

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 1125 of 2014

Deenbandhu, S/o. Phulsing, Aged About 25 Years, R/o. Village - Tirga,
Post and P.S. Anda, Civil And Rev. Distt. Durg C.G.

---- Appellant

Versus

State Of Chhattisgarh, Through : S.H.O., P.S. - Pulgaon, Civil and Rev.
Distt. Durg C.G.

-----Respondent

For Appellant	: Mr. Mayank Chandrakar, Advocate
For Respondent/State	: Mr. Samdarsh Nirankari, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

09/05/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Special Judge/Additional Sessions Judge, Durg, District – Durg (C.G.) in Sessions Trial No.121/2010 on 16.10.2014, convicting the appellant for the offence under Section 304 Part-II of the Indian Penal Code and sentencing him to undergo R.I. 10 years.
2. The case of the prosecution in brief is this that on 30.08.2008 at about 7.00 AM in the morning, the deceased Rekha Bai was preparing tea, the appellant and the deceased picked up a

quarrel, in which the appellant firstly abused her and then threw the utensil containing tea on her legs thereafter the appellant also poured kerosene oil over the Saree worn by the deceased and set fire to it. The deceased suffered injuries on both of her legs. On call made by the deceased, she was taken by her father to her parental house, where she was treated for about 10 days. On 10.09.2008, the deceased then lodged FIR (Ex.P-1), in which the offence under Section 498-A and 324 of the Indian Penal Code were registered. A dying declaration of the deceased was recorded on 11.09.2008, in which she gave statement about the act of the appellant. The deceased was then admitted for medical treatment in the hospital on 10.09.2008. After continued treatment and some improvement, she was discharged on 01.12.2008. The deceased was then again admitted to hospital for treatment on 14.12.2018, however, this time she could not improve and succumbed to the burn injuries and died on 02.01.2009 according to the admission ticket Ex.P-3. After the inquest procedure, the offence under Section 302 of the Indian Penal Code was added against the appellant. The case was investigated and on completion of investigation, charge-sheet was filed before the concerned Court.

3. Appellant was charged with offence under Section 498-A, 304(B) and 302 of the Indian Penal Code. The appellant denied the charges and prayed for trial. The prosecution examined as many as 11 witnesses on its behalf. On examining the appellant under

Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.

4. It is submitted by the learned counsel for appellant that the appellant has been erroneously convicted for the offence as aforesaid without there being evidence of prosecution beyond reasonable doubt. None of the witnesses having knowledge of the affairs of the deceased and the appellant, have made any statement against him. The conviction is based only on the evidence of dying declaration (Ex.P-13) and the medical evidence. It is clear case in which the death of the deceased had been the result of her negligence in getting proper treatment, for the reason that the deceased has died in this case after passing of about three months. Therefore, the injuries caused to the deceased were not sufficient to cause her death in ordinary course of nature. It was the complication that has arisen due to the negligence in treatment, which is actual cause of her death for which the appellant can not be held responsible. Therefore, on the basis of the evidence present on record, if it is to be believed, the only offence committed by the appellant would be under Section 324 of the Indian Penal Code and not more than that. Therefore, it is prayed that the appellant be acquitted of the charges. It is prayed in the alternative that in case, this Court is

not inclined to allow this appeal and acquit the appellant in that case, at least sentence imposed upon the appellant, which appears to be too harsh, may be reduced.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. The evidence is present in the form of dying declaration statement of the deceased herself, which clearly shows that the appellant was the person causing burn injuries to her and the medical evidence also shows that cause of death had been to the burn injuries caused to the deceased. Hence there is no room for interference in the impugned judgment, therefore, the appeal be dismissed.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the evidence beyond reasonable doubt?
8. There is no dispute that the deceased suffered burn injuries on 30.08.2008 and died on 02.01.2009. The evidence of Dr. S.K. Fating (P.W.-2), who has conducted autopsy and has opined vide his report Ex.P-2 that the deceased had died due to old infected burn injuries, therefore, there is no need to further examine the cause of death of the deceased. The only thing is to

be examined that how the burn injuries was caused, which shall be examined hereinafter.

9. Firanta (P.W.-3) is the father of the deceased. Devsharan (P.W.-5) is the resident of same village. Both have not supported the prosecution case and declared hostile. Bhupesh Chandrakar (P.W.-6) has stated that he was informed by the appellant that his wife caught fire, when she was preparing tea. He was declared hostile and cross-examined by the prosecutor, in which, he denied that the appellant had poured kerosene oil over the Saree of the deceased and had set her to fire. No other witness of incident has been examined. Therefore, on scrutinizing the evidence of witnesses having knowledge of the incident it clearly appears that there is no support to the prosecution from their evidence.
10. B.K. Verma (P.W.-10) was the Executive Magistrate, who has recorded dying declaration (Ex.P-13). He has stated that the deceased gave statement that on the date of incident, when she was preparing tea, the appellant threw tea on her legs and then after threatening her, poured kerosene oil over her Saree and set her to fire. In cross-examination, his statement has remained un rebutted.
11. The statement of B.K. Verma (P.W.-10) is the only evidence, which leads to an inference, that the appellant has caused burn injuries to the deceased by pouring the hot tea over her legs and

also by setting fire to her Sarree after pouring kerosene oil over her. Therefore, on this basis, it can be safely held that the appellant was the person, who caused burn injuries to the deceased.

12. It is needed to be considered, whether the burn injuries caused to the deceased can be held as direct cause of her death.
13. Dr. Vipin Jain (P.W.-7) medically examined the deceased on 10.09.2008 and found the burn injuries of 30-35% present over both of the legs of the deceased vide his report Ex.P-10. He opined that injuries were of grievous in nature.
14. Dr. Sarita Minz (P.W.-8) is another witness, who has treated the deceased in hospital. She has stated that the deceased was admitted to the District Hospital, Durg on 10.09.2008 and her treatment continued up to 01.12.2008. The general condition of the deceased improved, then on the request of the deceased and her family members, she was discharged on 01.12.2008. She has further stated that, on 14.12.2008, the deceased was again admitted in the hospital for treatment, at that time, she found that the deceased had 18% of old burn injuries. She has stated that treatment continued, but the deceased died on 02.01.2009, which is entered in the admission ticket Ex.P-3. In cross-examination, she has admitted that she has advised the deceased to take precautions regarding the injuries.

15. The statement of Dr. Vipin Jain (P.W.-7) and Dr. Sarita Minz (P.W.-8) very clearly indicates, that the deceased did not approach the medical center for treatment for about 10 days from the date of incident and thereafter when she was admitted in the hospital, her condition had improved i.e. why she was discharged but her condition got worst, for that she was admitted again and thereafter she could not recover.
16. It is a case, in which, it appears that the deceased herself and the persons, who were taking care of her were negligent in providing medical treatment and taking care and precaution as per the requirements. Although it is clear that the deceased had died because of the complications that arose out of the burn injuries but in such case, the appellant can be held responsible only for causing injuries and not for the complications, which could have been taken care of her by the deceased herself and other persons, who were taking care of her. Therefore, it is a peculiar case, in which, the finding of the Court below that the appellant was the person, who has caused death of the deceased by an act on his part, does not appear to be fully supported with the evidence to hold the appellant directly responsible for the death of the deceased. Therefore, on the basis of these findings the appellant can be held guilty of offence only under Section 326 of I.P.C. .

17. Therefore, this appeal is allowed in part. The conviction of the appellant is modified and the appellant is convicted under Section 326 of the Indian Penal Code, instead of Section 304-B of the Indian Penal Code. As the appellant has undergone the period of more than five years in jail, which appears to be sufficient period for sentence of imprisonment for the offence under Section 326 of the Indian Penal Code, therefore, the appellant is sentenced with the period of detention already undergone by him in jail.
18. Accordingly, the appeal is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge