made to her that it was Harinandan who has caused the death of the deceased without giving any detail as to why and how and in what manner he did so. No top of all, she has not suggested that she had any involvement in the death of the deceased. So the claim now made by the accused-appellant that Harinandan and Smt. Pushpa Devi, jointly pushed the deceased from the roof and this resulted in the injuries on his body, was yet another afterthought by the accused-appellant on which no reliance could be placed. It is not worthy that a number of inmates of the house were present at the time of occur rence and any of the pleas of the accused-appellant about the occurrence were true even marginally some one of them must have come forward to depose to it. Obviously, the different defence versions of the occurrence are concoctions made from time to time in a futile bid to escape the charge which was fully brought home by the prosecution evidence and the tell tale circumstances of this case.

29. So no exception can be validly taken to the conclusions of facts drawn by the learned Sessions Judge on scrutiny of the evidence and circumstances on record and the acceptance of the testimony of both the ocular witnesses about the occurrence against the accused-appellant. The learned Sessions Judge has not given specific reasons as to why and how the case would fall under Section 304, Part I, IPC but the evidence and circumstances on record do show that in any case the offence under Section 304, Part-I, IPC has been made out against the accused-appellant beyond any shadow of doubt if not an offence under Section 302, IPC itself considering the intention and the injuries inflicted on vital part. So the appeal had no merit and force.

30. On the point of sentence, learned Amicus curiae has pointed out that the accused-appellant was arrested by the police in this case on 24-9-1993 and is in custody since then urging that his sentence may be reduced to the period already undergone by him uptill now.

31. In my view in such a case of patricide there is no scope for showing any leniency on the point of sentence.

32. Consequently, this appeal is dismissed. The conviction and sentence of the accused-appellant for the offence under Section 304, Part-I, IPC is maintained. The accused-appellant is already undergoing his sentence in jail. He shall serve out the remaining part of the sentence according to law.

33. The registry shall send a copy of this judgment to the learned Additional Sessions Judge concerned for compliance. He shall also send a copy of this judgment to the accused-appellant in jail for his information.

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