

Rajendra Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-18-2011

Judge : Imtiyaz Murtaza; Mrs. Jayashree Tiwari, JJ.

Acts : Indian penal code (IPC) - Sections 302; Code of Criminal Procedure (CrPC)
- Section 161, 313

Appeal No. : Criminal Jail Appeal No. 5111 of 2005

Appellant : Rajendra

Respondent : State of U.P.

Judgement :

1. This Jail appeal has been filed against the judgement and order dated 20.8.2002 passed by learned Additional Sessions Judge, Court No.4, Deoria whereby convicting accused appellant under Section 302 I.P.C. and sentencing him to life imprisonment and a fine of Rs.2000/- and in default of payment of fine simple imprisonment for one year.

2. Briefly stating the facts of prosecution case are as follows:

3. As per contentions raised in FIR, it is alleged by informant Kailashi Devi wife of Rajendra Kewat that she is resident of Gram Changaha, Tola Luathahi, Police Station Rudrapur, District Deoria. It is stated that her husband often used to say that Bitna is not his son and he did not eat food cooked by his wife Kailashi. The parents of informant Kailashi used to nurture her children and herself. On the

alleged date of incident after taking food, she was sleeping with her two children inside the kothari and the door was bolted from inside the room. The dibri was lightening. At about midnight her husband Rajendra entered into kothari by lifting the chhappar of roof and stating that Bitna is not his son, suppressed the neck of Bitna who is aged about five months and threw him at bhurki. When she cried, her maternal mother-in-law Smt. Anjoria wife of Chhotey Lal, Shanti wife of Morik, Ashok son of Ram Naresh, Sadhu Sharan son of Hubri etc. approached. Then her husband unbolted the door and fled away from the spot. Her son Bitna died due to suppressing of neck and throwing. She requested that her report be written and necessary action be taken against her husband Rajendra.

4. Upon this information, police of the police station concerned investigated the case and after due investigation submitted chargesheet against accused Rajendra. Learned Magistrate after taking cognizance on the charge sheet summoned accused Rajendra. Accused Rajendra appeared before the Court of learned Magistrate. Copies of relevant prosecution documents were supplied to him. Since offence under Section 302 I.P.C. was triable exclusively by the Court of Sessions. The case was committed to Court of Sessions.

5. Accused Rajendra appeared before the Court of Sessions. He was heard on the point of charges. Since prima-facie charge was found against him, charge under Section 302 IPC was framed against him which was read over and explained to accused Rajendra. He pleaded not guilty to the charge levelled against him and claimed to be tried. Hence the trial proceeded.

6. Prosecution examined P.W.-1 Smt. Kailashi, informant as witness of facts she is the wife of accused Rajendra and mother of deceased child Bitna. P.W.-1 Kailashi has stated in her evidence that she knew accused Rajendra who has killed her son Bitna five years ago. She stated that it was 12:00 p.m. when Rajendra jumped from Pilani (roof) and entered into room where she was sleeping along with her two children. Accused Rajendra lifted her son Bitna and stated that he is not his son. Accused Rajendra killed his son Bitna by throwing him. He was only six months old. Accused Rajendra killed son Bitna in the same Pilani room where she was sleeping. On her cries, Anjoria, Shanti, Ashok and Sadhu Sharan approached

and saw the incident. Rajendra escaped from his home. Rajendra was married to her ten years before the incident. Two sons were begetted by her out of wedlock with Rajendra. First son is Anil and second son is Bitna.

