

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 826 of 2010****(Arising out of judgment/order dated 20.10.2010 in S.T. No.25/2010 of the learned Additional Sessions Judge (FTC), Rajnandgaon)**

- Vijay Kumar Sen S/o Suresh Kumar Sen, aged about 33 years, R/o village Sulsuli, P.S. Devari District Durg, at present Atal Aawas Kanchanbag, Tahsil & District Rajnandgaon.

---- Appellant**Versus**

- State of Chhattisgarh Through : P.S. City Kotwali, Rajnandgaon, District Rajnandgaon (C.G.)

---- Respondent

For Appellant.	:	Smt Indira Tripathi, Advocate.
For Respondent.	:	Shri Avinash K. Mishra, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board**Pritinker Diwaker, J****20/09/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 20.10.2010 passed by the Additional Sessions Judge (FTC), Rajnandgaon, in S.T. No.25/2010 convicting the accused/appellant under Section 302 IPC & and sentencing him to undergo imprisonment for life with fine of Rs.2000/-, in default of payment of fine amount to further undergo R.I. for one month.

02. In the present case, name of the deceased is Sheela Bai, wife of the accused/appellant. As per the prosecution case, on 16.01.2010 at about 7.30 pm, the accused/appellant poured kerosene oil on the deceased and set her ablaze. Sheela Bai was immediately taken to nearby hospital where 99% burn injuries on her body were noticed. On

same date at 10.00 pm, dehati nalisi (Ex.P/1) was recorded at the instance of Leela Bai (PW/1), sister of the deceased, followed by FIR (Ex.P/20) at 10.20 pm under Section 307 IPC against the accused/appellant. On 17.01.2010, during treatment the deceased succumbed to injuries in the hospital and immediately thereafter dehati merg (Ex.P/15) was recorded at 01.30 pm. On same day, inquest on the body of deceased was conducted vide Ex.P/4 and dead body was sent for postmortem to District Hospital, Rajnandgaon vide Ex.P/10-A where postmortem examination on the body of deceased was conducted on 17.01.2010 by Dr. V.P. Maheshwar (PW/7) who gave his report Ex.P/10 opining the cause of death to be shock due to 100% burn injuries. After filing of the charge sheet, the trial Court framed the charge against the accused/appellant under Section 302 of IPC.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 12 witnesses. Statement of the accused/appellant 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 has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits :

- (i) That the accused/appellant was residing separately and, therefore, the question of setting the deceased on fire does not arise.
- (ii) That Leela Bai (PW/1), sister of the deceased, wanted to grab the

house of the accused/appellant allotted to him under the Government scheme and that is why he has been falsely implicated in the crime in question.

(iii) That the deceased suffered 100% burn injuries and, therefore, question of making dying declaration by her also does not arise.

(iv) That no Doctor has been examined by the prosecution to prove that the deceased was in a fit state of mind to make her dying declaration.

(v) That no medical document is there on record to show that when the dying declaration of the deceased was recorded, she was conscious or was in a fit state of mind to make the statement.

(vi) That the prosecution has not examined the children of the appellant and sister of the deceased whereas all of them were present at the relevant point of time. In support of her contention, she placed reliance on the decision in the matter of **Shindo alias Sawinder Kaur and Anr. V. State of Punjab** reported in **2011 AIR SCW 6556**.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that detailed dying declaration was recorded by the Executive Magistrate (PW/11) and there is no reason for this Court to disbelieve the said dying declaration. It has been argued that PW/11 while supporting the prosecution case has categorically stated as to the manner in which he recorded the dying declaration. State counsel further argued that before recording the dying declaration of the deceased, endorsement was obtained from the concerned Doctor to the effect that the deceased was in a fit state of mind to make the said statement. State counsel also submits that even

if the said Doctor has not been examined, it will not make any difference because there is no evidence on record to show that the Executive Magistrate would falsely implicate the accused/appellant. It has been also submitted that the deceased died on the second day and it cannot be said that the deceased was not in a fit state of mind to make dying declaration.

07. We have heard learned counsel for the parties and perused the material available on record.

08. Leela Bai (PW/1) is sister of the deceased at whose instance dehati nalisi (Ex.P/1) and FIR (Ex.P/20) were recorded. She has stated that on the date of incident when she was sitting with the deceased, accused/appellant came there and asked the deceased to give divorce. There was some hot talk between the two and then the deceased went in another room. The accused/appellant followed her (deceased), entered in the room and closed the door from inside. She has further stated that upon being knocked the door, the same was opened and then she saw the accused/appellant pouring kerosene oil on the body of deceased and setting her ablaze. She tried to extinguish the fire as a result of which she too had sustained burn injuries on her hand, abdomen, back etc. This witness has further stated that since one and half month prior to the incident the accused/appellant was living separately. In lengthy cross-examination, she remained firm and nothing could be elicited from her to discredit her testimony but for minor contradictions.

09. Vinod Tembhurne (PW/2), witness to seizure (Ex.P/5) by which certain articles were seized from the spot, has not fully supported the prosecution case. He is also witness to spot map Ex.P/2.

10. Nagesh (PW/4) is brother of the deceased. He has stated that there

used to be dispute between the appellant and the deceased. On the date of incident, he was in his house and his sister Chunni Bai informed him that the accused/appellant has set the deceased on fire.

11. Dr. V.P. Maheshwar (PW/7) conducted postmortem on the body of deceased and gave his report Ex.P/10 noticing following injuries:-

- (i) Rigor mortis present all over the body.
- (ii) 100% superficial burn present all over the body, eyes closed and mouth partially opened.
- (ii) Carbon particles were present in both nostrils. Singeing of hair of head present.

The Doctor has opined the cause of death to be shock due to extensive 100% burn injuries.

12. Harish Kashyap (PW/8) is Patwari who prepared spot map vide Ex.P/7A. Imal Kishore (PW/9) - constable and Hemchand Verma (PW/10) - Sub Inspector assisted in the investigation.

13. Rajendra Prasad Tiwari (PW/11) is Executive Magistrate who recorded the dying declaration (Ex.P/18) of the deceased. He has stated that after obtaining the certificate from the Doctor that the deceased was in a fit state of mind to make the statement, he recorded the dying declaration of the deceased and in her dying declaration the deceased has stated as to the manner in which she was burnt by the accused/appellant. C.L. Kosre (PW/12)- Investigating officer has duly supported the prosecution case. In lengthy dying declaration (Ex.P/18), the deceased has described as to the manner in which she was burnt by the appellant.

14. In the present case, according to evidence of prosecution witnesses, the incident took place on 16.01.2010 when the accused/appellant had asked the deceased to give divorce. There was some hot talk between the two and then the deceased went in another room. The accused/appellant followed the deceased, entered in the room, closed the door from inside and after pouring

kerosene oil on the deceased, he set her ablaze. The incident has been witnessed by Leela Bai (PW/1) who was present at the place of occurrence. PW/1 in her statement has stated as to the manner in which the deceased was burnt by the accused/appellant and in cross-examination she remained firm and nothing incriminating could be elicited to discredit her testimony. Thus, we have no reason to disbelieve the statement of this witness. This apart, dying declaration (Ex.P/18) was made by the deceased before the Executive Magistrate (PW/11) who has categorically supported the prosecution case.

15. When a person makes a statement while being aware of the prospect that his/her death is imminent and proximate, such a statement assumes a probative value which is almost unassailable, unlike other statements which he/she may have made earlier, when death was not lurking around, indicating the cause of his/her death. That is to say that a person might be quite willing to implicate an innocent person but would not do so when death is knocking at his/her door. That is why a dying declaration, to conform to this unique specie, should have been made when death was in the contemplation of the person making the statement/declaration. In the case before us, the statement made by the deceased would qualify to be treated as a dying declaration because she was admitted in the hospital, having sustained 100% burn injuries, and because of these grave burn injuries, she would be expecting to shortly breathe her last.

16. The central question remains as to whether the alleged dying declaration attracts authenticity. The Executive Magistrate (PW/11), before recording the dying declaration, has obtained an endorsement of the Doctor on 16.01.2010 at 9.15 pm to the effect that the deceased was in a fit state of mind to make dying declaration, and dying declaration of the deceased was recorded on same day at 10.00 pm i.e. after 45 minutes. Thereafter, on 17.01.2010 at 12.25 pm, the deceased succumbed to her injuries. The time

gap between endorsement of Doctor and recording dying declaration is not so long and credibility of it cannot be doubted. That apart, the deceased died on next day of recording her dying declaration it means that the death was knocking at her door. Thus, questioning the authenticity of the dying declaration and the appellant being falsely implicated in the commission of crime do not arise. The evidence of PW/1, PW/11 and the dying declaration (Ex.P/18) are sufficient to infer that it is the accused/appellant who after pouring kerosene oil on the body of deceased set her ablaze. True it is that the Doctor who made the endorsement and signed the said paper has not been examined but considering the fact that there is no challenge to it before the trial Court, the same cannot be termed as fatal to the prosecution particularly whe the statement of PW/11 inspires confidence of this Court. Further, there is no evidence on record to show that as to why the Executive Magistrate (PW/11) will make incorrect statement against the accused/appellant. The case law relied upon by the learned counsel for the appellant in the matter of **Shindo (supra)** is of no helpful being distinguishable on the ground of facts.

17. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned.

18. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellant is reported to be in jail and therefore no further order regarding his arrest etc. is required.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE