

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 461 of 2011

- Gait Ram Sahu son of Laxman Sahu, aged about 30 years, resident of Village Khurshi, Police Station Lalpur Distt. Bilaspur (CG)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh thorough Police Station Lalpur Distt. Bilaspur (CG)

---- Respondent

For appellant : Shri Yogeshwar Sharma, Advocate.
For Respondent/State : Shri Adil Minhaj, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board by Justice Pritinker Diwaker

16/09/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 31.5.2011 passed by the Additional Sessions Judge , Mungeli, Distt. Bilaspur in S.T.No.59/09 convicting the accused/appellant under Sections 302 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.2,000/- and in default thereof to suffer additional R.I. for one year.

02. As per prosecution case, on 11.8.2009 at about 9 pm the accused after tying up his wife Santoshi with the pole, poured kerosene on her and set her afire as a result of which she suffered severe burn injuries. She was first taken to Community Health Center, Mungeli, from where she was shifted to Chhattisgarh Institute of Medical Sciences, Bilaspur

on 12.8.2009 where her MLC (Ex.P/9) was conducted, according to which she suffered 81% burn injuries, mostly on the front portion of her body. During treatment she succumbed to burn injuries on 16.8.2009. Based on information given by ward boy of the hospital unnumbered merg (Ex.P/10) was registered at CIMS Kotwali, Bilaspur and thereafter numbered merg (Ex.P/6) was recorded. After merg enquiry, FIR (Ex.P/13) was registered against the accused/appellant on 14.9.2009 under Section 302 of IPC. Postmortem on the body of the deceased was conducted by PW-14 Dr.K.K. Jaiswal along with Dr. Anjali Chipde vide Ex.P/16 and noticed 80% burn on the body of the deceased and opined that the cause of death was burn, mode of death was secondary shock and that the death was homicidal in nature. After investigation charge sheet was filed against the accused/appellant under Section 302 of IPC and accordingly charge was also framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 14 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence he examined one Shrawan Kumar as DW-1.

04. 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 accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that in fact the deceased sustained accidental burn injuries when she was returning from Kothar carrying burning earthen lamp (chimney) in her hand and fell down suddenly.

(ii) that the dying declaration of the deceased was recorded by one Assistant Sub Inspector which is available on record but unfortunately the said dying declaration could not be exhibited by anyone. In that dying declaration, the deceased has categorically stated that she suffered burn injuries accidentally due to fall while carrying burning earthen lamp.

(iii) that statements of PW-1 Ram Nihora and PW-4 Sumitra Bai, father and mother of the deceased, are not reliable because both these witnesses have stated that the deceased made oral dying declaration before them, however, her medical condition was not as such that she could have made any such declaration.

(iv) that if any such oral dying declaration was made by the deceased before PW-1 and PW-4 in the hospital, these witnesses ought to have disclosed this fact at the time of preparation of inquest but no such disclosure was made by them.

(v) that when the deceased was hospitalized by her relatives it was recorded in the medical documents that she suffered accidental burn injuries.

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

(i) that the so-called dying declaration made by the deceased before the ASI has no evidentiary value as this document has neither been exhibited by anyone nor the said ASI has been examined by either of

the parties.

(ii) that in the said dying declaration it has been categorically mentioned by the ASI that the doctor had opined that the deceased was not in a fit state of mind to make any such declaration and therefore, signatures of the witnesses were not obtained on the dying declaration.

(iii) that it has come in the evidence that the accused/appellant was in the habit of beating the deceased and earlier also on several occasions the accused/appellant had beaten the deceased by tying her up with a pole.

(iv) the fact that on the date of incident the accused/appellant had first tied up the deceased with a pole and then set her ablaze after pouring kerosene on her stands established from the MLC (Ex.P/9) and postmortem report (Ex.P/16) wherein it has been mentioned that she suffered maximum burn injuries on front portion of her body and as per FSL report (Ex.C-1) kerosene smell was emanating from the seized articles i.e. half burnt sari of the deceased, half burnt lungi by which the deceased was tied up with the pole, a bottle of glass and the scrap of the pole.

(v) that there is no reason for this Court to disbelieve the oral dying declaration made by the deceased before PW-1 Ram Nihora and PW-4 Sumitra Bai who appears to be the natural witnesses.

(vi) that in view of the ocular and medical evidence available on record, conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

07. Heard counsel for the respective parties and perused the material

on record.

08. Though the so-called dying declaration recorded by the ASI on 12.8.2009 is available on record in which the deceased is alleged to have stated that while she was coming back from Kothar (a place where hey is stored) carrying earthen lamp in her hand, as she stumbled down her sari came in contact with the burning lamp accidentally and she got burnt, but this document has neither been exhibited by the prosecution nor the accused/appellant made any attempt to examine the said ASI in his defence and to prove this document. On the contrary, a note has been put on this document by the same ASI that since as per medical report the treating doctor had opined that the deceased was not in a position to make any such statement, he did not obtain signatures of the witnesses on the said dying declaration. Thus as the doctor had not given any comment as to the fitness of the deceased while giving dying declaration which has not even been exhibited nor the person recording the same has been examined by either of the parties, the same has no value in the eye of law.

09. PW-1 Ram Nihora, father of the deceased, has stated that about three years back marriage of the accused/appellant was solemnized with the deceased by following Chudi custom and out of their wedlock a son was also born. He has stated that after few days of marriage the accused/appellant started gambling and on being objected by the deceased, he used to beat her. On several occasions complaint was made by the deceased to him and other family members whereupon they had made the accused/appellant understand but yet the

accused/appellant continued to do gambling and consuming liquor. He has further stated that upon receiving information that the accused/appellant has burnt his daughter, he came to Bilaspur hospital, saw his daughter in the hospital in burnt condition and there her daughter informed him that it is the accused/appellant who after tying her up with the pole poured kerosene on her and set her afire. He has stated that the deceased remained in hospital for about 3-4 days and after her death the accused/appellant fled from the hospital. He admitted his presence during preparation of inquest Ex.P/2 and also admitted his signature on the inquest.

In cross-examination he has categorically stated that in the hospital the deceased was in a position to talk and till her death she was talking. He has clarified that since at the time of preparation of inquest no question was put by the police as to how the deceased died, he did not inform the police that it is the accused/appellant who had set his daughter on fire.

10. PW-4 Sumitra Bai, mother of the deceased, has made almost similar statement as has been made by PW-1. She has categorically stated that when she along with her husband and Jethani went to see the deceased in the hospital at Bilaspur she was talking and she informed her that the accused/appellant had burnt her after pouring kerosene on her, and after two days of making such disclosure, she died. She has further stated that even son of the deceased had informed her that it is the accused/appellant who burnt the deceased.

11. PW-2 Ramesh has been though declared hostile but has stated

that about a month prior to death of the deceased, her father came to him and informed that the accused/appellant after consuming liquor had beaten the deceased and ousted her. On this, he along with father of the deceased and the deceased had gone to the house of the accused/appellant, made him understand and asked him not to consume liquor and the accused/appellant had also assured them of keeping the deceased well. PW-3 Manharan, maternal uncle of the deceased in relation, has stated that on the date of incident the accused/appellant had come to him and informed that the deceased is suffering from fever and she is being taken to Mungeli, whereupon he accompanied them to Mungeli. At that time the deceased was alive and she had asked for water. He has further stated that on being asked by the accused/appellant he had gone to inform the parents of the deceased about her condition. PW-5 Mohanlal is a village Kotwar. He has proved seizure Ex.P/3 by which half burnt sari, half burnt lungi, a bottle of glass and one match box were seized. According to the seizure memo smell of kerosene was coming out from all the seized articles. He has also proved house panchaname (Ex.P/4) and spot map (Ex.P/5). PW-8 Prasanna is the ward boy at whose instance merg intimation was recorded. PW-9 Ramkumar a witness to seizure Ex.P/8 has though turned hostile but admitted his signature on the document. PW-10 Dr. Rahul Bhargav admitted the deceased in burn unit on 12.8.2009 and gave his report Ex.P/9 according to which the deceased had sustained 81% burn injuries. He has admitted that since the deceased was not in a position to give any statement, neither they recorded her statement nor did they inform the police for recording her statement. PW-11 J.K. Rathore, ASI, recorded merg intimation

(Ex.P/10). PW-12 B.R. Nag, investigating officer, has duly supported the prosecution case. PW-13 G.R. Mahilange has proved inquest Ex.P/2.

12. PW-14 Dr.K.K.Jaiswal conducted postmortem on the body of the deceased on 16.8.2009 along with Dr. Anjali Chipde. He has stated that on external examination they noticed eye semiclosed, mouth open, tongue inside the mouth, both extremities extended, superficial burn all over the body except face, upper part of thigh, both shoulder and back of trunk and rigor mortis present. On internal examination, they noticed that the spleen, brain, trachea, lungs, liver were congested, both the chambers of heart were full of blood, membrane of intestine had turned reddish and the external private parts got affected due to burn. In their opinion, the mode of death was secondary shock, cause of death burn and the death was homicidal in nature.

13. DW-1 Arun Kumar who is immediate neighbour of the accused/appellant has been projected as an eyewitness to the incident. He has stated that while the deceased was coming back from kitchen garden carrying hey, as the hey caught fire from the earthen lamp burning on the courtyard, the sari of deceased came in contact with fire and she suffered burn injuries. He has further stated that on alarm being raised, the accused/appellant came there and extinguished the fire. In para-4 he has stated that when the deceased was burning he did not make any attempt to extinguish the fire.

It is relevant to note here that according to this witness the deceased sustained burn injuries as the hey caught fire and her sari accidentally

came in contact with the fire whereas as per unexhibited dying declaration of the deceased she suffered burn injuries as she had fallen down while coming back from the Kothar carrying burning earthen lamp in her hand.

14. Spot map (Ex.P/5) reveals that the place where the incident had taken place is room of the accused/appellant where there is a wooden pole 8-10 feet high. Burnt portion of the said pole was scraped off and the scrap was sent for examination to FSL along with other articles. As per FSL report (Ex.C-1) kerosene smell was emanating from the seized articles i.e. half burnt sari of the deceased, half burnt lungi by which the deceased was tied up with the pole, a bottle of glass and the scrap of the pole. The FSL report has not been disputed by the the defence.

15. Close scrutiny of the evidence thus makes it clear that on 11.8.2009 it is the accused/appellant who after tying up the deceased with a wooden pole with the help of lungi poured kerosene on her and set her ablaze as a result of which she sustained 81% burn injuries and succumbed to the same on 16.8.2009. It has come in the unrebutted evidence of PW-1 Ram Nihora and PW-2 Ramesh that the accused/appellant was in the habit of gambling and consuming liquor and on being objected by the deceased he used to beat her and had once also ousted her from his house. They have further stated that panchayat meetings were also convened in the past for settling the dispute between the appellant and the deceased. Before her death on or about 14.8.2009 the deceased had made oral dying declaration before PW-1 Ram Nihora and PW-4 Sumitra Bai, her father and

mother, categorically stating as to the manner in which she was burnt by the appellant. We have no reason to disbelieve the statements of these witnesses and they appear to be natural witnesses. Furthermore, as already discussed above, from the spot certain articles i.e. half burnt sari, half burnt lungi, a bottle of glass and the scrap of the pole were seized and on chemical examination the same were found to be having kerosene smell as per FSL report (Ex.C-1). Most importantly, no explanation whatsoever was offered by the accused/appellant in his statement under Section 313 of Cr.P.C. as to how the deceased sustained burn injuries except making bald denial of all the incriminating circumstances. Thus, taking into consideration the facts and circumstances of the case, oral and documentary evidence on record as also conduct of the appellant, we are of the opinion that the prosecution has been successful in proving guilt of the accused/appellant on the basis of evidence adduced by it and as such, the findings recorded by the trial Court holding the appellant guilty under Section 302 of IPC suffer from no illegality or infirmity.

16. In the result, the appeal being without substance is liable to be dismissed and is hereby dismissed. The accused/appellant is already in jail, therefore, no further order as to his surrender etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(I.S. Uboweja)

Judge