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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 329 of 2005

- Govind @ Bighawa, aged about 19 years, son of Radhey Lal Satnami, resident of Village Darrabhatha, P.S. Seepat, Tahsil Masturi, Distt. Bilaspur (CG)

---- Appellant

(In Jail)

Versus

- State Of Chhattisgarh through Police Station Seepat, Distt. Bilaspur (CG)

---- Respondent

For Appellant : Shri Vishwanath Goswami, Advocate.
For Respondent/State : Shri Rahul Tamaskar, PL.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board By Justice Pritinker Diwaker

04/10/2016:

This appeal arises out of the judgment of conviction and order of sentence dated 7.2.2005 passed by the 5th Additional Sessions Judge, Bilaspur in ST No.350/2004 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and pay a fine of Rs.500/- with default stipulation.

02. As per the prosecution case, deceased Lalita was having affair with the appellant, on 10.6.2004 she was called by acquitted accused i.e. mother of the appellant in her home, there was some dispute between the appellant and the deceased and it is alleged that the appellant after pouring kerosene oil on the deceased set her on fire. She was immediately rushed to her house, which was adjacent to the house of

the appellant, however, on the way she fell. FIR (Ex.P/14) was lodged immediately after incident at about 7.30 pm by the deceased herself against the appellant and his mother under Section 307/34 of IPC. Injured Lalita was immediately taken to hospital where her medical examination Ex.D/2 was done. Her dying declaration was recorded vide Ex.P/15 wherein she has stated that she was burnt by the appellant. At about 10.15 pm she succumbed to her burn injuries. PW-4 Dr. Rajnikant Verma conducted postmortem on her body vide Ex.P/5 noticed 80% burn and other burn injuries on various parts of the body and opined that the cause of death was hypovolumic shock as a result of extensive antemortem burn. After investigation, charge sheet was filed against the appellant and acquitted accused under Section 302/34 of IPC. However, while framing charge the trial Judge framed charge under Section 302 of IPC against the appellant and under Section 302/34 of IPC against acquitted accused Shukwara @ Bhuri Bai.

03. So as to hold the accused persons guilty, the prosecution examined 14 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting accused Shukwara @ Bhuri Bai of the charge under Section 302/34 of IPC, convicted and sentenced the appellant as mentioned above.

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05. Counsel for the appellant submits as under:

(i) that both FIR (Ex.P/14) and dying declaration (Ex.P/15) have not been proved by the prosecution as required under the law. The deceased was a literate lady, instead of obtaining her thumb impression her signature ought to have been obtained by the prosecution. Even if the thumb impression has been obtained, the same ought to have been proved by the prosecution but it has not been done by the prosecution.

(ii) that PW-3 Chandrabhan, Kotwar, has categorically stated that the deceased burnt herself, she was not burnt by the appellant and when this witness has not been declared hostile, his statement is required to be given weightage and on that ground alone, the appellant is liable to be acquitted.

(iii) that statement of Lainibai, aunt of the deceased, was also recorded by the police, which was in favour of the appellant, however, she has not been examined in the Court by the prosecution deliberately and as such, benefit of doubt should have been given to the appellant.

(iv) that PW-2 Anita, sister of the deceased, has also not supported the prosecution case fully.

06. On the other hand, State counsel submits as under:

(i) that FIR was lodged by the deceased herself and after her death, this FIR is to be treated as her dying declaration. In the FIR as also in the dying declaration Ex.P/15, the deceased has categorically stated as to the manner in which she was burnt by the appellant.

(ii) that there is no reason to disbelieve the dying declaration of the deceased, which finds due corroboration from oral dying declaration

made by her before PW-1, PW-5 and PW-7, who have duly supported the prosecution version.

(iii) though in the Court PW-3 Chandrabhan has stated that the deceased never informed him that she burnt herself but if unexhibited diary statement of this witness is seen, it is apparent that in the Court this witness has improved. Statement of PW-3 is self-contradictory and if it is read as a whole, it emerges that the deceased had never informed this witness that she burnt herself.

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

08. PW-1 Kamin Bai, mother of the deceased, has stated that at the time of incident she had gone to fetch water and at about 5 pm when she returned she found her daughter Lalita in burnt condition and at that time she was semi-conscious. She made oral dying declaration before her that she was called by the acquitted accused i.e. mother of the appellant in her home and there the appellant put vermilion in her hair parting and thereafter, poured kerosene on her and set her ablaze. In cross-examination, she has reiterated that though the deceased was semi-conscious, but was in a position to talk.

09. PW-2 Anita, sister of the deceased, aged about 10 years, has stated that house of the appellant is adjacent to her house, on the date of incident in the evening her mother had gone somewhere and she was in the house along with the deceased. The deceased was called by the acquitted accused and after some time the deceased came out from the house of the appellant in burning condition. She noticed that

there was vermilion in her hair-parting. She has stated that her sister/deceased had never said that in case her marriage is not solemnized with the appellant, she would burn herself. In para-7 she has stated that it is incorrect to say that her sister burnt herself. In para-9 she has reiterated that her sister did not set herself on fire.

