

STATE OF RAJASTHAN

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v.

RAMESH

(Criminal Appeal No.1526 of 2008)

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NOVEMBER 20, 2015

**[S. A. BOBDE AND PRAFULLA C. PANT, JJ.]**

*Penal Code, 1860 – s. 304 Part I – Punishment for culpable homicide not amounting to murder – Allegation that respondent-father committed murder of his daughter – Conviction and sentence u/ss. 302 and 201 – Acquittal by High Court holding that the chain of circumstances against the convict was not complete to hold him guilty – On appeal, held: From the evidence on record, it is proved beyond reasonable doubt that when the respondent saw his daughter talking to PW-9, he got suddenly provoked and lost his power of self-control, slapped her, took her inside the house, and caused death of his daughter by strangulation and throttling – Medical reports read with oral testimony of witnesses successfully prove the charge of culpable homicide not amounting to murder punishable u/s. 304 Part I against respondent – Thus, the High Court erred in holding that the deceased could have hanged herself and that the chain of circumstances was not complete against the accused – Respondent convicted u/s. 304 Part I and sentenced to rigorous imprisonment for ten years.*

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**Allowing the appeal, the Court**

**HELD: 1.1 After carefully going through the medico legal evidence on record, it is opined that it was not a case where a view could have been taken that the deceased died of hanging. There was no reason to disagree with the opinion given by PW-8-doctor that the deceased had died of asphyxia as a result of pressure**

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A over the neck. Though PW-10-minor daughter of the  
accused stated that her elder sister's body was found  
hanging, but this witness was got declared hostile by  
the prosecution, and trial court rightly disbelieved her  
statement, for the reason that after losing her elder sister,  
B she was not in a position to lose her father. [Para 19]  
[173-F-H]

1.2 After carefully scrutinizing the evidence on  
record, it is proved beyond reasonable doubt on the  
C record that when accused 'R' saw his daughter talking  
to PW-9, he got suddenly provoked and lost his power  
of self-control, slapped her, took her inside the house,  
and caused death of his daughter by strangulation and  
D throttling. The medical evidence clearly shows four ante  
mortem injuries on the neck region and three around  
mouth of the deceased as mentioned in the autopsy  
report. On going through the reports read with oral  
E testimony of witnesses, there is no hesitation in holding  
that prosecution successfully proved the charge of  
culpable homicide not amounting to murder punishable  
under Section 304 Part I against the accused/  
D respondent. [Para 22] [174-F-H]

1.3 Exception 1 to Section 300 IPC provides that a  
F culpable homicide is not murder if the offender, whilst  
deprived of the power of self-control by grave and  
sudden provocation, causes the death of the person who  
gave the provocation. The following three conditions,  
as required under Exception 1 to Section 300 IPC, are  
G fulfilled in the instant case that the provocation was not  
sought or voluntarily provoked by the offender; that the  
provocation was not given by anything done in  
obedience of the law; and that the provocation was not  
H given by anything done in lawful exercise of the right of  
private defence. [Para 23] [175-A-D]

**1.4 The High Court erred in law in holding that the deceased could have hanged herself, and that the chain of circumstances was not complete against the accused. The judgment and order passed by the High Court is set aside. Accused-respondent 'R' is convicted under Section 304 Part I IPC and sentenced to rigorous imprisonment for ten years. The period of sentence already undergone by the accused would be set off. [Para 24] [175-E-F]**

*Modi's Medical Jurisprudence and Toxicology*  
23<sup>rd</sup> Edn – referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal  
Appeal No. 1526 of 2008

From the Judgment and Order dated 04.01.2006 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in D.B. Criminal Jail Appeal No. 397 of 2000

Shovan Mishra, Milind Kumar for the Appellant.

Nedumaran R., P. R. Kovilan Poongkuntran, (A.C. – SCLSC) for the Respondent.

The Judgment of the Court was delivered by

**PRAFULLA C. PANT, J.** 1. This appeal is directed against judgment and order dated 04.01.2006, passed by the High Court of Judicature at Rajasthan, Jaipur Bench, whereby said Court has allowed D.B. Criminal Jail Appeal No. 397 of 2000, and set aside the conviction and sentence recorded against respondent Ramesh by Sessions Judge, Jaipur, under Sections 302 and 201 of Indian Penal Code (IPC), and acquitted him of the charge.

2. Prosecution story in brief is that PW-1 Prithviraj Singh gave a telephonic information on 28.04.1999 at about 10.55

A p.m. to PW-7 Bhagwan Singh, Station House Officer of Police  
Station Kalwad that Sheela, eldest daughter of his servant  
Ramesh (respondent) has committed suicide by hanging. The  
Station House Officer rushed to the spot. He made enquiries  
B lived with his three daughters. He (Ramesh) told the Station  
House Officer that his daughter went out of the farm house at  
about 8.30 p.m. and came back after some time. Ramesh  
further told that he objected to his daughter's conduct of  
meeting PW-9 Bablu, and scolded her. Thereafter power went  
C off. He further told the Station House Officer that after some  
time when generator was started, he saw that Sheela has  
hanged herself. The knot was opened and the body was  
brought down. The Station House Officer mentioned these  
D facts in the report/marg No. 7/99 prepared under Section 174  
of the Code of Criminal Procedure (CrPC). He prepared site  
plan, took dead body in his possession, and got prepared  
inquest report (Ex. P-1) in the early hours of 29.04.1999. He  
E directed PW-11 Assistant Sub Inspector Maliram to make  
further inquiries under Section 174 CrPC. The Assistant Sub  
Inspector, after recording the statements of Ramesh and other  
witnesses present there, gave report on 30.04.1999, on the  
basis of which First Information Report (Ex. P-11) was  
F registered as Crime No. 63/99 relating to offences punishable  
under Sections 302 and 201 IPC. The Station House Officer  
himself took up the investigation. Meanwhile, autopsy was  
conducted on 29.04.1999 on the dead body of Sheela by PW-  
8 Dr. Viveka Nand of S.M.S. Hospital, Jaipur, at the request of  
the police, who found following ante mortem injuries: -

G "External injuries seen at the time of P.M. Examination

- (i) Abrasion 1.5 cm x ½ cm on area 2 cm below  
middle of the right mandibular rim on right side  
H upper neck.

- (ii) Abrasion  $\frac{1}{2}$  cm x  $\frac{1}{4}$  cm on right side neck in middle/3 A
- (iii) Abrasion 1 cm x  $\frac{1}{4}$  cm on lateral half of right clavicle.
- (iv) Abrasion 1.25 cm x  $\frac{1}{4}$  cm on suprasternal notch.
- (v) Abrasion  $\frac{1}{6}$  cm on area just below right side lower lip. B
- (vi) Abrasion  $\frac{1}{2}$  cm x  $\frac{1}{4}$  cm on area just above right angle of mouth.
- (vii) Three linear abrasions each of size 1 cm x  $\frac{1}{4}$  cm parallel to each other on area just above right angle of mouth on right side face. C
- (viii) Abrasion 2 cm x  $\frac{1}{4}$  cm just above right elbow on right arm dorsally. D
- (ix) Abrasion 2 cm in length linear x skin deep vertical on right palm below bone of right middle finger.
- (x) Abrasion  $\frac{1}{4}$  x  $\frac{1}{6}$  cm on left medial malleolus.
- (xi) Abrasion  $\frac{1}{4}$  cm x  $\frac{1}{6}$  cm on area below left medial malleolus on left foot. E
- (xii) Abrasion 1 cm x  $\frac{1}{2}$  cm on dorsing right forearm upper/3.

Neck dissection – on dissection of neck there is haematoma æ (with) tissue staining found at following places red in colour antemortem in nature æ effusions extravassation of blood F

- (a) Left lateral side of trachea upper/3 size  $\frac{1}{4}$  x  $\frac{1}{4}$  cm. G
- (b) Left lateral side of trachea middle/3 size  $\frac{1}{4}$  x  $\frac{1}{4}$  cm.
- (c) Left lateral side of trachea middle/3 on area  $\frac{1}{4}$  cm below above injury size  $\frac{1}{4}$  x  $\frac{1}{4}$  cm.

- A (d) Right side front of neck underneath ext. injury No. 1 on antero lateral of trachea upper 1/3 size 1 cm x ½ cm above the level of hyridbone.

B Further examination shows (trachea) congested areas in trachea ã fine white froath. There is haematoma of soft tissues near upper part of tachea over right side neck in middle/3. Upper part – left side neck also show such haemotoma in an area of 2 cm x ½ cm on left side neck. There was froathy blood which came out through upper respiratory tract æ fine froath when trachea was removed.”

C The Medical Officer (PW-8) gave following opinion at the end of the post mortem report (Ex. P-12): -

D “Opinion

The cause of death is asphyxia as the result of injuries of the neck region as mentioned. All are ante mortem injuries. ....”

E 3. During investigation, the Investigating Officer interrogated witnesses, arrested the accused (Ramesh), and on its conclusion, submitted charge sheet against him for his trial in respect of offences punishable under Sections 302 and 201 IPC.

F 4. It appears that after giving necessary copies as required under Section 207 Cr.P.C., the case was committed by the Magistrate to the Court of Sessions on 24.7.1999. The learned Sessions Judge registered Sessions Case No. 76 of 1999, and after hearing the parties, on 11.10.1999, framed charge of offences punishable under Sections 302 and 201 IPC against accused/respondent Ramesh, to which he pleaded not guilty and claimed to be tried.

H 5. On this, prosecution got examined PW-1 Prithviraj Singh, (informant), PW-2 Om Prakash, PW-3 Ram Singh (both

witnesses of inquest report), PW-4 Raju (witness of the fact that Ramesh slapped Sheela about half an hour before the incident), PW-5 Amba Lal (witness of arresting memo), PW-6 Constable Devinder Singh (formal witness), PW-7 S.I. Bhagwan Singh (Investigating Officer), PW-8, Dr. Viveka Nand (who conducted post mortem examination), PW-9 Bablu (the boy with whom the deceased said to had a friendship), PW-10 Meela (minor daughter of accused/sister of the deceased), and PW-11 A.S.I. Mali Ram.

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6. The oral and documentary evidence was put to the accused under Section 313 CrPC, in reply to which he admitted that his daughter Sheela died on 28.4.1999 at about 9.00 p.m. He also told that the inquest report and memorandum of recovery of Chunni/Dupatta of the deceased etc. were prepared. He further admitted that he did scold his daughter Sheela (deceased) as stated by PW-3 Ram Singh about twenty minutes before her death. As to the rest of the evidence, he denied the same as incorrect. At the end of his statement under Section 313 CrPC the accused stated that after generator started, he saw his daughter (Sheela) hanging from a hook of wooden beam (Balli). He further stated that when knot was loosened, she was alive. He stated that the deceased was given some water and when attempt was made to take her to hospital, she died. As to the fact that the deceased was given water, as stated by the accused, or that she died on her way to the hospital, there is nothing on the record to support the same.

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7. The trial court, after hearing the parties, found accused/respondent Ramesh guilty of the charge, and convicted and sentenced him under Section 302 IPC to imprisonment for life and directed to pay fine of Rs.10,000/-, in default of which he was required to undergo one year's rigorous imprisonment. The respondent was further convicted and sentenced under Section 201 IPC to rigorous imprisonment for a period of two

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A years and directed to pay fine of Rs.1000/-, in default of payment of which he was required to undergo further three months' rigorous imprisonment.

8. Against said judgment and order dated 17.6.2000, B passed by the Sessions Judge, Jaipur, in Sessions Case No. 76 of 1999, appeal (D.B. Criminal Jail Appeal No. 397 of 2000) was filed by the convict before the High Court. The High Court, after hearing the parties, allowed the appeal and set aside the conviction and sentence recorded by the trial court holding that C the chain of circumstances as against the convict was not complete to come to the irresistible conclusion that the accused-respondent committed murder of his daughter. Said order of the High Court is challenged before us by the State.

D 9. We have heard learned counsel for the parties and perused the original record of the case.

10. It is an admitted fact on record that Sheela, daughter of the accused-respondent, died on 28.4.1999, as is apparent from the statement of accused recorded under Section 313 E CrPC read with the prosecution evidence, discussed above. Death of Sheela was not natural is also admitted fact, and established on record, for the reason that where the prosecution case is that she died due to asphyxia by F strangulation and throttling, the version of the defence is that she died by hanging. In an appeal against acquittal we have to examine the evidence on record to find out whether prosecution has successfully proved or not that the accused/ G respondent caused homicidal death of Sheela, as suggested by it, and also as to whether two views – one taken by the trial court and another by the High Court – were possible in the present case or not as to the cause of death of the deceased.

11. We have already quoted above the ante mortem H injuries recorded in the autopsy report by PW-8 Dr. Viveka



Nand. We have also reproduced the opinion given by him at the end of the autopsy report as to the cause of death. PW-8 has stated in his report (Ex.P-12) dated 29.4.1999 that the deceased died of Asphyxia as a result of injuries on the neck region, but he did not mention as to whether it was asphyxia due to strangulation or hanging. But in his oral testimony he has stated that the deceased had died due to injuries around her neck and suffocation. He has further stated that on 19.5.1999 in response to letter No. 1490 dated 3.5.1999 of Station House Officer, Kalwad, he gave following reply to him: -

“After going through above mentioned post mortem report it is clear that there was no ligature mark around the neck.

Hence it is clarified that the above mentioned person did not die because of hanging. She died because of asphyxia as the result of pressure over neck.”

This report is exhibited as P-13 on the record proved by the Medical Officer (PW-8) during his examination. There is no suggestion in the cross-examination to PW-8 Dr. Viveka Nand that cause of death could have been asphyxia due to hanging.

12. It is argued on behalf of the respondent that since the deceased committed suicide by hanging herself with a Chunni/ Dupatta, and her body was brought down immediately after the incident, as such, no ligature mark was found around the neck, and it is a case of suicide by hanging.

13. Hanging is a form of death, produced by suspending the body with a ligature round the neck, the constricting force being the weight of the body, or a part of the body weight. In other words, the hanging is the ligature compression of the neck by the weight of one's body due to suspension.

A 14. According to Modi's Medical Jurisprudence and  
Toxicology (23<sup>rd</sup> Edition), "ligature mark depends on the nature  
and position of ligature used, and the time of suspension of  
the body after death. If the ligature is soft, and the body is cut  
down from the ligature immediately after the death, there may  
B be no mark....."

15. 'Strangulation' is defined by Modi as "the compression  
of the neck by a force other than hanging. Weight of the body  
has nothing to do with strangulation. Ligature strangulation is  
C a violent form of death which results from constricting the neck  
by means of a ligature or by any other means without  
suspending the body. When constriction is produced by the  
pressure of the fingers and palms upon the throat, it is called  
as throttling. When strangulation is brought about by  
D compressing the throat with a foot, knee, bend of elbow, or  
some other solid substances, it is known as mugging (strangle  
hold)." (emphasis supplied)

16. As to appearances due to asphyxia, Modi says: -  
E "The face is puffy and cyanosed, and marked with  
petechiae. The eyes are prominent and open. In some  
cases, they may be closed. The conjunctivae are  
congested and the pupils are dilated. Petechiae are  
seen in the eyelids and the conjunctivae. The lips are  
F blue. Bloody foam escapes from the mouth and nostrils,  
and sometimes, pure blood issues from the mouth, nose  
and ears, especially if great violence has been used. The  
tongue is often swollen, bruised, protruding and dark in  
colour, showing patches of extravasation and  
occasionally bitten by the teeth. There may be evidence  
of bruising at the back of the neck. The hands are usually  
clenched. The genital organs may be congested and  
there may be discharge of urine, faeces and seminal  
fluid."

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(emphasis supplied)

17. In 'asphyxia', according to Modi, "ligature is usually situated above the thyroid cartilage, and the effect of its pressing the neck in that situation is to force up the epiglottis and the root of the tongue against the posterior wall of the pharynx. Hence, the floor of the mouth is jammed against its roof, and occludes the air passages,....."

18. In the light of above, we have examined the observations of PW-8 Dr. Viveka Nand in the autopsy report (Ex. P-12), prepared by him at the time of post mortem examination. We have already quoted above the ante mortem injuries and findings on the neck dissection and also the opinion given by the Medical Officer. At this stage, we think it relevant to mention here the observations made by the Medical Officer (PW-8) as to external appearances mentioned in page one of the post mortem report, which disclose –

"Both eyes were semi open and looked like protruded, on opening eyes are reddish congested, mouth closed, lips and face along with nails show bluish discolouration, abdomen slightly distended, condition of pupils – both dilated".

(emphasis supplied)

19. After carefully going through the medico legal evidence on record, we are of the opinion that it was not a case where a view could have been taken that the deceased died of hanging. There was no reason to disagree with the opinion given by PW-8 Dr. Viveka Nand (Ex. P-13) that the deceased had died of asphyxia as a result of pressure over the neck. Though PW-10 Meela (minor daughter of the accused) has stated that her elder sister's body was found hanging, but this witness was got declared hostile by the prosecution, and trial court rightly disbelieved her statement, for the reason that after losing her elder sister, she was not in a position to lose her father.

A           20. We think it pertinent to refer here to the statement of  
PW-9 Bablu, who has stated that he knew Sheela (deceased)  
and they wanted to marry. He further told that on 28.4.1999  
between 8.00 to 8.15 p.m. he was talking with Sheela near the  
well. He further told that accused Ramesh came there and  
B threatened him of breaking his bones if he continued to meet  
Sheela. The witness further narrated that Ramesh slapped  
Sheela. He further told that Ramesh took Sheela to the house  
and thereafter he did not know what happened, but at 10.30  
p.m. he came to know about the death of Sheela.

C           21. PW-4 Raju has corroborated the above statement.  
He stated that he heard some noise on 28.4.1999 at 8.15 p.m.  
on his way back from the field. He further told that when he  
reached near well, he saw Sheela and Bablu talking and  
D advised them to go to their respective homes. Meanwhile  
accused Ramesh came and slapped his daughter Sheela and  
took her to his house. He further told that he did not know what  
had happened thereafter, but at about 10.30 p.m. PW-1  
Prithviraj Singh called him and Bablu. Meanwhile, the police  
E also reached there.

          22. After carefully scrutinizing the evidence on record,  
as above, we are convinced that it is proved beyond  
reasonable doubt on the record that when accused Ramesh  
F saw his daughter talking to PW-9 Bablu, he got suddenly  
provoked and lost his power of self-control, slapped her, took  
her inside the house, and caused death of his daughter by  
strangulation and throttling. The medical evidence clearly  
shows four ante mortem injuries on the neck region and three  
G around mouth of the deceased as mentioned in the autopsy  
report (Ex. P-12). On going through the reports Ex. P-12 and  
P.13 read with oral testimony of witnesses, discussed above,  
we have no hesitation in holding that prosecution has  
successfully proved the charge of culpable homicide not  
H amounting to murder punishable under Section 304 Part I  
against the accused/respondent Ramesh.

23. Exception 1 to Section 300 IPC provides that a culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation. Needless to say that following three conditions, as required under Exception 1 to Section 300 IPC, are also fulfilled in the present case: -

(a) that the provocation was not sought or voluntarily provoked by the offender;

(b) that the provocation was not given by anything done in obedience of the law; and

(c) that the provocation was not given by anything done in lawful exercise of the right of private defence.

24. For the reasons, as discussed above, we are of the view that the High Court has erred in law in holding that the deceased could have hanged herself, and that the chain of circumstances was not complete against the accused. Therefore, this appeal deserves to be allowed. Accordingly, the appeal is allowed, and the impugned judgment and order dated 4.1.2006, passed by the High Court in D.B. Criminal Jail Appeal No. 397 of 2000, is set aside. Accused-respondent Ramesh is convicted under Section 304 Part I IPC and sentenced to rigorous imprisonment for ten years. The period of sentence already undergone by the accused shall be set off. His conviction and sentence recorded by the trial court shall stand modified accordingly.

The lower court record be sent back to make the respondent serve out the remaining part of sentence.