

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 102 of 2013**

1. Deepak Sahu S/o Pannalal Sahu, Aged About 25 Years, R/o Auto Colony, Mahasamund, Police Station, Tahsil and District Mahasamund C.G., Chhattisgarh
2. Anusuiya W/o Pannalal Sahu, Aged About 47 Years, R/o Auto Colony, Mahasamund, Police Station, Tahsil and District Mahasamund C.G., District : Mahasamund, Chhattisgarh

**---- Appellants****Versus**

- State of Chhattisgarh through The District Magistrate, Mahasamund, District - Mahasamund C.G., Chhattisgarh

**---- Respondent**


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For Appellants : Smt. Indira Tripathi, Advocate.

For Respondent/State: Shri A.N. Bhakta, Deputy Advocate General.

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**  
**Judgment on Board**

**23/01/2019**

1. This appeal has been preferred against judgment dated 22-01-2013 passed in Sessions Trial No.50/2012 by the First Additional Sessions Judge, Mahasamund, District Mahasamund, C.G. convicting the appellants under Section 498A read with Section 34 and Section 307 read with Section 34 of the IPC and sentencing them with R.I. for 2 years and R.I. for 7 years along with fine Rs.500/- and Rs.1000/- with default stipulations and direction that both the jail sentences shall run concurrently.
2. The prosecution case, in brief, is this, that marriage of complainant Neha Sahu (PW-6) was performed with appellant No.1 - Deepak Sahu about 6 to 7 months prior to the date of incident. Thereafter, she went to live in her matrimonial home. While residing in her matrimonial

home she was treated with cruelty. On 25-12-2011 the complainant suffered from burn injuries and was admitted in CHC hospital in Khariyar Road and she got further treatment in Nayapara hospital, Orrisa and Dr. Bhimrao Ambedkar Medical College Hospital at Raipur. The dying declaration (Ex.-P/6) of complainant Neha Sahu (PW-6) was recorded on 08-02-2012, in which she made allegation that she was given clothes soaked with kerosene oil and then was forced to wear them by the appellants and then she was set ablaze on that date of incident by the appellants, on that basis unnumbered FIR (Ex.-P/8) was recorded by the police and on that basis numbered FIR (Ex.-P/9) was recorded on the same day, i.e., 08-02-2012. The investigation was carried out in which another dying declaration Ex.-P/7 dated 09-02-2012 was also recorded. After completion of the investigation charge sheet was filed before the concerned Court.

3. The appellants were charged with offence under Section 498A read with Section 34 and Section 307 read with Section 34 of the IPC, to which they denied and prayed for trial.
4. After completion of the prosecution evidence, the appellants were examined under Section 313 of the Cr.P.C., in which they denied all the incriminating evidence against them, pleaded innocence and false implication. One witness was examined in defence.
5. After completion of the trial, the impugned judgment has been passed wherein the appellants have been convicted and sentenced as aforementioned.
6. Learned counsel for the appellant submits that no case of conviction is made out for offence under Section 307 of the IPC. The date of incident is 25-12-2011, after which the victim was admitted to the

hospital at Khariyar Road, Orrisa for treatment where she gave statement before the doctor that she got burn injuries accidentally because of the blast of kerosene stove, which is also mentioned in the admission ticket Ex.-P/4. The appellants were implicated falsely in this case, this is reflected from the delay in recording of dying declaration which was recorded almost after two months on 08-02-2012 and then again on 09-02-2012. The dying declarations, Ex.-P/6 and Ex.-P/7 are contradictory to each other, which further makes the case of prosecution doubtful. The defence witness Dhaneshwari Nand (DW-1) who was a neighbor, immediately arrived on the spot after the complainant caught fire and suffered burn injuries, she has given altogether different statement against the prosecution. Similarly, Santoshi Sahu (PW-4) is also neighbor who has not supported the prosecution case. The complainant and other related witnesses have made statement against the appellants because of interest, hence sufficient doubts are present in this case which could have been made basis to acquit the appellants from the charge of offence under Section 307/34 of the IPC. Therefore, it is prayed that the appeal may be allowed.

7. Learned counsel for the State/respondent opposes the grounds raised in the appeal and the submission made in this respect and submits that the prosecution has proved its case beyond reasonable doubt. The complainant Neha Sahu (PW-6) has reliably deposed before the Court and her statement has been supported by Fatkan Bai (PW-11), her mother and Chandulal (PW-12), her father. The medical evidence has also corroborated, as it has proved, that the

victim suffered burn injuries which may have proved fatal, therefore, no case is made out for acquittal in this case. Therefore, the appeal may be dismissed.

