

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 216 of 2012**

- Jitendra Kumar Chauhan S/o Bhakturam Chauhan, aged about 21 years, R/o village Milupara, Police Station Tamnar, District Raigarh (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Station Incharge, Center Police Station Tamnar, District Raigarh (C.G.)

---- Respondent

For Appellant.	:	Shri Arvind Shrivastava, Advocate.
For Respondent.	:	Shri Ravindra Agrawal, Govt. Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt Justice Rajani Dubey

Judgment on Board**Pritinker Diwaker, J****24/08/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 13.02.2012 passed by I Additional Sessions Judge, Raigarh, in S.T. No.168/2010 convicting the accused/appellant under Sections 498-A, 506 Part-I and 307 IPC & sentencing him to undergo R.I. for three years, R.I. for two years and imprisonment for life respectively.

02. In the present case, victim is Pushpa Bai (PW/1), wife of the accused/appellant, and their marriage was solemnized on 16.05.2010.

03. According to the prosecution case, victim Pushpa Bai suffered burn injuries on 05.09.2010. On the basis of undated written report (Ex.P/1), FIR (Ex.P/2) was registered on 15.10.2010 against the accused/appellant and five other acquitted persons of his family under Sections 498-A and 307/34 IPC. The victim was medically examined

on 15.10.2010 by Dr. Awadhesh Kumar Singh (PW/7) who noticed healed burn injuries on her body. Further case of the prosecution is that after sustaining burn injuries, the victim was hospitalized in Community Health Center, Lailunga from 26.09.2010 to 04.10.2010 and this fact has been proved by the prosecution vide Ex.P/10. After filing of the charge sheet, the trial Court framed the charge against the accused/appellant under Sections 498-A, 506 (1) and 307 IPC & his five other family members under Sections 498-A, 506(1) and 307/34 IPC.

04. So as to hold the accused persons guilty, the prosecution examined as many as 09 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record, while acquitting five accused persons of the charge levelled against them, has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits :

- (i) That most important witness to the prosecution victim Pushpa Bai (PW/1) has not supported the prosecution case and turned hostile.
- (ii) That in view of the statement of PW/1, there remains nothing against the accused/appellant.
- (iii) Even Sushila Chouhan (PW/3), mother of the victim, has not supported the prosecution case.

(iv) That the Investigating Officer has not been examined by the Court.

(v) That the accused/appellant has been convicted on the strength of statement of Anand Ram Chouhan (PW/2), father of the victim, whereas if his entire evidence is seen, it is contrary to what has been stated by the victim PW/1.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

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

09. Victim Pushpa Chouhan (PW/1) has not supported the prosecution case and turned hostile. She has admitted the fact that after the incident, a compromise was arrived at between her and the accused/appellant. She has stated that she suffered burn injuries on her neck and was not subjected to cruelty.

10. Anand Ram Chouhan (PW/2), father of the victim, has stated that he was informed by his daughter PW/1 that she was subjected to cruelty. The statement of this witness goes contrary to what has been stated by PW/1 that she has never informed to her parents.

11. Sushila Chouhan (PW/3)-mother of the victim PW/1, Ram Sai Bhagat (PW/4) - Panch and Gangaram Sidar (PW/5)- Sarpanch, have been declared hostile.

12. L. R. Bhagat (PW/6) - Asstt. Sub Inspector, registered an FIR (Ex.P/2).

13. Dr. Awadhesh Kumar Singh (PW/7) medically examined the victim

PW/1 and gave his MLC (Ex.P/9-A) noticing old healed burn injuries.

14. Vinay Kumar Tripathi (PW/8) is the Patwari who has not prepared any spot map.

15. Dr. Raj Kumar Gupta (PW/9) has stated that according to victim (PW/1), she was admitted in District Hospital, Raigarh for 13 days but as her injuries were not healed, she came to CHC, Lailunga where she was admitted on 26.09.2010 and got discharged on 04.10.2010.

16. Close scrutiny of the evidence makes it clear that there is absolutely no evidence against the accused/appellant warranting his conviction under any Section. Victim PW/1 has not supported the prosecution case and turned hostile. She has stated that she herself poured kerosene oil on her and set her ablaze. She has further stated that she did not inform any incident to her parents, whereas according to PW/2, father of the victim, he was informed by PW/1 about the cruelty meted out to her. That apart, even the Investigating Officer has not been examined by the Court below.

17. To sum up, this Court is of the considered opinion that the prosecution has not led enough evidence to prove the complicity of the accused/appellant in the crime in question and for that the benefit of doubt has to go to the accused. The trial Court while convicting and sentencing the accused/appellant has not considered the evidence of the prosecution in its true perspective and thereby committed error in convicting him.

18. In view of what has been discussed above, the findings recorded by the Court below cannot be sustained in the eye of law and are liable to be set aside. The appeal is thus allowed, judgment impugned is set

aside and the accused/appellant stands acquitted of the charge levelled against him by extending him benefit of doubt. The accused/appellant is reported to be on bail. His bail bonds stand discharged.

19. Appeal is thus allowed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Rajani Dubey)
JUDGE

Vijay