

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.305 of 2001

Kanti Bai alias Kherin, W/o Anuplal, age 35 years, occup. Household, R/o Sorga, P.S. Patna, Teh. Korla, District Korla, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh through PS Patna, District Korla (Chhattisgarh)

---- Respondent

For Appellant	:	Shri Shakti Raj Sinha, Advocate
For State/Respondent	:	Ms. Smita Ghai, Panel Lawyer

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

25/1/2016

1. The Appellant, aunt of the deceased, stands convicted under Section 302 IPC to life imprisonment ordered on 22.3.2001 by the First Additional Sessions Judge, Baikunthpur in Sessions Trial No.278 of 2000.
2. The deceased was a minor girl aged approximately 9 years. She suffered burn injuries at home on 7.7.2000 about 12:00 pm. PW-3, Baban Ram, PW-4, Brijlal, PW-7, Sudama, PW-8, Radheshyam and the 10-year old brother of the deceased Hari Krishna, were fishing in the pond nearby and came running on seeing smoke. The deceased was put in a jeep for being taken to the hospital. PW-5, Jai Kumar and PW-6, Shiv Kumari, the parents of the deceased happened to meet them. The deceased on being asked by her parents named the Appellant who poured kerosene on her and set her afire. The deceased did not survive and died in the hospital about 4:25 pm the same day. Merg, Exhibit P-2 was lodged by the ward-boy

Mohan Ram, PW-1 at 22:15 hours the same day. FIR, Exhibit P-17 was registered by R.A. Chhatre, PW-14, the Investigating Officer on 10.7.2000 at 14:30 hours after preliminary enquiry naming the Appellant as an accused.

3. Learned Counsel for the Appellant submitted that there is no evidence in support of the accusation that the Appellant had poured kerosene oil on the deceased and set her afire. In their police statement, both PW-5, Jai Kumar and PW-6, Shiv Kumari, the parents of the deceased, did not mention about any land dispute with the Appellant or that she had allegedly threatened 8 to 10 days ago to kill somebody from their family because of the land dispute. No details of lands or where the dispute was pending has been stated. Similarly in their police statement they did not state that the deceased told them that cloth had been stuffed in her mouth. The deceased would have spoken only after the cloth had been taken out. No such cloth has been seized by the police and produced as exhibit. These statements were made in the Court for the first time and are therefore improvements and embellishments. Both were vital and material omissions which have remained unexplained and falsify the entire prosecution allegations. The existence of alleged motive cannot be sufficient to establish guilt conclusively as wrongly held by the Trial Judge. The minor brother of the deceased Hari Krishna has not been examined and neither was his police statement recorded even though his name finds mention in the spot map, Exhibit P-13. The Investigating Officer R.A. Chhatre, PW-14 stated that the witness did not say anything.

4. PW-9, Dr. T. Ekka, who attended the deceased when she was brought to the hospital, deposed that she had 95% burns and was not in a position to say anything. It completely falsifies the statement of Shiv Kumari, PW-6 that the deceased had named the Appellant in presence of the Doctor and Nurse.

5. If the deceased had suffered burn injuries, surely one of the prosecution witnesses, if not her brother, who took her to the hospital must have asked her on the spot how the accident had occurred. There is no evidence to that effect. The name of the Appellant has transpired only after appearance of the parents namely PW-5 and PW-6 with whom there was a land dispute.

6. None of the witnesses except for PW-5, Jai Kumar and PW-6, Shiv Kumari have supported naming of the Appellant by the deceased in the jeep. The Investigating Officer PW-14, R.A. Chhatre has deposed that he recorded the statements of the witnesses exactly in the manner as stated.

7. PW-13, Dr. Rameshwar Sharma, who conducted the post mortem, Exhibit P-16 opined that the cause of death was neurogenic shock due to anti mortem thermal burn and no opinion was possible whether it was homicidal, suicidal or accidental. The existence of any faint smell of kerosene from the body cannot be conclusive opinion of the Appellant having set the deceased on fire. The possibility of an accidental death due to burn by kerosene cannot be ruled out. From the prosecution evidence, it transpires that perhaps the deceased was alone at home. PW-3, Baban Ram, uncle of the deceased denied knowledge of how the deceased suffered burns and also denied his police statement that he saw the Appellant standing outside the boundary wall and that she told him not to go inside as there was a live electric wire. None of the other independent witnesses who rushed to the spot have mentioned the presence of the Appellant. Conviction therefore was not sustainable as the charge had not been established beyond all reasonable doubts. The Appellant is therefore entitled to acquittal.

8. Learned Counsel for the State submitted that Dr. T. Ekka, PW-9 had given in writing to PW-14, the Investigating Officer that the deceased was

conscious when she was being treated in the hospital. The Appellant had a motive to commit the offence because of the land dispute corroborated by PW-3, Baban. There is no reason why a 9 year old minor girl would set herself on fire. Her entire body was burnt except the feet. Smell of kerosene was coming from her body which suggests that she was set on fire. The mere fact that the others may not have asked her who committed the offence and the disclosure was made for the first time by the deceased to her own parents, is but natural considering that she was a minor. This disclosure was made after she was given water to drink by her parents.

9. We have considered the submission on behalf of the parties and perused the evidence on record also.

10. The deceased was a minor aged about 9 years. Her elder brother Hari Krishna was at the pond along with the other witnesses. Her younger brother was 6½ years old. Presumably, the minor girl was alone at home or along with her 6½ years old brother at best. There is no eye witness to the occurrence and the evidence is circumstantial. The existence of a land dispute between the Appellant and the parents of the deceased cannot lead to any inescapable conclusion of the Appellant being the assailant merely because she may have had a motive to do so. Motive may be a corroborative factor in cases of circumstantial evidence but not conclusive. The omission of both PW-5, Jai Kumar and PW-6, Shiv Kumari to mention in their police statement that the deceased had threatened them a few days ago and that cloth was stuffed in the mouth of the deceased are considered material omissions and the witnesses appeared to be making out a new case by improvement in Court. There has been no seizure of the piece of cloth which obviously was taken out of the mouth of the deceased by her parents. The prosecution has not led any evidence or established why the police statement of Hari Krishna was not recorded or why he was not

brought as a witness to depose in the Court.

11. The fact that there may be faint smell of kerosene coming out from the body cannot be conclusive proof that the deceased was set on fire by another especially in view of the medical report that it could not to be said with certainty whether death was homicidal, suicidal or accidental. If a homicidal or suicidal is ruled out due to lack of evidence, we are only left with the possibility of an accidental death.

12. The prosecution witnesses are stated to have come running to the house of the deceased on seeing smoke. Surprisingly, no question was asked to the deceased as to how she caught fire. The statements of the parents, PW-5, Jai Kumar and PW-6, Shiv Kumari, that cloth had been stuffed in the mouth of the deceased is not corroborated by the independent prosecution witnesses who also denied that the deceased had named the Appellant in their presence in the jeep.

13. PW-6, Shiv Kumari deposed that the deceased named the Appellant in presence of the doctor and nurses, but PW-9, Dr. T. Ekka, the attending doctor deposed that the deceased was unfit to make any statement when she brought to the hospital as endorsed on Exhibit P-11, the requisition made by the police to the hospital for recording her statement as dying declaration in response of which PW-9, Dr. T. Ekka stated that she was not in a position to do so. While Exhibit P-11 bears the time 3:30 pm, Exhibit P-12 bears no time.

14. The nature of the evidence led by the prosecution cannot lead us to hold that there was conclusive and clinching evidence to establish that the Appellant was the assailant who had poured kerosene on the deceased and set her on fire allegedly due to a land dispute. No details of the lands which were the subject-matter of the dispute have even been mentioned by PW-5, Jai Kumar and PW-6, Shiv Kumari the parents of the deceased.

15. The conclusion of the Trial Judge that the disclosure of the Appellant as assailant by the deceased to her parents was perfectly natural and the fact that she may not have mentioned name of the Appellant to earlier witnesses who were taking her to the hospital was not very relevant, is not sustainable in view of the nature of evidence available. Likewise the conclusion that there was no other possible reason for an accidental death and it was only the background of the land dispute which conclusively established the status of the Appellant as the offender is also unsustainable in absence of cogent evidence.

16. In conclusion, the appeal is allowed and the conviction of the Appellant is set aside subject to compliance by her of the conditions incorporated in Section 437A Cr.P.C.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE