

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 138 of 2010

State of Chhattisgarh through District Magistrate, Bilaspur (C.G.)

--- APPELLANT

Versus

Basant Pandey, S/o. Bramhaprasad Pandey, Aged about 38 years, R/o. Village- Birgaon, Police Station – Jarhagaon, District -Bilaspur (C.G.)

---- RESPONDENT

For the Appellant :- Mr. Rajendra Tripathi, Panel Lawyer
For the Respondent :- None

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board By
Prashant Kumar Mishra, J.

18.06.2018

1. Challenge in this acquittal appeal is to the judgment of acquittal rendered by the trial Court acquitting the respondent for the offence under Section 302 of the IPC.
2. About 7 to 8 years prior to the date of incident, the deceased and the respondent have eloped and were staying together without being legally married. It is said that out of their relationship, Vishal (PW-3) was born and was staying with the deceased and the respondent. The deceased was involved in manufacture and sale of illicit liquor. The deceased sustained severe burn injury on 12.08.2007 and succumbed to death in course of treatment on 16.08.2007.

3. The prosecution came up with charge against the respondent for committing murder of the deceased by setting her ablaze.
4. To prove the charge the prosecution has examined PW-1 Vimla Bai, (mother of the deceased), PW-2 Anil, (brother of the deceased), PW-4 Chainu, PW-5 Anita, PW-6 Prabhulal Dhuri, (father of the deceased), PW-7 Smt. Sarita Pahare, PW-8 J.K. Rathore, PW-9 Kaushal Ram, PW-10 Vipin Kujur, PW-11 Ishwar Jaiswal, PW-12 Horilal Kashyap, PW-13 Siyaram, PW-14 Dr. B.L. Raj, PW-15 Prakash Chand Kori, PW-16 Bhuwabhal Singh Netam, PW-17 Smt. T. Toppo, PW-18 Mohan Lal Patle and PW-19 Dr. Vijay Chandel.
5. As per the initial prosecution case, the deceased, the respondent and PW-3 Vishal were in the house at the time of incident which occurred at about 6.30 pm on 12.08.2007, therefore, it was the respondent who should have disclosed the special fact within his knowledge regarding the death of his wife as is required under Section 106 of the Evidence Act. The respondent has tried to elicit from the witness that it was a case of sustaining accidental burn injuries and thus, he has tried to move out of the clutches of Section 106 of the Evidence Act.
6. The prosecution has presented PW-3 Vishal, as eyewitness. This witness has supported the prosecution case in his examination-in-chief, however, in his cross-examination, he has stated that he was playing outside the house at the time of incident and when he

entered the house his mother was being taken to the hospital in a four-wheeler. Thus, he ceased to be an eyewitness.

7. The other witnesses of alleged oral dying declaration is PW-1 Vimla Bai, (mother of the deceased), however, in her examination-in-chief, she has not stated that the deceased had ever informed her that it was the respondent who had set her on fire. This witness would only state in her examination-in-chief that the deceased told her that the reason for her sustaining burn injury is known to the respondent. According to this witness, the respondent was tutoring the deceased that if anybody enquires about the incident she should say that she has received burn injury from the stove. However, in other part of her examination including examination-in-chief this witness has further stated that when she asked the deceased about the reason for sustaining the burn injury the deceased did not reveal anything to her. The statement of PW-2 Anil (brother of the deceased) is also on the same line.
8. Prabhulal Dhuri (PW-6), (father of the deceased), has been declared hostile. In his examination-in-chief, he has stated that PW-1 Vimla Bai, had informed him that the deceased sustained burn injury from the stove. The other witnesses are the villagers, or the persons before whom the seizure of articles were made. However, all the witnesses are hearsay as they were not present on the spot nor any of them has interacted with the deceased prior to her death.

9. In addition to the oral statement, the dying declaration of the deceased was also recorded on 13.08.2007 by the Executive Magistrate, Shri Prakash Chand Kori (PW-15). This witness has proved the dying declaration Ex.P-32, wherein the deceased has stated that she sustained burn injuries because of bursting of stove while she was cooking food and that no one is responsible for setting her on fire.
10. The above state of evidence on record goes to establish that there is neither any direct evidence nor any circumstantial evidence in the nature of oral dying declaration or any other circumstances pointing that it was the respondent who committed murder of the deceased. There is some allegation of maltreatment by the respondent, however, the so called relationship between the deceased and the respondent being more than 7 years and further for the reason that there is no allegation of demand of dowry and the charge sheet was also not filed for offence under section 304 B of the IPC, therefore, in the absence of direct or circumstantial evidence regarding commission of murder of the deceased, the trial Court has rightly acquitted the respondent.
11. There is no substance in this appeal which fails and is hereby dismissed.

Sd/-
Judge

Prashant Kumar Mishra

Sd/-
Judge

Vimla Singh Kapoor