

Mahabir Mandal and Others

Vs

State of Bihar

Criminal Appeal No. 97 of 1969

(H. R. Khanna, G. K. Mitter, J, M Shelat JJ)

07.03.1972

JUDGMENT

KHANNA, J. -

1. Mahabir Mandal (58), Dasrath Mandal (24), Kasim Ansari (30), Mahadeo Sah, (60) and Kedar Nath Upadhya (28) were tried in the court of Additional Sessions Judge, Monghyr. The learned Additional Sessions Judge acquitted Kedar Nath Upadhya. Mahabir and Dasrath were convicted under Section 302, read with Sections 34, 120-B and 201, Indian Penal Code. For the offence under Section 302, read with Section 34, Indian Penal Code, each of those two accused was sentenced to undergo imprisonment for life, while for the offence under Section 201, Indian Penal Code, each of them was sentenced to undergo rigorous imprisonment for a period of four years. No separate sentence was awarded for the offence under Section 120-B, Indian Penal Code. The sentences awarded to each of the two accused were ordered to run concurrently. Mahadeo and Kasim were convicted under Sections 120-B and 201, Indian Penal Code. For the offence under Section 201, Indian Penal Code, each of these two accused was sentenced to undergo rigorous imprisonment for a period of three years. No separate sentence was awarded for the offence under Section 120-B, Indian Penal Code to Mahadeo and Kasim. The appeal filed by Mahabir, Dasrath, Kasim and Mahadeo was dismissed by the Patna High Court. The four convicted accused have now come up in appeal to this Court by special leave.

2. Mahabir accused, who was practicing as a homoeopathic doctor at Jamalpur in district Monghyr, is the father of Dasrath accused. Dasrath was studying in the final year in Medical College, Dharbhanga at the time of occurrence and was having house surgeon's training in that college at the time of the trial. Kasim is stated to be the compounder of Mahabir accused, while Mahadeo accused was employed by Mahabir as a servant to look after Mahabir's field.

3. Indira Devi deceased (18) was the wife of Dasrath accused and daughter of Baijnath Mandal (P.W. 2) of Surajgarh at a distance of 30 miles from Jamalpur. Indira was aged about 13 years at the time of her marriage and continued to stay after the marriage at her father's house for about five years. The reasons for the delay in the performance of Muragawan (second marriage) ceremony, after which a girl goes to her husband's house, according to the prosecution case, was that Mahabir accused demanded about Rs. 2,500 as Dan Dahej from Baijnath P.W. The amount was, however, not paid by Baijnath. Letter, dated March 29, 1962, was then received by Baijnath from Dasrath accused wherein Dasrath reminded Baijnath of his promise to pay Rs. 2,500 to Dasrath so that Dasrath might obtain admission in Calcutta National Medical College for the purpose of his further education. Muragawan ceremony of Indira was performed in April, 1962 and Indira went to the house of her husband and his father in Jamalpur. A few months after that, in the month of Bhadon 1962, Baijnath

took Indira to his house after receipt of a letter for that purpose from Dasrath accused. A few weeks thereafter Indira was taken by Mahabir accused to his house. After Indira had stayed at the house of her father-in-law for some time, Mahabir accused levelled allegations against Indira that she was having illicit intimacy with his second son Rajendra. Mahabir also sent a letter to Baijnath to take Indira to his house in Surajgarh. Indira was accordingly taken in the month of December, 1962 to Baijnath's house. Mahabir after that expressed his reluctance to take back Indira to his house. In May, 1963 the Tilak ceremony of Mahabir's daughter as well as the marriage of Mahabir's youngest son Mahendra were to be performed. Indira was not invited for these occasions from her father's house. Baijnath then took Indira and left her at the house of Mahabir. Mahabir and Dasrath accused did not like this act of Baijnath in bringing Indira and leaving her at their house. On June 7, 1963 Mahabir wrote a letter to Baijnath wherein he complained that some people had set fire to the house of Mahabir on the occasion of the marriage at the instance of Baijnath.

4. The case of the prosecution further is that in August, 1963 Mahabir accused went to Calcutta and met Bhai Lal Mandal (P.W. 18), who is a cousin and partner in hotel business of Baijnath P.W., and asked Bhai Lal to request Baijnath to take his daughter Indira from Mahabir's house, because Indira was having illicit intimacy with her husband's younger brother who was an engineering student. Mahabir also told Bhai Lal that if Baijnath would not take Indira, he (Mahabir) would give some fatal injection to Indira. Bhai Lal thereupon sent letter, dated August 8, 1963, to Baijnath in an insured cover. Referring to the talk with Mahabir, Bhai Lal stated in that letter :

"In the end, Doctor Babu told us that now he would take his action very soon. She was the cobra of his house. He has such an injection in his possession that nothing will be known and she will remain sleeping. At present I give her one injection at an interval of a day or two for the pain in her abdomen and the girl also says 'Babuji please give me injection in at an interval of a day or two. The pain of my abdomen remains subsided with the injection.' On the same pretext he will give her that injection also that she will not even know about it and will depart from my house for ever. He was saying that he would take that action within a month."

