

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 560 of 2008**

- Bhupendra Kewat, aged about 30 years, S/o Ranuwa Kewat, R/o Village Changeri, P.S. Marwahi, Distt.- Bilaspur (Cg)

---- Petitioner**Versus**

- State Of Chhattisgarh, Through Police Station Marwahi, District Bilaspur (CG)

---- Respondent

For Appellant	Mr. Rakesh Pandey, Advocate
For Respondent /State	Mr. R. Tripathi, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra**Judgment On Board****24/7/2017**

1. Heard.
2. The appellant stands convicted for the offence under Section 306 of IPC and has been sentenced to undergo RI for 7 years on account of commission of suicide by his wife Geeta Bai on 30.5.2007.
3. The appellant was married with Geeta Bai about 20 years back from the date of incident. The *Gauna* ceremony was performed 10 years before the incident. They had two sons and one daughter out of the wedlock. On the date of the incident, the appellant returned to the house at 10:30 p.m. in a state of

intoxication and started beating his wife, therefore, she poured kerosene oil and set herself on fire. In the course of treatment, she succumbed to the severe burn injuries at about 3:30 a.m. on 31.5.2007.

4. The trial Court has convicted the appellant on the basis of the dying declaration of the deceased (Ex.P/13) proved by PW-8 Constable Jagmohan Panna and PW-10 D.K. Vahane, Naib Tehsildar, who recorded the dying declaration as also on the basis of statements made by PW-1 Kunwaria Bai, mother of the deceased, PW-2 Ram Naresh, brother of the deceased, PW-3 Ramdas, father of the deceased and PW-4 - Urmila Bai, cousin of the deceased.
5. Mr. Rakesh Pandey, learned counsel for the appellant, would argue that normal household discord or dispute between the husband and wife has led to commission of suicide by the wife, which cannot be termed as such instigation by the husband driving her to commit suicide. According to him, the dying declaration has not been proved in accordance with law, which is a suspicious document, therefore, reliance placed on such dying declaration by the trial Court is not proper. He would further submit that if there would have been such regular ill-treatment by the appellant to his wife, she would have made any previous report, which is not available in the case, therefore, the allegations made by her relatives, as an afterthought, should not have been relied by the trial Court.
6. Per contra, Mr. R. Tripathi, learned Panel Lawyer for the State,

would submit that merely because the wife somehow tolerated the cruel treatment and behaviour of the appellant to maintain the cordial family relations, it would not mean that the allegations are afterthought. According to him, the relatives of the deceased have duly supported the prosecution case and moreover, a person on death bed would not speak false, therefore, the dying declaration has to be believed, which is otherwise proved in accordance with law.

7. I have heard learned counsel for the parties and perused the record.
8. I shall first deal with the argument as to the genuineness and reliability of the dying declaration.
9. In the matter of **Ashok Manekar Vs. Smt. Jagriti Manekar (FAM No.151/2016, decided on 29.6.2017)**, the Division Bench of this Court after referring to several judgments of the Supreme Court rendered in the matters of **Dr. N.G. Dastane Vs. Mrs. S. Dastane**, (1975) 2 SCC 326, **V. Bhagat Vs. D. Bhagat (Mrs.)**, (1994) 1 SCC 337, **Sirajmohmedkhan Janmohamadkhan Vs. Hafizunnisa Yasinkhan and Another**, (1981) 4 SCC 250, **Savitri Pandey Vs. Prem Chandra Pandey**, (2002) 2 SCC 73, **Gananath Pattnaik Vs. State of Orissa**, (2002) 2 SCC 619, **Parveen Mehta Vs. Inderjit Mehta**, (2002) 5 SCC 706, **Chetan Dass Vs. Kamla Devi**, (2001) 4 SCC 250, **A. Jayachandra Vs. Aneel Kaur**, (2005) 2 SCC 22, **Naveen Kohli Vs. Neelu Kohli**, (2006) 4 SCC 558, **Sujata Uday Patil Vs. Uday Madhukar Patil**, 2007 AIR SCW 896, **Manisha Tyagi Vs. Deepak Kumar**, AIR 2010

SC 1042 and **Ramchander Vs. Ananta**, (2015) 11 SCC 539, has held that even though the appellant therein has denied all the allegations in his deposition yet considering the documentary evidence in form of two criminal trials, in which, the allegations against the appellant was of beating/assaulting and injuring his wife in a state of intoxication, the allegations of cruelty levelled by the respondent therein against the said appellant are found to be duly proved.