7. At the time of incident she had gone to sleep after bolting the door from inside. She had got the script of FIR written by one Uma Shanker and had submitted the same at the police station. She verified her thumb impression on the FIR which is Ext.Ka-1. She stated that Investigating Officer had recorded her statement and had also seen dead body of his son. He had taken dead body in custody, prepared the inquest report, sealed dead body and sent the same for post mortem. After post mortem examination dead body was handed over to her. In her cross-examination she stated that she had not given any affidavit. When Rajendra was in jail she had never come to the Court. She had no knowledge as to when Rajendra was bailed out. She further stated that she had never given any such affidavit that her husband accused Rajendra is innocent. She further stated that she had not filed any affidavit in the Court. She stated that accused Rajendra is not mad. She stated that four persons had witnessed the incident of killing her son. Their names are Shanti, Anjoria, Ashok and Kailashi herself. At the time of incident she was extremely near to her deceased son. Other persons were at the distance of 4-5 steps. Her husband Rajendra was bare handed and he suppressed the neck by hands and killed the son. He put both the hands around the neck and suppressed the neck by thumb and fingers. The incident occurred within ten minutes. In between ten minutes all persons were crying sorrowfully. These persons were standing around accused Rajendra and within ten minutes accused Rajendra suppressed the neck and child was killed. The accused was badly addicted in suppressing the neck and there was none to save. All were seeing the incident helplessly. After ten minutes the people of village assembled and stated that he had committed bad act, God will not excuse him. Village Chawkidar also came there. The villagers stated to Chawkidar that son has been killed, run to the police station and call Sub-inspector. The Chawkidar went to the police station. Early in the morning Subinspector came to the place of occurrence in jeep alongwith Chawkidar. She further stated that she had gone to the police station at 8-9 a.m. Prior to her going to the police station Subinspector had arrived at the spot. The blood was blowing out from the mouth of her son. Sub-inspector asked

Rajendra why he had committed this sin. Rajendra told that the deceased is not his son. The informant P.W.-1 further stated that No Sarkar, this is our son and not son of any other person. Whereupon he asked from villagers as to whether Rajendra was saying correctly or Kailashi. The villagers told that Kailashi is pure and clear. The villagers stated that accused Rajendra is maligning the Ganga river and Kailashi is a lady of good character. Sub-inspector stated that Rajendra was accusing the good woman and gave 5-7 slaps on his face and then he took dead body. The dead body was sealed. She also went to the police station alongwith dead body and Rajendra was locked at the police station. The dead body was brought to Deoria by Tempo. There are signs of suppressing on the neck of her son. She further stated that she was weeping taking the dead body of her son in her lap. The blood was blowing from his mouth. The blood of the child did not fall on her clothes.

8. For about ten minutes the blood was blowing. That blood neither fall on the person of his son nor on the floor. The entire blood remained in mouth and neck itself of deceased child. She stated that from the mouth of deceased son, foam was coming out. Eyes of son had not come out. At the time of incident deceased son was wearing underwear, Baniyan and sweater. Except the signs of suppression of neck, no other injury was seen by her on the person of deceased son. The tongue was inside the mouth and had not come out. The child was of dark complexion and his face had become pale after death. After death, Pota had come in the nad of child . She stated that she had seen the signs of thumbs on the neck of her child. On both the sides of neck there were signs of 4-4 fingers and on the back of neck also there were signs of fingers. At that time her son was wearing a kardhani. The signs of kardhani was also there on the waist of her child. She had seen the signs of suppression on his neck as it were on the waist and wrist.

9. At the time of inquest Sub-inspector had also seen those signs. The Punch had stated to the Sub-inspector that the signs of all fingers alongwith thumbs is seen on the neck of deceased son. The tears came in the eyes of Sub-inspector after seeing those signs around the neck of child. Six months before the incident accused used to call her of bad character, she used to feel sorrow.

10. Despite this she never got fed up with accused because she had love and affection for accused Rajendra. She has remarried herself after two years of incident in which her child was killed. After the death of child she felt fed up with accused Rajendra. People told that Rajendra will not come back, she should remarry. If accused had come back within two years she would have started living with him. After two years when all the hopes died she remarried. Her son Anil is of ten years. He was born out of the wedlock with accused Rajendra. Anil is living with her. She stated that she used to say that her husband may be released early so that she may not be compelled to remarry. For God sake she may not be compelled to remarry and her life be spent with accused Rajendra. Her parental place is Gram Pipra, police station Rudrapur. After two years of incident her parents told that she should remarry. Her second husband loves her and after living with second husband it came to her mind that Rajendra should be punished. She was interrogated that after remarriage she had desired that Rajendra be punished. She stated that from the time of incident she desired that accused Rajendra should be punished. She stated that she did not know from the date of incident whether accused Rajendra was in jail or has been released. She further stated that it is wrong to say that she had filed any affidavit and got accused Rajendra released and brought Rajendra to home and it is also wrong that since she has now got remarried, she is telling false.

