

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1032 of 2001

Order reserved on 20.11.2019

Order pronounced on 05.12.2019

Kumari Kiran @ Jaswanti @ Guddi, D/o Lal Dewangan, age 21 years, R/o Gaya Nagar, Durg, PS Durg (CG).

---Appellant

Versus

State of Chhattisgarh

---- Respondent

For Appellant : Mr. Praveen K. Dhurandhar, Advocate

For State/Respondent : Mr. Ishan Verma, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

Complainant Barkha (PW-1) and accused Kiran – once friends – later turned into enemies. Case of the prosecution indicates that as friend of the accused/appellant namely Sudhir was also having acquittance with the complainant (PW-1), the accused/appellant did not like the same and always used to tell PW-1 not to converse with Sudhir. When complainant (PW-1) did not listen to the accused/appellant and continued conversing with Sudhir, on 07.12.2000 being totally disparaged the accused/appellant called complainant (PW-1) to the roof top of her house, and they both got drowned in discussion. During the course of discussion between the two, the accused/ appellant tied the complainant to the chair she was sitting on with the help of scarf, poured kerosene on her and threw a burning match stick at her. However, as the complainant sensed the situation, she got cautious and sprang up from the chair in order to avert the match stick fall on her. After somehow getting herself freed

she ran up and informed her uncle (PW-3) about the act of the accused/appellant. Thereafter, on arrival of her father, she went to police station along with her uncle and lodged the report Ex.P-1. Seizure of clothes, match sticks, kerosene etc. was made under Ex.P-5 and Ex.P-6. After medical examination and conclusion of investigation, charge sheet was filed against the accused/appellant under Sections 307 and 342 IPC followed by framing of charge accordingly.

2. Learned Court below by judgment impugned dated 17.10.2001 passed by Additional Sessions Judge, Durg in Sessions Trial No.100/2001 convicted the accused/appellant under Sections 307 and 342 IPC with imposition of sentence of RI for 10 years and fine of Rs.10,000 under Section 307 and RI for one year under Section 342 IPC, plus default stipulation.

3. Counsel for the accused/appellant submits that the judgment impugned convicting and sentencing the accused/appellant as mentioned above is off the record and thus not deserves maintenance in this appeal. State counsel however supports the judgment impugned.

4. From the evidence of PW-1 it is apparent that as she continued talking to Sudhir even after being objected to by the accused, she started nurturing ill will with her and in furtherance thereof, she was called by the accused/appellant to the roof top of her house and during the gossips, she tied her up to the chair in which she was sitting with the help of scarf, and after pouring kerosene on her body she threw a burning match stick at her. However, as the luck would have it, nothing untoward happened to her and she came out of the

danger unscathed. Evidence of PW-3 also supports the case of the prosecution and submits that on the date of incident he saw the complainant getting down the stairs of the accused/appellant halter skelter drenched in kerosene and told him that the accused/appellant was about to burn her. Dr. AK Mishra (PW-7) who did medical examination of the complainant has also stated that he noticed foul smell of kerosene emanating from the hair and clothes of the complainant vide reports Ex.P-7 and Ex.P-8. This apart seizure of clothes, intact match sticks and clothes smelling kerosene was made under Ex.P-5 and Ex.P-6 which also lay support to the case of the prosecution.

5. Thus the aforesaid discussion of the factual aspect of the matter read in the light of the evidence of the witnesses in particular that of PW-1, PW-3 and PW-7 and also keeping in mind that the intact match stick was seized under Ex.P-6 and that the victim did not suffer any injury as is evident from the statement of PW-7. This Court is of the opinion that the conviction of the accused/appellant under Section 307 IPC is not sustainable under the law and accordingly the same is hereby set aside. However, looking to the evidence on record the accused/appellant has to be convicted under Section 323 IPC. It is done so.

6. Thus the conviction of the accused/appellant under Section 307 is hereby set aside and she is now convicted under Section 323 IPC. Her conviction under Section 342 IPC being in conformity with the evidence of the witnesses is hereby maintained.

7. As regards sentence, keeping in mind the fact that once the accused and the complainant were friends and that by facing long

drawn prosecution since 2000 the accused has already suffered a lot, and that she has already remained in jail for about 3 weeks, no useful purpose is going to be served in again sending her to jail and disturb her long future. Accordingly, the sentence imposed on her is reduced to the period already undergone.

8. Appeal thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan