

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 604 of 2011**

1. Premsheela wife of Prakash Sahu, aged about 28 years, resident of village Piprod Thana Sankra, District Mahasamund, Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh through Police Station Sankra, District Mahasamund, Chhattisgarh.

---- Respondent

AND**CRA No. 661 of 2011**

1. Suresh Sahu S/o Balram aged about 23 years, resident of village Piprod Thana Sankra, District Mahasamund, Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh through Police Station Sankra, District Mahasamund, Chhattisgarh.

---- Respondents

For Appellants

Smt. Savita Tiwari, Advocate

For Respondents:

Shri Ashish Surana, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice I.S. Uboweja****Judgment on Board by Pritinker Diwaker, J****13/04/2016**

As these two appeals arise out of the same judgment dated 22.07.2010 rendered by Additional Sessions Judge, Mahasamund in Sessions Trial No. 27/2010 convicting the accused/appellants under Section 302/34 IPC and sentencing them to undergo imprisonment for life, they are disposed of by this common judgment.

2. Deceased Yogeshwari alias Malibai was the wife of accused/appellant

Suresh Sahu and sister-in-law (Devrani) of accused/appellant Premsheela. Her marriage with accused Suresh Sahu was solemnized in the year 2008 whereas on 27.2.2010 she suffered 94% burns. She was taken to Community Health Centre, Pithora; from there shifted to Government Hospital Raipur where she succumbed to the injuries on 28.2.2010.

4. As per the case of the prosecution, accused/appellants were having illicit relations and that is why to get rid of the deceased they eliminated her. Un-numbered *merg* intimation Ex. P-13 was recorded on 28.2.2010 at Police Station Modhapara on the basis of memo sent by the Government Hospital, Raipur. Postmortem examination on the body of the deceased was conducted on 28.2.2010 by Dr. Raj Kumar Singh (PW-8) who gave his report Ex. P-6 (to be discussed later). Thereafter, numbered *merg* Ex. P-4 was recorded on 22.3.2010 at Police Station, Sankra. After *merg* inquiry, FIR Ex. P-9 was registered on 1.4.2010 against the accused/appellants under Section 304-B/34 IPC. After investigation, charge-sheet was filed by the police for the offence punishable under Sections 304-B/34, 302 in the alternative 302/34 IPC and Section 4-A of the Dowry Prohibition Act. The Court below however framed the charge under Sections 302 in the alternative 302/34 and 304-B IPC.

5. In order to prove its case the prosecution has examined 13 witnesses in support of its case. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they have denied their guilt and pleaded innocence and false implication in the case. One Anand (DW-1) has also been examined by the defence.

6. After hearing the parties, the Court below acquitted the accused/appellants of the charge u/s 304-B but has convicted and sentenced them as mentioned in paragraph No.1 of this judgment.

7. Counsel for the accused/appellants submits that there is no conclusive evidence on record to show the involvement of the accused/appellants in

commission of murder of the deceased and prima facie it appears to be a case of suicide. She submits that being the interested witnesses, the oral dying declaration said to be made by the deceased before Sukhlal (PW-5), Kailash (PW-9) and Gaurav (PW-11) is not reliable. According to her, case diary statements of these witnesses being recorded almost after a month from the date of incident, also create doubt in the case of the prosecution.

8. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below are strictly based on the evidence of the witnesses and there is no infirmity in the same. He submits that the oral dying declaration made by the deceased before Sukhlal (PW-5), Kailash (PW-9) and Gaurav (PW-11) is fully reliable and there is no reason to disbelieve the same.

9. Heard counsel for the parties and perused the evidence of the witnesses available on record.

10. Sukhlal (PW-5) – the brother of the deceased has stated that marriage of the deceased with accused Suresh had taken place on 18.2.2009 and thereafter whenever visited his house, she informed that the members of her matrimonial house used to pick up quarrel with her. According to him, two months prior to her death the deceased had come to his house and informed that whatever items were given to her, accused Suresh used to give the same to his sister-in-law (*Bhabhi* – accused Premsheela). He has stated that on receiving information regarding the deceased being in serious condition, he rushed to the house of the accused/appellants and saw the deceased lying in the courtyard in burnt condition and on being asked as to how all that happened, she told him that after hurling abuses, the members of her matrimonial house set her on fire after pouring kerosene on her body. In his lengthy cross-examination, this witness has remained firm to what he has stated in the examination-in-chief. Kailash (PW-9) – the father of the deceased supporting the case of the prosecution has stated that for 2-3 months after marriage, the deceased was treated well in her

matrimonial house. According to him, whenever he visited the house of the accused/appellants, father of accused Suresh used to tell him that his son (Suresh) had illicit relations with his sister-in-law (accused Premsheela). According to him, on receiving information regarding the condition of the deceased, he along with his father immediately rushed to the house of the accused/appellants and saw her lying in the courtyard in burnt condition and on being asked she told him that after kicking accused Suresh had poured kerosene on her body and her sister-in-law set her on fire. Gaurav (PW-11) – the grand-father of the deceased has stated that after marriage when the deceased had been to his house, she informed that accused Suresh used to subject her to cruelty and give all her belongings to his sister-in-law (accused Premsheela). He has further stated that when he went to the house of the accused/appellants after receiving information about the deceased, she was lying in the courtyard in burnt condition and on being questioned, she informed him that accused Suresh poured kerosene on her body and accused Premsheela set her on fire. Akshay Kumar (PW-1) – the witness to seizure Ex. P-1 and memorandum Ex. P-2 has not supported the case of the prosecution and has been declared hostile. Tej Singh (PW-2) is the Patwari who prepared spot map Ex. P-3. I.R. Gayakwad (PW-3) is the witness who recorded un-numbered *merg* Ex. P-4. Hira Ram Panda (PW-4) is the witness to oral dying declaration made by the deceased who has stated that on being asked as to who burnt her, instead of naming anyone she told him that the person supposed to burn has burnt her. Lalit Nayak (PW-6) has stated that the deceased informed him that she did not burn herself but was burnt by someone else. Subhash Pradhan (PW-7) has stated that the deceased made oral dying declaration in *Oria* language before Gaurav (PW-11). Dr. Raj Kumar Singh (PW-8) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-6 stating that surgical dressing present on chest, abdomen, upper part, right forearm, left wrist; venesection wound on right subclavian region; rigor mortis present all over body in strong phase; hypostasis could not be seen due to burns; burns – 2 to 3 (Dupuytren's Classification) on face, neck, both shoulders, right breast, lower

chest both side, upper chest right, left side upper chest in patches, whole upper limbs (except right cubital fossa, right palm, right axillary pit & left palm). Upper abdomen upper part, left groin, left flank & right flank of abdomen laterally, both lower limbs (except both thigh upper 1/4 part medially perineum – both thigh & both feet dorsum distal 1/2 part). Back – Nape of neck to ankles (except waistline 2 cm wide and on buttocks in patches). Red line of demarcation present at junction of burnt & healthy skin. Burns show reddish colour at places. Blood cherry red colour, scalp hair burnt at most of the part at margins & at vertex & emit kerosene like smell. Death was due to cardio respiratory failure as a result of burns and its complications. Laxmi Narayan (PW-10) – the uncle of the deceased and witness to inquest has stated that on being asked by Gaurav (PW-11) she had informed to have been burnt by the accused/appellants. According to him, he along with his family members took the deceased to the police station and then to the hospital. B.S. Urmalia (PW-12) is the investigating officer who has duly supported the case of the prosecution. L.R. Giri (PW-13) is the witness who assisted in the investigation. Anand (DW-1) has stated that when he reached the place of incident, deceased was lying in the courtyard and was not talking to anyone. He has stated that he was not aware as to what discussion took place between the deceased and her family members.

11. Close scrutiny of the material available on record including the evidence of the witnesses goes to show that after marriage the deceased was subjected to cruelty by the accused/appellants on account of the illicit relations of her husband with her sister-in-law and all the items received by her from her parents were being handed over by accused Suresh to his sister-in-law (one of the accused herein). The witnesses to oral dying declaration namely Sukhlal (PW-5), Kailash (PW-9) and Gaurav (PW-11) have categorically stated that on receiving the information regarding critical condition of the deceased they rushed to the house of the accused/appellants and saw her lying in the courtyard in burnt condition and on being asked she had informed them that accused Suresh poured kerosene on her body and accused Premsheela set her on fire. Though there are minor contradictions in the Court statements of these witnesses if

compared to their case diary statements but on material particulars they stand firm. This Court does not find any substance in the argument of the counsel for the appellants that the deceased having sustained 94% burns was not in a position to speak, because Sukhlal (PW-5), Kailash (PW-9) and Gaurav (PW-11) have categorically stated to have been informed by the deceased to have been set afire by the accused/appellants themselves. Even the defence has not been able to prove that the deceased died an accidental death or it was a case of suicide. Statements of the witnesses to dying declaration further stand corroborated by the postmortem report Ex. P-6 which says that the body of the deceased emanated the smell of kerosene.

12. Thus the prosecution has proved its case by adducing sufficient evidence and so also the Court below has based its finding on due appreciation thereof. There appears to be no reason to disbelieve the evidence of the witnesses to oral dying declaration which gets support from the medical evidence as well. Being this, the well reasoned judgment impugned is not required to be disturbed and accordingly it is hereby affirmed.

13. Appeals being without substance are liable to be dismissed and they are dismissed as such. As the appellants are already in jail, no direction for their arrest etc is necessary.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(I.S. Uboweja)

Judge