

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 896 of 2011

- Hori Lal Yadav, aged about 42 years, S/o Agnu Yadav, S/o Village Balpur Naharpara, PS Champa, Distt. Janjgir-Champa (CG)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh, Through PS Champa, Distt. Janjgir-Champa (CG)

---- Respondent

For appellant : Shri FS Khare, Advocate.
For Respondent/State : Shri Adil Minhaj, PL.

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

Judgment On Board By Shri Justice P. Diwaker

04/02/2016

This appeal arises out of the judgment of conviction and order of sentence dated 23.9.2011 passed by the Sessions Judge, Janjgir-Champa in ST No.154/10 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.2000/- with default stipulation.

02. As per prosecution case, on 1.7.2010 at about 2 pm the accused/appellant demanded money from his wife/deceased Kuntibai for purchasing liquor and when she refused to give him money saying "she does not have food in the house and yet you are demanding money for liquor", he having poured kerosene on her set her afire. At

the relevant time, only the accused/appellant and the deceased were in the house as their two daughters had gone to the house of their maternal uncle. After seeing smoke emanating from the house of the deceased and hearing her cries, PW-12 Sohanlal, a villager, informed the daughters of the deceased, on which they along with their maternal uncle and aunt rushed to the house of the deceased. At that time the deceased was alive, on being asked as to how she got burnt, the deceased informed them that on account of her refusal to give money to the appellant for purchasing liquor, he poured kerosene on her body and set her ablaze. She was immediately taken to Government Hospital, Champa where she was medically examined by Dr. (Smt.) Anita Shrivastava (PW-5) vide Ex.P/7, according to which she had suffered 94% burn injuries. In the hospital her dying declaration was recorded by PW-11 TR Bhardwaj, Executive Magistrate, vide Ex.P/11, after obtaining certificate of the treating doctor as to consciousness of the patient to make statement. In the said dying declaration the deceased has categorically stated that it is her husband/appellant, who under the influence of liquor, set her on fire by pouring kerosene. She has further stated that on the date of incident she was alone in the house; her daughters had gone to the house of their maternal uncle at Balpur; her husband is a drunkard, he commits marpeet with her quite often after consuming liquor, she earns her livelihood by working as labour and thereby maintains her children. However, on the second day i.e. 2.7.2010 she succumbed to her burn injuries during treatment. Merg intimation Ex.P/17 was recorded on 2.7.2010 at the instance of Bhushan, Ward Boy. Thereafter, inquest (Ex.P/5) over the dead body was prepared and the body was sent for postmortem, which was

conducted on 2.7.2010 by PW-6 Dr. KR Singh vide Ex.P/12 wherein he noticed 90% second degree burn and opined that the cause of death was asphyxia as a result of burning and its complications. Memorandum (Ex.P/14) of the accused/appellant was recorded, pursuant to which one plastic jerrycane and one match box were seized vide Ex.P/16. From the place of occurrence, one burnt piece of blouse, burnt piece of sari, one burnt jute bag, two pieces of burnt matchstick and another piece of burnt sari, were seized vide Ex.P/15. After investigation charge sheet was filed against the appellant under Section 302 of IPC and accordingly, charge was framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 15 witnesses. Statement of the accused 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 defence, he examined his mother Bhuribai Yadav.

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 appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that considering the nature of evidence on record, present appears to be a case of accidental burning or suicide and the appellant has been implicated falsely.

(ii) that the dying declaration (Ex.P/11) was recorded at the instance of

relatives of the deceased and therefore, the same cannot be acted upon to hold the appellant guilty.

(iii) that at the time of incident the appellant was not in house and it has also come in the evidence that the house where the deceased was burning was bolted from outside.

(iv) that in the alternative, it has been argued that even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 304 Part-II of IPC because the incident had occurred all of a sudden, in the heat of passion upon a sudden quarrel, without there being premeditation on the part of the appellant.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that in the dying declaration (Ex.P/11) the deceased has categorically stated as to the manner in which she was burned by the accused/appellant. This apart, the deceased also made oral dying declaration before PW-1 Anita Kumari Yadav, PW-2 Smt. Sunita Yadav and PW-3 Narayan Yadav, who remained consistent throughout their examination and there is no reason to doubt their credibility. He submits that considering the brutality of the act of the appellant, his conviction under Section 302 of IPC is strictly in accordance with law and there is no justifiable reason to alter the same.

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

08. PW-1 Anita Kumari Yadav, aged about 18 years, daughter of the accused/appellant and the deceased, has stated that two days prior to

the incident she had gone to the house of her maternal uncle along with her elder sister Sunita and there she received information through Sohanlal (PW-12) that smoke is coming out from their house, there appears to be some fire also and when she rushed to her house along with her sister, uncle and aunt, which is at a distance of about 1 km, she saw her mother/deceased in burnt condition and at that time she was alive. When she asked her mother as to what had happened, she informed her that it is her father/appellant who burned her when she refused to give him money for purchasing liquor. She has stated that the accused/appellant was a habitual drinker, her mother was taken to hospital and there also she informed her that it is the accused/appellant who burned her on her refusal to give him money for liquor. In para-7 she has stated that earlier also the accused/appellant used to threat her mother of burning by pouring kerosene on her, but had not done so.

09. PW-2 Smt. Sunita Yadav, elder daughter of the accused/appellant and the deceased, has made almost similar statement as has been made by PW-1. She too has stated that when she reached her house after receiving information from Sohanlal Satnami that smoke is coming out from their house which is bolted from outside, she saw her mother/deceased in burnt condition and on being asked, she informed her that it is the accused/appellant who burned her on her refusal to give him money for purchasing liquor.

10. PW-3 Narayan Yadav, brother-in-law of the appellant and brother of the deceased, to whom daughters of the appellant and the deceased had gone to meet about two days prior to the date of incident, has

stated that upon receiving information when he reached the house of the appellant, he met his sister/deceased and she informed him that it is the accused/appellant who burned her as she had refused to give him money for liquor. He has stated that at that time the accused/appellant was there, he was completely drunk and even made an attempt to stop him from taking the deceased to hospital.

11. PW-5 Dr. Anita Shrivastava, did MLC Ex.P/7 of the deceased and noticed 94% burn, the entire body was burned except both soles and back, blisters had developed, skin peeled off and turned blackish, smell of kerosene oil was emanating, her condition was serious and therefore, she referred her to CIMS, Bilaspur for further treatment. She has categorically denied the suggestion that when the deceased was brought for treatment, she was not in a position to give statement. She has admitted that only after satisfying herself about the condition of the deceased to make statement, she had certified that the deceased was in a position to give statement.

12. PW-6 Dr. KR Singh conducted postmortem vide Ex.P/12 wherein he noticed 90% second degree burn and opined that the cause of death was asphyxia as a result of burning and its complications. PW-7 Umendram is a witness to spot map Ex.P/13, memorandum of the appellant Ex.P/14 and seizure Ex.P/16. PW-8 Chhotelal Satnami is a witness to inquest Ex.P/5. PW-9 Dharamdin, Patwari, prepared the site plan Ex.P/2. PW-10 Bhushanlal Satnami is the Ward Boy, who intimated the police about death of the deceased, based on which merg Ex.P/17 was recorded. PW-11 TR Bhardwaj, Executive Magistrate, who recorded dying declaration Ex.P/11 of the deceased,

has stated that when he was recording dying declaration, the deceased was fully conscious and a certificate to this effect was also given by the treating doctor. In the said dying declaration the deceased has categorically stated that it is the accused/appellant who burned her after pouring kerosene on her body. PW-12 Sohanlal Banjare is the person who called the daughters of the appellant and the deceased and other persons after seeing smoke coming out from the house of the deceased. PW-13 Ramashray Yadav, Assistant Sub Inspector, assisted in the investigation. PW-15 Rajesh Joshi, investigating officer, has duly supported the prosecution case.

13. DW-1 Bhuribai, mother of the accused/appellant, has stated that at the time of incident the appellant was not in the house as he had gone out in connection with his work.

14. Conviction of the accused/appellant is substantially based on the oral dying declaration made by the deceased before PWs, 1, 2 & 3 and her dying declaration (Ex.P/11) recorded by PW-11 TR Bhardwaj, Executive Magistrate.

15. Close scrutiny of the evidence makes it clear that on 1.7.2010 the accused/appellant demanded money from his wife/deceased for purchasing liquor and on her refusal, poured kerosene on her body and set her on fire. At that time only the accused/appellant and the deceased were in the house. After seeing smoke emanating from their house and hearing cries of the deceased, PW-12 Sohanlal, a villager, informed the daughters (PWs 1 & 2) of the deceased, who at the relevant time were in the house of their maternal uncle at a distance of

about 1 km. Thereafter, PWs 1 & 2 and PW-3 brother of the deceased and others rushed to the house of the deceased and found her in burnt condition. However, at that time she was alive and on being asked she disclosed to them that it is the accused/appellant who burned her on her refusal to give him money for liquor. This apart, dying declaration of the deceased (Ex.P/11) also recorded by PW-11 TR Bhardwaj, Executive Magistrate, after obtaining certificate of the treating doctor (PW-5 Smt. Anita Shrivastava) as to the fitness of mind of the deceased to make statement. In this dying declaration, the deceased has categorically stated that she was burned by her husband/appellant by pouring kerosene on her body.

16. The principle of dying declaration is based on legal maxim "*nemo moriturus proesumitur mentiri*"—a man will not meet his maker with a lie in his mouth. Such declarations are made in extremity, when the party is at the point of death, and when every hope of this world is gone; when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so awful is considered by the law as creating an obligation, equal to that which is imposed by a positive oath in a court of justice. While dealing with the question of dying declaration, the Apex Court in the matter of State of U.P. v. Ram Sagar Yadav (AIR 1985 SC 416) has held that if the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.

17. In light of above principles of law, if we examine the evidence of PW-1 Anita Kumari Yadav, PW-2 Smt. Sunita Yadav and PW-3

Narayan Yadav, before whom oral dying declaration was made by the deceased, their evidence inspire confidence, is cogent and therefore, can safely be relied upon because they are none else but daughters and brother-in-law of the appellant and appear to be natural witnesses. The defence has utterly failed to bring anything on record to suspect their credibility. As such, there appears to be no reason for this Court to disbelieve their statements. Similarly, the witnesses to dying declaration (Ex.P/11) i.e. PW-11 and PW-5 lend due corroboration to the prosecution case, the said declaration has been recorded strictly in accordance with law and appears to have been made by the deceased in a fit state of mind, without any pressure or coercion.

18. Yet another important aspect of the case is that the present is a house murder. In such a case, it is extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon. In such cases, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house can not get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer any explanation.

19. In the case in hand, it has come in the evidence that the

accused/appellant was a habitual drinker, he used to commit marpeet with the deceased in the name of demand of money for purchasing liquor and in the past he had also threatened her of burning by pouring kerosene on her. PW-1 and PW-3 have stated that when they reached the house of the deceased, the appellant was also present there, at that time he was drunk. PW-3 has further stated that when they were about to take the deceased to hospital for treatment, the appellant tried to stop him. Thus it is evident that at the time of occurrence, the accused/appellant and the deceased were the only inmates of the house and that their relations were strained. In such a situation, the appellant being the only surviving inmate of the house was under the legal obligation to explain as to how the deceased suffered burn injuries, however, no such explanation has been offered by him in his statement under Section 313 of Cr.P.C., rather he has taken a false plea of *alibi* and in support thereof examined his mother as DW-1. This circumstance also goes against the appellant and points towards his guilt.

20. In addition to above, based on the memorandum (Ex.P/14) of the accused/appellant seizure of plastic jerrycane and one match box was made and the witness to these documents PW-7 Umendram has fully supported the prosecution case on this point.

21. Thus, keeping in view the overall evidence i.e. dying declaration Ex.P/11, oral dying declaration made before PWs.1, 2 & 3, recovery of incriminating articles at the instance of the appellant, the medical evidence, as also failure of the appellant to explain the circumstances in which the deceased suffered burn injuries, especially when the

present is a case of house murder, the only conclusion which can safely be drawn is that it is the accused/appellant who set the deceased on fire by pouring kerosene on her and thereby committed her murder. Considering the manner in which the offence was committed, we find no reason to alter the conviction into Section 304 Part-I or II, the findings recorded by the trial Court holding the appellant guilty under Section 302 of IPC are based on proper appreciation of the entire evidence on record and the same are hereby affirmed.

22. In the result, the appeal being sans merits meets the fate of dismissal. The accused/appellant is reported to be in jail, therefore, no further order regarding his surrender etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(I.S. Uboweja)

Judge