

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR**

**DB : HON'BLE SHRI PRITINKER DIWAKER AND
HON'BLE SHRI CHANDRA BHUSHAN BAJPAI, JJ**

CRA No. 917 of 2011

- Rajesh Kumar Korwa S/o Manbodh, aged about 28 years, R/o Village Nawagarh, (Mahadeo Talab Paar) P.S. Ambikapur, Distt.-Surguja, C.G.

---- Appellant**Versus**

- State Of Chhattisgarh through P.S. Ambikapur, Distt. Surguja (CG)

---- Respondent

For appellant	:	Mr. V.R.S. Parihar, Advocate.
For Respondent/State	:	Mr. Ashish Surana, Panel Lawyer.

Judgment on Board by Justice Pritinker Diwaker**18/11/2015**

1. This appeal arises out of the judgment of conviction and order of sentence dated 12-5-2011 passed by the 1st Additional Sessions Judge, Ambikapur, Distt. Surguja in S.T. No. 158/2010 convicting the accused/appellant under Sections 302 and 201 of the IPC and sentenced him to undergo imprisonment for life with fine of Rs. 1,000/- under Section 302, IPC and to undergo R.I. for 5 years with fine of Rs. 500/- under Section 201, IPC plus default stipulations.

2. In the present case, name of the deceased is Sarita, wife of the accused/appellant who died inside the house of the accused/appellant on 3-2-2010. On 4-2-2010 at about 12.45 p.m. a complaint was lodged by the accused/appellant before Police Station Ambikapur alleging that he is working as labourer. On the previous day i.e. 3-2-2010 at about 1.00 pm he had gone to cast his vote and stayed there only, however at about 10.00 p.m. P.W. 1 Rungul Yadav had informed him that his house has caught fire and when he reached in his house, he saw his wife Sarika lying on the cot and was in a burnt state. He immediately kept the deceased on the floor and during that he also suffered burn injuries on his left elbow. He has further stated that as there was none in the house and it was late night, he did not inform anyone but on the morning he narrated the entire incident to Sarpanch and Panchas and thereafter he is reporting the matter. Inquest on the body of the deceased was performed vide Ex. P-3 on 4-2-2010 and thereafter the body was sent for post mortem which was conducted by P.W. 11 Dr. J.P. Sahu on 5-2-2010. The autopsy surgeon noticed following 12 injuries on the body of the deceased:

- (i) Abrasion present just above right nipple size 3 cm x 2 cm.
- (ii) Abrasion present (Rt) anterior axillary line over 10th rib 3 cm x 2 cm.
- (iii) Contusion with lacerated wound present right side forehead just above eyebrow 2 cm x 1 cm x 1 cm.
- (iv) Abrasion present right side outer forehead.
- (v) Abrasion present right elbow post aspect 2 cm x 2 cm.
- (vi) Abrasion present right side of neck 1 cm x 1 cm.
- (vii) Multiple abrasions present right side of neck below 3 cm of angle of mandible size varies 1 cm to 2 cm linear.
- (viii) Contusion present over left shoulder 15 cm x 6 cm with diffuse contusion over dorsal spine region.
- (ix) Swelling (diffuse) present over left dorsal aspect of hand.
- (x) Swelling around left eye.
- (xi) Contusion present over left side of angle of mandible 3cm x 2 cm.
- (xii) Contusion with abrasion size 6 cm x 1 cm roughly transverse over 7th ICS of left chest.

According to him mode of death of the deceased was due to shock caused by internal hemorrhage due to injury to the vital organs, spleen and liver.

3. After receiving the post mortem report and doing preliminary investigation, FIR Ex. P-14 was registered against the accused/appellant under Sections 302 and 201 of IPC. After filing of the charge sheet, charges under Sections 302 and 201 of IPC were framed against the accused/appellant.

4. So as to hold the accused/appellant guilty, the prosecution examined as many as 12 witnesses. Statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para 1 of this judgment.

