

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 85 of 2000**

Bheshlal, son of Ganeshram Sahu, aged about 59 years cultivator,
resident of village Pandiyain, police station Pathriya, District Bilaspur.

---- Appellant

Versus

State of Madhya Pradesh (Now Chhattisgarh).

---- Respondent

For Appellant	:	Shri Aditya Khare, Advocate.
For Respondent/ State	:	Ms. Smita Ghai, Panel Lawyer.

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.**

Judgment On Board**Per NAVIN SINHA, C.J.****30/4/2015**

1. The Appellant stands convicted under Section 302 IPC to life imprisonment with fine of ₹1,000/-, in the event of failure to pay which he was required to undergo six months further rigorous imprisonment, as ordered by the Additional Sessions Judge, Mungeli in Sessions Trial No.173 of 1997 dated 13.12.1999.

2. The deceased was the wife of the Appellant found dead inside the courtyard of the house. The Appellant was granted bail on 29.8.2006. It came to be cancelled for non-representation on 9.9.2014. The Appellant is presently in custody. There is no report that if he has expressed any desire to engage a Counsel of his own choice or be provided Legal Aid. Considering that the appeal is of the year 2000, we thought it prudent to request the High Court Legal Aid

Services Committee, which has nominated Shri Aditya Khare, Advocate, to assist us in the appeal. Both Shri Aditya Khare and the State Counsel have rendered us all necessary assistance by arguing and placing the entire evidence on record to enable us to dispose the appeal.

3. The Appellant lodged 'Merg' Exhibit P-6, on 2.5.1996 at about 9:25 a.m. stating that his wife, the deceased had set herself afire at about 8:00 a.m. by dousing herself with kerosene oil inside the compound of their house. The post-mortem of the deceased was conducted by PW-9, Dr. P.C.Banerjee, Exhibit P-4, who opined that the cause of death was haemorrhagic shock resulting from the head injury. The post-mortem further noticed 100% burns, multiple blisters, blood-stained froth present in the nostrils and mouth, the left hand was clutching a bamboo stick burnt at both ends. There was a lacerated wound over the right temporal region of the head measuring 1" x ½". The brain matter was congested with haemorrhage present and there was haemorrhage of temporal bone. The lung was congested but there was no carbon present in the throat, esophagus or lungs. The lungs were congested as was the heart, filled with blood. The injury on the head was ante-mortem in nature while the burns were post-mortem. Death was estimated to have taken place 12-18 hours earlier. FIR Exhibit P-16, was registered on 23.7.1996 after the post-mortem report was made available.

4. Learned Counsel for the Appellant submitted that in the 'Merg' the Appellant had stated that the deceased had burnt herself by dousing kerosene. PW-1, Melaram has stated that the Appellant was sitting at the house of Dilharan, when the witness noticed smoke

emanating from the formers house. They both together rushed to the Appellant's house and found the deceased dead due to burn injuries. Vimla Bai, PW-2, the daughter-in-law of the deceased has stated that the Appellant had gone with her children to the house of Dilharan. The Appellant tried to douse the fire by throwing water on the deceased. The conduct of the Appellant in attempting to save his wife is incompatible with the accusation that he had killed her. On the contrary the evidence reflects that he tried to save her life. If he had set her on fire he would not have tried to save her. Blood was spattered on the stone wall near the place the body was lying as deposed by Vimla Bai, PW-2. The possibility that the deceased may have injured herself on the head while running hither thither after she had set herself afire cannot be ruled out. In absence of any evidence against the Appellant, the benefit of doubt must be given to him. There was no occasion for the Appellant to kill his own wife. There is no evidence that relations between the two were estranged, much less any evidence of past conduct against the Appellant. A can of kerosene, a match box and scattered match-sticks were also found at the place of occurrence. Merely because the deceased may have died at home, the burden cannot shift automatically to the Appellant by invoking Section 106 of the Evidence Act. The onus initially lies on the prosecution to make out a *prima facie* case of the deceased having been killed in her own house under circumstances not explained, only thereafter the onus will shift to the Appellant for demonstrating that he was not the assailant and explaining the circumstance how death took place inside the house. The initial onus not having been discharged by the prosecution, the Appellant is not required to prove his innocence.

5. Learned Counsel for the State submitted that the deceased died at home. The post-mortem reveals an ante-mortem head injury. The Appellant has offered no explanation with regard to the head injury found on the deceased. In his defence under Section 313 Cr.P.C. he took a false defence that he was not aware that the deceased had suffered any head injury. This is an incriminating factor against him as he has stated falsehood to his knowledge. The theory that the deceased burnt herself to death does not stand scrutiny because if she had set her own self on fire while alive, soot would have been present in her throat, esophagus or lungs. The cause of death was the head injury and not the burns. If a person sets oneself on fire, it is not probable that body would be 100% burnt from hair to toe with blisters all over and skin separated from the bones. The fact that the deceased was clutching a stick in her hand is evidence that either she had tried to protect herself or snatched it from the Appellant when he had assaulted her. The motive for the occurrence is evident from the skirmish that PW-2, Vimla Bai had with the deceased immediately prior to the occurrence with regard to morning tea.

6. We have considered the submissions on behalf of the parties and examined the evidence on record.

7. The Appellant in the 'Merg' stated that in the morning skirmish had taken place between his wife and the daughter-in-law, PW-2 when he stated that he would go and leave his daughter-in-law and children at Pathariya where her husband had gone. The deceased stated that she would go herself. The Appellant left the house and when he came back after 5 to 7 minutes to drink water, he found that his wife was half burnt lying on the ground. But PW-1, Melaram has deposed that the

Appellant was sitting at the house of one Dilharan when the witness noticed smoke coming out of the Appellant's house, went and informed him, after which the Appellant accompanied by the witness rushed home to find the deceased dead due to burn injuries. In cross-examination, no question was asked to the witness that the Appellant had gone home on his own from the house of Dilharan and that the witness had not informed him anything and neither accompanied him to his house. This falsifies the statement made in the 'Merg' by the Appellant that he came back to the house all alone to find the deceased dead. The evidence of PW-1, Melaram that the Appellant was at the house of Dilharan is corroborated by the evidence of his daughter-in-law, PW-2 also. A false 'Merg' in a case of the present nature based on circumstantial evidence becomes an incriminating factor against the Appellant.

8. PW-2, Vimlabai has deposed of a skirmish with the deceased over morning tea. She then left to fetch water and saw Dilharan walking towards her house along with the Appellant. She also followed them and they saw smoke emanating from the house to find that the deceased died of burn injuries. The Appellant sought to douse the fire by throwing water on the body. This was a significant act on the part of the Appellant in his defence. If it was a bonafide attempt by the Appellant to save his wife, surely he would have stated this crucial fact in the 'Merg' itself. The Appellant offers no defence or explanation why he did not do so despite the fact that he stated that the deceased was only half burnt. The blood spattered stone wall is a desperate defence with no reasonable basis as the deceased suffered 100% deep burn injuries with the skin burnt and bones exposed and was lying in a

supine position. On the contrary, the possibility arises that the head of the deceased was forcibly banged on the stone wall leading to death after which the body was burnt. This theory also finds support from the medical evidence in the post-mortem that the head injury was ante-mortem but the burn injuries were post-mortem.

9. We find it difficult to accept the defence suggestion that the deceased banged herself on the wall and suffered the head injury. In that event the fracture of her right temporal bone would either have rendered her unconscious or the pain and agony would have been so extreme that the question of setting herself on fire does not arise.

10. PW-5 and 6, Rukmani Bai and Dwarka proved the inquest report, Exhibit P-2, PW-7, Kuber was the son of the deceased who deposed that he was not at home.

11. PW-9, Dr. P.C. Banerjee deposed that the body was in pugilistic position. Post-mortem lividity was present on the back and the colour of the body had changed since death. The body was 100% burnt with the skin having left the bones at many places. There were blisters all over the body. The nose and mouth contained blood mixed with froth. There was a stick measuring 6" x 3" with both ends burnt clutched in the left fist of the deceased. The bone of the left elbow was visible. There was injury on the right side of the temporal region measuring 1" x ½" as also 3" linear fracture of right temporal bone. The injuries to the head were ante-mortem in nature and the burn injuries on the body were post-mortem. The tongue was stuck between the teeth. The report is clearly suggestive of an assault first and the burns being subsequent.

12. PW-10, Surajan Singh, Sub Inspector proved seizing the match-box, match-sticks and plastic jerry can from the place of occurrence, Exhibit P-9, but he did not speak of finding any water on the ground at the place of occurrence falsifying the defence that the Appellant attempted to save the deceased by throwing water on her. PW-2, Vimla Bai had stated that the deceased would sweep the house, collect the refuse at one place then used to set it on fire. Kerosene and match-box kept for that purpose proved handy for the Appellant. PW-10 also proved the 'Merg'. PW-11, S.R. Dhritlahre proved the MLC of the Appellant, marked Exhibit P-14, which is not considered of any relevance because of the fact that it was conducted on 7.2.1997, long after the occurrence. He proved the FIR Exhibit P-16 as having been recorded by one K.B. Singh, whose signature he recognized.

13. The entirety of the evidence leads us to the conclusion for the following sequences of events. The deceased had a skirmish with the daughter in law, PW-2. The Appellant intervened and restrained his wife from doing so. The daughter-in-law PW-2, went away to fetch water. The Appellant was at home and had not gone anywhere. There is contradiction between the statement of the Appellant in the 'Merg' that he came back home within minutes and the evidence of PW-1, Melaram and PW-2, Vimla Bai that the Appellant was sitting at the house of Dilharan and came home with PW-1, Melaram on being informed that smoke was coming out from the house.

14. The present was a case of circumstantial evidence. In his defence under Section 313 CrPC, the Appellant acknowledged that he was sitting in the house of Dilharan and went home accompanied by PW-1. Significantly, the statement, if true would have found mention in

the 'Merg' itself. Similarly, under Section 313 CrPC, when a question was put to the Appellant that there was a head injury which was opined to be cause of death, the Appellant denied any knowledge of the head injury. If he had gone home and found the deceased half burnt, and the hair on the head was completely burnt as noticed in the post-mortem report the head injury on the deceased would well have been visible. The Appellant therefore again sought to deny a fact in his knowledge. If the deceased had died because of banging her head on the stone wall after setting herself on fire, this fact would have been mentioned by the Appellant in the 'Merg' itself. Not only did the Appellant try to mislead the prosecution by making a false story for the manner of death but also took false defences to his knowledge under Section 313 Cr.P.C. Evidently, the Appellant tried to destroy the evidence for having killed the deceased by setting her on fire contending that she had tried to commit suicide. The fact that deceased was holding a stick in a clenched fist indicates that either she snatched it from the Appellant when he tried to assault her or she had used it to defend herself. What is more important is that if she was holding a stick in one hand, the possibility of dousing herself with kerosene and setting herself on fire by a match stick by the other hand, is completely impossible.

15. The post-mortem report indicates that there was no soot in the throat, oesophagus and lungs. The head injury was ante-mortem and the burn injuries post-mortem a fact which speaks for itself for the manner of death and the sequence of events leading to the same. We find it highly improbable that a person setting herself on fire would stand in one place to suffer 100% burn injuries with skin peeling off,

entire hair burnt and the injuries due to fire from head to toe. The natural reaction of a person setting oneself on fire also would be to run helter and skelter rather than to lie at one place only suffering the entire burn injuries. It is only if the deceased had been fatally assaulted on the head, fell down unconscious or died unable to offer any resistance that the body would have been found lying in a supine position with 100% deep burn injuries.

16. In a case of circumstantial evidence false defences taken by the accused become additional incriminating factors against him. No defence has been urged for the manner in which the deceased may have died otherwise. In his defence under section 313 Cr.P.C the Appellant stated that he would lead evidence in support of his defence but he led no defence evidence. In (2010) 12 SCC 310 (Manu Sao v. State of Bihar) it was observed :-

“13. As already noticed, the object of recording the statement of the accused under Section 313 of the Code is to put all incriminating evidence against the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also to permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and besides ensuring the compliance therewith the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or in the alternative to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put to the accused every important incriminating piece of evidence and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the courts have

explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.”

17. In the entirety of the discussion and consideration of the evidence on record we find no reason to interfere with the conviction of the Appellant. He is already in custody. The Appellant shall undergo the remaining period of sentence.

18. The appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE