

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 673 of 2001**

- Raj Lal, Son of Shri Singarsai Gond, Resident of village Bhadi, Police Station Baikunthpur, District Koriya, Chhattisgarh

---Appellant**Versus**

- The State of Chhattisgarh, Thorough Police Station Baikunthpur, District Koriya, Chhattisgarh.

---- Respondent

For Appellant	Shri V.K. Sahu, Advocate.
For Respondent/State	Shri Santosh Bharat, P.L.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

01/08/2019

1. This appeal arises out of the judgment of conviction and order of sentence dated 06.07.2001 passed by the First Additional Sessions Judge, Baikunthpur, District Koriya, C.G. in ST No.207 of 2001 convicting the appellant under Section 307 of IPC and sentencing him to undergo rigorous imprisonment for five years.
2. Brief facts of the case are that on the date of incident dated 04.02.2001, complainant/wife of the appellant was sleeping in her matrimonial house. At about 12 in the night accused/appellant came to the house from the outside and poured kerosene oil on the body of the complainant and set her on fire. She came out of the house and extinguished the fire. The other co-accused Sukhman Bai, mother-in-law of the complainant said that she has set herself on fire. After the incident, appellant Rajlal went out of the house and

co-accused Sukhman Bai administered first aid to the complainant. After 2-3 days Rajlal came back to the house and both the accused persons asked her not to narrate the incident to anybody otherwise she would be killed. After some days of the incident, her aunt Kunti Bai came to the house with her son, with whom the complainant went back to her parental house and from there she lodged FIR Ex.P-1 against the appellant and his mother-in-law namely Sukhman Bai of IPC on 15.02.2001 at police station Baikunthpur under Section 498-A IPC. During investigation as per Ex.P-2 burnt clothes of the complainant were seized. She was examined by PW-8 Dr. Rameshwar Sharma, who found superficial and deep burn injuries on the body of the complainant. According to him, she received 10% burn injuries. She was admitted in the hospital on 15.02.2001 but she left the hospital on 18.02.2001 without seeking permission from the doctors. The doctor treating her also submitted a report vide Ex.P-12 and stated that the injuries found on the body of the complainant were simple in nature. After completing the investigation, the charge sheet for offence under Sections 307 and 498-A IPC was filed against the appellant and co-accused. Thereafter, the trial Court framed charges under Sections 307 and 498A of IPC against the appellant Rajlal whereas Co-accused Sukhman Bai was charged with offence under Section 498-A of IPC only.

3. So as to hold the accused persons guilty, the prosecution has examined as many as 8 witnesses in all. Statement 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. However, no defence witness was examined by them in their defence.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting the co-accused Sukhman Bai of the charges under Section 498-A of IPC, convicted and sentenced the appellant as mentioned above.
5. Learned counsel for the appellant submits that in this case FIR was lodged after 11 days of incident. He submits that Jaikumari/complainant want to marry some another person and she was not happy with the appellant. Therefore, appellant is falsely implicated in this case. He further submits that no smell of kerosene oil was found on the clothes of the complainant which were seized by the police officer during investigation as per Ex.P-2 and no article is seized during investigation by which appellant could be said to have set the complainant on fire. He also submits that complainant/JaiKumari after the incident was taken by her mother-in-law for treatment to Dr. Chickenjuri where she narrated that she suffered burn from chimney and never narrated that the accused/appellant set her on fire. Even the father of the complainant namely PW-5 Bineshwar has not supported the prosecution case. Therefore, considering the statement of the father of the complainant PW-5, the conduct of complainant PW-3 Jaikumari, inordinate delay of 11 days in lodging the FIR for which no explanation has been offered, the fact that nothing has been seized from the spot by the police establishing the involvement of

the appellant in the crime in question, the trial Court was not justified in convicting the appellant under Section 307 of IPC and as such he deserves to be acquitted of the said charge.

6. Counsel for the respondent/State supports the impugned judgment.
7. Heard learned counsel for both the parties and perused the material available on record.
8. It is not in dispute that the complainant PW-3 Jaikumari suffered burn injuries to the extent of 10% as is evident from her MLC and the evidence of Dr. Rameshwar Verma which remains unrebutted in cross-examination. Though, the incident has occurred on 04.02.2001 and the FIR was lodged on 15.02.2001 i.e. 11 days after the incident, but the complainant has explained the said delay on account of she going to her parental house. Considering the facts and circumstances of the case, the evidence of the complainant, the said delay in lodging the FIR cannot be said to be fatal to the prosecution case and it appears to be just and proper.
9. From the unrebutted evidence of the complainant PW-3 Jaikumari which finds due corroboration from the evidence of PW-8 Dr. Rameshwar Verma, who has duly proved her MLC, it stands proved beyond reasonable doubt that it is the accused appellant who caused simple burn injuries to the complainant.
10. Now it is to be seen whether the said act of appellant makes him liable for conviction under Section 307 of IPC. Considering the nature and extent of injuries, the part of the body where the burn injury was sustained, the fact that the complaint suffered only 10% burn according to PW-8 Dr. Rameshwar Verma which was simple in nature, it cannot be said that while inflicting such injury on the

complainant, the intention of the appellant was to commit her murder. However, since the appellant caused voluntarily hurt by means of fire to the complainant, he is guilty under Section 324 of IPC.

11. As regards the sentence, considering the fact that at the time of incident, the appellant was 23 years of age, the incident occurred whereby in the year 2001 i.e. 18 years ago. He has already remained in jail for above 7 months, the maximum sentence provided under Section 324 of IPC is three years, this Court is of the opinion that ends of justice would be served, if the appellant is sentenced to the period already undergone by him.

12. In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 307 of IPC, he is held guilty under Section 324 of IPC and sentence to the period already undergone by him. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge

Akhilesh