

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 721 of 2014

Jayat Bal S/o Jadav Bal, aged about 27 years, R/o Vill-Adhikariguda, P.S. Umarkote, Distt. Navrangpur, Orrisa, at present residence Atal Awash, Colony Kalipur, P.S. Phejarpur, Distt. Bastar, Distt. Bastar (C.G.)

---- Appellant

Versus

State of C.G. Through Arkshi Kendra – Phejarpur, Distt. Bastar (C.G.)

---- Respondent

For Appellant :	Shri Vivek Sharma, Advocate
For Respondent/State:	Shri R.K. Jaiswal, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

09/12/2016

1. This appeal has been preferred against the judgment of conviction and sentence passed by First Additional Sessions Judge, Bastar at Jagdalpur (C.G.) in S.T. No. 06/2014 on 23/06/2014, whereby appellant was convicted under Section 306 of Indian Penal Code and sentenced with rigorous imprisonment of five years and fine of Rs.1000/- with default stipulation.

2. The prosecution case is this, that appellant and his wife deceased Ruma resided in Atal Awas Colony, Kalipur. On the fateful day i.e. 26/11/2013 at about 9.00 a.m. in the morning deceased Ruma Bal poured kerosene on herself and set herself to fire. She was admitted in Maharani Hospital, Jagdalpur on the same day at 09.20 a.m. with 90% burn on her body. Treating Dr. (Smt.) J. Gupta (PW-13)

after admitting her for treatment gave information to Police to do the needful for recording of dying declaration. On request of SHO Police Station Jagdalpur, Executive Magistrate Anand Ram Netam (PW-5) recorded the dying declaration (Ex.P10) of deceased Ruma Bal, in which she made statement that her husband used to quarrel with her after consuming liquor because of which she got frustrated and set fire herself after pouring kerosene oil on her body. Deceased expired on the same day at 04.40 p.m. An intimation was sent vide (Ex.P/20) to the Police Outpost Frejarpur, on the basis of which merg intimation (Ex.P/3) was recorded. Inquest of the dead body of the deceased was conducted vide (Ex.P/5) by Executive Magistrate Smt. Yamini Pandey Gupta (PW-6) in presence of witnesses. On the basis of inquest report, FIR (Ex.P/13) was lodged in the Police Station, Frejarpur registering an offence under Section 304 B of IPC against the appellant further investigation, the statement of witnesses were recorded. Seizure of articles from the spot were made vide (Ex.P/1), spot map (Ex.P/7) was prepared, postmortem of the deceased was conducted vide (Ex.P/11). One spot map by Patwari was prepared vide (Ex.P/12), articles of the deceased were preserved in postmortem were seized by seizure memo (Ex.P/14). Seized articles were sent for FSL Examination, but no FSL report is submitted on the record. After completion of investigation, appellant was charge-sheeted.

3. Appellant was charged under Section 304 B of IPC. He denied the charges. Prosecution examined 13 witnesses and no witness has been examined for defence. On examination under Section 313 of Cr.P.C. appellant pleaded innocence and false implication and has stated that he attempted to put out the fire on the body of the deceased

and that deceased got burned due to her own fault. The impugned judgment was passed by the trial Court, whereby the charge under Section 304 B of IPC was not found to be proved and appellant was convicted under the lesser offence under Section 306 of IPC and sentenced as mentioned above.

4. The grounds in this appeal are these, that the learned trial Court failed to appreciate the evidence of prosecution before the trial Court. No case is made out against the appellant under Section 306 of IPC. There have been no evidence on material ingredients under Section 107 of IPC for proof of abetment. The dying declaration of the deceased itself is doubtful. There has been material contradiction and omissions on the evidence of the witnesses which has not been given any consideration, hence for these reason appellant was entitled for acquittal.

5. It is submitted by the counsel for appellant, that without disputing the contents of dying declaration (Ex.P/10) the statement given by the deceased do not make out any offence under Section 306 of IPC. As per her statement she felt, harassed because her husband used to consume liquor and quarrel with her on number of occasions and it was her own decision to set herself to fire and as immolate her. Statement of witnesses also do not disclose any act of abetment committed by the appellant. It is submitted, that at the most on the basis of the conduct and act of appellant only the offence under Section 498 A is made out. Appellant is in custody since his date of arrest on 29/11/2013 and till today the period is custody is more than three years. It is prayed that the conviction and sentence be modified. Further in the alternative it is

also prayed, that if this Court is not inclined to alter the conviction, then the sentence for offence under Section 306 of IPC may be modified to the period of custody already undergone by the appellant-accused.

6. Counsel for the State has opposed the ground in appeal and the arguments submitted by counsel for appellant. It is submitted, that the prosecution has proved its case beyond reasonable doubt. The act and conduct of the appellant had been very clearly abetment for committing suicide by the deceased. There is no ground for interference in the impugned judgment.

7. On the basis of the grounds urged, the argument submitted the question before this Court is whether the conviction is sustainable?

8. It is a fact and not disputed by the appellant-accused that deceased Ruma Bal set herself to fire on 26/11/2013 at about 9.00 a.m. in the morning. It is also not disputed that one dying declaration (Ex.P/10) was recorded by Executive Magistrate Anand Ram Netam (PW-5). Attention has been drawn to the contents of the dying declaration (Ex.P/10) which is in the form of question and answer, in which the answer to first question is this that deceased poured kerosene from stove on herself and she burnt herself. In answer to next question she stated that her husband used to consume liquor everyday and used to quarrel and beat her, due to which she wanted to die. In answer the another question she stated that on the date of incident also accused came home in drunken condition who abused her and started beating her like all days. There is no statement of the deceased in dying declaration that appellant in some manner instigated the deceased to commit suicide. Kheritis Mandal (PW-10) is father of deceased, who has

-

stated that his daughter deceased Ruma Bal and son-in-law appellant-accused had eloped and married three years before the date of incident. The appellant-accused was habitual of drinking liquor and used to ask deceased to bring money from her father's house. This witness at one time sent Rs.5000/- and another time he sent Rs.10,000/- to the appellant-accused. Further he stated that after the deceased was admitted in burnt condition in hospital, he was informed by the deceased herself, that her husband poured kerosene on her and set fire to her. In cross-examination this witness was confronted with the previous statement (Ex.D/1), compared to which the statement in Court seems to have been improved, specially on this point that it was told by deceased that it was the appellant-accused who set the deceased on fire and secondly giving about of amount of Rs.5000 and Rs. 10000/- to the appellant. Further he has admitted in cross-examination that his daughter used to reside in Atal Awas Dharampura, Jagdalpur from two months prior to the date of incident and he had never been there. He has also admitted that he never lodged any report against the appellant-accused on the ground that appellant used to abuse and give beating to his daughter-deceased. The statement of this witness is admissible to this extent only, that appellant was a habitual drinker and he used to quarrel and give beating the deceased. Other statement regarding demand etc. is improved statement cannot be taken into consideration.

9. Sujata Mandal (PW-11) is mother of the deceased. She has stated that in the hospital her daughter-deceased told her that appellant-accused used to harass her every day after consuming liquor. She has not given any statement about the circumstances previous to

the date of incident. Sangeeta Das (PW-1), Shambhu Mistri (PW-2) and Mitali Bose (PW-3) who are the neighbors of deceased and appellant, they have stated ignorance about the act and conduct of the appellant, for this they have been declared hostile by the prosecution. Shishir Dutta (PW-4) has been cited hearsay witness but has not supported the prosecution case and has been declared hostile.

10. Executive Magistrate Smt. Yamini Pandey Gupta (PW-6) conducted inquest vide (Ex.P/5), Patwari Ramesh Panigrahi (PW-7) prepare spot map (Ex.P/12), Sub Inspector Smt. Shail Pawar (PW-8) recorded the merg (Ex.3), Inspector K.N. Tiwari (PW-9) conducted the investigation. On the basis of analysis of the witnesses, who have been cited for the purpose of giving statement about the relation of appellant and deceased and about the happening of the date of incident, the only outcome of this statement is, that appellant-accused was a habitual drinker and very often he used to quarrel with his wife-deceased after consuming liquor and give beating to her. The happenings of date of incident on the basis of dying declaration (Ex.P/10) was that appellant-accused was under intoxication of liquor who gave beating to his wife-deceased, who thereafter committed suicide by setting herself on fire.

11. There is no need to consider on the rest of evidence. On the basis of the circumstances as understood and made out from the evidence on record, the question before this Court is, whether the act and conduct of the appellant-accused in this case can be regarded as abetment for committing suicide by the deceased. It seems to have been proved that the deceased was harassed and frustrated by the drinking habit of the appellant-accused and that appellant used to

~

quarrel, manhandle and beat the deceased after consuming liquor. On the date of incident the event was similar to the previous events, even then the deceased could tolerate no more and took the decision of the self immolate herself. It was the defence of appellant that deceased got burnt due to her own fault, but no evidence was led in this aspect and no question put to any of the witnesses that the death of the deceased was accidental, hence this ground of defence was not established. The another submission that appellant tried to put off fire from the body of deceased. In this respect the statement given by Sangeeta Das (PW-1) is relevant, in her cross-examination in para 2, that at the time of incident appellant was present on the spot and poured the water on the burning body of the deceased. The act of appellant to put off fire at the time of incident is not enough to rule out the circumstances created before the deceased set herself to fire, for the reason as she has mentioned in her dying declaration.

12. It is very clear that the marriage of appellant and deceased took place just before three years on the date of incident, hence the death of deceased took place within seven years of marriage and her death is very clearly a suicide. There has been evidence that appellant after consuming liquor usually used to beat her, which is an act of cruelty as defined under Section 498 A of IPC, under these circumstances Section 113 A of Evidence Act comes into play, according to which when a wife commit suicide within a period of seven years from the date of her marriage and there is evidence, that within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had

been abetted by her husband or by such relative of her husband. This provisions empowers the Court to draw a presumption on the basis of facts of the case. According to the facts of this case, it is clear that deceased was continuously subjected to such cruelty by the appellant as he was a habitual drinker, due to which the quarrel with deceased and the act of beating the deceased had been frequent. Under the circumstance of this case it was proper to draw such presumption. Hence the finding of the trial Court that appellant has committed offence of abetment of suicide, though not held on the basis of the presumption under Section 113 A of the Evidence Act, even then it is a correct finding which needs no interference.

13. Another argument submitted on behalf of the appellant that the sentence part may be modified needs consideration. Looking to the facts and circumstances of the case it seems proper and sufficient to serve the purpose, if the appellant is punished with the period of custody already undergone, hence this appeal is allowed in part. The conviction recorded by the trial Court is upheld. The sentence part is modified. The appellant is sentenced with imprisonment of the period of custody already undergone by him so far, the sentence of fine imposed by the trial Court and the stipulation of default maintained as it is. If the fine is paid, then appellant be released from jail if not required to detained in any other case.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE