

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 729 of 2009

1. Shyamji, S/o- Mohitram Mannewar, Aged about- 50 years,
 2. Puniram, S/o- Shyamji Mannewar, Aged about- 27 years,
 3. Sita Bai, W/o- Shyamji Mannewar, Aged about- 45 years,
- All appellants are R/o Village- Balpur, P.S.- Champa, District-
Janjgir- Champa (C.G.)

---- Appellants

Versus

- State of Chhattisgarh, through- Police Station- Champa, District-
Janjgir- Champa (C.G.)

---- Respondent

For Appellants : Smt. Meenu Banerjee, Advocate.

For State/Respondent : Shri Raghvendra Verma, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

08/11/2019

1. This appeal is directed against the judgment dated 14th October, 2009 passed by Additional Sessions Judge, Janjgir, District- Janjgir- Champa (C.G.) in Sessions Trial No. 123/2009 wherein the said Court convicted all the three appellants for commission of offence under Sections 498-A, 342 and 307 read with Section 34 of IPC, 1860 and sentenced them to undergo R.I. for three years and to pay fine of Rs. 300/-, R.I. for one year and R.I. for seven years and to pay fine of Rs. 500/- respectively with default stipulations.
2. In the present case, name of the victim is Meena Bai Mannewar (PW-5). Appellant No. 2 Puniram is her husband whereas appellant No. 3 Sita Bai is her mother-in-law and appellant No. 1 Late Shyamji is her father-in-law. Prosecutrix married with appellant No. 2 Puniram nine years back and out of their wedlock

two children were born. After five years of their marriage appellant No. 2 Puniram started ill-treatment to the prosecutrix for which complaint was made and matter was compromised between them before the Court at Sakti. On the date of incident the appellants after holding the hands and legs of the prosecutrix gagged her mouth and administered some poison. Matter was reported and investigated and thereafter the appellants were charge-sheeted and convicted and sentenced as mentioned above.

3. Learned counsel for the appellants submits that the trial Court has overlooked the material contradictions and omissions in the statement of the prosecution witnesses. There is no evidence to connect appellant Sita Bai with the crime in question, therefore, her conviction is improper and incorrect. He would further submit that the trial Court has not considered the evidence of the prosecution witnesses in its right perspective while passing the judgment of conviction, therefore, same is liable to be set aside.
4. On the other hand, learned counsel for the State supported the judgment and submits that the finding arrived at by the trial Court is based on proper marshaling of evidence and the same is not liable to be interfered with invoking the jurisdiction of appeal.
5. I have heard learned counsel for the parties, perused the judgment impugned and record of the Court below.
6. To substantiate the charge the prosecution has examined as many as 11 witnesses. Meena Bai (PW-5) deposed before the trial Court that appellant No. 2 Puniram pressed her mouth and

asked his father Late Shyamji to bring medicine and thereafter they administered some substance to her. As per version of this witness the liquid which was administered to her was some pesticides used for cultivation and same had bad smell. Version of this witness is supported by version by Dr. Manish Kumar Shrivastava (PW-3) and Dr. Pankaj Tebhudikar (PW-11). As per version of Dr. Pankaj Tebhudikar (PW-11) there was sign of consuming poison in the body to prosecutrix Meena Bai. Version of this witness is unrebutted during cross-examination and it is established from his evidence that some poisonous substance which is pesticide was administered to the prosecutrix. Version of Meena Bai is again supported by version of Manrakhan (PW-1) and Naib Tahsildar/T.R. Bhardwaj (PW-4). Again it is supported by version of Rajdhar (PW-6), Ram Snehi (PW-7), Santosh Kumar (PW-8) and Ishwar Prasad (PW-9). From the evidence of entire prosecution witnesses, it is established that poisonous substance was administered to Meena Bai by appellant No. 2 Puniram and appellant No. 1 Late Shyamji.

7. Now the question for consideration of this Court is whether the act of the appellants falls within mischief under Section 307 of IPC 1860. Intention of the appellants may be deduced from the entire facts and circumstances of the case.
8. In the present case, it is established that both the appellants administered poisonous substance to Meena Bai. In the present case. What the Court has to see is whether the act, irrespective of its result was done with the intention or knowledge and under such circumstances which may be termed as attempt to commit

murder. An attempt in order to be criminal need not be the penultimate act. It is sufficient as per law, if there is present an intent coupled with some over act in execution thereof.

9. In the present case, administering of poisonous substance can be turned as brutality and it can be easily inferred that the appellants have knowledge that death may be caused by their act. When the evidence on record is analysed, it is clear that Section 307 read with Section 34 of IPC has clear application and, therefore, case of both the appellants falls within mischief of Section 307 read with Section 34 of IPC.
10. For commission of offence under Section 498-A of IPC cruelty means any willful conduct which is such of nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health. In the present case, act of both the appellants caused danger to life of the prosecutrix and, therefore, their act falls within definition of cruelty as defined under Section 498-A of IPC. This charge is also established against both the appellants.
11. For commission of offence under Section 342 of IPC which is wrongful confinement is defined under Section 340 of IPC. As per definition whoever wrongfully confines any person in such a manner as to prevent him from proceedings beyond certain circumscribing limits is said wrongfully to confinement that person. From the evidence of Meena Bai (PW-5) it is established that before the incident she was sleeping in veranda and appellant No. 2 Puniram taken her to room and

thereafter appellant No. 2 Puniram with the help of appellant No. 1 Shyamji administered her poison. It means she was not able to go beyond the room by the act of both the appellants. The act of the both the appellants fall within the mischief under Section 342 of IPC for which the trial Court convicted them.

12. So for as appellant No. 3 Sitabai is concerned, the prosecutrix Meena Bai did not depose that she participated with the other appellants. Though it is stated by T.R. Bhardwaj (PW-4) who is Naib Tahsildar that Meena Bai made dying declaration and in the said declaration she involved appellant No. 3 Sitabai also, but that dying declaration Ex.P/9 cannot be used against Sitabai. In the present case, because Meena Bai was alive and she deposed before the trial Court on oath, she has been cross-examined also what is deposed by her. Looking to the entire evidence of Meena Bai participation of Sitabai in the crime in question is not established, therefore, Ex.P/9 which may be termed as previous statement, like statement under Section 161 of Cr.P.C. cannot be used against her to record finding to conviction.
13. Accordingly, appeal filed by Sitabai is allowed. She is acquitted from all the charges under Sections 498-A, 342 and 307 read with Section 34 of IPC, 1860. Her conviction and sentence passed by the trial Court is hereby set aside.
14. The appeal filed by appellant No.1 Shyamji is abated due to his death.

15. In view of the above, appeal filed by appellant No. 2 Puniram is liable to be and is hereby dismissed. As per report of jail authorities this appellant has suffered full jail term and released after benefit of remission granted to him by the jail authorities, therefore, no further orders for his arrest etc. is required.
16. Accordingly, appeal filed by Sitabai is allowed while the appeal filed by appellants Shyamji and Puniram is dismissed.

Sd/-

(Ram Prasanna Sharma)
Judge