

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.352 of 2012**

- Keshavram Sahu S/o Girdhari Sahu, R/o Village Junwani , P.S. And Distt. North Baster Kanker C.G..

---- Appellant**Versus**

- State Of Chhattisgarh Through - P.S. Kanker , Distt. North Baster Kanker C.G.

---- Respondent

For Appellant	:	Shri A. N. Pandey, Advocate
For Respondent/State	:	Shri K. K. Singh, GA

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Order on Board**Per Manindra Mohan Shrivastava, J.****08-01-2019**

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 28-02-2012 passed by the Additional Sessions Judge, Uttar Bastar, Kanker in Sessions Trial No.67/2011, whereby and whereunder the appellant has been held guilty for commission of offence under Section 302 of IPC and sentenced him, as described below-

Section-302 IPC Life Imprisonment and fine of Rs.1,000/-, in default of payment of fine, additional Simple Imprisonment for 2 month

2. The prosecution story, as unfolded from the impugned judgment and records of the case is that Chaiti Bai (deceased) was brought to the hospital on 02-03-2011 in burnt condition. Though, Chaiti Bai was provided medical

treatment, she succumbed to death on the next day early in the morning at about 5 A.M. In the mere intimation as well as in the FIR, it was recorded that Chaiti Bai was set on fire by her own husband (appellant herein) by pouring kerosene on her and setting her ablaze. The appellant was arrested. According to the case of the prosecution, Dr. Lokesh Dev, PW-13, before whom, the burnt lady-Chaiti Bai was first brought, recorded dying declaration at about 05.15 PM on 02-03-2011, followed by another dying declaration recorded by the Executive Magistrate, PW-4. After filing of the charge sheet, learned trial Court framed charges for commission of offence under Section 302 of IPC against the appellant, alleging that the appellant set his wife on fire and thereby committed offence. The appellant abjured guilt and was subjected to trial. In order to prove its case, the prosecution examined as many as 13 witnesses and came out with two dying declarations, one dying declaration, Ex.P-22 recorded before Dr. Lokesh Dev, PW-13 and second dying declaration, Ex.P-8 recorded before the Executive Magistrate, PW-4 as also the evidence of oral dying declaration given by the deceased before her brother-Chhabhi Ram, PW-7 and the postmortem report proved by Dr. Anil Verma, PW-9 alleging that it is the appellant, who during the course of quarrel with his own wife-the deceased, poured kerosene on her and set her ablaze with an intention to cause death. Learned trial Court, relying upon two dying declarations as well as the oral dying declaration, held the appellant guilty of commission of offence of murder of Chaiti Bai and sentenced him, as described above, giving rise to this appeal.

3. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant argued that two dying declarations are highly doubtful. He argued that as far as dying declaration, Ex.P-22, recorded by Dr. Lokesh Dev, PW-13 is concerned, the same is highly doubtful, because it does not bear the signature of the deceased and when it

was recorded, no family member was stated to be present. Further contention is that even according to Dr. Lokesh Dev, PW-13, Chaiti Bai had suffered burn injuries up to the extent of 80% and therefore, it cannot be said that she was in a condition to speak out and give dying declaration.

As far as dying declaration, Ex.P-8 recorded by the Executive Magistrate, PW-4 is concerned, the same is sought to be assailed on the submission that before recording the dying declaration, the Executive Magistrate did not obtain the Fitness Certificate from the Treating Doctor, as to whether, the injured was in a fit condition to give dying declaration. According to him, the first dying declaration was recorded on 02-03-2011 at about 05.15 PM, whereas second dying declaration, according to the prosecution, was recorded after one hour and the condition of the injured was fast deteriorating and therefore, in the absence of Fitness Certificate, the dying declaration recorded by the Executive Magistrate becomes doubtful. He would next submit that not only, at the time of recording first dying declaration before the Doctor, but also at the time of recording second dying declaration before the Executive Magistrate, none of the family members of the deceased were present, therefore, the entire proceedings of recording two dying declarations are shrouded in mystery and could not be made basis to hold that the prosecution has proved its case beyond reasonable doubt. He would further submit that the case of the prosecution becomes highly doubtful because witness of the dying declaration, Ex.P-22, Smt. Hemin Jain, has also not been examined and the prosecution has failed to give any reason as to why she could not be examined. He submits that so-called oral dying declaration given by the deceased to her brother Chhabi Ram, PW-7 is liable to be disbelieved, because Chhabi Ram is an interested witness.

4. On the other hand, learned State counsel would support the impugned

judgment of conviction and order of sentence by submitting that the present is a case where FIR was promptly lodged and the victim was immediately admitted in the hospital, wherein not only the doctor, but also the Executive Magistrate both had recorded dying declaration. He would submit that though, at the time of recording dying declaration by the Executive Magistrate or at a later point of time, medical certificate has not been obtained, the doubt, if any, stands cleared, because the treating Doctor, who himself recorded the dying declaration, in his evidence, has clearly deposed that the victim was able to speak. He would next submit that other circumstances creating doubt on the basis that the family members were not present, signatures of victim was not taken by the doctor while recording dying declaration and Hemin Jain was not examined, are cleared, as in the present case, there is not only one, but two dying declarations, which are supported by corroborative evidence of brother of the deceased, Chhabi Ram, PW-7, who had brought the deceased to the hospital.

5. In the FIR, Ex.P-1, proved by Smt. Sima, PW-1 and Investigating Officer, ASI Lakhesh Kumar Gangesh, PW-6, it has come out that Chaiti Bai was set ablaze by the appellant by pouring kerosene on her. In the merged intimation also, the same story has been narrated. It would thus be seen that right from the beginning, the prosecution has come out that the appellant set ablaze his wife by pouring kerosene on her.

6. Dr. Lokesh Dev, PW-13 is the doctor, who first treated the injured. He has deposed that on 02-03-2011 at about 05.15 PM, Police Constable No.423 had brought the injured in the Emergency Ward, wherein the injured declared that her husband Keshav Sahu poured kerosene on her and set ablaze at 11-12 hours on the same date. He has deposed that at the time of checking patient, she was found mentally fit with pulse at the rate of 80, though, she was found

having sustained burn injury to the extent of 75-80%. He has also deposed that there was smell of kerosene. Importantly, he has deposed that the injured was wearing fresh clothes meaning thereby that the burnt clothes were removed from the body and in that place, fresh clothes were put. According to this doctor, the nature of burn injuries were homicidal. Dr. Lokesh Dev, PW-13 has stated that the injured stated before him that while she was sitting in her home and child was playing, her husband Keshav Ram Sahu came to house at about 11-12 hours in intoxicated condition and started beating the child and when she resisted and advised him not to do it, the husband poured kerosene on her and set her ablaze. Chaiti Bai herself poured water on her and worn blanket and started calling for help. What was stated by the deceased-Chaiti Bai, was recorded in the dying declaration in Ex.P-22 and the doctor has proved the same by putting his signature. He states that as hands of the deceased were burnt, he could not take her signature. He deposed that on the next day, at about 05.15 AM in the morning, Chaiti Bai died. In the cross-examination, Dr. Lokesh Dev, PW-13 though admits that dying declaration of the deceased-Chaiti Bai was not recorded in the question-answer form, but he has deposed that dying declaration was recorded in a manner it was stated. The doctor has denied suggestion that in all cases, where a person has suffered 75-80% burn injury, would not be in a condition to speak and has added that it would depend upon the place of burn.

Submission of learned counsel for the appellant, which calls for notice of this Court is that though Hemin Jain is one of the witnesses to the proceedings of recording dying declaration, Hemin Jain has not been examined nor the Dresser, who was engaged in dressing of Chaiti Bai, at the time, when dying declaration was being recorded, but then, we find that in the present case, dying declaration was also recorded by the Executive Magistrate, PW-4, after about 1

hour vide Ex.P-8.

7. The Executive Magistrate, PW-4 has deposed that he recorded dying declaration in Ex.P-8. Contents of dying declaration, Ex.P-8 and that of earlier dying declaration, Ex.P-22 are similar and there is no contradiction in the aforesaid two dying declarations either with regard to time and place of incident or the genesis of dispute between the husband and wife or the manner, in which, the deceased was set on fire. This dying declaration was assailed mainly on the ground that before dying declaration was recorded, no fitness certificate was obtained by the Executive Magistrate.

Ordinarily, when the Executive Magistrate records dying declaration, he should obtain fitness certificate whether the person, whose dying declaration is to be recorded, is medically fit or not. However, we find that in the present case, Dr. Lokesh Deve, PW-13, who had recorded first dying declaration, has deposed that he was the treating doctor and found that the patient was in a fit state for recording dying declaration as she was able to speak and mentally fit. This evidence of Dr. Lokesh Deve, PW-13 could not be controverted in his cross-examination.

8. Further more, we find that corroboration, if necessary, is provided from uncontroverted testimony of Chhabi Ram, PW-7. brother of the deceased, who has clearly stated that when he came to know that his sister sustained burn injury, he went to her house and found that she was fully burnt and weeping. She was taken to the hospital and in his presence and the presence of police, oral dying declaration of Chaiti Bai was given that she was burnt by her husband by pouring kerosene on her and setting her ablaze. This witness has not been subjected to any cross-examination to impeach credibility as to what has been stated in his evidence. Therefore, on the face of two dying declarations, one by the doctor and second one by the Executive Magistrate,

which corroborates the oral dying declaration given by the deceased-Chaiti Bai before her brother Chhabhi Ram, PW-7, we have no doubt that the appellant is the person, who set ablaze his wife, by pouring kerosene on her.

9. We also noticed that Smt. Sima, PW-1 & Smt. Tulsi Bai, PW-2 had deposed in their evidence that they went to the house of the appellant and found that Chaiti Bai was lying in a burnt condition and the appellant was also present there. Conduct of the appellant is also blameworthy. According to Chhabhi Ram, PW-7, when he was informed about the incident, he went to the house of Chaiti Bai and got her admitted. The appellant neither explained though he was in the home, nor made any effort to save the life of her wife.

10. In view of above, we are of the considered opinion that the prosecution has proved beyond reasonable doubt that the appellant has poured kerosene on his own wife and set her ablaze and thereby committed murder. Therefore, we are of the view that no case for interference in the impugned judgment of conviction and order of sentence is made out.

11. In the result, the appeal is dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Rajani Dubey)
Judge