10. In the present case, if the dying declaration- Ex.P/13 is examined in the light of the test laid down by the Supreme Court for proving a dying declaration, it would appear that the same was recorded by a Medical Officer, who is an independent person, not related to any of the parties nor is a Police Officer and moreover, the Dying Declaration is signed by two witnesses namely Urmila Bai (PW-4) and one Sem Kunwar.

11. Mr. Bhagwan Singh Paikra, the Medical Officer, who has recorded the dying declaration, has been examined before the trial Court as PW-09. In his statement, he has fully supported the dying declaration by stating that the same was written in the language spoken by the deceased. There is yet another dying declaration Ex.P/17, which is recorded by the Executive Magistrate D.K. Wahne (PW-10). Even though the subsequent dying declaration -Ex.P/17 is not recorded in question answer form, the substances in both the dying declarations are one and the same, inasmuch as, in both the statements, the deceased has made allegations that the husband used to assault and

regularly ill-treat her in a state of intoxication.

12. There is nothing in the cross-examination of both these witnesses namely PW-9 Bhagwan Singh Paikra and PW-10 D.K. Wahne, which would discredit their statements vis-a-vis the dying declarations to create a doubt or suspicion over the genuineness of the same. The dying declaration is required to be acted upon if it satisfies the judicial conscience of the Court that it is a true and genuine document bearing correct depiction or description of the words spoken by the deceased.

13. I have found the dying declarations to be genuine piece of documents worthy of being relied and acted upon, as an admissible evidence. The remaining evidence is oral evidence by the witnesses namely PW-1 Kunwaria Bai and PW-2 Ram Naresh, who are mother and brother of the deceased. While mother Kunwaria Bai has supported the case of the prosecution, brother Ram Naresh has turned hostile, however in para 4 of his cross-examination, he supported the prosecution case by stating that the deceased was ill-treated in a state of intoxication by the appellant. Similarly, PW-3 Ramdas, father of the deceased and PW-4 Urmila Bai, cousin of the deceased, have also supported the case of the prosecution. Urmila Bai has supported the dying declaration Ex.P/13 by stating that the Medical Officer has recorded the dying declaration in her presence. Thus, the contents of the dying declaration and the basic prosecution case of regular consumption of liquor and beating the wife in a state of intoxication has been duly proved

by the oral evidence also.

14. So far as the other argument regarding allegation as to the instigation by the appellant-husband driving the deceased-wife to commit suicide is concerned, in the matter of **Praveen Pradhan Vs. State of Uttaranchal and another, (2012) 9 SCC 734**, it has been held by the Supreme Court that the offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which has been done by the person who has been abetted. It has further been held that the instigation has been gathered from the circumstances of a particular case and no straitjacket formula can be laid down to find out whether in a particular case there has been instigation which forced the person to commit suicide. If the acts done by the accused has created a situation that a person felt totally frustrated and committed suicide, it may be a case of instigation and driving the person to commit suicide. In such case, doing such regular illegal act in the past would amount to abetment.

15. In the dying declaration, the deceased has clearly stated that she committed suicide because her husband would always consume liquor and assault her. In the dying declaration -Ex.P/17, she would state that out of frustration because of the act of her husband, she has poured kerosene oil and set herself on fire.

16. The test laid down by the Supreme Court and prerequisites of instigation and driving the person to commit suicide out of frustration is duly satisfied in the language, in which, the

deceased has given her dying declaration. Therefore, the present is a case where the prosecution has proved its case beyond reasonable doubt that the appellant has abetted the deceased in commission of suicide.

17. The appellant is not on bail. It appears he has already served the entire sentence imposed upon him.

18. For the foregoing, the appeal being devoid of any substance, is liable to be and is hereby dismissed. Sd/-

Judge

(Prashant Kumar Mishra)

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