

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 275 of 2010**

- State Of Chhattisgarh, Police Station, Kusmi, District Surguja (C.G.)

---- Petitioner**Versus**

- Shanti Bai W/o Late Suresh Sao, aged about 48 years, R/o Vill. Tatiajharia, PS Kusmi, District Surguja (C.G.)

---- Respondent

For Appellant-State

Shri Arvind Dubey, PL

For Respondent

None

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board By****Prashant Kumar Mishra J.****16/07/2018**

1. The trial Court has acquitted the sole accused from the charge under Section 302 of IPC. The respondent was charged with committing murder of her daughter-in-law, the deceased Savita, at about 10:15 am on 02.04.2003.
2. The marriage between the deceased and PW-2 Santosh Kumar Gupta had taken place in the year 1998. They had a daughter, aged about 3 years, out of the wedlock. PW-7 Ramcharitar Sao, the father of the deceased, would admit in his deposition that

there was no dispute between the deceased and the accused concerning demand of dowry neither any dowry was given at the time of marriage.

3. With the above background facts, the prosecution came forward with allegation that on a dispute concerning the deceased's insistence to visit her parental house, the respondent set her ablaze at about 10:30 am for which she sustained 99% burn injuries and was admitted in the Mission Hospital, Ambikapur on that day itself. Her dying declaration (Ex-P-6) was recorded by PW-5 Jagannath Verma, Naib Tehsildar, wherein the deceased alleged that her mother-in-law i.e. the respondent has set her on fire and that her husband is not guilty. The prosecution has examined PW-1 Dal Bahadur, PW-2 Santosh Kumar Gupta, PW-3 Dr. R. N. Gupta, PW-4 Gopal Prasad, PW-5 Jagannath Verma, PW-6 Nagendra Tiwari, PW-7 Ramcharitar Sao, PW-8 Jigmaram Bhagat, PW-9 S. K. Sen, PW-10 Dr. Beatris, PW-11 Dr. Manorama Minj, PW-12 Dr. Prakash Kumar Sinha, PW-13 Dr. Rajiv Ranjan to bring home the guilt, whereas the respondent has abjured the guilt and examined 5 defence witnesses to prove her innocence. In substance, the respondent defended the allegation on the plea that she was not present in the house at the time of incident as at that time she and her 3 years old grand daughter had gone to take bath in a nearby pond, which is situated at a distance of about $\frac{1}{2}$ – 1 km from the place of occurrence.
4. The case of the prosecution mainly rests on the dying declaration (Ex-P-6) recorded by PW-5 Jagannath Verma, therefore, we

would straightway advert to the said piece of evidence because if the said evidence fails to assist the prosecution, there is no other material sufficient for convicting the respondent. Ex-P-6 has been written by PW-5 Jagannath Verma at about 9:15 pm on 18.03.2003, however, dying declaration is not in question answer form. It does not carry a certificate by the doctor physician/that the person making declaration is in fit mental state to record her statement. There is no document by which the concerned IO or doctor/physician had summoned the PW-5 to come to the hospital for recording dying declaration. PW-12 Dr. Prakash Kumar Sinha, who had admitted the deceased when she was brought to the hospital for the first time on 17.03.2003, would categorically state in para 5 of his cross examination that to the best of his knowledge, no dying declaration has been recorded in the hospital. Similarly, PW-13 Dr. Rajiv Ranjan would also not state that any dying declaration was recorded in his presence.

5. Importantly, PW-7 Ramcharitar Sao, father of the deceased, reached the hospital on 17.03.2003 itself, yet he is not making any statement that the deceased ever made any oral dying declaration to him. Since Ex-P-6 has been recorded on the next day i.e. 18.03.2003, it is highly unnatural that if the deceased was in fit mental condition, then why oral dying declaration was not made by her when PW-7 met her on 17.03.2003. Considering the material on record, we are fully convinced and satisfied that the trial Court's finding disbelieving the dying declaration is perfectly borne out from the evidence, as mentioned above.

6. In addition to the above, PW-4 Gopal Prasad, whose presence on the spot immediately after the incident has been proved by PW-7 Ramcharitar Sao himself, would state that at the time of incident, the respondent was not available in the house. Even though, this witness has been declared hostile, since his presence has been admitted by PW-7, this witness's entire statement cannot be thrown out. Thus, on reading the statement of PW-4 also, it appears that the respondent was not present in the house, therefore, it is all the more possible that the dying declaration (Ex-P-6) was not a sacrosanct document, so that conviction under Section 302 of IPC can be rendered on this basis alone. On a studied analysis of the evidence, we do not find any substance to upset the finding recorded by the trial Court.
7. The acquittal appeal deserves to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Vimla Singh Kapoor