

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 768 of 2002****Judgment Reserved on 28/11/2019****Judgment delivered on 25/02/2020**

Nandlal S/o Shriram Sahu, aged about 32 years R/o Village Kushvabahari
Thana City Kotwali, Distt. Raigarh (C.G.).

--- Appellant**Versus**

State of Chhattisgarh through District Magistrate, Raigarh (C.G.)

---- Respondent

For Appellant	:	Mr. Ravindras Sharma, Advocate
For Respondent	:	Mrs. Smriti Shrivastava, PL

Hon'ble Shri Justice Arvind Singh Chandel**CAV Judgment**

1. This appeal is directed against the judgment dated 05/07/2002 passed in S.T. No. 184/1998 by the Fourth Additional Sessions Judge, Raigarh (FTC), Raipur, whereby the Appellant has been convicted under Sections 498 (A) & 306 of the IPC and sentenced to undergo RI for 3 years with fine of Rs. 500/- and RI for 5 years with fine of Rs. 1000/- with default, respectively with default stipulations.
2. Facts of the case are that the marriage between the Appellant and Deceased Satyabhama was solemnized prior to two years of the incident i.e. on 18/07/1998. Out of their wedlock, one son got birth who was aged about 1 ½ years at the relevant time. On 19/07/2008 at about 10:00 am, the Appellant returned from the factory and saw that his door was locked.

He went behind the room and saw from the window that her wife was burning and his son was lying dead after burning. On being asked, the Deceased told him that she has burned herself. The matter was reported by the Appellant vide Dehati Merg Ex.P-7. During merg inquiry, inquest proceeding was conducted vide Ex.P-3. From the spot, jerry cane and matchbox were seized vide Ex.P-4. The postmortem of the Deceased was conducted by Dr. Uma Shankar (PW2). His report is Ex.P-1. After merg inquiry, FIR has been lodged vide Ex.P-5. Statement of witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been filed against the Appellant as well as his mother and father i.e. Sriram and Kamla Bai. To prove the guilt of the Appellant, the prosecution has examined as many as 12 witnesses. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded wherein he has pleaded his innocence and false implication in the matter.

3. During pendency of the appeal, co-accused Sriram died. After trial, the trial Court has acquitted co-accused Kamlabai, however, the Appellant has been convicted and sentenced as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned counsel appearing on behalf of the Appellant has submitted that the Trial Court has wrongly convicted the Appellant without there being any evidence available on record. It is further submitted that the trial Court itself has arrived to the conclusion that there is no evidence that the Appellant had instigated or abated the Deceased for committing the suicide, instead thereof, the trial Court has convicted him only on

presumption made under Section 113A of the Evidence Act. There is nothing on record on the basis of which it can be established that the Appellant has committed any cruelty with the Deceased, therefore, the trial Court has wrongly taken presumption under Section 113-A of the Cr.P.C.

5. Learned counsel appearing on behalf of the State opposes the same and supported the judgment of conviction passed by the trial Court.
6. I have heard learned counsel for the parties and perused the record minutely.
7. There is no dispute on the point that within 7 years of marriage, the Deceased died due to burn injuries along with his son who was aged about 1 ½ years. The case of the prosecution is based upon the statement of Roopkuwar (PW1), mother, Ajeet Ram (PW6), Umashankar (PW7) and Chandra Kumar (PW9), maternal uncle of the Deceased.
8. In her court statement, Roopkuwar (PW1) has deposed that after the marriage of the Deceased, one boy namely Falguni had sent a letter to the Appellant in which, he wrote that he was having love relation with the Deceased. This witness has further deposed that once Falguni came in their house in presence of the Appellant and the Deceased, at that time the Appellant had beaten him and also made a report against Falguni. This witness has never stated anything that the Appellant has tortured or assaulted the Deceased due to doubt or made any allegation on the character of the Deceased. In Para 6 & 7 of her cross-examination, this witness has categorically admitted that the Appellant did not get partition in his land, therefore, he stayed in her house for about 6 months. This

witness has further deposed that her husband visited the matrimonial house of the Deceased and at that time, the Deceased told him that she is good and living well. In para 9 also, this witness has admitted that the Deceased used to visit her maternal house 2-3 times in a year and she always told them that she is living good in her matrimonial house. Her husband also told in the same manner.

9. Ajeet Ram (PW6), father of the Deceased deposed that when the Deceased became pregnant then her mother-in-law and father-in-law has separated the Deceased and the Appellant. Thereafter, the Deceased and the Appellant came to his house and stayed there for about 1 ½ years, where the Deceased gave birth to a son. This witness has also deposed that one Falguni had come to their house and the Appellant had assaulted him and made a report against him. In para 9 & 10, this witness has further admitted that the Appellant used to help him in farming work till he stayed in their house. He further deposed that when the Deceased went to her matrimonial house and till the period of her death, she has never made any complaint or dispute. Though this witness has stated in para 4 that the Appellant and the Deceased stayed in his house two times and the Appellant had beaten the Deceased, apart from this no cruelty or torture has been done with the Deceased as stated by this witness. If this statement is admitted yet the incident is single instance which is very much prior to the death of the Deceased. Therefore, just because of this single incident, no presumption can be made regarding cruelty.
10. Umashankar (PW7), brother of the Deceased has deposed that in the summer vacation, he stayed in the house of the Deceased for about 1

month. At that time, he saw the Deceased was not provided food and the Appellant used to beat her. This witness is unable to tell the date when this incident took place. He also admitted that he is never told this matter to anyone. Bedram (PW8) matrimonial uncle of the Deceased has deposed that when the Appellant was residing with the Deceased in her house, one time the Appellant slapped the Deceased on the matter to not provide food to him early. But this witness has himself admitted that this type of matter is usual in their house.

11. On minute examination of above evidence, it makes clear that the Deceased and the Appellant resided in her matrimonial house for about 1 year and they were living happy. According to the statement of Roopkuwar (PW1) and Ajeet (PW6), there was no dispute between them at that time and later also. Though according to Ajeet (PW6) father of the Deceased, the Deceased was beaten twice by the Appellant and this had happened long back before the incident. There is no such type of evidence that the Deceased was continuously beaten or subjected to cruelty. Only one time or two time quarrels took place between them and once the Appellant slapped him, on this basis only this cannot be established that the Appellant was having cruel behavior towards the Deceased, therefore, presumption made by the trial Court under Section 113A of the Evidence Act is not sustainable and the conviction of the Appellant is also not sustainable. Thus, the finding of the trial Court is not in accordance with the evidence available on record.
12. Consequently, the appeal is allowed. The judgment of the trial Court is quashed and the Appellant is acquitted from the charge framed against

him. His bail bond be discharged forthwith.

13. Records of the court below along with the copy of this judgment be sent back forthwith for necessary compliance and action.

Sd/-
(Arvind Singh Chandel)
Judge

Rahul