8. Heard learned counsel for the parties and perused the record of the trial Court.
9. Neha Sahu (PW-6) has stated that after marriage she was treated with cruelty by both the appellants, because they were not satisfied with the dowry given and they had their own demands. Regarding the incident she has stated that on the date of incident the appellants had brought a saree and forced her to wear it and thereafter poured kerosene oil on her and then set her ablaze with a match stick. When she cried out the appellants did not come to help her at first, but later on, they came and poured water on her body. She has also stated that firstly she was admitted in the hospital at Khariyar Road where she remained for 15 days, thereafter she was taken to Nayapara hospital, where she was treated for 12 days, thereafter she was admitted in Medical College Hospital, Raipur where she was treated for 10 to 12 days. She has admitted about making dying declaration of Ex.-P/6 and Ex.-P/7. In cross-examination she was confronted with her previous statement Ex.-D/2, compared to which, it appears that she has made some improvements in the Court statement and there is improvement about setting her ablaze by using match stick. Further, she has admitted about first dying declaration statement that she was forced to wear kerosene soaked saree and further she has admitted that she did not inform about the incident to her neighbours. She has

admitted in para 11 of her cross-examination that she has given statement before treating doctors in the hospitals at Khariyar Road, Nayapara and Medical College Hospital, Raipur, but she was unable to recollect as to what kind of statement she had given then.

10. Fatkan Bai (PW-11) has deposed before the Court making statement regarding cruel treatment given to her daughter/victim by the appellants and has stated that after getting information about the incident she went to see her daughter in the hospital at Khariyar Road and found her in burnt condition. Her daughter told that the appellants had burnt her. In cross-examination she was confronted with her previous statement Ex.-D/3, there appears to be some contradictions and omissions but the same do not appear to be material. She admitted in para 7 of her cross-examination that she was not informed by her daughter that the appellants were the persons who have burnt her and she again made statement that when she asked her daughter as to how she got burnt she did not make any statement.
11. Chandulal (PW-12) has similarly stated in his examination-in-chief regarding the cruel treatment given to his daughter by the appellants and about visiting her daughter at hospital Khariyar Road where she was treated for burn injuries. When he met her she was not in a condition to speak, but later on, after some recovery she stated before this witness that on the date of incident she was by force asked by the appellants to wear saree and then both of them set her to fire. In cross-examination he has denied the adverse suggestions and remained firm on his statement, but he has

admitted this suggestion of defence that while staying in hospital at Khariyar Road for 8 days the complainant never informed him that she was burnt by the appellants. He has clearly denied that the victim/complainant had got burn injuries accidentally.

12. Resham Sahu (PW-2) has given statement in cross-examination that the appellants used to treat the complainant with cruelty regarding which a meeting of society was called in which the appellants apologized and they were advised. Thereafter, he came to know about the incident and went to see the complainant who was in burnt condition. She did not inform him about the manner in which she got burnt. In cross-examination his statement so given has remained unrebutted and he has not made any specific statement regarding the incident.
13. Santoshi Sahu (PW-4) has stated that on the date of incident she heard the cry for help from the complainant and saw that appellant No.2 – Anusuiya was washing clothes near the well, then she herself went to the spot where the complainant was burning and put out her fire. She has also stated that appellant No.1 was out of residence who came and helped in putting out the fire. The prosecution has declared this witness hostile. In cross-examination she has admitted that she was told by Neha Sahu (PW-6) that while she was cooking food she got burnt from the flame that came out from the stove.
14. Chandrasai Sahu (PW-5) has stated about cruel treatment in his examination-in-chief and about the incident that took place, he has stated that on asking complainant Neha Sahu (PW-6) she told him

that on the date of incident appellant No.2 had asked her to wear another saree and after wearing it, when she burned the match stick to light the stove, her saree caught fire. In cross-examination he has again reiterated that the victim/complainant has informed him that she herself had burnt the match stick, when her saree caught fire.

15. Statement of treating and examining doctors are relevant for coming to conclusion in this case. Doctor Pitavash Sha (PW-3) has stated that the victim was brought to the hospital in Khariyar Road for treatment of burn injuries on 26-12-2011. She was admitted by him and then the victim informed that she got burn injuries because of blast of kerosene stove, which he has recorded in the admission ticket Ex.-P/4. Doctor Seema Binkar (PW-8) has examined the injuries of the victim on 08-02-2012 and gave her report vide Ex.-P/8A describing all the burn injuries suffered by the victim. Doctor Antaryami Sahu (PW-14), Physician in District Hospital Nayapara, Orrisa has stated Neha Sahu (PW-6) was admitted for treatment of burn injuries on 16-01-2012. He has not made any other statement apart from that.
16. ASI Top Singh Deewan (PW-10) has stated that when the complainant was admitted in Ambedkar Hospital, Raipur he had made a request for recording of dying declaration of the complainant.
17. Doctor Seema Binkar (PW-8) has given statement that she has recorded dying declaration of the victim vide Ex.-P/6 on 08-02-2012. In cross-examination no specific suggestion was put to her to contradict the statement recorded in the dying declaration Ex.-P/6.

18. Brijnath Sai (PW-13) is Executive Magistrate who recorded another dying declaration on 09-02-2012 in Dr. Bhimrao Ambedkar Hospital, Raipur which is Ex.-P/7. In cross-examination he has stated that he did not obtain signature of two witnesses in the dying declaration.
19. ASI S.D.Baghel (PW-9) has given statement that he made request for recording of dying declaration by Executive Magistrate and then lodged the FIR (Ex.-P/8), on that basis, ASI N.K.Dubey (PW-7) has lodged the numbered FIR (Ex.-P/9) in the Police Station Mahasamund.
20. After closely scrutinizing of all the evidence present in the record and considering on the chronology of the incident and other events, it appears that soon after the incident the complainant herself and her parents did not make any complaint with the police, on the contrary, according to the statement of Doctor Pitavash Sha (PW-3) and the statement in the admission ticket (Ex.-P/4) the case that was reported by the victim/complainant was simply this that she has suffered burn injuries accidentally. The victim was shifted from the hospital at Bagbahara to the hospital at Nayapara and then to the hospital at Raipur and while getting admission in the subsequent hospital again she did not make any statement as to any other reason about her suffering from burn injuries. Things took turn on 08-02-2012 when on the basis of request made by the police to Doctor Seema Dinkar (PW-8) who recorded the dying declaration Ex.-P/6. The contents of Ex.-P/6 have not been narrated by the witness recording it in her deposition, which was a necessity, even then for the purpose of this case it would be appropriate to read the

contents of Ex.-P/6. In this statement the victim has stated that she was forced to wear clothes which were soaked with kerosene and then she was burnt by the appellants. Another dying declaration is Ex.-P/7 which was recorded on next day, i.e., 09-02-2012 by the Executive Magistrate Brijnath Sai (PW-13) which is also worth reading, the witness has himself not narrated about the statement recorded in the deposition before the Court, however, on reading of Ex.-P/7 it is found that the victim has stated that the appellants first poured kerosene oil over her and then set her ablaze by using a match stick.

21. There appears to be change in version in the dying declarations Ex.-P/6 and Ex.-P/7 and in the subsequent dying declaration the victim has made improvement by adding that the appellants firstly poured kerosene oil on her body and then set her to fire, whereas, in the previous statement she has stated that the appellants forced her to wear clothes soaked with kerosene. These variations cannot be ignored as it is omission as well as improvement in the subsequent dying declaration. As the victim herself is alive, hence, this dying declaration has simply a force of previous statement. On the basis of scrutiny, it has appeared that the victim had made three fold statement, first statement she made before the doctor was that she got burnt accidentally, second statement vide Ex.-P/6 that she was forced to wear kerosene soaked clothes and then was set ablaze by the appellants and third statement vide Ex.-P/7 that the appellants poured kerosene oil over her body and set her to fire. This continuous development in the statement clearly makes the witness

unreliable, therefore, it is held that the deposition of Neha Sahu (PW-6) regarding the incident in which she suffered burn injuries is not reliable. Her parents Fatkan Bai (PW-11) and Chandulal (PW-12) are just hearsay witnesses and they also have clearly admitted that for a number of days the complainant did not speak about it that she was burnt by somebody. Apart from that, witnesses of neighbourhood Santoshi Sahu (PW-4) and Dhaneshwari Nand (DW-1) have also stated differently. Therefore, in such circumstances and on the basis of the discussion made hereinabove, I am of this opinion that the prosecution has failed to bring the evidence beyond reasonable doubt that the appellants were the persons who had attempted to cause death of the victim. Therefore, conviction on the basis of this evidence is totally uncalled for and illegal, because of which the appellants deserve to be acquitted from the charge under Section 307 read with Section 34 of the IPC. However, in view of this Court, the trial Court has not committed any error in convicting the appellants under Section 498A read with Section 34 of the IPC.

22. It is prayed by learned counsel for the appellants that the appellants had suffered a lot because of their false implication in this case, therefore, they may be sentenced for the period they have already undergone in jail as the appellant No.1 is in jail since 29-04-2012, whereas appellant No.2 has suffered jail sentence of about 5 months and few more days.
23. After due consideration on the circumstances and nature of the case against the appellants, I feel inclined to allow this prayer to reduce the sentence imposed upon the appellants for their conviction under

Section 498A read with Section 34 of the IPC.

24. Consequently, the appeal is allowed in part. Conviction and sentence of the appellants under Section 307 read with Section 34 of the IPC is set aside. However, conviction of the appellants under Section 498A read with Section 34 of the IPC is maintained, however, the jail sentence imposed upon them by the trial Court for the offence under Section 498A read with Section 34 of the IPC is reduced to the period of detention already undergone by them in jail.
25. The appeal stands disposed off.

Sd/-  
**(Rajendra Chandra Singh Samant)**  
Judge