

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 277 of 2003**

1. Girawar @ Bhuru Ram Sahu

---- Appellant (in jail)

Versus

1. State of Chhattisgarh

---- Respondent

For Appellant	:	Mrs. Renu Kochar, Advocate
For Respondent/State	:	Mr. Rama Kant Pandey, Panel Lawyer

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Judgement on Board by T.P.Sharma, J.**30/04/2015**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 30.12.2002 passed by the Additional Sessions Judge, Dhamtari, in Sessions Trial No. 254/2001 whereby and whereunder after holding the appellant for uttering word with intent to insult modesty of Sohadra Bai after committing house trespass in order to commit offence punishable with capital punishment and for committing homicidal death amounting to murder of Sohadra Bai, the Court below convicted the appellant under Section 449, 509 and 302 of the I.P.C. and sentenced him to undergo RI for five years with fine of Rs.1000/-, to undergo SI for six months and to imprisonment for life with fine of Rs.1000/-. In default of payment of fine, appellant shall undergo additional RI for six months each under Section 449 and 302 of the I.P.C.

2. Conviction of the appellant is impugned on the ground that without there being any iota of evidence against him, the Court below convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 25.03.2001 at about 08 – 09 pm, the unfortunate deceased – Sohadra Bai, aged about 65 years, who was a deserted woman and was leading her livelihood by earning alone, was present in her house. The appellant entered her house and demanded for sex, which she denied and told that he may contact with the girls of his age group whereupon the appellant tried to attempt to commit sexual offence upon her, which was resisted by her, then the appellant got annoyed, took out the kerosene lamp and poured kerosene oil over her and then set her ablaze. On 27.03.2001 at about 4.00 pm, the villagers brought her to Community Health Center, Nagri, for treatment. She was treated by P.W.2 Dr. S.C.Netam, who informed the Nagri Police vide Ex.P.2. On 28.03.2001 vide Ex.P.2A, Nagri Police requested P.W.2 S.C.Netam for medical examination of the victim. She was examined by P.W.2 S.C.Netam vide Ex.P.2 and found burn mark present on right and left lower extrimities anterior and posterior side and other burn injuries present on hip region and genital part, abdomen and chest upto both breast and inner aspect of both upper arms.

4. P.W.4 Shashi Kumar Dhruw requested S.D.M. for record of dying declaration vide Ex.P.6. P.W.3 Manish Mishra recorded dying declaration vide Ex.P.4, in which, the deceased had made dying declaration that the appellant demanded for sex which was denied and told that he may contact with the girls of his age group, then the appellant tried to commit sexual intercourse, which was resisted by her, the denial of which got the appellant annoyed, thereafter the appellant took kerosene lamp and poured kerosene oil over her and then set her ablaze. Finally, F.I.R. was registered against the appellant vide Ex.P.5 on 28.03.2001 at about 08.30 pm. Burn saree, petticoat, chimney lamp and one wooden piece were seized from the spot vide Ex.P.7. Spot map was prepared vide Ex.P.12. Finally, she was discharged on 14.04.2001 and thereafter on 22.05.2001 she died.

5. Merg was recorded vide Ex.P.18. After summoning the witnesses vide Ex.P.15, inquest over the dead body was prepared vide Ex.P.16. Vide Ex.P.21

dead body was sent for autopsy to Community Health Center, Nagri. P.W.2 S.C.Netam conducted autopsy vide Ex.P.20 and found following injuries and symptoms:

- i. Rigor mortis was present. Eyes closed. Mouth open. Pupil dilated.
- ii. Yellowish brown clouded old scar of burn present on right and left lower extremities anterior and posterior side.
- iii. Old burning scar mark also present on lip region and genital part, abdomen and chest upto both breasts and inner aspect of both upper arm, duration of which was one month.

Mode of death was Septicemic shock due to severe infection on account of burn.

6. Seized articles were sent for chemical examination to F.S.L. and vide report Ex.P.22 presence of kerosene on the cloths of the deceased has been affirmed.

7. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

8. After completion of investigation, charge sheet was filed before the Court of J.M.F.C. Dhamtari, who in turn committed the case to the Court of Sessions. The learned Additional Sessions Judge received the case on transfer for its trial.

9. In order to prove the guilt of the appellant, the prosecution examined as many as 14 witnesses. Accused person was examined under Section 313 of the Code wherein he denied the circumstances appearing against him and innocence and false implication in crime in question was claimed. Accused also examined defence witnesses, namely, Bisamber (D.W.1) and Lakshminath (D.W.2) to take the defence of alibi.

10. After providing an opportunity of hearing to the parties, the learned Additional Sessions Judge convicted and sentenced the appellant as

aforementioned.

11. We have heard learned counsel for the parties and perused the record of Court below including judgment impugned.

12. Mrs. Renu Kochar, learned counsel for the appellant, submits that evidence adduced on behalf of the prosecution is self-contradictory. The evidence available on record reveals that F.I.R. is post-dated. There is inconsistency in the evidence of P.W.2 Dr. S.C.Netam and P.W.4 Head Constable Shashi Kumar Dhruw relating to date of admission, date of recording of dying declaration and time of lodging of F.I.R. As per evidence of prosecution, she (deceased) received burn injuries on 25.03.2001 and she has not been taken to Hospital till 26.03.2001. From 27.03.2001 till 14.04.2001 she was being given treatment and thereafter she was discharged and after more than one month she died on 22.05.2001 as a result of Septicemic shock due to severe infection on account of burn which shows that deceased died as a result of burn injuries. The alleged dying declaration Ex.P.4 and the evidence of P.W.3 Manish Mishra do not inspire confidence and trustworthy. The dying declaration and the evidence of P.W.3 Manish Mishra is not safe to rely for placing reliance upon the conviction of the appellant. Even otherwise, this is a case of an offence punishable under Section 307 of the I.P.C. and not under Section 302 of the I.P.C.

13. On the other hand, Mr. Rama Kant Pandey, learned counsel for the State, opposed the appeal while submitting that the evidence of P.W.2 Dr. Shiv Charan Netam, P.W.3 Manish Mishra and P.W.4 Shashi Kumar Dhruw is sufficient for proving the guilt of the appellant. The appellant after committing house trespass has utter the words with intent to insult her modesty. The appellant has poured kerosene oil upon her and thereafter set her ablaze with intent to cause her death. The aforesaid evidence is sufficient to establish the fact that the appellant committed the offence punishable under Section 449, 302 and 509 of the I.P.C. Therefore, after scrutinizing the evidence the trial Court has rightly convicted and

sentenced the appellant.

14. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. In the present case, causing burn injuries by pouring kerosene oil upon deceased has been substantially disputed on behalf of the appellant, but, on the other hand, established by the evidence of P.W.1 Kunti Bai, P.W.2 Dr. S.C.Netam and P.W.4 Shashi Kumar Dhruw, merg intimation Ex.P.18, F.I.R. Ex.P.5, injury report Ex.P.2 and autopsy report Ex.P.20.

15. As regards complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of P.W.3 Manish Mishra, Nab Tahsildar and dying declaration Ex.P.4 made by the deceased. As per evidence of P.W.3 Manish Mishra, he visited the Government Hospital, Nagri, for recording dying declaration. At the time of recording declaration, the deceased was alive and was competent to give declaration. In Ex.P.4, the deceased stated that the appellant entered into her house, he demanded sexual intercourse with her, which she denied and told that he may contact with the girls of his age, then he tried to commit offence forcibly which was also resisted by her, whereupon, the appellant took out lamp and poured kerosene oil on her and thereafter set her ablaze. The defence has cross-examined this witness at length but has not been able to elicit anything in his cross-examination to discredit his testimony relating to dying declaration. His evidence substantially finds corroboration of written dying declaration Ex.P.4. This evidence is sufficient for drawing an inference that the appellant had gone to the house of deceased, he demanded for sexual intercourse, which was denied and then the appellant annoyed, took out kerosene lamp and poured kerosene oil over her and then set her ablaze.

16. As per medical evidence and merg intimation Ex.P.18, she was under treatment from 27.03.2001 till 14.04.2001 and on 14.04.2001 she was discharged and thereafter she died on 22.05.2001. Mode of death of was Septicemic shock

due to severe infection on account of burn. It revealed that cause of death was infection of burn and septicemic shock. She was alive since 25.03.2001 to 22.05.2001, i.e., for about 3 months. Even she was discharged from the Hospital on 14.04.2001. In these circumstances, it is difficult to hold that the appellant has caused homicidal death of deceased, although cause of death was septicemic shock due to secondary infection of burn which shows that in case of proper treatment she would have been alive. This evidence clearly reveals that the appellant attempted to commit the murder of deceased but has not caused homicidal death of deceased. Appellant has uttered the words with intent to insulting modesty of deceased after committing house trespass for commission of the aforesaid offence. Consequently, the act attributed to the appellant squarely falls within the ambit of Section 307, 451 and 509 of the I.P.C.

17. While convicting the appellant under Sections 449 and 302 of the I.P.C. the trial Court has not considered the aforesaid facts and circumstances and thereby committed illegality.

18. Consequently, appeal is partly allowed. Conviction and sentence of the appellant under Section 509 of the I.P.C. is hereby affirmed. Conviction of the appellant under Section 302 and 449 of the I.P.C. is hereby altered to Section 307 & 451 of the I.P.C. and he is sentenced for the period already undergone. The appellant is in custody since 29.03.2001 till 19.09.2005, i.e., he was in custody for about four years and six months. He be set at liberty at once, if not required in any other case.

(T.P.Sharma)
JUDGE

(I.S.Uboweja)
JUDGE