

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 727 of 2010

- Yashwant Nishad S/o Bhikham Nishad, Aged about 23 years, R/o Vill. Silauti Ps Bhakhara, Dhamtari

---- Appellant

Versus

- State Of Chhattisgarh, through P.S. Bhakhara, District Dhamtari (CG)

---- Respondent

For Appellant	: Shri U.R.Khosaley, Advocate
For Respondent/State	: Shri Vaibhav Goverdhan, P.L.

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

Judgment on Board

(Delivered on 16.02.2016)

Per P.Diwaker,J.

16/02/2016

This appeal arises out of the judgment of conviction and order of sentence dated 27.08.2010 passed by the Additional Sessions Judge (FTC), Dhamtari, District Dhamtari (CG) in S.T. No. 45/2010 convicting the accused/appellant under Section 498-A and 304-B IPC and sentencing him to undergo RI for three years and to pay fine of Rs. 500/- u/s. 498-A and to undergo imprisonment for life and to pay fine of Rs. 500/- with default stipulations.

2. Brief facts of the case are that deceased Nandani was the wife of accused/appellant and their marriage was solemnized about a year back from the date of incident i.e. 09.01.2010 when she was allegedly set on fire after pouring kerosene oil by the accused/appellant. She was admitted in the Mission Hospital, Bathena, Dhamtari. On 18.04.2010 written report (Ex.D-1) was lodged by Mahaveer Nishad (PW-1) father of the deceased alleging that accused/appellant used to beat the deceased for demand of colour TV and cell phone. However considering his poor financial condition he could not fulfill the demand as a result of which the appellant has burnt his daughter.

Based on this report, FIR Ex.P-2 was registered on 18.04.2010 against the accused/appellant under Section 498-A IPC. During treatment the deceased succumbed to her injuries on 21.04.2010. Unnumbered merg Ex.P-17 and numbered merg Ex.P-11 were recorded on 22.04.2010 and 24.04.2010 respectively and thereafter postmortem examination on the body of deceased Nandani was conducted on 22.4.2010 vide Ex.P-10 by Dr. A.R.Thakur (PW-12) who noticed 72% burns and he opined that the cause of death was shock due to burn. After investigation, charge sheet was filed against the accused/appellant and thereafter charge under Sections 498-A and 304-B IPC was framed against him.

3. In support of its case, prosecution has examined 16 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charges levelled against him and pleaded his innocence and false implication in the case. This apart three defence witnesses have also been examined by the accused.

4. The trial Court after hearing the parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para one of this judgment. Hence the present appeal.

5. Counsel for the appellant submits as under:

i) that a very improbable story has been put forth by the prosecution where it is alleged that on account of demand of colour TV and cell phone, the appellant set the deceased on fire after pouring kerosene oil on her. He submits that it has come in the evidence of the witnesses that the appellant was having color TV and cell phone prior to his marriage and therefore question of making such demand does not arise.

ii) that the deceased was hospitalized for about 11 days, there was enough opportunity for the police to record the dying declaration of the deceased but the same has not been recorded and this goes to show that she was not in a position to make any such dying declaration.

iii) that once the deceased was not in a position to make the dying declaration before the Magistrate or before the doctor question of her making oral declaration before Mahavir Nishad (PW-1), Kala Bai Nishad (PW-6) and Jayanti Bai Nishad (PW-7) or any other witness does not arise.

iv) that while deposing in the court Mahavir Nishad (PW-1) has exaggerated his version and made those allegations which are not the part of his written complaint.

v) that even if the entire prosecution case is taken as it is, offences as alleged are not made out against the accused/appellant.

vi) that the appellant is in jail since last about six years and therefore he be set free forth with.

6. On the other hand supporting the impugned judgment it has been argued by the counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court. He submits that even in absence of dying declaration of the deceased, oral dying declaration made by her before Mahavir Nishad (PW-1) is reliable and therefore is no infirmity in the same.

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

8. Mahavir Nishad (PW-1) father of the deceased has stated that marriage of his daughter (deceased) was solemnized with the accused/appellant in the year 2009 and after one month of her marriage when he had gone to the house of accused/appellant, his daughter informed that the accused/appellant is demanding for colour TV and cell phone and used to beat her. He has stated that when he asked the accused/appellant about the said fact, he demanded the same from him but he showed his inability on account of his poor financial condition. He has stated that about a week prior to the incident the accused/appellant and deceased came to his house and a week thereafter, he received the information about the incident. On receiving this information, he along with other family members went to the hospital and saw his daughter in burnt condition but she was alive and able to talk to them. He has stated that his daughter had informed him that on the date of incident, after taking dinner when she was sitting on the cot, at that time, accused/appellant came there, set the deceased on fire after pouring kerosene oil on her. He has also stated that after setting her on fire, the accused/appellant had also made an attempt to extinguish the fire. He has stated that the deceased died after 13-14 days of the incident. He admits that the accused/appellant was having color TV and cell phone prior to the marriage and that the TV was not in working condition. Baisakhin Bai (PW-2) Aunt of the deceased has also stated that the accused/appellant used to demand color TV and cell phone from the deceased. Ram Chandra Kosasriya (PW-3), who reduced the written report in writing has stated that he wrote the said report on the instructions of Mahavir Nishad (PW-1). Anand Ram Nishad (PW-4) uncle of the deceased had made similar allegations as

has been made by Mahavir Prasad (PW-1) and Baisakhin Bai (PW-2) that the accused/appellant demanded color TV and cell phone from the deceased. He however has stated that in the hospital deceased has not informed him any such thing. Kala Bai Nishad (PW-6) Mother of the deceased has also stated that the accused/appellant used to demand color TV and cell phone. She has stated that when she met the deceased in the hospital she found her to be fully burnt and her condition was bad then she informed her that it is the accused/appellant who set the deceased on fire after pouring kerosene oil on her. In cross-examination she has stated that she attended her daughter twice-thrice in the hospital and whatever the deceased was trying to talk it was difficult for her to understand. Jayanti Bai Nishad (PW-7) sister of the deceased has also made similar allegation as has been made by Mahavir Nishad (PW-1) and Kala Bai Nishad (PW-6). She has further stated that after receiving the information when she came to the hospital deceased informed her that it is the accused/appellant who set her ablaze after pouring kerosene oil on her. Santosh Kumar Shandilya (PW-9) is the Patwari who prepared spot map Ex.P-6 and panchanama Ex.P-7. Dr. A.R.Thakur (PW-12) had performed the postmortem on the body of the deceased vide Ex. P-10 and according to him cause of death was shock due to burn. B.S.Thakur (PW-13) is the Investigating Officer who has duly supported the prosecution case. He has stated that after receiving information, police reached the hospital and made an attempt to record the dying declaration of the deceased but the doctor had disclosed him that the deceased was not in a position to make any such statement and therefore it could not be recorded. He has further stated that after lodging the FIR he had also made an attempt to record the diary statement of the deceased but she was not in a position to make the same.

Anusuiya Nishad (DW-2) has stated that the deceased was not in a position to talk.

9. Close scrutiny of the evidence makes it clear that on 09.04.2010 deceased suffered 72% burn injuries for which she was hospitalized immediately and she succumbed to the injuries on 21.4.2010. Admittedly the dying declaration of the deceased and her 161 Cr.P.C. statement could not be recorded because as per the police authorities she was not in a position to make such statement. From the statement of the mother of the deceased it is also apparent that deceased was not in a fit state of mind to make the dying declaration and whatever she was talking it was difficult to understand. Considering all these aspects of the case, in particular the physical condition of the deceased, it is difficult to believe that the deceased made oral dying declaration before Mahavir Nishad (PW-1), Kala Bai Nishad (PW-6) and Jayanti Bai (PW-7). Even as per Mahavir Nishad (PW-1) deceased had

informed him that she was burnt by the accused/appellant but no such positive allegation has been made by him In his written report Ex.D-1. This apart as per the evidence, in the house of the accused/appellant color TV and cell phone was with him prior to his marriage and therefore also demand of those articles becomes doubtful. There is no conclusive evidence in respect of the offence under Section 304-B IPC as the basic ingredients of the said Section are not fulfilled by the prosecution beyond all reasonable doubts as required. Even the conviction of the accused/appellant under Section 498-A IPC is doubtful considering the evidence as adduced by the prosecution.

10. Having regard to the totality of the case, in particular the nature of evidence adduced by the prosecution and the statement of the witnesses, we are of the considered opinion that the prosecution have utterly failed to prove the case beyond reasonable doubt and in these circumstances the benefit of doubt must go to the accused/appellant. Thus, the findings recorded by the trial Court holding the appellant guilty under Section 304-B IPC on the basis of the evidence adduced by the prosecution suffer from illegality and therefore the benefit of doubt must go to the accused/appellant.

11. In the result, the appeal is allowed. Impugned judgment of the trial Court is hereby set aside and the appellant is acquitted of the charges under Section 304-B and 498-A IPC by extending benefit of doubt. As the appellant is reported to be in jail, he be set free forthwith if not required in any other case.

Sd/-

Pritinker Diwaker
Judge

Sd/-

Inder Singh Uboweja
Judge