

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 754 of 2007

- Sumitra Devi Rathor, Wife of Sudama Rathor, aged 30 years, resident of Pendra P.S. Pendra, Distt. Bilaspur (CG)

---- Appellant

Versus

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

---- Respondent

For Appellant	:	Shri Rakesh Pandey, Advocate.
For Respondent/State	:	Shri Neeraj Mehta, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice R.C.S. Samant

Judgment On Board By Justice Pritinker Diwaker

19/01/2017

This appeal arises out of the judgment of conviction and order of sentence dated 10.8.2007 passed by the Additional Sessions Judge (FTC), Pendra Road, in ST No.327/2003 convicting the appellant under Section 302 of IPC and sentencing her to undergo imprisonment for life and to pay a fine of Rs.500/- with default stipulation.

02. As per the prosecution case, appellant Sumitra Bai is the second wife of Sudama Rathor whereas deceased Sitabai was the first wife of Sudama. Marriage of deceased Sitabai was solemnized with Sudama about 10-12 years prior to date of incident and *Gauna* ceremony was solemnized after two years. However, as there was some dispute between her and Sudama, she went to her parental house and lived with them for two years. During this period, Sudama contracted second

marriage with the appellant. Further case of the prosecution is that after sometime the deceased started living at Pendra in a rented house where Sudama and his wife/appellant were living. There used to be frequent quarrel and dispute between the appellant and the deceased and it is said that on 3.10.2002 when the deceased was sleeping on a cot in her house, the accused/appellant poured kerosene on her and set her ablaze. After hearing the cries of the deceased, her neighbours reached there but found the door bolted from inside. The door was broken open and when they entered the room, they found the deceased burning. She informed them that while she was sleeping, someone poured kerosene on her and set her afire. It is alleged that at the relevant time the appellant was standing near the back door of the house and she did not make any effort for extinguishing the fire. Injured Sitabai was immediately taken to Community Health Center, Pendra from where a memo was sent to the police. Dying declaration of the deceased (Ex.P/7) was recorded by PW-23 PK Sahu, Police Inspector, and thereafter, Sitabai was referred to Bilaspur where she succumbed to her burn injuries on 4.10.2002. In the meanwhile, on 4.10.2002 itself FIR (Ex.P/31) was registered against the appellant on suspicion under Section 307 of IPC. After death of the deceased, merg intimation Ex.P/27 was recorded on 4.10.2002. Inquest over the dead body was prepared vide Ex.P/24. The dead body was sent for postmortem, which was conducted on 5.10.2002 by PW-12 Dr. Madhulika Sen vide Ex.P/23 who noticed burn injuries and opined that the cause of death was shock due to extensive burn. After investigation, charge sheet was filed against the appellant under Section 302 of IPC and accordingly, charge was framed by the trial Court.

03. So as to hold the accused/appellant guilty, the prosecution examined 24 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which she denied the circumstances appearing against her in the prosecution case, pleaded innocence and false implication. In her defence she has stated that at the relevant time she was carrying pregnancy of nine months, it is the deceased who was taking care of her, both of them were living like sisters, there was no dispute between them, the deceased caught fire accidentally, she came there after hearing her cries, however, she was not in a position to extinguish the fire as she was pregnant.

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 above.

05. Counsel for the appellant submits as under:

(i) that the appellant has been convicted solely on the basis of circumstantial evidence but its nature is not as such which can be made basis for her conviction.

(ii) that in the dying declaration (Ex.P/7) the deceased has categorically stated that she could not see the person who poured kerosene on her and set her ablaze.

(iii) that there were number of doors in the house where the incident took place and as such, the possibility of any 3rd person being perpetrator of the crime cannot be ruled out.

(iv) that the trial Court has erred in law in convicting the appellant merely on the basis of her conduct where it is said that despite seeing the deceased burning she did not make any effort to extinguish the fire

because at the relevant time she was carrying nine months pregnancy and therefore, her conduct appears to be natural.

(v) that important prosecution witnesses PW-9 Mohd. Rafique, PW-10 Smt. Dashoda Bai, PW-11 Smt. Kamla Bai and PW-21 Sushila Bai have not supported the prosecution case and have turned hostile.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no scope for any interference by this Court.

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

08. PW-1 Badriprasad Rathor, uncle in relation of the deceased, has stated that about 15 days prior to the incident the deceased had gone to her parents' house and she had informed him that she was being threatened by the appellant and her mother-in-law by saying that she would be ousted or killed. In cross-examination, this witness, however, admits that whatever he is deposing in the Court is being deposed for the first time and no such statement was made by him before the police. PW-2 Bhagwandas, father of the deceased, has stated that marriage of the deceased was solemnized with Sudama, however, she was ousted by her husband, she was living in her house for some time and thereafter, her husband took her back and she started living with her husband and the appellant, who was second wife of Sudama. He has stated that on the date of incident he received information from one Bihari that some burn injuries have been suffered by her daughter.

When he reached the Govt. Hospital, Bilaspur, her daughter was alive and she informed him that after taking meal when she was sleeping, she was burnt and when she woke up, she saw the appellant standing there carrying red coloured bladder having wick and after seeing her burning, she (appellant) fled from the spot. In cross-examination he admits that the deceased told him that the door was bolted from inside and it was broken open by her neighbours.

09. PW-3 Birsiyabai, mother of the deceased, has stated that marriage of her daughter Sitabai was solemnized with Sudama, after about a year of marriage Sudama dropped Sitabai at her parental house and did not come to take her back for 15 days. In the meanwhile Sudama performed second marriage. After some time, Sudama came to take the deceased back, however, she refused to go back and after village meeting, she went with Sudama and was living with her husband Sudama and the appellant. She has stated that there used to quarrel between the appellant and the deceased. Upon coming to know about the burn incident, she went to see her daughter and on being asked, the appellant told her that the deceased has got burnt from stove. She asked the appellant when the deceased has got burnt from stove, as to how her bed and beddings got burnt. When she came out from the room, she was informed by the persons of the vicinity that it is the appellant who burnt the deceased.

10. PW-4 Koushalya Bai, sister-in-law (Bhabhi) of the deceased, has stated that there used to be quarrel between the appellant and the deceased. The appellant used to threaten that she would burn the deceased and this fact was not disclosed by deceased Sitabai to her

parents. She has stated that the appellant and the deceased were living in separate rooms and that the room where deceased was living has three doors. Thereafter, she has stated that in the house there are three doors whereas in the room of Sitabai there was only one door.

11. PW-5 Maiku is the seizure witness of Ex.P/1, P/2 & P/3 whereby one red coloured box, one black coloured box, stove and one cot were seized. He has turned hostile. PW-6 LN Patel had first examined the deceased when she was brought to Community Health Center, Pendra. He has stated that he had suggested for recording of her dying declaration. He medically examined her and thereafter gave his report Ex.P/5 and referred the patient to Bilaspur. He gave report Ex.P/6 that the deceased was in a fit state of mind to make statement; her dying declaration Ex.P/7 was recorded in his presence and according to him, the deceased was fully conscious.

12. PW-7 GP Rajwade, Patwari, prepared the spot map Ex.P/7A. He also conducted inquest. He has stated that in the house there were as many as four doors and a window and size of the window was as such from where anybody can enter and go out from the house. He cannot tell as to whether the said window was bolted from inside. Thereafter he has stated that the said window was locked from outside. PW-8 Dhanpat, cousin of the deceased, has not stated anything specific against the appellant and has turned hostile. PW-9 Mohd. Rafique, independent witness of the same vicinity has turned hostile. PW-10 Dashoda Bai, neighbour of the appellant and the deceased, has also turned hostile. She has, however, stated that when the injured Sitabai came out from the house she had already burnt, she was in a position

to talk and on being asked, she told that she is not aware as to how she suffered burn injuries. PW-11 Smt. Kamla Bai is also neighbour of the appellant and the deceased. She too has turned hostile. PW-12 Dr. Madhulika Sen conducted postmortem on the body of the deceased vide Ex.P/23 and noticed burn injuries on her body. In her opinion, the cause of death was shock due to extensive burn.

13. PW-14 Govindprasad Rathor is a witness of inquest Ex.P/24. He has stated that he had accompanied the deceased while she was being taken for treatment to Bilaspur, but she was not in a position to talk and did not disclose anything on the way. He has further stated that though efforts were made by him and others to enquire from the deceased as to how she got burnt but she did not say anything.

14. PW-15 Surendra Jaiswal is a witness of inquest Ex.P/24. PW-16 Smt. Gubiyabai, neighbour of the appellant and the deceased, has also turned hostile. PW-17 Smt. Bhuribai, neighbour of the appellant and the deceased, has not supported the prosecution case and has been declared hostile. She has, however, stated that at the time of incident the appellant was carrying nine months pregnancy. PW-19 Mankunwar is a witness of inquest. In para-3 she has stated that at the relevant time the appellant was carrying nine months pregnancy and that the appellant was being taken care of by the deceased. This witness also accompanied the deceased while she was being taken to Bilaspur for treatment. She has stated that the deceased was not in a position to talk and till her death she did not disclose anything. PW-20 Uttamchand Yadav has turned hostile. PW-21 Sushilabai, neighbour of the appellant and the deceased has not stated anything specific

against the appellant and merely stated that after hearing cries when she entered the house, she found the deceased in burnt condition and stove was also lying there. However, this witness was later declared hostile. PW-22 BK Singh conducted part of investigation. PW-23 PK Sahu, investigating officer, recorded dying declaration of the deceased Ex.P/7. In the dying declaration she has stated that she was living with the appellant, who is second wife of her husband Sudama; on 3.10.2002 she was sleeping in her house, her children had gone to school; the appellant was in the house; while she was sleeping someone poured kerosene on her and set her afire and when she raised cries, her neighbours came there and extinguished the fire and took her to hospital. However, she could not see the person who burnt her. In this dying declaration, endorsement has been made by the doctor that during recording of dying declaration the patient was conscious. PW-24 Sudama Prasad Rathore, husband of the deceased and the appellant, has been declared hostile.

15. Admittedly, there is no direct evidence against the appellant to show her complicity in the crime in question and her conviction rests upon circumstantial evidence. It is by now well settled that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any

reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.

16. Close scrutiny of the evidence makes it clear that on 3.10.2002 while the deceased was sleeping in her house on a cot, someone poured kerosene on her and set her ablaze. According to some of the witnesses, the appellant was also present but she was standing on the back door of the house. The important prosecution witnesses (PW-9, 10, 11 & 21) have not supported the prosecution case and have been declared hostile. Though as per evidence of PW-2 Bhagwan Das, father of the deceased, oral dying declaration was made by the deceased to him at Bilaspur, but other witnesses (PW-14 and PW-19) have deposed that they accompanied the deceased from Pendra to Bilaspur and during this period she was not in a position to talk and that though efforts were made to enquire from her as to who set her on fire, but she did not disclose anything. It is relevant to note here that these witnesses have not been declared hostile or further cross-examined by the prosecution on this point. They have also stated that till death they were with the deceased and she did not speak anything.

17. Most important piece of evidence in the present case is the dying declaration (Ex.P/7) of the deceased recorded by PW-23. Even according to this dying declaration, the deceased had not seen the person who poured kerosene on her. PW-23, investigating officer, has stated that he recorded the dying declaration in presence of the doctor

and that deceased had not disclosed the name of the person who set her on fire. Even as per the treating doctor, the deceased was conscious throughout during recording of dying declaration. Had the deceased been burnt by the appellant, she would have certainly disclosed her name. Furthermore, it has come in the evidence of the prosecution witnesses that the deceased was taking care of the appellant who was carrying pregnancy. The appellant has also stated in her statement under Section 313 of Cr.P.C. that she and the deceased were living like sisters and the deceased was taking care of her at the time of pregnancy.

18. As regards conduct of the appellant that she did not make any effort to save the deceased even after seeing her burning, it has come in the evidence of the witnesses that at the relevant time the appellant was carrying nine months pregnancy and in her statement under Section 313 of Cr.P.C. she has also stated that as she was in advance stage of pregnancy she could not help the deceased and the fire was extinguished by the neighbours. In the overall facts and circumstances of the case, conduct of the appellant cannot be taken as an incriminating circumstance, rather it appears to be natural one.

19. For the reasons stated above, we are of the opinion that the prosecution has not been able to prove guilt of the appellant on the basis of circumstantial evidence beyond all reasonable doubt. From the evidence it appears that there were other doors to access the house of the deceased and thus possibility of some 3rd person being perpetrator of the offence cannot be ruled out. Being so, the appellant is entitled to be acquitted of the charge by giving her benefit of doubt.

20. In the result, the appeal is allowed. The impugned judgment is hereby set aside and the appellant is acquitted of charge under Section 302 of IPC by giving her benefit of doubt. She is reported to be on bail, therefore, her bail bonds stand discharged and she need not surrender.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge

Khan