11. After inquest, Investigating Officer did not meet her as she was living with her parents. She did not know whether dead body of child was buried or burnt. After the post mortem report of dead body she did not return back to the house of Rajendra and had left her in-laws house. The house in which she used to live with Rajendra is now occupied by Rajendra's relatives. Her father-in-law were five brothers. Her father-in-law died prior to the incident. The field of Rajendra is sown by his relatives. She further stated that brothers of her father-in-law and their sons are trying that accused Rajendra be convicted. She further stated that it is correct that after the incident she got her new husband and the relatives had got the field of accused Rajendra. The room in which incident took place is how much long and wide, she does not remember. She was sleeping on a cot. On the same cot deceased son was sleeping. In that room she and her son was sleeping. How many persons were standing on the door of the room where the incident took

place was in her memory. There was no weapon in room of incident at the time of incident. Accused Rajendra had given her a kick as a result of which she fell and she sustained injury on her chin. While falling she got injury of brick on her chin. She did not examine her injury in hospital. It is wrong to say that she had not sustained any injury and was giving false evidence. In reply to this she denied and stated that it is wrong to say that she had not seen incident and she also denied that at the instance of pattidars she is giving false evidence.

12. P.W.- 2 Smt. Anjoria wife of Chhotey Lal has stated on oath that accused Rajendra is not her son. They lived in the same house with different doors. The Incident had taken place six years ago at midnight. The wife of Rajendra was sleeping along with her sons in house. The wife of Rajendra is Smt. Kailashi whose son had died in this incident. Deceased son was six months old and begetted from wedlock of Rajendra and Kailashi. Rajendra used to say that he is not his son and used to remain annoyed with his wife Kailashi.

13. On the night of incident Kailashi was sleeping with her sons.

14. Accused Rajendra entered into room by removing the chhappar roof of Pilani where Kailashi was sleeping with her sons. Rajendra killed the child by suppressing his neck. Kailashi cried. On her cries, this witness also ran and reached at the spot and saw that accused Rajendra was running away. Smt. Shanti and Ashok and other persons also approached and saw the incident. She deposed that she saw this incident son Bitna of Rajendra had died.

15. She was interrogated by investigating Officer and she recognised accused Rajendra present in Court.

16. In cross examination she stated that she is Pattidar of accused Rajendra and is ploughing the field of Rajendra after incident. In the house of accused Rajendra nobody resides now. She further deposed that at the time of incident she was sleeping and heard the noise of thief-thief and Kailashi was saying that her son has been killed. She woke up on the noise of Kailashi. When the villagers arrived, accused Rajendra had escaped from the house. When she went for first time the boy had died. Accused Rajendra could not be caught despite attempts by the

villagers. The villagers who were following accused Rajendra did not come back and returned to their homes.

17. She further deposed that when she reached at the spot there was no one. Kailashi was crying that accused Rajendra has killed her son. She stated that she had not seen accused Rajendra killing son but had seen accused Rajendra running away. When she saw for first time accused Rajendra was running about 100 steps towards east of the village. The villagers were following with lathi, bhala and torch. The villagers returned back saying that they could not be traced and had hidden some where. At that time Kailashi was not unconscious. The village people were following accused Rajendra. She could not depose the names of all the villagers who had followed accused Rajendra because it was night time. The villagers on returning back did not come to her but went back to their homes.

