

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 918 of 2013**

1. Kismat Dhanwar son of Shaniram, aged about 30 years, resident of Khuntapani, Police Station Himgir (Orissa), at present resident of Village Kasdol, Police Station - Tamnar, Civil & Revenue District Raigarh, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Gharghoda, District Raigarh CG

---- Respondent

For Appellant : Shri Aman Kesharwani, Advocate
 For Respondent/State : Smt. Madhunisha Singh, PL

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board by Pritinker Diwaker, J

25/11/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 01.08.2013 passed by Additional Sessions Judge Raigarh in Sessions Trial No. 15/2011 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 20,000/-, plus default stipulation.

2. Name of the deceased in this case is Aruna Kumari - wife of the accused/appellant. It is said that after marriage the accused/appellant started living in the house of his mother-in-law where he used to pick up quarrel with the deceased after consuming liquor. On 12.11.2010 also there was quarrel between

the two as the deceased had seen the photograph of some girl in the purse of the accused/appellant. On the next day, it is alleged that the accused/appellant dragged the deceased into his room and set her ablaze after pouring kerosene on her body. On hearing the cries of the deceased, when mother of the deceased namely Punai Bai (PW-1) reached near the room, accused/appellant ran away and then the deceased told her that it is the accused/appellant who burnt her after pouring kerosene on her body. Thereafter, the deceased was first taken to Tamnar Hospital but looking to her condition she was shifted to Raigarh where she died during treatment on 14.11.2010. According to the doctor conducting postmortem examination (PW-12), the deceased had suffered 99 per cent burn. On the basis of intimation sent by the ward boy of the hospital, *merg* Ex. P-22 was registered. Thereafter, un-numbered FIR Ex. P-19 was registered on 14.11.2010 followed by numbered one Ex. P-21 which was registered on 16.11.2010 at the instance of PW-1. After drawing inquest Ex. P-5, dead-body was sent for postmortem examination which was conducted by Dr. A.K. Kushwaha (PW-12) who gave his report Ex. P-18. After investigation, charge-sheet was filed by the police under Section 302 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 15 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and

pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits as under:

(i) That the accused/appellant has been falsely implicated in the case.

(ii) That the statement of Punai Bai (PW-1) – the mother of the deceased is not reliable.

(iii) That the oral dying declaration made by the deceased before Punai Bai (PW-1) and Surendra Sahu (PW-4) is also not reliable.

6. On the other hand, counsel for the State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Punai Bai (PW-1) – the mother of the deceased has stated in her evidence that as a day before the incident her daughter (deceased) happened to see the photograph of some girl in the purse of the accused/appellant, some quarrel was there between the two and then on the next day the accused gave 2-3 slaps to the deceased and dragged her inside his room. This witness has stated that on hearing the cries of the deceased she went to the

room of the deceased but by that time the accused had burnt her. This witness is also stated to have seen the accused/appellant running away from the place of incident. According to her, the deceased told her that it is the accused/appellant who had burnt her after pouring kerosene on her body. In cross examination, barring some minor contradictions and omissions, this witness remained firm to what has been stated by her in the examination-in-chief. Surendra Sahu (PW-4) is the witness who reached the spot immediately after the occurrence. He has stated that on hearing the cries emanating from the house of the accused/appellant he went there and saw that the fire caught by the deceased had extinguished and the deceased was asking for water. After offering water to the deceased when this witness asked as to how she got burnt, it was told by her that it was the accused/appellant who caused burns to her. According to this witness, the deceased also told him that the accused asked her to sign some paper but she did not do that. This witness has stated that the deceased had informed him this much only. At this stage this witness has been declared hostile. However, the oral dying declaration made by the deceased before this witness remains undisputed. Manglu Dhanwar (PW-2) – the father of the deceased has not supported the case of the prosecution and has been declared hostile. He is however stated to have seen the accused running away. This witness is also stated to have come to know about the deceased being burnt by the accused/appellant, through his wife (PW-1). Sukanti Bai Dhanwar (PW-3) has also not supported the case of the prosecution and

has been declared hostile. In paragraph No.4 she however has admitted that when she reached the spot, PW-1 and PW-2 were extinguishing the fire and on being asked as to how she caught fire, the deceased told her that it is the accused/appellant who put her afire after pouring kerosene on her body. Roop Singh Yadav (PW-5) though turned hostile, has stated that he saw the accused/appellant running away from the spot. Rajaram Uraon (PW-6), Parikshit Kumar Dhanwar (PW-7) and Hariram Dhanwar (PW-9) - the witnesses to inquest Ex. P-5 have not supported the case of the prosecution and have been declared hostile. Radheshyam Kamal (PW-8) is the witness who assisted in the investigation. Rudresh Nayak (PW-11) is the *Patwari* who prepared spot map Ex. P-17. Dr. Anil Kumar Kushwaha (PW-12) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-18 stating that he noticed 99% burns on her body and cause of death was syncope as a result of burn. Smt. Swarnlata Tigga (PW-13) is the witness who assisted in the investigation. Smt. Avanti Gupta (PW-14) is the witness who did inquest on the dead body. Pramod Kumar Xess (PW-15) is the investigating officer who has duly supported the case of the prosecution.

9. Perusal of the evidence of the witnesses thus makes it crystal clear that a day prior to the incident there was a quarrel between the deceased and the accused on account of photograph of some girl being seen by the deceased in the pocket of her husband - the accused/appellant herein. Deceased - the wife does not appear to be at fault anywhere in registering

her protest on seeing all that but it did not suit to the depraved and distorted mind-set of the accused – her husband. Emotional outburst of the deceased after sensing someone else in the life of her husband proved costlier to her. This antagonistic attitude of the deceased, heightened the anger of the accused beyond the roof where succumbing to his irrepressible mental urge he decided to finally eliminate the deceased for ever. PW-1 – the mother-in-law of the accused has categorically stated that as her daughter (the deceased) happened to see the photograph of some girl in the purse of the accused/appellant, some skirmishes surfaced between the two. Testimony of PW-1 further indicates that even on the next day, the acerbity in the mind of the accused towards the deceased did not cease to rule his mental firmament where after slapping twice-thrice, he dragged her inside his room and set her afire after pouring kerosene on her body. After PW-1 rushed to the spot on hearing the cries of the deceased, she was told by her that it is the accused who did all that. PW-4 who reached the spot immediately after the occurrence has also stated that after offering water to the deceased when he asked her as to how she suffered burns, she disclosed to him that it was none else but the accused/appellant himself who set her ablaze. Deceased is also said to have told him that the accused had asked her to sign some paper but she did not do that. Though PW-4 has been declared hostile, he remained firm on the point that the deceased made oral dying declaration before him. Even the medical evidence has fully supported the case of the prosecution where the doctor (PW-12) has stated that the deceased suffered 99 per cent burns on her

body. Thus the the overall appraisal of the evidence makes one thing clear that on account of photograph of some girl being seen by the deceased in the pocket of the accused, he got furious and to ease the fury he eliminated her for ever by setting ablaze after pouring kerosene on her body. All this remained un rebutted by the defence as not even a single evidence has been adduced by it falsying the stand of the prosecution. In that view of the matter, the Court below appears to have been fully justified in convicting the accused under Section 302 for committing the murder of his wife. No illegality or infirmity is seen in the judgment impugned worth interference by this Court.

10. In view of above, the appeal being devoid of any substance is liable to be dismissed and it is hereby dismissed. Judgment impugned is hereby affirmed. As the accused/appellant is already in jail, no order for his arrest etc. is necessary.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(P. Sam Koshy)
Judge