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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1148 of 2014**

- Shiv Prasad Choure S/o Late Bhura Prasad Choure, aged about 37 years, R/o Village Chandakhuri, Police Station Hirri, District Bilaspur (C.G.)

---- **Appellant****Versus**

- State of Chhattisgarh Through : Station House Officer, Police Station: Hirri, Revenue District Mungeli, District Bilaspur (C.G.)

---- **Respondent**

For Appellant : Shri Ravindra Sharma, Advocate

For Respondent/State : Shri Aditya Sharma, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra, J**Hon'ble Shri Justice Gautam Chourdiya, J****Judgment on Board by Justice Prashant Kumar Mishra****19.11.2019**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 08.10.2014 passed by learned Additional Sessions Judge, Mungeli, District Bilaspur (C.G.) in Sessions Trial No. 12 of 2012, whereby the appellant stands convicted under Section 302 of IPC for committing murder of his wife namely Shashikala Choure and sentenced to undergo life imprisonment and fine of Rs.1,000/-, in default of payment of fine to undergo further rigorous imprisonment for one month.
2. The appellant and the deceased performed love marriage due to which the caste panchayat ostracized them and the family of the deceased as has been deposed by deceased's father PW-2 Madhav Prasad. The deceased was *Shiksha Karmi* whereas the appellant was unemployed or daily wager. The appellant was habituated to consume liquor and used to beat her wife every now and then in drunken condition. In such background the incident happened at about 08:30 pm on 13.06.2011 in which the appellant tied both hands of his wife and assaulted and dragged her and set her on fire in the verandah of the house. The deceased tried to move away and fell thrice in

the process. The deceased was taken to local hospital and thereafter to Medical College Hospital Raipur, where she succumbed to burn injury on 16.06.2011. The merger intimation (Ex.-P/1) was registered on 17.06.2011. During merger inquiry, witnesses informed the police that the appellant committed murder of his wife deceased Shashikala Choure, therefore, F.I.R. (Ex.-P/8) was registered on 10.01.2012. Memorandum statement of the appellant was recorded vide Ex.-P/4 consequent to which the plastic jerrycan of kerosene oil was recovered from his possession vide Ex.-P/6, soil filled with kerosene oil was recovered vide Ex.-P/5. In the postmortem examination, the deceased was found to have died due to cardio respiratory failure as a result of burn and its complication. The postmortem report (Ex.-P/14) was submitted by PW-13 Dr. E.K. Thakur.

3. To bring home the charge, the prosecution examined as many as 13 witnesses i.e. PW-1 Lalan Singh, PW-2 Madhav Prasad, PW-3 Narendra Dixena, PW-4 Anchu Bhai, PW-5 Ramphul Kori, PW-6 Kamlesh, PW-7 Rajendra, PW-8 Bodhan Singh Thakur, PW-9 Isthak Xalxo, PW-10 Dr. Anil Baghel, PW-11 Dr. D. Shah, PW-12 Top Singh Diwan and PW-13 Dr. E.K. Thakur. The appellant abjured his guilt but did not examine any defence witness.
4. The trial Court has convicted the appellant mainly on the basis of statements of PW-1 Lalan Singh and PW-4 Anchu Bhai together with other corroborative evidence.
5. It is argued by Shri Ravindra Sharma, learned counsel for the appellant that as per statement of PW-8 Bodhan Singh Thakur, Investigating Officer, it was impossible either for PW-1 Lalan Singh or PW-4 Anchu Bhai to have seen the incident, therefore, their statements are unbelievable. It is also argued that the deceased remained alive for three days and in the treatment papers of Medical College Hospital Raipur, cause of death is mentioned as accidental burn due to fall of chimney, therefore, non-recording of the dying

declaration of the deceased raises a serious doubt on the prosecution case. It is further argued that the appellant and the deceased had three children out of wed-lock and these three children were present in the house at the time of incident yet they have not been examined, therefore, prosecution case suffers from serious lacuna.

6. Per contra, Shri Aditya Sharma, learned Panel Lawyer for the State would submit that PW-1 Lalan Singh and PW-4 Anchu Bhai are immediate neighbours and they have no enmity with the appellant, therefore, there is no reason to disbelieve their statements and the same have rightly been relied upon by the trial Court.
7. We have heard learned counsel for the parties at length and have also scrutinized the evidence available on record.
8. PW-2 Madhav Prasad is father of the deceased. According to this witness, he was informed by PW-4 Anchu Bhai about the incident. He speaks about love marriage of his daughter with the accused and further that she was a *Shiksha Karmi*. He also says that he could not attend the last rituals after death of his daughter because the caste panchayat had ostracized them. He did not attend his injured daughter during treatment as he was not aware about the hospital in which she was admitted.
9. PW-1 Lalan Singh is the person who had gone to attend one marriage function near BSNL Tower located near the place of occurrence. He witnessed the deceased moving out of her house in burnt condition. She was raising alarm and fell down after moving about 50 ft. The appellant/accused was hitting her head on the ground. The accused then went inside the house and came out with the bucket of water and poured it over the deceased to douse the fire. When this witness went to the house of the appellant, he refused to speak to the witness, as he was drunk at that time. Since the appellant was not in proper condition to take his wife to the hospital, he (PW-1) arranged ambulance and the deceased was sent to

Raipur hospital. He says that PW-4 Anchu Bhai was also present at the time of the incident.

10. PW-4 Anchu Bhai is the neighbour of the appellant as houses of both of them are opposite to each other. As per the map (Ex.P/3) house of this witness is at a distance of 118 ft. from the place of occurrence. Hearing the cries of the children, this witness moved out of his house and saw the appellant beating his wife and bringing her to the verandah. The appellant tied her hands and thereafter poured kerosene oil and set her on fire. At this point of time, the appellant was holding both the legs of the deceased and he fled from the spot when he sustained burn injury while setting her on fire. The deceased tried to run to save herself and fell down thrice in the process. He had gone to the Medical College Hospital Raipur to meet the ailing deceased. He also says that PW-1 Lalan Singh has seen the incident. There is no material contradiction or omission in the statements of PW-1 Lalan Singh and PW-4 Anchu Bhai.

11. Although Investigating Officer, PW-8 Bodhan Singh Thakur, has stated that the place of occurrence is not visible from the house of PW-4 Anchu Bhai but having seen the map (Ex.-P/3) and statement of PW-4, it appears the place of occurrence from the house of PW-4 is visible. There is no suggestion put to this witness (PW-4) that the verandah of the house of appellant is not visible from his house. Since the distance of both the houses is only 118 ft., it is very easy to have visibility. Moreover, the fact that PW-4 has seen the incident has also been supported by PW-1 Lalan Singh who is also an eyewitness.

12. True it is that three children aged about 13 years, 11 years and 9 years were present in the house and the prosecution has not examined them but it is important to bear that there are two independent eyewitnesses who have seen the incident. Non-examination of the inmate of the house would have been material or rather fatal for the prosecution if it is a case of

circumstantial evidence. The principle as to when non-examination of witness is treated fatal for the prosecution is based on the reasoning that the prosecution should not withhold the best available evidence. Therefore, once the best available witnesses in form of two eyewitnesses namely PW-1 Lalan Singh and PW-4 Anchu Bhai have been produced by the prosecution, non-examination of the children is not fatal for the prosecution.

- 13.** In the statements of PW-1 Lalan Singh and PW-4 Anchu Bhai, there is no material contradiction or omission. Presence of PW-4 at his own house and he being neighbour, he is a natural witness. There is nothing in the record, nor any question has been put to these witnesses that they have any enmity or issues with the appellant. Though PW-4 has been put suggestion regarding dispute with the appellant but he has denied the same. No document has been filed by the defence confronting the witness about his land dispute in relation to the house.
- 14.** It is also argued by the appellant that the eyewitnesses have disclosed the name of the appellant after more than six months of the incident and the F.I.R. (Ex.-P/8) has also been lodged nearly after seven months. Therefore, non-disclosure of the incident by eyewitnesses discredit their statements. However, perusal of the F.I.R. would disclose that the merg was registered on the date of death itself. During merg inquiry, the witnesses have informed the police about the role played by the appellant in committing murder of the deceased. On completion of the merg inquiry, F.I.R. (Ex.-P/8) was registered naming the appellant as perpetrator of the crime, therefore, there is no delay in lodging the F.I.R. or disclosing the incident to the police. It is not a case where without there being any merg inquiry, the F.I.R. was registered after considerable time and the witnesses kept quiet during the period. Once again no question has been put to the Investigating Officer that he did not make any inquiry about the incident for about seven months, nor any question has been put to the eyewitnesses in this regard.

15. Thus, from the evidence available on record, it stands proved beyond all reasonable doubt that it is the appellant who caused death of his wife by setting her ablaze after pouring kerosene oil on her body.
16. At this stage, Shri Ravindra Sharma, learned counsel for the appellant would next submit that having regard to the facts and circumstances of the case, the offence committed by the appellant would fall within one or the other exception to Section 300 of IPC and the appellant would be guilty of committing culpable homicide not amounting to murder. To buttress his submission he would place reliance on the law laid down by the Division Bench of the Bombay High Court in the matter of ***Babu Sadashiv Jadhav Vs. State of Maharashtra*** reported in ***1986 Cri.L.J. 739***.
17. Per contra, Shri Aditya Sharma, learned Panel Lawyer for the State would put forth that in a case where the accused has caused death by setting the deceased on fire while in an inebriated condition, knowledge as well as intent to commit offence is available. Therefore, there is no question of offence falling within any of the exceptions to Section 300 of IPC.
18. In the case in hand, the appellant was under the state of intoxication as has been stated by PW-1 Lalan Singh. It is provided under Section 86 IPC that a person committing offence in an inebriated condition is liable to be dealt with as if he had same knowledge as he would have had if he had not been intoxicated. However, the said provision does not further provide that the appellant had same intention while committing offence for the reason that the knowledge to commit offence is different than the intention to commit offence. A person may have knowledge of the consequences of the act done by him, but intention to commit offence and the gravity of intent differs from case to case. Therefore, whether an intoxicated accused had same intent or not for committing offence is to be examined independent of his knowledge of the consequences of the act.
19. Dealing with some what similar facts, the Hon'ble Supreme Court in the

matter of ***Basdev Vs. State of Pepsu*** reported in ***AIR 1956 SC 488***, has held that 'so far as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, we must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being?.....If so, it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking and from the facts it could be found that he knew what he was about, we can apply the rule that a man is presumed to intend the natural consequences of his act or acts.'

20. The Hon'ble Supreme Court would further observe that 'of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this had led to a certain amount of confusion.' The Hon'ble Supreme Court then referred to several English decisions in *Rex V. Meakin*, (1836) 173 ER 131 (A); *Regina V. Cruse*, (1838) 173 ER 610 (B); *Reg V. Monkhouse*, (1849) 4 Cox. CC 55 (C); *Reg. V. Doherty*, (1887) 16 Cox. CC 306 (D); *Rex V. Meade*, 1909-1 KB 895 (E) and *Director of Public Prosecutions Vs. Beard*, 1920 AC 479 (F) and summarized in para 14 thus,

“(14) The result of the authorities is summarised neatly and compendiously at page 63 of *Russel on Crime*, tenth edition, in the following words:

"There is a distinction, however, between the defence of insanity in the true sense caused by excessive drunkenness and the defence of drunkenness which produces a condition such that the drunken man's mind

becomes incapable of forming a specific intention. If actual insanity in fact supervenes as the result of alcoholic excess it furnishes as complete an answer to a criminal charge as insanity induced by any other cause.

But in cases falling short of insanity evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had this intent, but evidence of drunkenness which falls short of proving such incapacity and merely establishes that the mind of the accused was so affected by drink that he more readily gave way to some violent passion does not rebut the presumption that a man intends the natural consequences of his act".

21. Referring the above judgment in the matter of *Basdev* (supra) the Division Bench of the Bombay High Court in the matter of *Babu Sadashiv Jadhav* (supra) has applied the principle to convert the offence from Section 302 of IPC to one under Section 304 Part-I where the accused was charged for causing death of his wife by pouring kerosene oil on her body and setting her ablaze.
22. We shall now consider as to when the appellant had knowledge that the act committed by him would cause death of his wife, whether his intent was also to cause her death. It has been found that the appellant was intoxicated as has been deposed by PW-1 Lalan Singh. This witness also says that when deceased Shashikala was crying and they requested the appellant to take her to hospital he did not respond because he was intoxicated, meaning thereby that the accused was not aware about the consequences of his act, however, he can still be attributed of the knowledge of his act in view of Section 86 of IPC. It has also come in the evidence that later the accused tried to douse the fire as has been deposed by PW-1 Lalan Singh in para 2 of his deposition. Similarly, PW-4 Anchu Bhai has also stated that the accused tried to douse fire by pouring water over her body. The moment there is evidence that the accused tried to douse fire by remaining at the place of occurrence, without trying to flee from the spot, it would clearly

prove that he had no intent to cause murder.

23. Having appreciated the law laid down by the Hon'ble Supreme Court in respect of difference between the knowledge and intent when the person committing offence is in state of intoxication and applying the same to the facts and circumstances of the case, we are of the opinion that the appellant had knowledge about consequences of his act but had no intention to commit murder. Therefore, the offence would fall under fourth exception to Section 300 of IPC. We have applied Exception-4 for the reason that the appellant being in state of intoxication had committed the act without premeditation and subsequently tried to save the deceased.

24. While drawing above conclusion we may draw support from the observations made by the Hon'ble Supreme Court in the matter of **Maniben Vs. State of Gujarat** reported in **(2009) 8 SCC 796** in para 20 which reads thus:

20. There is also evidence on record to prove and establish that the action of the appellant to throw the burning tonsil was preceded by a quarrel between the deceased and the appellant. From the aforesaid evidence on record it cannot be said that the appellant had the intention that such action on her part would cause the death or such bodily injury to the deceased, which was sufficient in the ordinary course of nature to cause the death of the deceased. Therefore, in our considered opinion, the case cannot be said to be covered under clause (4) of Section 300 IPC. We are, however, of the considered opinion that the case of the appellant is covered under Section 304 Part II IPC.

25. In the result, the appeal is allowed in part. The appellant's conviction under Section 302 of IPC is set aside and instead he is convicted under Section 304 Part-II of IPC. The appellant has already suffered jail sentence of about seven years and eleven months. Therefore, the said period of jail sentence being sufficient for the offence under Section 304 Part-II, the appellant is sentenced to the period already undergone by him. The appellant is in jail. He be released forthwith if not required in any other case, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the

satisfaction of the trial Court. The bail bond shall remain in operation for a period of six months from today as required under the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

26. Before parting we may record our appreciation for the valuable assistance rendered by Shri Ravindra Sharma, learned counsel for the appellant appointed by the High Court Legal Services Committee and Shri Aditya Sharma for the State in this jail appeal.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Appeal No. 1148 of 2014

Shiv Prasad Choure

Versus

State of Chhattisgarh

HEAD NOTE

A person committing offence in an inebriated condition is liable to be dealt with as if he had same knowledge as he would have had if he had not been intoxicated, as provided under Section 86 IPC. However, he cannot be presumed to have the same intention because knowledge to commit the offence is different than the intention to commit offence.