10. PW-4 Chandrabhan, Village Kotwar, has stated that after coming to know about the burn incident when he had gone to the house of the appellant, he found the deceased lying in Kothar in burnt condition and about 100 villagers had reached there. He states that considering the condition of the deceased, nobody was talking to her, however, when it was noticed that she was in a position to talk, he enquired from her as to how she got burnt, on which she told that she cannot live without the appellant and that is why she is burning. In para-5 he has stated that the deceased had not informed him as to by whom she was burnt, she simply informed that she cannot live without the appellant and that is why she is burning. In para-8 he has stated that he cannot tell that the deceased burnt herself because the appellant had refused to marry her.

11. PW-4 Dr. Rajnikant Verma conducted postmortem on the body of the deceased on 11.6.2004 vide Ex.P/5 and noticed following injuries/symptoms:

“superficial 80% burn; head, neck, breast, abdomen, trunk, front and back, both upper limbs, both lower limbs (above knee), both legs are spared; hairs of scalp, eyebrows and eyelashes are burnt, pubic hairs are spared, smell of kerosene oil present, skin peeled off from burnt area; subcutaneous tissue is red and

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soft; the veins of breast and abdomen are engorged and coagulated blood. Burn is antemortem and caused by contact of direct flame of fire."

In his opinion the cause of death was hypovolumic shock as a result of extensive antemortem burn. Initially he has stated that the death could not be homicidal, however, subsequently he corrected himself and stated that the said statement was given by mistake. Further, he stated that the death could also be suicidal.

12. PW-5 Sukalu is a witness before whom oral dying declaration was made by the deceased. He has stated that after suffering burn injuries the deceased was asking for water and when she was enquired by the Inspector she informed him that she was called by the acquitted accused in her house, who asked her to marry the appellant, however, on reluctance being shown by the deceased, she was burnt by the appellant after pouring kerosene on her. PW-7 Miniram is another witness before whom oral dying declaration was made by the deceased. He has also supported the prosecution case. PW-6 Umed Ram has turned hostile and not supported the prosecution case. PW-8 Lallan Pandey, ASI and PW-12 Manohar Lal Patel, helped in the investigation. PW-10 Safedlal is a witness to seizure Ex.P/12 & P/13 whereby vermilion box and kerosene container were seized. PW-11 Mohd. Shafi, investigating officer, has duly supported the prosecution case. PW-13 Dr. B.K. Vaishnav medically examined the deceased when she was brought in hospital in burnt condition. He noticed that her palm was also burnt. There were burn injuries over her head, breast, abdomen, hands and both the thighs. PW-14 Jagdish Prasad

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Kashyap, Patwari, prepared the spot map Ex.P/17.

13. Close scrutiny of the evidence makes it clear that on 10.6.2004 the deceased was called by acquitted accused in her house and there the accused/appellant put vermilion in her hair-parting, on her resistance poured kerosene on her body and then set her ablaze. Immediately after the incident the deceased lodged FIR (Ex.P/14) categorically stating therein as to the manner in which she was burnt by the appellant. After lodging FIR at 7.30 pm, she died on 10.15 pm. In such an eventuality, the said FIR can be treated as dying declaration of the deceased. That apart, her dying declaration (Ex.P/15) was also recorded separately by PW-11, which is almost replica of the FIR lodged by her. We find no substance in the argument of the appellant that the said dying declaration is doubtful because it does not bear signature of the deceased. It is not mandatory that each and every dying declaration must bear signature of the declarant. From the evidence of PW-11 it is evident that in the incident the deceased had suffered grievous burn injuries and was not in a position to put her signature, therefore, her thumb impression was obtained. In the given situation, the dying declaration (Ex.P/15) cannot be held to be doubtful, rather it inspires confidence and appears to be trustworthy.

14. Yet another piece of evidence against the appellant is the oral dying declaration made by the deceased before PW-1 Kaminbai, PW-5 Sukalu and PW-7 Miniram, who have duly supported the prosecution case and stated that on being enquired from the deceased as to how she got burnt, she stated that it is the accused/appellant who poured kerosene on her and set her afire. Even sister of the deceased (PW-2

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Anita) while supporting the prosecution case has stated that the deceased had never said that she would commit suicide if she is not married to the appellant. Though PW-3 Chandrabhan ought to have been declared hostile for not fully supporting the prosecution case, however, from perusal of his statement in light of other evidence, medical and oral, it is apparent that he is not stating the true facts and his statement is self-contradictory. In his diary statement, he has stated that the deceased informed him also that she was burnt by the accused/appellant.

15. Thus, taking into consideration the overall evidence on record we are of the firm view that the trial Court was fully justified in holding the appellant guilty under Section 302 of IPC on the basis of evidence adduced by the prosecution in support of its case. We find no illegality or infirmity in it for interference.

16. In the result, the appeal fails and is, accordingly, dismissed. The appellant is reported to be on bail, therefore, his bail bonds stand cancelled and he is directed to be taken into custody forthwith to undergo the remaining sentence.

Sd/-
Pritinker Diwaker
Judge
Judge

Sd/-
Chandra Bhushan Bajpai
Judge
Judge

Khan