

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 854 of 2010

- Rajendra Barai S/o Syalu Muttu Barai, aged about 36 years, R/o Motisagar Para Korba, P.S.-Kotwali Korba, Distt.-Korba, C.G.

---- Petitioner

Versus

- State Of Chhattisgarh, Through Station House Officer, Police Station Kotwali, Distt. Korba (CG)

---- Respondent

For appellant : Shri Sameer Singh, Advocate.
For Respondent : Shri Rahul Tamaskar, PL.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice I.S. Uboweja

Judgment On Board by Justice P. Diwaker

18/02/2016

This appeal arises out of the judgment of conviction and order of sentence dated 13.10.2010 passed by the Sessions Judge, Korba in S.T.No.05/2010 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and fine of Rs.3000/- with default stipulation.

02. Brief facts of the case are that marriage of the accused/appellant and the deceased was solemnized about 25 years prior to the date of incident i.e. 19.10.2009, the appellant was doing the work of scrape dealer whereas his wife/deceased Papti @ Parvati Barai used to earn by collecting and selling waste material. It is alleged that on 19.10.2009 the accused/appellant had a quarrel with the deceased and thereafter he poured kerosene on her and set her ablaze. She was immediately

taken to hospital. On her report, unnumbered FIR (Ex.P/12) was recorded at Rampur Police Chowki on 19.10.2009 against the appellant. Immediately thereafter numbered FIR (Ex.P/13) was recorded at Police Station - City Kotwali, Korba at the instance of the deceased against the appellant under Section 307 of IPC. The deceased was medically examined on 19.10.2009 by PW-3 Dr.MP Rathore vide Ex.P/5 who noticed extensive burn injuries on the body of the victim and opined that she suffered 70-75% burn and that her condition was dangerous to life. During treatment, dying declaration of the deceased was recorded vide Ex.P/6A on 19.10.2009 itself by PW-3 after obtaining due permission from the Executive Magistrate and recording satisfaction as to consciousness of the patient to make such statement vide Ex.P/6. In the said dying declaration the deceased has stated as to the manner in which she was burned by the appellant. After death of the deceased on 24.10.2009, intimation was sent vide Ex.P/7 from the hospital and accordingly, merg was recorded. Inquest over the dead body was performed vide Ex.P/2 and thereafter, the dead body was sent for postmortem, which was conducted by PW-4 Dr. S. Kanwar on 24.10.2009 vide Ex.P/3 wherein he noticed burning of parietal and frontal portion of both sides, entire hair and face including neck, chest, both arms, hands, stomach and back were burnt, it was 70-75% burn, there were no sign of external injury. In his opinion, the cause of death was shock as a result of extensive burn injuries. After completion of investigation charge sheet was filed against the accused/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 8 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.

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 the dying declaration (Ex.P/6A) has not been recorded by the Executive Magistrate and therefore, it has no evidentiary value.

(ii) that PW-2 Chelva @ Shiva has stated that on account of anger the deceased had falsely implicated the appellant.

(iii) that as the deceased was a lady of unsound mind, she burned herself by pouring kerosene on her body.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:

(i) that FIR lodged by the deceased Ex.P/13 is to be treated as her dying declaration wherein she has categorically stated as to the manner in which she was burned by the appellant.

(ii) that the written dying declaration (Ex.P/6A) was recorded by the treating doctor PW-3 after obtaining due permission of the Executive Magistrate and satisfying himself about the condition of the victim, in presence of witness and as such, there is no reason for this Court to

disbelieve the said dying declaration.

(iii) that the deceased also made oral dying declaration before PW-2 who has supported the prosecution case.

(iv) that even if the deceased was having some mental ailment, it does not give right to the appellant to burn her to death.

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

08. In the FIR lodged by the deceased, she has categorically stated that she has a daughter, aged 14 years, and on the date of incident when she was all alone in the house, the accused/appellant came there and asked her to leave the house after giving her entire money and ornament to him and when she asked the reason, he specifically told her that he did not want to keep her and would perform second marriage. There was a dispute over this matter and in that process, the appellant poured kerosene on her and set her ablaze. When she raised cries, Shiv Barai (PW-2) came to her rescue, he called her brother Armo Barai and Chelva, who took her to hospital.

09. PW-1 Arjun Barai is a witness to Ex.P/1 whereby a plastic container, matchstick and burnt sari of the deceased were seized. Though he has been declared hostile but has admitted his signature on the document.

10. PW-2 Chelva is brother of the deceased. He has stated that while the deceased was being shifted to hospital by auto she informed him that it is the accused/appellant who burned her and when in the hospital his family members asked her, there she informed them that

as the accused/appellant was demanding money from her, she got infuriated and set herself on fire. In cross-examination he has admitted that mental condition of his sister/deceased was not good, earlier also she had attempted to commit suicide and therefore, there is possibility of she burning herself.

11. PW-3 Dr. MP Rathore did MLC of the deceased vide Ex.P/5 and noticed extensive burn injuries on the body of the victim and opined that she suffered 70-75% burn, from burnt portion of body smell of kerosene was coming out and that her condition was dangerous to life. He has stated that he had received memo from the police for recording dying declaration of the victim and then after receiving instructions from the Executive Magistrate, the same was recorded. He has stated that at the time of giving statement the deceased was fully conscious. In her dying declaration she has stated that it is the accused/appellant who burned her after pouring kerosene on her body. On being asked, the deceased also informed him that as the appellant wanted to perform second marriage, he burned her. He has further stated that at the time of recording dying declaration, police constable (PW-5) was also present, who signed the said document.

12. PW-4 Dr. S. Kanwar conducted postmortem on the body of the deceased vide Ex.P/3 and noticed burning of parietal and frontal portion of both sides, entire hair and face including neck, chest, both arms, hands, stomach and back were burnt, it was 70-75% burn, there were no sign of external injury. In his opinion, the cause of death was shock as a result of extensive burn injuries. PW-5 R.Kujur has stated that he received permission from the City Magistrate for recording

dying declaration of the deceased and that the same was recorded by PW-3 in his presence. He has proved recording of dying declaration and contents of the same. He has also proved FIR (Ex.P/12) which was registered by him in the District Hospital, Korba. PW-6 Lakhan Singh Thakur recorded numbered FIR (Ex.P/13) lodged by the deceased. PW-7 Pradeep Kumar Sagar is a witness to inquest Ex.P/2 and PM report Ex.P/3. PW-8 J.R. Bhargav, investigating officer, has duly supported the prosecution case.

13. Close scrutiny of the evidence makes it clear that on 19.9.2009 when the deceased was all alone in her house, the accused/appellant came there, there was quarrel between the two as the appellant was forcing her to leave the house so that he could perform second marriage and when she refused to do so, he poured kerosene on her body and set her ablaze. Immediately thereafter the deceased was taken to hospital by her brother and other persons to whom she disclosed that it is the accused/appellant who burned her. On her report, initially offence under Section 307 of IPC was registered against the accused/appellant and after her death, it was converted to Section 302 of IPC. During treatment, her dying declaration (Ex.P/6A) of the deceased was recorded by PW-3 Dr.MP Rathore after obtaining due permission from the Executive Magistrate and satisfying himself about the mental and physical condition of the victim to give such statement. In the said dying declaration recorded in question and answer form she has specifically stated as to the manner in which she was burned by the appellant. Witness to the said dying declaration i.e. PW-5 R. Kujur has duly proved it. He has also proved lodging of FIR by the deceased.

14. Thus considering the overall evidence on record, in particular the dying declaration of the deceased, which has been satisfactorily proved by the prosecution, and duly finds support from medical evidence and witnesses to the said document, it is proved beyond doubt that it is the accused/appellant who by pouring kerosene on the body of his wife/deceased set her afire and thereby committed her murder. The findings recorded by the trial court holding the appellant guilty under Section 302 of IPC are based on proper appreciation of the evidence and therefore, the same are hereby affirmed.

15. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. The 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