6. Learned counsel for the appellant submits :-

- (i) that at the time of incident, the appellant was not in the house and immediately after coming to know of the fire incident, he reached to his house, tried to save his wife but unfortunately by the time she had already expired.
- (ii) that there is no other evidence against the accused/appellant on which basis

he can be convicted for committing murder of the deceased.

(iii) that the doctor has not opined that whether the death was homicidal or accidental.

(iv) that on the date of incident, the deceased had consumed excessive liquor and it appears that she was not in sense as a result of which she suffered burn injury.

(v) lastly that the appellant is in jail since 5 years and 8-9 months therefore, he be set free.

7. On the other hand, supporting the impugned judgment, it has been argued by the State counsel :

(i) that in the evening of 3-2-2010 at about 7.30 pm P.W. 4 Chanda Bahadur, neighbour of the accused/appellant felt burning smell and when he went to the accused/appellant, he found him sitting there and he also saw the cot in the burning condition. When this witness had asked about said burn, the appellant did not inform him anything however at about 10 pm he came to his house and informed that the deceased had suffered burn injury.

(ii) that through P.W. 4 has been declared hostile but when he was cross-examined by the Public Prosecutor, he has admitted his police statement and has reiterated as to the manner in which he saw the incident.

(iii) that the mere intimation Ex. P-9 lodged by the accused/appellant is contrary to what he has stated in his statement under Section 313, Cr.P.C. He submits, according to the mere intimation, the appellant was not at home and when he returned at about 10.00 pm he saw his wife in a burning condition whereas in his statement under Section 313, Cr.P.C. he has categorically admitted that P.W. 4 Chanda Bahadur came to his house in the evening and made certain inquiries and by that time, burn incident had already taken place.

(iv) that as per the post mortem report, the deceased died after sustaining internal injury on her spleen and liver but no explanation has been offered by the accused/appellant in this regard. He submits that in a case of murder, heavy burden lies on the accused to explain about the murder of inmate.

(v) that even if it is not stated by the autopsy surgeon that the death was homicidal in nature but considering the mode of death as explained by the autopsy surgeon, it is apparent that the death was homicidal in nature.

(vi) that the fire incident had taken place at about 9.00 pm but instead of informing the same to villagers the appellant kept quiet and even on the next morning he did not lodge report but lodged the report at about 12.45 pm whereas

distance between his house and the police station is 2 km only. It has been argued that conduct of the appellant itself explains his guilty and involvement in the commission of offence.

(vii) that as per FSL report Ex. P-18, blood stains have been found in the Article A, D1 and D2 i.e. saree, blouse and petticoat of the deceased and this proves that the deceased was subjected to injury by the accused/appellant. He further submits that as per FSL report Ex. P-17, in the article A and D, i.e. Saree and petticoat, kerosene smell was noticed by the expert and thus it is apparent that after committing murder of the deceased, she was burnt by the appellant.