5. Indira died in the house of Mahabir accused in Mohalla Nayagaon in Jamalpur on the night of September 17, 1963. Mahadeo accused earlier on that evening had been told by Mahabir accused to sleep at the latter's house for the night. At about 1.30 a.m. or 2 a.m. on that night, Mahabir accused, who is known as Doctor Sahib, awakened Mahadeo as well as Kasim and Gobind, another servant of Mahabir. Mahadeo then brought a taxi driven by Kedar Nath Upadhyya accused. Mahadeo went with Mahabir accused inside the house and saw the dead body of Indira lying on a cot. No one else was present in the house. The mouth of Indira was open and there were no apparent injuries on her person. Mahabir and Mahadeo accused then picked up the dead body and brought it outside the house. Gobind was also asked to assist in the carrying of the dead body. The dead body was then placed in the taxi on the back seat. Gobind and Mahadeo sat below the seat by the side of the dead body, while Mahabir and Kasim accused sat on the front seat along with the driver. A cement bag with bricks was placed in the boot of the taxi. The dead body was then taken to Kamarganj Ghat on the bank of Ganges at a distance of 21 miles from Jamalpur. At the Ghat the bag filled with bricks was tied round the waist of Indira's dead body. Mahadeo and Gobind took the dead body into the water of the Ganges and threw it there in chest-deep water. Mahabir and others then went back to Jamalpur and reached there at 5 a.m.

6. Mahabir and Dasrath accused, according to the prosecution case, were seen by Shiban Mandal (P.W. 8) and Mushahru (P.W. 15) at or about their house in Nayagaon on the morning of September

18, 1963.

7. Head Constable Suleman Khan (P.W. 6) was during the days of the occurrence posted at police post Nayagaon. On the morning of September 18, 1963, when he went to the tea stall for taking tea, he heard from some persons about the death of Indira and the removal of her dead body at night. The Head Constable gave this information at 11 a.m. to Sub-Inspector Kishori Lal (P.W. 22) at Jamalpur police station. The sub-Inspector made an entry about the information in the station diary.

8. Sub-Inspector Kishori Lal then went to the house of Mahabir and found the door closed. There was no response to the knocking at the door. Kasim and Mahadeo accused were then sent for and were interrogated.

9. In the meanwhile, on the morning of September 18, 1963, it is stated, Baijnath P.W. sent his younger brother Jagdish (P.W. 9) to Monghyr to make some purchases. Baijnath also asked Jagdish to go to Nayagaon and meet Indira. Jagdish reached Nayagaon at about 8 a.m. In Nayagaon Jagdish came to know from his relative Sita Devi that Indira had died during the previous night and her dead body had been removed. Jagdish then hired a taxi, went to Surajgarh and informed Baijnath about the death of Indira and the removal of her dead body. Baijnath and Jagdish then came in that taxi to Jamalpur. Baijnath on arrival at Jamalpur lodged report Ex. 18 at police station Jamalpur at 2 p.m.

10. Sub-Inspector Kishori Lal, it is further alleged, went again to the house of Mahabir accused at about 3.30 p.m. on September 18, 1963. Mahabir and Dasrath accused were not found in spite of search. Outside the dispensary of Mahabir, the Sub-Inspector found lying on a table two empty ampules of coramine, one empty phial of homoeopathic medicine on which words "Mere sd." were written and two empty ampules with words "distilled water for injection" written on them. These articles were seized by the Sub-Inspector. Mahadeo and Kasim accused were put under arrest. After the interrogation of Mahadeo accused, on September 18, 1963, ASI Birbhadra Singh went with Mahadeo accused to a place called Chandi Asthan on the bank of river Ganges and spread a net in the river, but the dead body of Indira was not found there. The police party then returned to the police station. There was further interrogation of Mahadeo and Kasim accused. Early on the morning of September 19, 1963 at about 5 a.m. ASI, Birbhadra Singh accompanied by Mahadeo and Kasim accused went to Kamarganj Ghat. A place was then pointed by Mahadeo accused. From that place Mahadeo accused brought out of the water the dead body of Indira. A bag full of bricks was found tied to the waist of the dead body. ASI, Birbhadra Singh then prepared the inquest report and took into possession the bag filled with bricks.

11. Post-mortem examination on the dead body of Indira was performed by Dr. Hari Shanker Prasad (P.W. 21) on September 19, 1963, at 4.30 a.m. at Sadar Hospital Monghyr. The doctor found greenish discolouration over face and abdomen and an abrasion 2 1/2" x 1" on left cheek. According to the doctor, Indira had died within 36 to 48 hours before the post-mortem examination. There was no mark of ligature or wound on the neck. The skull and vertebrae were found to be normal. Right lung and left lung were found congested. Heart was normal and empty. Liver, spleen and kidney were "normally congested". Bladder was normal and empty. Viscera were preserved and sent to the Chemical Examiner. According to the report of the Chemical Examiner, no poison could be detected in the viscera of Indira.

12. Confessional statement of Mahadeo accused was got recorded from Shri B. M. Rastogi, magistrate on September 21, 1963. According to that statement, Mahadeo along with Mahabir and

Kasim accused as well as Gobind had taken the dead body of Indira from Mahabir's house to the bank of Ganges and thrown it in the river water after tying the bag full of bricks to the dead body.

13. Mahabir, Dasrath and Kedar Nath accused absconded after this occurrence. Mahabir and Dasrath accused surrendered in court on September 30, 1969. Kedar accused too was arrested. Attempt was also made to arrest Gobind but he was found to be absconding.

14. It is also alleged by the prosecution that Dasrath accused who was in the Darbhanga Medical College hostel was found absent from the hostel during the days from September 14 to September 19, 1963.

15. Mahabir accused at the trial gave the following version of the occurrence :

"On September 17, 1963 at 8 p.m., she (Indira) died. About 1 1/2 months before it, she was seriously suffering from stomach trouble and there was no hope for her life. Baijnath lived at my house for four days and attended her. Letter (Ext. B/1) is proof thereof. Four days before her death, she suffered from ordinary Influenza and she was under my treatment. On September 17, 1963, in the morning there was remission of her fever. On that date at about 7.45 p.m. I came back to my house, and asked Indira's condition. My wife told me that she was quite well for the whole day and that she was not feeling well for the last 5 to 7 minutes. Thereafter I went inside. On enquiry Indira told that she was not feeling well. Then I began feel her pulse. All of a sudden she had convulsion and she died within 4 seconds. I could not understand as to what was the cause of her death. I am myself a doctor. There was no necessity of beating drums (spreading news) as to her illness."

16. According further to the statement of Mahabir, he informed the relatives about the death of Indira. They took the dead body of Indira at 10 o'clock in the night and after disposing of the dead body returned to the house at 12 mid-night or 1 a.m. Jitan Mandal, Thakur Mandal and Mahadeo went with Mahabir when the dead body was put in the river. Mahabir further stated :

"I do not know Gobind, after disposal of the dead body, we came back to our house between 12 o'clock and 1 o'clock in the night, Mahadeo put the bag full of bricks on the taxi. It is our custom either to burn or drown the dead body, but specially young girls are cent. percent. drowned because while burning, the clothes are burnt and the dead body becomes naked. Hence after putting fire in the mouth of the dead body of young girl the same is generally drowned. For drowning the dead body some heavy burden is tied, so that the dead body might not float, and nobody might see it and dog or jackal might not eat."

17. Mahabir denied having met Bhai Lal in Calcutta and having told him that he (Mahabir) would give a fatal injection to Indira. The other allegations of the prosecution were also denied by Mahabir. He, however, admitted having written the letters produced by the prosecution.

18. Dasrath accused in his statement under Section 342 of the Code of Criminal Procedure stated that he was at Darbhanga during the days of the present occurrence and was staying at the house of a close relative, Shri Ram Lakhan Bhagat Advocate, because the eldest son of Shri Bhagat was suffering from typhoid and there was no other male member to attend upon him. The plea of Kasim accused was denial simpliciter.

19. Mahadeo accused in the course of his statement under Section 342 of the Code of Criminal Procedure stated that Indira died at about 8 p.m. and later on that night, Mahadeo was awakened by Mahabir accused. Mahadeo added :

"At 8 o'clock in the night after the death of Indira, Dr. Saheb told that Thakur should prepare CHACHRI and that he was going to bring KAFAN. Ladies were weeping inside the house. Gobind was not there. It was rainy season. At the instance of Dr. Saheb, Thakur and myself kept bricks in a gunny bag. Dr. Saheb went to ask 10 or 15 persons to go with the dead body. When he came after saying to them, it began to rain. At the instance of other persons, Dr. Sahib went to bring two taxis but only one taxi could be available. For want of accommodation in the taxi, Dr. Sahib, Thakur and Jitan took the dead body on the taxi and remaining persons could not go."

Mahadeo admitted having thrown the dead body in the river. Written statement was also filed on behalf of Mahabir.

20. The Trial Court came to the conclusion that the possibility of the death of Indira due to morphine injection could not be ruled out. It was held that Mahabir and Dasrath accused had conspired to kill Indira by administering poison, or at any rate, Dasrath accused had connived at the murder of Indira by Mahabir accused. Both of them were further held to have conspired to dispose of the dead body secretly with a view to screen themselves from legal punishment. Mahabir and Dasrath accused were accordingly convicted and sentenced as above. Kedar accused was given the benefit of doubt and was acquitted. As regards Mahadeo and Kasim accused, it was held that though they had jointed in the disposal of the dead body, they were not parties to the conspiracy to murder Indira. These two accused were, however, found to have conspired to dispose of Indira's dead body with a view to screen Mahabir and Dasrath accused from legal punishment of murder. Mahadeo and Kasim accused were accordingly convicted for offences under Sections 120-B and 201, Indian Penal Code.

21. On appeal the High Court found that the following facts had been proved :

"(1) Appellant Dasrath was not keen to have the DURAGAMAN ceremony performed even after more than four years of his marriage and was putting pressure on Indira's father to pay the promised sum of Rs. 2,500/- to him although in fact there was no such promise from his father-in-law.

(2) Dasrath had in the meantime come in some sort of close intimacy with a girl medical student of Kanpur, named, Madhuri Chourasia and was on correspondence with her.

(3) Deceased Indira was suspected by Dasrath and by his father and step-mother of illicit intimacy with Rajendra when she came in Aswin in 1962 to stay at Mahabir's place and they decided to abandon her at her father's place never to be called back again.

(4) On the asking of Dasrath and Mahabir the father of Indira brought her back to his place in December, 1962.

(5) Indira was not asked to join her husband's family on the occasion of the TILAK of Mahabir's daughter and third son Mahendra in May, 1963.

- (6) Baijnath went uninvited with Indira to Nayagaon on that occasion and he was insulted by Mahabir and Dasrath; but still Baijnath left Indira there and returned alone to Surajgarh.
- (7) Mahabir immediately wrote a post card (Ext. 1/3) expressing his acute bitterness, disgust and hatred for Baijnath and his daughter.
- (8) On August 7, 1963, Mahabir in Calcutta had talks with Bhailal an uncle of Indira and Mahabir conveyed to him his idea of injecting Indira to death within a month if she was not removed by her father from his place.
- (9) Dirty allegations were made against her character and she was described by Mahabir before Bhailal as cobra.
- (10) Bhailal immediately conveyed to Baijnath the gist of the conversation he had with Mahabir by letter, Ext. 1/4, dated August 8, 1963.
- (11) Mahabir on his own admission before Bhailal was already giving injections to Indira to relieve her of some stomach pain.
- (12) Suddenly Indira died on the night of September 17, 1963.
- (13) No relation or neighbour at Nayagaon came to know of her death on that evening.
- (14) The father of the deceased girl was not informed about the death although Surajgarh was not very far and there was undue haste in disposing of the body on the very night of her death.
- (15) The dead body was stealthily carried away by Mahabir and his three servants including Qasim Ansari on the taxi at dead of night and was sunk unceremoniously in Kamarganj Ghat, 21 miles away although the nearer burning ghat or bank of the Ganges was at Lal Darwaza or Chandi Asthan at Monghyr, only five to six miles away from Jamalpur.
- (16) The body was not cremated according to custom.
- (17) Rumour about surreptitious disposal of the dead body was reported at Jamalpur Police Station and enquiry was at once started by the thana officer on the morning of September 18, 1963, and Mahadeo and Qasim Ansari made discrepant statements about the death and disposal of the dead body on interrogation.
- (18) Mahabir and also Dasrath (who was seen at Jamalpur on the morning of September 18, 1963) absconded and remained traceless till September 30, 1963.
- (19) Mahadeo misled the police in searching out the dead body in the evening at Chandi Asthan on September 18, 1963, and later on a subsequent clue furnished by him the police party came to Kamarganj Ghat and recovered the dead body from the river bed.

(20) Upon post-mortem examination heart was found empty and normal and it excluded the possibility of natural death due to syncope or vagal inhibition.

(21) Dasrath was absent from his hostel at Darbhanga from September 14, 1963, and again from September 23, 1963, till September 30, 1963, when he and his father Mahabir surrendered in court.

(22) The plea of alibi of Dasrath remained unsubstantiated."

In the result, the conviction of the accused-appellants was upheld and their appeal was dismissed.

22. In appeal in this Court Mr. Chari on behalf of the appellants has argued that the material on record does not establish that Mahabir accused caused the death of Indira deceased. In any case, according to the learned counsel, it has not been proved that the death of Indira was homicidal and not natural. So far as Dasrath accused is concerned, the submission made is that there is no cogent evidence on the record to show that he was present at his house in Jamalpur on the night of occurrence. As regards Kasim accused, the counsel contends that he is not proved to have taken part in the removal of the dead body of Indira from the house of Mahabir. In respect of Mahadeo, the argument is that he did not know that Indira had been murdered. The above contentions have been controverted by Mr. Prasad on behalf of the respondent State. We have heard the arguments at length and shall now proceed to examine as to whether the prosecution has been able to establish the charge against the accused and if so, against which of them.

23. We may first take the case of Mahabir accused. It is the case of the prosecution that Mahabir had an aversion for Indira deceased and suspected her of illicit intimacy with his second son, Rajendra. Indira was consequently sent to her father's house. The above facts are proved by the evidence of Baijnath (P.W. 2) and are corroborated by letter, dated July 6, 1962, sent by Dasrath accused to Baijnath P.W. The evidence of Baijnath P.W. further shows that after Indira had been brought to his house in December 1962, Baijnath made many efforts to send Indira to the house of Mahabir, but Mahabir declined to keep her in his house. In May, 1963 the marriage of Mahendra in Tilak ceremony of Mahabir's eldest daughter were to be performed. Mahabir did not send for Indira on the occasion of the above Tilak ceremony. Baijnath on coming to know of the Tilak ceremony personally took Indira with him to Mahabir's house. Mahabir resented the act of Baijnath in bringing Indira to the house on the above occasion and made no secret of his resentment. Baijnath all the same left Indira at Mahabir's house under the belief that the anger of Mahabir would subside. The fact that Mahabir became angry because of Indira having been brought to his house by Baijnath on the occasion of the above Tilak ceremony is admitted by Mahabir also in his statement under Section 342 of the Code Criminal Procedure.

24. After the Tilak ceremony of Mahabir's daughter Indira continued to stay at the house of Mahabir. Mahabir however, did not feel happy over this. Mahabir also suspected that some people had set fire to his house on the occasion of the marriage of his daughter at the instigation of Baijnath. On June 7, 1963, Mahabir wrote a letter to Baijnath in the course of which Mahabir stated :

"So far your daughter is living peacefully but you, who have kept your daughter (here) secretly have done a great harm. You who have done this act in collusion with my enemies and you have thought that it would be for your good. Those whom you think that they will help you against Mahabir Mandal are like the TATI of the stalks

of maize. You should know that there is man of brain on this side also to burn the action which you take. Hence you should come as soon as you receive the letter and have a face to face talk. Your daughter can live or go only after settlement made in the talk. You should not hesitate in coming (here) I shall not quarrel. Whatever action will have to be taken, will be taken with brain. If you do not come its result will be bad."

25. The writing of the above letter has been admitted by Mahabir in his statement under Section 342 of the Code of Criminal Procedure. The letter shows that Mahabir was not prepared to keep Indira at his house unless some amends were made by her father.

26. The evidence of Bhai Lal (P.W. 18), who is a cousin of Baijnath P.W. and runs hotel business, shows that on August 7, 1963, Mahabir went to the witness in Calcutta and told the witness to request Baijnath to take his daughter from the house of Mahabir as Mahabir did not like to keep her in his house. Mahabir also added at that time that Baijnath's daughter was having illicit intimacy with the other son of Mahabir and this would create complication in the family when the sons of Mahabir came during vacation to the house. Mahabir even went to the extent of describing the daughter of Baijnath as a cobra in the house. According further to Bhai Lal, Mahabir held out a threat while leaving that if Baijnath did not agree to take back his daughter, he would give some fatal injection to Indira. On the following day Bhai Lal sent a letter narrating the above facts to Baijnath. As some money was also being sent along with that letter by Bhai Lal to Baijnath, the letter and the money were sent in an insured cover. The evidence of Bhai Lal in this respect is corroborated by that of Baijnath P.W. to whom the letter was sent. Baijnath also referred to the above threat of Mahabir conveyed through Bhai Lal in the first information report. Both the Trial Court and the High Court accepted the prosecution evidence in this respect and nothing has been urged in this Court as may justify interference with the above appraisal of evidence.

27. It is a common case of the prosecution and the defence that Indira died suddenly in Mahabir's house in his presence on the night between September 17 and September 18, 1963. The evidence of Baijnath shows that no intimation about the death of Indira was sent to him. Mahabir accused later on that night arranged a taxi and with the help of Mahadeo and others placed the dead body in the taxi. The dead body was thereafter taken in that taxi by Mahabir to Kamarganj Ghat at a distance of 21 miles from the house of Mahabir in Jamalpur. A bag full of bricks was also carried in the taxi. The dead body of Indira was then thrown into chestdeep water of the Ganges after the bag full of bricks had been tied to the waist. The above facts are also not disputed by Mahabir. According to him, they took the dead body at about 10 p.m. and after the body was thrown into the Ganges they returned at about mid-night or 1 a.m.

28. After report had been lodged by Baijnath with the police on the following day, that is, September 18, 1963, Mahabir accused was found to be absconding and was not traced till he surrendered himself in court on September 30, 1963.

29. The dead body of Indira could not be recovered on September 18, 1963, and was recovered only on the morning of September 19, 1963, after the particular spot at Kamarganj Ghat had been pointed by Mahadeo accused.

30. Post-mortem examination on the dead body of Indira deceased was performed by Dr. Hari Shanker Prasad. There was greenish discolouration over the face and abdomen and an ante mortem abrasion was found on the left cheek. Eyes were protruding and corneas were hazy. Decomposition

had started, and according to the doctor, the time between the death and post-mortem examination was 36 to 48 hours. Both the lungs were found congested. Heart, according to the doctor, was normal and empty, while liver, spleen and kidney were "normal congested".

31. The above circumstances, in our opinion, clearly point to the conclusion that Mahabir accused was responsible for the death of Indira. It is no doubt true that there is no ocular evidence in this case regarding the commission of the crime but the chain of different circumstances are consistent only with the hypothesis of the guilt of Mahabir. Mahabir was not only inimically disposed towards Indira, he had also held out a threat that if she was not taken from his house he would administer an injection to her as a result of which she would die. The conduct of Mahabir after the death of Indira at a time when according to him he was feeling her pulse speaks volumes of his guilty conscience. Had Indira's death been natural and not the result of foul-play, there was no reason as to why Mahabir should not have immediately informed her father of her death. According to Mahabir, he sent a post card to Indira's father on the following day. No question on that score, however, was put to Indira's father Bajjnath when he came into witness box. The act of Mahabir in arranging for a taxi and taking the dead of Indira at the dead hour of the night to Kamarganj Ghat at a distance of 21 miles clearly indicates his desire to surreptitiously remove the dead body and throw it at a place from which it would not be recovered. It is significant in this connection to observe that Monghyr is at a distance of only five or six miles from Jamalpur while Lal Darwaza burning ghat is at a distance of nine miles from Jamalpur. Both Lal Darwaza burning ghat and Monghyr are on river bank. The fact that the dead body was taken to a much more distant place like Kamarganj Ghat which is 21 miles away tends to show that Mahabir wanted that the place where the dead body was thrown should not get known to others. The tying of bag containing bricks to the dead body betrays further anxiety to prevent the floating and consequent detection of the dead body.

32. According to the defence version, Dasrath accused, who is husband of Indira, was not present in Nayagaon and was away to Darbhanga at the time of the death of Indira. Dasrath even was not sent for before the dead body was disposed of. The stealthy removal of the dead body of Indira at a late hour of the night and the undue haste with which the body of Indira was thrown in the river at a distance of 21 miles from Nayagaon is a gravely incriminating circumstance and no plausible explanation has been furnished by Mahabir for this abnormal conduct.

33. As regards the contention that the death of Indira was natural and not homicidal, we have already mentioned above that both her lungs were found to be congested. Heart was normal and empty. Dr. Prasad (P.W. 21), who performed the post-mortem examination on the dead body, was declared hostile on the request of the public prosecutor. In answer to a further question, Dr. Prasad stated that the death of Indira might have been a normal death. Dr. Prasad ruled out an asphyxial death or death by morphine poisoning because, according to him, there was no indication of any of the following characteristics which are to be found in the case of such a death :

- "(a) Right lung is full of blood and left is empty.
- (b) Lividity of faces, fingers and nails.
- (c) Congestion of the brain.
- (d) Froth or blood froth in the trachea.
- (e) Punctiform ecchymosis in the lungs with congestion of lungs."

34. The prosecution also examined Dr. Kamleshwar Singh, police surgeon (P.W. 24). According to this witness, he perused the post-mortem report and the Chemical Examiner's report. The witness added : "In my view I cannot form any opinion for the cause of death except that death had resulted due to respiratory failure. Asphyxia is the technical term for respiratory failure. Poisoning may be one of the causes of respiratory failure". Dr. Kamleshwar Singh expressed his agreement with Dr. Prasad regarding the characteristics of asphyxial death.

35. The Trial Court and the High Court in the light of the evidence on record, were of the opinion that the death of Indira by morphine poisoning could not be ruled out. According to Taylor's Principles and Practice of Medical Jurisprudence, Vol. II, Twelfth Edition, page 199, poison can be administered not only orally but also hypodermically or intravascularly with the help of a syringe. As there was no eyewitness of the occurrence, the court should not, in our opinion, insist upon evidence regarding the exact manner in which the death of Indira was caused. It has to be borne in mind in this context that Mahabir accused was responsible for the removal of the dead body immediately after the death of Indira and the same remained submerged in water for more than 24 hours. The above conduct of Mahabir accused prevented prompt post-mortem examination on the dead body of Indira. On the material it can be said that there were some features like the congestion of both the lungs, the kidney, the liver and the spleen of Indira which, according to Dr. Kamleshwar Singh, were indicative of death by respiratory failure and the same could be caused by poisoning. The fact that the heart of the deceased at the time of post-mortem examination was found to be empty would not rule out asphyxial death as a result of poisoning. According to observations on page 125 of Modi's Medical Jurisprudence and Toxicology, Seventeenth Edition, in many cases of asphyxial deaths both the sides of the heart are found to be full if examined soon after death but after rigor mortis has set in, the heart is found contracted and empty. Reference has been made by Mr. Chari to report, dated December 23, 1963, of the Chemical Examiner, according to whom no poison could be detected in the viscera of Indira deceased. This circumstance would not, in our opinion, militate against the conclusion that the death of the deceased was due to poisoning. There are several poisons, particularly of the synthetic hypnotics and vegetable alkaloids groups, which do not leave any characteristic signs as can be noticed on post-mortem examination. We may in this context refer to the following observations on page 477 of the above mentioned book by Modi :

"It is quite possible that a person may die from the effects of a poison, and yet none may be found in the body after death, if the whole of the poison has disappeared from the lungs by evaporation, or has been removed from the stomach and intestines by vomiting and purging, and after absorption has been detoxified, conjugated and eliminated from the system by the kidneys and other channels. Certain vegetable poisons may not be detected in the viscera, as they have no reliable tests, while some organic poisons, especially the alkaloids and glucosides, may, by oxidation during life or by putrefaction after death, be split up into other substances which have no characteristic reactions sufficient for their identification."

36. Similar view has been expressed by Lambert in his book "The Medico-Legal Post-Mortem in India". We may also in this context refer to the book "Legal Medicine Pathology and Toxicology" by Gonzales and Others, Second Edition, wherein it is stated on page 847 :

"The post-mortem appearances in cases of morphine poisoning are not particularly characteristic. There is a congestion of the viscera, cyanosis and abundant dark fluid blood. When crude opium is taken by mouth the stomach may contain fragments of poppy, but nothing characteristic is found if morphine is injected."

37. The circumstances of the present case taken in their entirety clearly point to the conclusion that the death of Indira was not natural but was due to foul-play. In a number of cases where the deceased dies as a result of poisoning, it is difficult to successfully isolate the poison and recognize it. Lack of positive evidence in this respect would not result in throwing out the entire prosecution case if the other circumstances clearly point to the guilt of the accused. Reference in this context may be made to the following observations of Hidayatullah, J., (as he then was) who spoke for the majority in the case of *Anant Chintaman Lagu v. The State of Bombay* [(1960) 2 SCR 460] :

"A case of murder by administration of poison is almost always one of secrecy. The poisoner seldom takes another into his confidence, and his preparations to the commission of the offence are also secret. He catches his opportunity and administers the poison in a manner calculated to avoid its detection. The greater his knowledge of poisons, the greater the secrecy, and consequently the greater the difficulty of proving the case against him. What assistance a man of science can give he gives, but it is too much to say that the guilt of the accused must, in all cases, be demonstrated by the isolation of the poison, though in a case where is nothing else such a course would be incumbent upon the prosecution. There are various factors which militate against a successful isolation of the poison and its recognition.

The discovery of the poison can only take place either through a post-mortem examination of the internal organs or by chemical analysis. Often enough, then diagnosis of a poison is aided by the information which may be furnished by relatives and friends as to the symptoms found on the victim, if the course of poison has taken long and others have had an opportunity of watching its effect. Where, however, the poison is administered in secrecy and the victim is rendered unconscious effectively, there is nothing to show how the deterioration in the condition of the victim took place and if not poison but disease is suspected, the diagnosis of poisoning may be rendered difficult."

38. Reliance in the above context was placed in the cited case on the books on medical jurisprudence by different authors wherein it has been stated that the pathologist's part in the diagnosis of poisoning is secondary and that several poisons particularly of the synthetic hypnotics and vegetable alkaloids groups do not leave any characteristic signs which can be noticed on post-mortem examination. The following dictum was laid down in the case :

"The cases of this Court which were decided, proceeded upon their own facts, and though the three propositions must be kept in mind always, the sufficiency of the evidence, direct or circumstantial, to establish murder by poisoning will depend on the facts of each case. If the evidence in a particular case does not justify the inference that death is the result of poisoning because of the failure of the prosecution to prove the fact satisfactorily, either directly or by circumstantial evidence, then the benefit of the doubt will have to be given to the accused person. But if circumstantial evidence, in the absence of direct proof of the three elements, is so decisive that the Court can unhesitatingly hold that death was a result of administration of poison (though not detected) and that the poison must have been administered by the accused person, then the conviction can be rested on it."

39. The case against Mahabir accused, in our opinion, is covered by the latter part of the above observation. We, therefore, find no cogent ground to interfere with the findings of the two courts

that the death of the deceased was not natural but homicidal.

40. Reference has been made by Mr. Chari to the case of State Government, Madhya Pradesh v. Ramkrishna Ganpatrao Limsey and Others [AIR 1954 SC 20], wherein this Court dealt with an appeal against acquittal and observed that the exercise of extraordinary jurisdiction under Article 136 of the Constitution is not justifiable in criminal cases unless exceptional and special circumstances are shown to exist or that substantial and grave injustice has been done. The above observations are hardly of any assistance to the appellant. The other observation in that case relating to speculation in the absence of any material were made in the light of the facts of that case and as there is no parallel between the facts of the two cases, not much help can be derived from the cited case.

41. The suggestion put forth on behalf of the accused that Indira deceased might have died due to vaginal inhibition as a result of menstrual trouble or diarrhoea cannot be accepted. Had the death of Indira been natural because of some sudden disease and not homicidal, Mahabir accused would not have acted in the manner he did for the stealthy disposal of the dead body at night by throwing it in the river at a far off place without informing her father or even his own son about the death. The entire conduct of Mahabir is inexplicable on any rational ground and is consistent only with his guilt.

42. We may now deal with the case of Dasrath accused. According to the prosecution case, Dasrath was present in his house in Jamalpur on the night of occurrence. Dasrath, however, has denied this allegation and has stated that he was away to Darbhanga during those days. There is no reliable evidence to show that Dasrath was present in the house on the night in question. Reliance has been placed by the prosecution on the testimony of Shibhan Mandal (P.W. 8) and Mushahru Mandal (P.W. 15) who have deposed that they saw Dasrath reading a book near the dispensary room of his house on the morning of September 18, 1963. Both these witnesses are related to each other. Shibhan did not make any statement to the police till September 22, 1963. The fact that Shibhan kept quiet for four days and made statement to the police after four days would show that not much reliance can be placed upon his testimony. Mushahru on his own testimony has been involved in litigation with Mahabir, father of Dasrath. Mahabir also got the house of Mushahru attached in suit filed against him. As such, it is not safe to rely upon the testimony of Mushahru also.

43. It may be mentioned that, according to the confessional statement of Mahadeo, which was recorded by Shri Rastogi Magistrate on September 21, 1963 and upon which reliance was placed by the prosecution, no one was present in the house when Mahabir took Mahadeo inside the house to bring out the dead body of Indira for being placed in the taxi on the night of occurrence. The confessional statement of Mahadeo thus rules out the presence of Dasrath accused at his house on the fateful night.

44. The fact that Dasrath was not marked present in his hostel from September 14 till September 19, 1963, would not necessarily show that he was present in his house in Jamalpur on the night of September 17, 1963. According to Dasrath, he was in those days staying with a relative Shri Ram Lakhan Bhagat Advocate as Shri Bhagat's son was having typhoid. The fact that Dasrath did not adduce evidence in support of his version would not lead to the conclusion that he was present at his house in Jamalpur on the night of occurrence.

45. Reference has also been made to some letters between Dasrath and a girl named Madhuri in order to show their intimacy. This circumstance would not warrant an inference of the guilt of

Dasrath when the other Evidence is not sufficient to connect him with the crime. The same remarks would apply to letter, dated March 29, 1962, which Dasrath wrote to Baijnath in order to remind him of his promised to pay Rs. 2,500 for further education to Dasrath. It may be mentioned that a subsequent letter, dated July 6, 1962, of Dasrath to Baijnath shows his attachment towards his wife Indira deceased.

46. Coming to the case of Kasim, we find that there is no reliable evidence as may show that Kasim was present at the house of Mahabir on the night of occurrence and took part in the disposal of the dead body of Indira. Reliance was placed by the prosecution upon the statement alleged to have been made by Kasim and Mahadeo accused at the police station in the presence of Baijnath P.W. after Baijnath had lodged report at the police station. Such statements are legally not admissible in evidence and cannot be used as substantive evidence. According to Section 162 of the Code of Criminal Procedure, no statement made by any person to a police officer in the course of an investigation shall be signed by the person making it or used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when such statement was made. The only exception to the above rule is mentioned in the proviso to that section. According to the proviso, when any witness is called for the prosecution in the enquiry or trial, any part of his statement, if duly proved, may be used by the accused and with the permission of the court by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness for the purpose only of explaining any matter referred to in his cross-examination. The above rule is, however, not applicable to statements falling within the provisions of Clause 1 of Section 32 of the Indian Evidence Act or to affect the provisions of Section 27 of that Act. It is also well established that the bar of inadmissibility operates not only on statements of witness but also on those of the accused (see *Narayan Swami v. Emperor*) [AIR 1939 PC 47]. Lord Atkin, in that case, while dealing with Section 162 of the Code of Criminal Procedure observed :

"Then follows the Section in question which is drawn in the same general way relating to 'any person.' That the words in their ordinary meaning would include any person though he may thereafter be accused seems plain. Investigating into crime often includes the examination of a number or persons none of whom or all of whom may be suspected at the time. The first words of the section prohibiting the statement if recorded from being signed must apply to all the statements made at the time and must therefore apply to a statement made by a person possibly not then even suspected but eventually accused."

47. Reference may also be made to Section 26 of the Indian Evidence Act, according to which no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved against such person. There is nothing in the present case to show that the statements which were made by Kasim and Mahadeo accused on September 18, 1963, at the police station in the presence of Baijnath resulted in the discovery of any incriminating material as may make them admissible under Section 27 of the Indian Evidence Act. As such, the aforesaid statements must be excluded from consideration.

48. We, therefore, are of the opinion that no case has been proved against Dasrath and Kasim accused.

49. As regards Mahadeo accused, we find that it is the case of the prosecution and this fact is also admitted by Mahadeo accused in his statement under Section 342 of the Code of Criminal

Procedure that he was one of those who carried the dead body of Indira from the house of Mahabir to the taxi and thereafter went with the dead body in the taxi to Kamarganj Ghat. The dead body was also thrown in the Ganges by Mahadeo. Mahadeo further admits that he pointed out the dead body to the police and brought it out of the Ganges. The circumstances in which the death of Indira took place and the surreptitious manner in which her dead body was removed at dead of night from Mahabir's house to Kamarganj Ghat go to show that Mahadeo was not unaware of the fact that Indira's death was not natural and had been brought about by Mahabir. Mahadeo, in the circumstances, was rightly convicted for offence under Section 201, Indian Penal Code for causing the disappearance of the dead body with a view to screen the murderer from legal punishment.

50. As both Dasrath and Kasim are being acquitted, the charge under Section 120-B, Indian Penal Code against Mahabir for conspiracy with Dasrath to murder Indira and against Mahadeo for conspiracy with Kasim for causing disappearance of dead body of Indira must fail.

51. The result is that appeal of Dasrath and Kasim is allowed. Their conviction is set aside and they are acquitted. The conviction of Mahabir and Mahadeo for offences under Section 120-B, Indian Penal Code is set aside. The conviction of Mahabir for offences under Sections 302 and 201, Indian Penal Code as well as the sentence on that score is maintained. Likewise, the conviction and sentence of Mahadeo for offence under Section 201, Indian Penal Code is maintained. The appeal of Mahabir and Mahadeo to this extent is dismissed.

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