

**Mahesh Chander Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/685678](http://sooperkanoon.com/685678)

**Court :** Delhi

**Decided On :** Aug-02-1988

**Reported in :** 36(1988)DLT46

**Judge :** Charanjit Talwar, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Criminal Appeal No. 152 of 1987

**Appellant :** Mahesh Chander

**Respondent :** State

**Advocate for Def. :** Mr. Bakshi

**Advocate for Pet/Ap. :** B.G. Singh and; K.K. Bakshi, Advs.

**Judgement :**

**Charanjit Talwar, J.**

(1) Mahesh Chander, the appellant herein, challenges his conviction under Section 302 of the Indian Penal Code. He has also appealed against the order sentencing him to undergo imprisonment for life and to pay a fine of Rs. 2000.00 , in default of payment of fine, to undergo further R.I. for 2 years, for the offence of murdering his mother-in-law on 26th of September, 1983,

(2) Mr. Bawa, learned counsel for the appellant made a statement before us on 26th July, 1988, that the appellant is confining the appeal to the offence made out and not challenging the finding of facts. The plea is that the prosecution has been able to make out the offence under Section 324 of the Indian Penal Code against the appellant herein and not the offence under Section 302 Indian Penal Code . for which he has been found guilty and sentenced.

(3) The facts of the case have been noticed fully by the learned Sessions Judge in his impugned Judgment dated 27th May, 1987. We do not propose to notice the facts all over again in view of the statement of Mr. Bawa. The finding that Smt. Raj Khanna the mother-in-law of the appellant received the following injuries at the hand of the appellant herein is to be upheld:

'1. Burn injury on the half of face ; 2. Front of Abdomen ; 3. Whole of the back ; 4 Patches on both the arms.'

These injuries have been enumerated in the M.L.C. Ex. PWIO/A, prepared Dr. Jagdish Bhatia on 26th September, 1983 on admission of Raj Khanna in L N J P. Hospital at 5.45 P.M. She was discharge from the hospital on 1st October, 1983. This fact is also borne by the said M.L.C. She expired on 6th January, 1984. i.e. about 102 days after the occurrence. According to PW-7 Dr. Bharat Singh. who performed the post-mortem on her body, the internal examination revealed.

'SCALP pale, skull bones normal, brain pale, neck tissues normal, both lungs pale, heart normal, stomach contains little whitish fluid about one ounce in amount, MM. pale, small enlarge vessels contained gasses faces at places. Liver was pale, spleen, kidneys, adrenals and pancreas were pale, uterus was empty, rectum was empty, bladder contained clear urine. Blood and viscera was sealed for Chemical examination. Litmus paper did not give any change in colour when used on the surface of the body,'

We may notice that the prosecution has not brought out on the record any evidence to show that Raj Rani had suffered during the space of 20 days from the date of occurrence severe bodily pain or she was unable to follow her ordinary pursuits of a housewife. Keeping all these facts as noticed above, in view, we have

to find out whether the offence falls within the purview of Section 307 of the Indian Penal Code as pleaded by Mr. Bakshi, learned counsel for the respondent or it falls under Section 324 I.P.C. as urged by Mr. Bawa

(4) At this stage, we may notice that a report was sought from the hospital authorities by the Investigating agency to find out their opinion as to the nature of the injuries received by Raj Rani. .... It appears from the record that on 24th December, 1983, the M.L.C. was sent to Dr. R.K. Sharma of L.N.J.P. Hospital who opined the nature of the injuries to be grievous. Dr. Sharma has not been produced by the prosecution. The prosecutor did not even ask Dr. Jagdish Bhatia, PW-17 who had examined the injured at the time of admission and had filled in the M.L.C., to give his opinion about the nature of the injuries. Neither was that doctor asked whether Dr. Sharma had consulted him before giving this opinion. Dr. Sharma not having been produced and his handwriting not having been proved, his opinion regarding the nature of the injuries cannot be accepted as it is inadmissible.

(5) Now, we have to analyze whether the opinion of Dr. Bharat Singh, PW-7 that the death was due to Toxemia resulting from injuries, is to be accepted. As we have noticed earlier, the injuries were caused on 26th September, 1983 and by the time Raj Rani expired, those were completely healed. There is no evidence to show that either Dr. Bharat Singh or any other doctor had carried any blood test of Raj Rani either prior to her death or after death. The dictionary meaning of 'Toxemia' is 'presence in the blood of toxic products formed in the body cells or by bacteria'. Mr. Bakshi has not been able to tell us as to how Dr. Bharat Singh could have come to the decision that the death was caused by toxemia without their being any blood test. We are of the view that the opinion expressed by that doctor is not well-founded. It cannot be held that the death was due to toxemia. The observation in the postmortem Report Ex. PW-7/A, that 'the injuries were possible by corrosive liquid as alleged,' is also vague. It cannot be acted upon.

(6) With the help of Mr. Bakshi we have gone through the relevant portions of the evidence. To test the arguments of Mr. Bakshi that the offence falls under Section 307 I.P.O., he took us through the evidence to show that the appellant herein had

given threat to his mother-in-law. It law. does appear that the appellant was not getting on well with his mother-in-law but the prosecution evidence does not establish that he ever threatened to kill her. PW-2 Anita Khanna, one of the daughters-in-law of the deceased stated that, 'the accused used to threaten that if Neeru was not sent along with him, he would deface the face of my mother-in-law'. After referring to the quarrel on that day, she further stated, 'On this. the accused threatened my mother-in-law to teach her a lesson for refusing.'

(7) After going through the relevant evidence, we accept the contention of Mr. Bawa that the offence does not fall within the purview of Section 302 I.P.C. we further reject the arguments of Mr. Bakshi that it falls within the ambit of Section 307 Indian Penal Code .

(8) As we have noticed above, the opinion of Dr. Sharma that the injuries were grievous, cannot be accepted as being inadmissible. We have also given our reasons for not accepting the opinion of Dr. Bharat Singh. Thus it cannot be conclusively held that death was due to Toxemia. therefore, the offence committed by the appellant has to be held to fall under Section 324 Indian Penal Code . We alter the charge under Section 302 Indian Penal Code . framed on 10th August, 1984 against the appellant herein to one under Section 324 I.P.C. We hold him guilty of that offence. The result is that the conviction for the offence under Section 302 Indian Penal Code . and the sentence of life imprisonment and fine imposed on the appellant by the impugned Judgment and order are hereby set aside. The conviction is altered to that under Section 324 I.P.C. we are informed that the appellant before he was granted bail by our Order dated 6th January, 1988, was in jail for about 15 months, including the period as an undertrial.

(9) After giving our careful consideration to the facts of the case, we are of the view that he be sentenced to rigorous imprisonment for the period already undergone. The appeal is allowed to the extent indicated above. The appellant is on bail. His bail bonds are discharged.