18. She told that she did not meet Sub Inspector. She further deposed that she has given statement for first time in Court. When she had went with Kailashi it was dark night. When she reached she did not see as to whether son was on the cot or on the floor. When she reached Kailashi traced her child in 15 to 20 minutes and brought out her dead son. She stated that she is mother-in-law of Kailashi. Son Bitna was not lost elsewhere but was in home. Kailashi was weeping at that time. Son Bitna was traced below the cot. When Kailashi was searching her son, this witness was standing at some distance about 5 to 6 steps from the doors. After returning from the house of Kailashi she remained at her home for whole night. After incident house of Rajendra had fallen and his land was being ploughed by pattidars. On the next morning after incident she had gone to her field and returned back in evening. In the night after son was recovered in dead condition she did not return to the house of Kailashi out of fear. She denied that she is giving false evidence.

19. P.W.-3 Smt. Shanti has deposed in her oral testimony that son of Rajendra was murdered 5 to 6 years before. At the time of incident he was aged only six months and name of Rajendra's wife is Kailashi.

20. This son was of Rajendra. She further deposed that at the time of incident she was in her parental house and not in the house of her inlaws. She had not seen

Rajendra killing his son. This witness has been turned hostile and has stated that she was not present in her in-laws house but saw at her parental house.

21. P.W.-4 Lal Chandra too has turned hostile. He deposed that son of Rajendra aged about 5 months was killed about 7 years ago but he does not know the cause and manner of his death. Son Bitna was killed in the house of Rajendra. He has been declared hostile and has denied the statement recorded by Investigating Officer under Section 161 Cr.P.C.

22. P.W.-5 is Sri Yogendra Nath Singh Investigating Officer who has investigated the case and has prepared the inquest report Ext. Ka-2 and office papers for post mortem examination and prepared fard memo of dibri Ext. Ka-4 and submitted charge-sheet against accused Rajendra Ext. Ka-5. He has also proved the signature of Head Moharrir Prahlad Bharti on the chik FIR which is Ext. Ka- 6 and G.D. No. 14 dated 12.11.1994 of 8:00 a.m. which is Ext. Ka -7 and also G.D. of Aamad accused in writing and signature of Head Moharrir Prahlad Bharti which is Ext. Ka-8 on record.

23. Thus he has formally proved prosecution case. He has stated that on the time when he reached on the spot accused Rajendra was not present but he was arrested on the next day from some other place. He has denied that after inquest report, the dead body was taken to the police station and has also denied that he has not properly investigated the case.

24. P.W.-6 is Dr. R.P. Pandey who has conducted the post mortem examination, he found that the dead body of the child was about 5 to 6 months. After death torsion was present. The foam was coming out from the nose and the time of death was about half day before. He has examined the anti mortem injuries which are as follows :

1- 2 and c.m. distance in between forehead two wounds of 2 c.m. x 1 and c.m., muscle deep and 3 and c.m. x 2 c.m. muscle deep.

2- Contusions 4 c.m. x 4 c.m. on head, 6 c.m. above left ear. 3- On both sides of breathing canal in the middle of the neck, 3 c.m. x 2 c.m. contusions were present.

25. The contusions were present along with abrasions also. In the internal examination on the place of injury no. 2 on the left side of brain the clot of blood were found which was clotted and the bone near the left side ear was broken. The brain membrane and brain of the left side was torn. The breathing canal was broken. Plura was torn. Teeths have not developed and in the abdomen torn milk was present.

26. The doctor has opined that death was caused due to shock as a result of head injury and closer of passage of breathing canal. The doctor has opined that death of child was caused after suppressing the neck and throwing him immediately as possible in the manner.

27. The statement of accused Rajendra was recorded under Section 313 Cr.P.C. in which he has denied contentions raised by prosecution and stated that he did not want to give any evidence in his defence.

28. Then prosecution evidence was closed. The learned Sessions Judge after trial and hearing the arguments found the case against the accused proved beyond reasonable and probable doubts and convicted the accused Rajendra to life imprisonment.

29. By way of present appeal the aforesaid judgement and order dated 20.08.2002 passed by the Additional Sessions Judge has been challenged. It is mentioned in Jail Appeal that accused Rajendra is innocent and has falsely been implicated as he is very poor and helpless person.

30. During the course of argument by learned Amicus Curiae the judgement of learned Sessions Judge has been assailed on various grounds, mainly that the motive is not genuine and strong and FIR is ante dated, no witness of public has been examined. It has also been assailed on the ground that there was no source of sufficient light in which accused Rajendra could be recognized and two witnesses have turned hostile, there remains the sole testimony of P.W.-1 Kailashi which is not duly corroborated by any other independent testimony. It is also contended that investigation has not been properly conducted and there are contradiction in the testimony of the witnesses.

31. In this connection it will be appropriate to appreciate the evidence led by the witnesses in the present case.

32. The first point raised by learned Amicus Curiae that FIR is an ante dated and belated. A perusal of the record shows that incident had taken place at midnight. The report had been lodged on next morning at 8:00 a.m. Thus apparently there appears to be no undue delay in lodging of FIR. In inquest report Ext. Ka-2 on record it comes out that the time of lodging of the report is mentioned to be 8:00 a.m. under Section 302 I.P.C. and name of accused Rajendra is also mentioned in inquest report and inquest has started at 9:15 p.m. and completed at 10:15 a.m. which shows that by the time the process of inquest started, FIR was already in-existence.

33. Thus there was no inordinate delay in lodging of FIR and it has been promptly lodged particularly in the circumstances when there is no one at home of informant Kailashi who is wife of accused Rajendra himself and mother of the deceased son Bitna. Except the wife and one very little child of informant Kailashi husband himself who is accused and had fled away from the spot after the incident. Keeping these points in mind FIR which has been lodged earliest in morning is reasonably lodged in due time. The incident is in the month of November (middle) when sun rise takes place near about 7:00 a.m. The next point is the motive alleged in FIR that a suspicion scrapped in the mind of accused Rajendra who was husband of informant Kailashi that second son Bitna was not begetted from the wedlock of Kailashi and Rajendra. He had suspicion in his mind that he is son of some other person begetted by Kailashi. The motive is expressly stated by informant in FIR that since accused Rajendra suspected that his second son Bitna was begetted by Kailashi from some other person and not himself. As a result he used to remain annoyed with informant Kailashi and never used to eat the food cooked by informant Kailashi.

34. The motive alleged appears to be quite natural and conduct alleged in not eating cooked food also shows natural human conduct. This motive has been duly proved by informant Kailashi as P.W.-1 in her oral evidence. She has stated that at midnight accused Rajendra entered into room by removing chhappar roof of Pilani

and said that son Bitna is not his son. This motive has also been corroborated by P.W.-2 Smt. Anjoria that deceased child aged about six months was son of Kailashi and was born by Kailashi from Rajendra accused himself. Rajendra used to say that he is not his son and on account of this fact he used to remain annoyed with his wife Kailashi. So P.W.-2 Anjoria who is mother-in-law of informant Kailashi and is living adjacently, has corroborated the motive and cause of annoyance of accused Rajendra with respect of Kailashi and his son Bitna whom he had killed as alleged in FIR stands duly proved.

35. The next point to be considered in this connection as argued by learned Amicus Curiae is that there was no sufficient source of light in which accused person can be recognized by informant Kailashi inside the room. In this connection it has come in evidence of P.W.-1 Kailashi that there was a dibri lightening in the room where she was sleeping with her son. In a room where she was sleeping and her son was also sleeping by her side on the same bed, from where her son was lifted by accused Rajendra, the nearness of the distance is such that the person lifting son as well as suppressing the neck and throwing the child can very well be seen and recognized in dibri light. So there was sufficient source of light present on the place of occurrence.

36. More so, it cannot be over looked that accused Rajendra was not a foreigner to informant Kailashi. So considering the intimate relationship of husband and wife, it was not difficult or improbable for informant Kailashi to recognize accused Rajendra who is no one else except her own husband at midnight. So the contention that there was no sufficient source of light and there was no possibility of recognizing accused Rajendra does not seem to be tenable.

37. A person who is living together in intimate relationship of husband and wife can very well be recognized at midnight and also when dibri light is present and there can be no mistake by informant Kailashi in recognizing her husband Rajendra from very near place of lifting her son, suppressing his neck and throwing him.

38. It is further contended that no public witness has been examined in the present case when it has come out that several villagers have assembled on the spot.

Admittedly, as per contention of prosecution the incident had taken place inside the room of informant Kailashi at midnight where she herself along with her two little children had gone to sleep. In these circumstances, at midnight the inhabitants who were present inside the room can be the best and natural witnesses and incident can be witnessed by them alone.

39. It has been held by Hon'ble the Supreme Court in case of *Namdeo v. State of Maharashtra*, (2007) 14 SCC 150.

Related witness If can interested witness- Close relation (like victim's son), is not an interested witness especially if he was a natural witness and not a chance witness.

It is no doubt true that there is only one eyewitness who is also a close relative of the deceased viz, his son, It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. It is clear that Indian legal system does not insist on plurality of witness. Neither the legislature (Section 134 of evidence Act, 1872) no the judiciary mandates that there must be a particular number of witnesses to record an order of conviction against accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

40. In these circumstances, when the door was bolted from inside the room and accused Rajendra has entered into room by removing chhappar roof of Pilani so at the place of occurrence, there are only informant Kailashi and accused Rajendra and two little children of informant Kailashi out of whom one child has been killed by accused Rajendra.

41. The testimony of P.W.-1 Kailashi is consistent right from the initial stage i.e. the stage of FIR that she was sleeping inside the room along with her two little children, her husband removed the chhappar from the roof and entered into room and lifted her son Bitna stating that he is not his son and suppressed his neck and

then threw him as a result he died. She has stated that on the alleged date at midnight at 12:00 p.m. accused Rajendra jumped from the roof in room where she was sleeping and lifted son Bitna and stated that he is not his son and threw the child and killed him. In long cross examination from this witness, version so far as entering into room by jumping from the roof and lifting the child, suppressing his neck and throwing him and thereby killing him by accused Rajendra, the testimony of P.W.-1 Kailashi is consistent and could not be shaken by the long cross examination.

42. Mother is the best person to look after and guard her child aged about five months. The possibility of child sleeping by the side of mother cannot be ruled out. It is the most natural testimony given by mother about her small son also seems to be natural because it is natural human conduct and particularly in relationship of mother and son that a mother will not spare the real assailant of her small child and falsely implicate any person particularly a person who is her own husband.

43. So considering from this human angle and also testimony given by the P.W.-1 Kailashi even though she is a related witness cannot be discarded on any account. She is being mother of deceased child and also being his wife, in this circumstance when two intimate relationships are involved, the natural human conduct will be that the real culprit shall not be forsaken to falsely implicate a person so intimate as husband of informant P.W.-1 Kailashi. The testimony of P.W.-1 Kailashi so far as the incident regarding entering of accused Rajendra from the roof in the room where informant Kailashi was sleeping and lifting the child, suppressing his neck and throwing him and killing him is consistently corroborated and there appears no reason to disbelieve the testimony of this witness. Particularly, in the circumstance when the alleged motive regarding annoyance of accused Rajendra in connection with a suspicion regarding this child Bitna is duly corroborated by P.W.-1 Kailashi and the statement by P.W.-2 Anjoria duly corroborates version of prosecution with respect to motive.

44. Though P.W.-3 Smt. Shanti has been declared hostile but she has also admitted that son Bitna was son of accused Rajendra and informant Kailashi. So testimony of P.W.-3 Smt. Shanti corroborates the fact that deceased Bitna was his

son and cause of annoyance being motive is proved by P.W.-2 Anjoria and P.W.-1 Kailashi.

45. In yet another case it has been held by Hon'ble the Supreme Court in *Sewaka v. State of M.P.*, (2001)10 SCC:AIR 2002 SC 50.

Deceased shot dead while he was sleeping on a cot in the same part of the house where his wife was also sleeping-Incident seen by the wife when she woke up to ease herself- Assailants identified by the wife in moonlight-Appellant contending his false implication in the case on the ground of enmity-testimony of the wife corroborated by evidence given by other witnesses to whom she narrated the incident soon after its occurrence- despite the recovery of crime article proving to be doubtful, natural testimony of the wife relied on to affirm the conviction of the appellant under Section 302.

46. P.W.-4 Lal Chandra though has not corroborated the fact regarding murder of Bitna had yet proved Ext. Ka -2 inquest report which was conducted before him and he has put his signature or thumb impression on inquest report. This subsequent participation in inquest report within two hours of incident as narrated by this witness and his contention that son died in the house of accused Rajendra and also when mother of son was inside the house of Rajendra.

47. So testimony of P.W.-4 Lal Chandra supports the version of prosecution against accused Rajendra when read as whole supports contention that son Bitna was killed in his own home.

48. As already discussed above, since the incident had taken place in midnight inside room and accused Rajendra had entered into room by jumping from the roof of Pilani. The witnesses who approached were definitely standing outside the room and were hearing the noise that was coming out from room.

49. P.W.-2 Anjoria has stated that she heard the noise and she reached on the spot. She lived adjacent of the house of Kailashi and had approached on the noise of Kailashi who was stating that accused Rajendra has killed her son. Her testimony that she has not entered into room seems to be very natural because

she has stated that due to fear she has not entered into room. She has stated in her evidence that when she saw for first time accused Rajendra was running 100 steps away from his home. But her testimony regarding subsequent conduct and subsequent happening is very relevant. She has stated that on hearing cries, she approached on the spot when she reached there accused Rajendra was running at 100 steps away from his home. The running and escaping of accused Rajendra is a conduct narrated by P.W.-1 Kailashi as well as corroborated by P.W.-2 Anjoria shows such a subsequent conduct on the part of accused Rajendra creates an adverse presumption against him. Her contention that Kailashi had searched out her child within 15 to 20 minutes and brought him in dead condition also supports the contention as has come out in testimony of P.W.-1 Kailashi. So since the door was bolted from inside the room and it was opened by accused himself who had run away from the spot after the incident. It was not possible to see the happening inside room but after escaping of accused Rajendra subsequent conduct narrated that dead child was searched and shown by Kailashi and accused Rajendra fled away from the spot shows subsequent conduct on the part of accused Rajendra as well as Kailashi which goes to prove and corroborate version of prosecution. It was quite natural for accused Rajendra who is husband of informant Kailashi to have stood by her side and searched the child and to console Kailashi, mother of deceased child but instead of doing so he fled away from the spot by unbolting the doors which was bolted from inside the room. So this subsequent conduct of accused Rajendra as narrated by witnesses P.W.-1 Kailashi and P.W.-2 Anjoria creates adverse inference against accused Rajendra that none except Rajendra had killed the child. The contention raised by P.W.-1 Kailashi along with motive alleged to have been supported by P.W.-1 Kailashi and P.W.-2 Anjoria appears to be true and genuine.

50. It is also worth considering as a subsequent conduct when son was killed, accused Rajendra had not gone to the Police Station to lodge FIR. It is Kailashi herself who goes to Police Station and lodges FIR. These two omissions on the part of husband and father i.e. accused Rajendra clearly show that there is no scope of doubt about the testimony given by the present witnesses before the Court.

51. It has been held by the Hon'ble Supreme Court in *Mulakh Raj v. Satish Kumar*, (1992) 3 SCC 43 : AIR 1992 SC 1175.

Unusual or unnatural conduct of accused, previous or subsequent to the occurrence, relevant- Cumulative effect of the circumstances to be assessed in reaching the conclusion Evidence Act, 1872, S.8 In a case founded on circumstantial evidence, prosecution must prove all the circumstances connecting unbroken chain of links leading to only one inference that the accused committed the crime. If any other reasonable hypothesis of the innocence of accused can be inferred from the proved circumstances, accused would be entitled to the benefit. What is required is not the quantitative but qualitative, reliable and probable circumstances to complete the chain connecting accused with the crime. If the conduct of accused in relation to the crime comes into question the previous and subsequent conduct are also relevant facts. Therefore, the absence of ordinary course of conduct of accused and human probabilities of the case also would be relevant. The court must weigh evidence of the cumulative effect of the circumstances and if it reaches the conclusion that accused committed the crime, the charge must be held proved and the conviction and sentence would follow.

It is argued by learned Amicus Curiae that there are contradictions in the testimony of P.W.-1 Kailashi. Learned Amicus Curiae pointed out that as per version of prosecution it has come that after committing murder, accused Rajendra fled away from the spot. In cross it has come out that Investigating Officer asked Rajendra why you have committed this sin. Rajendra had stated that son Bitna is not his son. She further deposed that No Sarkar, this is our son.

Investigating Officer asked from the villagers as to whether Rajendra is telling truth or Kailashi is telling truth. The villagers stated that Kailashi is pure and truthful. Upon this Investigating Officer slapped accused Rajendra. It is argued by learned Amicus Curiae that accused Rajendra was present on the spot at home when Sub Inspector Investigating Officer inquired but no question has been specifically asked to this witness whether this conversation took place on the spot i.e. place of occurrence at the home of Kailashi or in the village or whether this conversation had taken place at the Police Station. In absence of specific statement that when

Sub Inspector approached on the place of occurrence, Rajendra was present in house and then this conversation proceeded. It cannot be said to be contradictory statement because where this conversation has taken place, has not been specifically put from this witness where Sub Inspector Investigating Officer has stated that he has arrested accused Rajendra from some where else and not home. It has also come in the testimony of P.W.-5 that when he reached at the spot accused Rajendra was not present there and he had not arrested accused on that day from the spot but had arrested accused from some other place. This evidence corroborates the fact stated by P.W.-1 Kailashi and P.W.-2 Anjoria that Rajendra had fled away from the spot after the incident. It has also come in evidence of P.W.-5 that two persons had come with Kailashi Devi for lodging the report they were according to G.D. Kailashi Devi and Santu Kewat. He has further stated that he does not remember as to how many persons had come with informant for lodging the report.

So contentions raised by learned Amicus Curiae that accused Rajendra had not fled away from the spot stands shattered when read with the testimony of P.W.-5. In the absence of any specific question to P.W.-1 Kailashi who is a rustic and illiterate lady as to whether the conversation of P.W.-1 Kailashi, Sub Inspector, Rajendra and villagers had taken place at her home, no other inference can be drawn in this regard.

In the last but not the least, it is contended that Investigating Officer has not properly investigated the case and investigation appears to be tainted and there are so many flaws in investigation but no specific flaw has been pointed out. Besides any lacuna on the part of Investigating Officer is not sufficient enough to destroy the case of prosecution which is consistent from the initial stage regarding the fact that accused Rajendra entered into room by jumping also removing and lifting the child where she was sleeping and suppressing his neck and throwing him and fled away from home.

From the post mortem report the statement of P.W.-1 Kailashi is fully corroborated. The doctor has mentioned following injuries :-

1- 2 and c.m. distance in between forehead two wounds of 2 c.m.x 1 and c.m., muscle deep and 3 and c.m. x 2 c.m. 20 muscle deep.

2- Contusions 4 c.m. x 4 c.m. on head, 6 c.m. above left ear. 3- On both sides of breathing canal in the middle of the neck, 3 c.m. x 2 c.m. contusions were present.

The doctor has opined that death was caused due to shock as a result of head injury and closer of passage of breathing canal. So version of prosecution also stands fully corroborated by medical evidence.

On the basis of the above, it comes out that the prosecution has consistently, proved the commission of offence against the accused person and the judgement and order passed by the learned Lower Court does not seem to suffer from any illegality or irregularity which may require any intervention in the matter.

The judgement passed by the learned Lower Court is upheld. The appeal is dismissed accordingly.

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