8. Heard counsel for the respective parties and perused the material available on record.

9. P.W. 1 Rungul Yadav, P.W. 2 Phulbasia Bai have been declared hostile. P.W. 3 Sonu has also been declared hostile but has stated that at about 7.00 pm when he was sitting near the village pond, P.W. 1 Rungul Yadav had informed him that fire incident had taken place in the house of the accused/appellant. He has further stated that in the evening itself, he had gone to the house of appellant along with other persons and when he inquired from the appellant he informed him that the deceased suffered burn injury of her own. P.W. 4 Chanda Bahadur, neighbour of the accused/appellant has also been declared hostile however he has stated that his diary statement was recorded by the police and on the date of incident at about 7.30 pm he felt burning smell coming out from the house of the appellant and then he went to his house and saw the cot in burnt condition and accused/appellant was sitting near the cot holding her head. He has stated that when he inquired from the accused/appellant about the said burn, he did not disclose him anything however at about 10.00 pm appellant came to his house and informed that the deceased died after burn injury. P.W. 5 Vishwas Rao Maske prepared inquest Ex. P-3 and had sent the body for post mortem. P.W. 6 Arun Kumar Ekka took the body for post mortem. P.W. 7 Laxman and P.W. 8 Vijendra Kumar Yadav are the witnesses to the inquest and P.W. 9 Santram Painkra recorded merg intimation. P.W. 11 Dr. J.P. Sahu conducted post mortem on the body of the deceased and found : an abrasion present just above right nipple size 3 cm x 2 cm, abrasion present right anterior axillary line over 10th rib 3 cm x 2 cm, contusion with lacerated wound present right side forehead just above eyebrow 2 cm x 1 cm x 1 cm, abrasion present right side outer forehead, abrasion present right elbow post aspect 2 cm x 2 cm, abrasion present right side of neck 1 cm x 1 cm, multiple abrasions present right side of neck below 3 cm of angle of mandible size varies 1 cm to 2 cm linear, contusion present over left shoulder 15 cm x 6 cm with diffuse contusion over dorsal spine region, swelling (diffuse) present over left dorsal aspect of hand,

swelling around left eye, contusion present over left side of angle of mandible 3cm x 2 cm, contusion with abrasion size 6 cm x 1 cm. According to him mode of death of the deceased was due to shock caused by internal hemorrhage due to injury to the vital organs, spleen and liver. P.W.11 K.K. Nag is the investigating officer who supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that on 3-2-2010, the accused/appellant committed murder of his wife by causing several injuries and then burnt her in the cot. To save himself a false information was given by the accused/appellant to the police on 4-2-2010 at about 12.45 pm by lodging merg Ex. P-9 and by stating that she died in an accidental burn injury. Distance between the house of the accused/appellant and the police station is just 2 km, the incident took place at 10.00 pm according to the appellant but yet he kept quiet for 12.00 hrs and did not inform the police about the incident. Furthermore in the merg intimation, the appellant had stated that when he returned to his house, he found his wife burnt and she had already died. However P.W. 4 Chandra Bahadur has categorically stated that in the evening of 3-2-2010 after noticing burning smell when he went to the house of the accused/appellant, he saw the accused appellant sitting near the cot and that the cot was completely burnt. From question No. 16 to 19 and 23 of his statement under Section 313 of Cr.P.C., it is apparent that he had admitted that in the night at about 7.00 pm, P.W. 4 Chanda Bahadur came to his house and by that time the burn incident had already taken place. It is thus clear that the merg intimation lodged by the accused/appellant is nothing but an afterthought and the contents of the merg are contrary to that of his statement under Section 313, Cr.P.C.

11. It is settled law that in a case of house murder where inmate is died, there is a corresponding burden on the accused appellant to give a cogent explanation as to how the crime was committed but in the present case, the appellant/accused has failed to do so. True it is that accused/appellant has taken a plea in his statement under Section 313 of the Cr.P.C. that he had gone to cast vote and returned his house when P.W. 1 Rungul informed him about fire in his house but above statement of the accused/appellant is belied by the statement of P.W. 4 Chanda Bahadur that at about 7.30 pm when he felt burning smell from the accused/appellant, he went there and saw the accused appellant sitting there. As per FSL report Ex. P-18 blood stains have been found in the Article A, D1 and D2 i.e. saree, blouse and petticoat of the deceased and this proves that the deceased was subjected to injury by the accused/appellant. Likewise in FSL report Ex. P-17, in the article A and D, i.e. Saree,

petticoat, kerosene smell was noticed by the expert and thus it is apparent that it is the accused/appellant who committed murder of the deceased.

12. The findings recorded by the Court below are based on due appreciation of the evidence available on record. That being so, the judgment impugned does not call for any interference. Accordingly, the appeal being without substance is liable to be dismissed and it is dismissed as such. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge