

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 838 of 2013**

- Naresh Singh Rajpur son of Shri Bane Singh Rajput, aged about 46 years, R/o Behind Prince Bar, Ganjpara, Durg, P.S. Durg, Civil and Revenue District Durg (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Police Station, Jamul, District Durg (C.G.)

---- Respondent

For Appellant : Shri Sudhir Verma, Advocate.
For Respondent/State: Shri Suryakant Mishra, P.L.

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

Judgment On Board**31.01.2019****Per Manindra Mohan Shrivastava, J**

01. This appeal is directed against the impugned judgment of conviction and order of sentence dated 07.05.2013 passed by Sessions Judge, Durg (C.G.), in Sessions Trial No.74/2012 whereby and whereunder, the appellant has been held guilty of commission of offence under Section 302 IPC and sentenced to undergo rigorous imprisonment for life with fine of Rs.10,000/-, in default of payment of fine, to further

undergo additional S.I. for one year.

02. According to the prosecution case, an FIR in Ex.P/17 was lodged in the Police Station by Ratan Singh (PW/9) in which he disclosed that when he saw fire and smoke coming out from a house (Qtr. No.35), two children came out of house and one of them (Naresh Yadav) disclosed that his mother was set ablaze by the present appellant. After taking mere intimation vide Ex.P/16, the dead body was sent for postmortem examination to Govt. District Hospital, Durg, where Dr. Anil Agrawal (PW/2) conducted postmortem on the body of deceased and gave his report in Ex.P/5. The deceased was found having sustained burn injuries all over the body, except palm and foot. According to the Doctor's opinion, the cause of death was cardio respiratory failure on account of 100 per cent burn injuries. Investigation was completed, charge sheet was filed against the appellant for alleged commission of offence under Section 302 IPC and he was prosecuted. The appellant, having abjured guilt, was put to trial. The prosecution examined as many as 11 witnesses, including the child witness Naresh Yadav (PW/5), son of the deceased, who is said to be present at the spot.

The learned trial Court, relying upon the circumstances and what was written in the FIR, as also relying upon the evidence regarding disclosure of the incident given by the child witness Naresh Yadav (PW/5) to other persons, held that

it is the appellant who committed murder by setting the deceased on fire.

03. Learned counsel for the appellant would argue that the conviction and sentence of the appellant is wholly unsustainable in law because the only witness to the incident Naresh Yadav (PW/5), son of the deceased, has not supported the case of the prosecution and all that he has said is that though there was quarrel between the appellant and the deceased, later on, the deceased herself committed suicide by pouring kerosene on her. He would further argue that not only the child witness but also Kumari Bai (PW/7), mother of the deceased, and Rakesh Gond (PW/6) & Rajesh Gond (PW/8), brothers of the deceased, with whom the child witness (PW/5) is said to be living after the incident, have also stated that after the incident, Naresh Yadav (PW/5) stated that his mother had committed suicide by setting herself on fire. He would argue that the evidence of other witnesses that Naresh (PW/5) informed them regarding the incident is only hearsay and cannot take precedence over what Naresh (PW/5) himself stated in the Court as a prosecution witness, therefore, the impugned judgment is liable to be set aside.

04. On the other hand, learned State counsel would argue that from the evidence of Naresh Yadav (PW/5), it has been proved that on the date of incident there was a quarrel between the appellant and the deceased, thereafter, the

deceased was found burning and that led to her death. The evidence of child witness proves this fact. He would further submit that the manner in which the child witness has deposed before the Court appears to be a tutored witness who has not disclosed the full and correct details of the incident whereas, number of prosecution witnesses have stated that soon after the incident this child witness informed to them that the appellant has set the deceased on fire.

05. We have heard learned counsel for the parties and also perused the record.

06. The only eye-witness to the incident, according to the prosecution, is Naresh Yadav (PW/5), child witness aged 8 year. He, undisputedly, is the son of the deceased. In his Court evidence, he has deposed that on the date of incident he was present in the house and after taking meals, there was quarrel between the appellant (his uncle) and his mother, the deceased. He has also deposed that in this quarrel the appellant beaten up his mother by using footwear. According to him, this incident happened at about 1.00 in the night and at that time, he and his brother were lying on the bed but they were awakened and witnessed the incident. He further deposes that he saw his mother burning. On his specific question put to this child witness as to who set his mother on fire, he has stated that his mother immolated herself. This witness was declared hostile by the prosecution and,

thereafter, he was cross-examined and, though, the witness states that there was a quarrel and the deceased was also beaten up, he emphatically denied suggestion that it is the appellant who poured kerosene and set the deceased on fire. On every such suggestion, the child witness has very emphatically denied the same and has stated that his mother immolated herself. On his specific suggestion given to him that he was tutored by his maternal-grand-mother to depose a false statement in the Court that his mother set herself on fire, the child witness emphatically denied the suggestion and again reaffirmed that he himself has seen the incident. He was again given specific suggestion that the appellant set his mother on fire, which he again emphatically denied. When a question was put to him that he was telling lie, he again denied it. As far as his statement taken by the police is concerned, the child witness says that he had not given the statement as recorded by the police, but in his cross-examination, he says that he had informed regarding his mother setting herself on fire. He admits that on the date of incident the appellant and the deceased both were drunk and there was quarrel between them.

07. After having closely scrutinized and analyzed the evidence of the child witness (PW/5), we noticed that the child witness who claims to be the eye-witness is very firm and emphatic on his stand taken before the Court, and despite all

suggestions made to him that the appellant had set his mother on fire, he has denied and has repeatedly stated that his mother set herself on fire that means she has committed suicide.

08. We do not find either from the evidence or from any attending circumstances that the child witness, who happens to be the son of the deceased lady, would exonerate one who would kill his mother. The appellant is not the father but only uncle of the child witness PW/5. There is absolutely no basis as to why the child witness would speak false and try to save, if at all, there was an incident of killing his mother in front of his eyes.

09. There are number of witnesses of the prosecution who claims to have made a statement on both sides. The prosecution witnesses say that they were informed by the child witness (PW/5) that the appellant had set the deceased on fire but there are more number of prosecution witnesses who say that they were informed by the child witness (PW/5) that his mother committed suicide by pouring kerosene. Importantly, the mother of the deceased Smt. Kumari Bai (PW/7) and her (deceased) two brothers Rakesh Gond (PW/6) and Rajesh Gond (PW/8), with whom the child witness (PW/5) is stated to be living, all have stated that upon being informed, the child witness stated that his mother committed suicide.

10. On the face of the evidence of the child witness, which is unshaken, it is difficult to hold that it is the appellant who murdered the deceased. Therefore, we have no hesitation to hold that the prosecution has failed to prove its case beyond reasonable doubt that it is the appellant who committed the murder. The appellant should be given benefit of doubt.

11. In the result, the appeal is allowed, judgment impugned is set aside and the appellant stands acquitted of the charge levelled against him by extending him benefit of doubt. The appellant is reported to be in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge