

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No.390 of 2011

Jagdish Joshi S/o Dhaniram Joshi, aged about 23 years, R/o Panchsheel Nagar, Satnamipara, District – Durg (C.G.).

--- Applicant

Versus

State Of Chhattisgarh, through Police Station Durg, District Durg (C.G.).

---Non-applicant

For Applicant	:	Shri Parag Kotecha, Advocate (Appointed by the court).
For State	:	Shri V.K.Tekam, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/11/2017

1. The appellant in the instant case stands convicted for the offence punishable under Section 498 (A) and 307/34 of I.P.C. and have been sentenced to undergo R.I. for 7 years and fine of Rs.1,000/- with default stipulation of R.I. for an additional three months.
2. The challenge is to the judgment of conviction dated 22/01/2001 passed by the 7th Additional Sessions Judge, Durg in Sessions trial number 32/2010.
3. The case of the prosecution is that, the appellant in the instant case on 26/11/2009 at around 11.00 p.m. is said to have after assaulting the complainant – his wife Madhu Joshi – PW/4 poured kerosene upon her and set her ablaze as a result of which she received grievous injuries and was hospitalized where she underwent treatment for about two months time.
4. The Police Authorities on lodging of the F.I.R. on 02/12/2009- Annexure P/4 investigated the case against the present appellant and his

mother for the offence under Section 498-A and 307/34 of the I.P.C. The trial court in the course of trial also framed charges against the accused persons for the offence under Section 498-A and 307/34 of the I.P.C.

5. In all, the prosecution examined 7 witnesses. No witnesses were examined in defence. The trial court after the conclusion of trial vide the impugned award found the present appellant guilty of the offence under Section 498-A and 307 of the I.P.C. and sentenced him for a period specified in the preceeding paragraphs.

6. At the same time, the trial court acquitted the accused person from the offence under Section 498-A of the I.P.C.

7. Since the counsel who had been engaged on behalf of the appellant remained absent in spite of the matter being called on repeated occasion, this court thought it proper in taking the assistance of Shri Parag Kotecha, Advocate present in the court in the disposal of the appeal considering the fact that it is an appeal pending since 2011.

8. Shri Kotecha, Advocate for the applicant submits, that the case of the prosecution has not been properly established in as much as there is no independent witnesses whose evidence could be relied upon to ensure, that the case of the prosecution stood proved beyond all reasonable doubt. He further submits, that the entire prosecution case revolves around the evidence of Madhu Joshi – PW/4, the victim, and apart from the said victim there is no other evidence available on record with which it could be said, that the charges levelled against the appellant stands conclusively proved. He further submits, that alleged dying declaration which was recorded by C.P.Mishra, Naib Tahsildar – PW/3 also cannot be said to have been effectively proved as there is no averment in the report of the Naib Tahsildar so also in the statement of Dr.V.S.Baghen -

PW/7 as regards the fact whether the victim on the date when the alleged dying declaration was recorded was in a condition where she could easily record her statement? He further submits, that even otherwise the incident occurred because of sudden anger which came to the mind of the appellant when he came home after working for the whole day and enquired whether the dinner was ready for him and he was informed that it was not prepared. This was the reason for him to get agitated and for all these reasons, the counsel for the applicant prays for setting aside of the impugned award and the appellant be acquitted from all the charges levelled against him.

9. The State counsel on the contrary opposing the appeal submits, that perusal of the evidences of the prosecution's witnesses by itself establishes the charges levelled against the appellant. It was further contended, that the case of the prosecution and the statement recorded by the Naib Tahsildar as dying declaration is a supportive piece of evidence. He further submits, that the victim in the course of trial has also proved the said dying declaration recorded by the Naib Tahsildar. Thus, the entire case of the prosecution have not been established and the appeal deserves to be rejected.

10. Having heard the rival contentions put forth on either side and on perusal of record, undisputedly, the victim in the instant case had received burn injuries on 26/11/2009. The complainant in the instant case is Madhu Joshi – PW/4. The material witnesses examined on behalf of the prosecution would be the victim herself and that in her evidence she had categorically named the appellant of setting her ablaze after pouring kerosene on her.

11. This statement of her in the F.I.R. as well as in the court statement does not have much contradiction or discrepancies to doubt the statement of the complainant. Further the fact that the appellant had set her ablaze is also established from the so called dying declaration recorded while victim was in the hospital i.e. the statement recorded by the Naib Tahsildar which is also proved by the statement of the Naib Tahsildar himself.

12. In the given factual matrix of the case where there is the statement of the complainant and the statement of Naib Tahsildar who recorded dying declaration, this court is of the opinion, that no strong case has been made out by the appellant calling for interference with the finding of the guilt by the trial court. Therefore the judgment of conviction passed by the trial court against the appellant for the offence under Section 307 of I.P.C. stands affirmed and the appeal of the appellant stands rejected.

13. The report which has been furnished by the State Counsel shows that the appellant in the instant case has been released from jail on 10/12/2013 after completion of his sentence and getting remission also. Hence, no further steps have to be taken on the appeal being rejected.

**Sd/-
(P. Sam Koshy)
Judge**

Sumit