

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.894 of 2014**

Ajay Kumar Banjare S/o Late Paras Ram Banjare Aged About 33 Years R/o Behind Sai Darbar, Talapara, PS Civil Lines, Bilaspur, Civil And Rev. Distt. Bilaspur C.G. , Chhattisgarh

----Appellant

Versus

State Of Chhattisgarh Through PS Civil Lines, Bilaspur, C.G. , Chhattisgarh

....Respondent

For Appellant	:	Mr. Rishi Rahul Soni, Advocate
For State	:	Mr. Lalit Jangde, Dy. G.A.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board by Manindra Mohan Shrivastava, J.

24.11.2020

Heard.

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 24.03.2014 passed by learned Sessions Judge, Bilaspur CG in Sessions Trial No.152/2013, whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below :

Conviction	Sentence
Under Section 302 of IPC	Life imprisonment and fine of Rs.1,000/- for the default in payment of fine, 1 month of Additional S.I.

2. Prosecution case begins from FIR dated 22.05.2013 lodged in the Police Station Civil Lines, Bilaspur at about 9:40 a.m. by one Suraj Kumar Banjare (PW5), in which, it was recorded that on that day, his brother Ajay Kumar Banjare, the appellant/accused came to the house at about 9:00 am in the morning in an intoxicated condition and started quarreling with him regarding his daughter and at

that stage, his sister-in-law (the deceased) pacified quarrel and then the appellant out of anger with intention to cause death poured kerosene oil on the sister-in-law and set her ablaze by lighting with matchstick. Having seen this incident, FIR Informant poured water on her to douse the fire. As a result of burn injuries, face, waist, both thighs, hands, belly, upper belly part were burnt and incident was also seen by his mother and others. After lodging of FIR in Ex.P/15, the injured was admitted in the hospital where she remained there for about 4 days until she succumbed to death on 26th of May, 2013. It is also the case of the prosecution that while injured so admitted receiving treatment of burn injuries, dying declaration was also recorded by Executive Magistrate Sandeep Thakur (PW8).

3. The police completed investigation and filed charge-sheet against the present appellant alleging commission of offence of murder of his own wife by setting her ablaze. The prosecution, in order to prove its case, examined as many as 11 prosecution witnesses followed by examination of accused under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against him in the evidence led by the prosecution. The appellant denied having committed offence and pleaded innocence. No defence witness was examined.

4. Learned trial Court mainly relied upon dying declaration, nature of injury, postmortem report, contents of FIR and held that the appellant guilty of commission of offence of murder of his own wife and sentence life imprisonment giving rise to present appeal.

5. Assailing legality and validity of impugned judgment of conviction and order of sentence, learned counsel for the appellant vehemently argued and contended that the foundation of the entire criminal case, the FIR could not be proved beyond doubt because lodger of the FIR, Suraj Kumar Banjare (PW5) has not supported the case of the prosecution and has admitted that he has not lodged any such FIR. It is next submitted that the learned Trial Court has placed heavy reliance on the so called dying declaration recorded by Executive Magistrate without there being any certification by treating doctor or any other doctor that the injured, at the time of recording dying declaration, was in a fit state of health to give dying declaration. The Executive Magistrate when confronted with the situation has stated that doctor had separately given notes on examination but no such note has been led in evidence by prosecution, therefore, the prosecution case is rendered highly doubtful. Next submission is that according to prosecution, another dying declaration was recorded by police officer but no such dying declaration has been

placed on record by prosecution and therefore, adverse inference ought to be drawn against the prosecution and the accused deserves to be given benefit of doubt. Next submission of learned counsel for the appellant is that in the present case, even according to FIR and the statement of Suraj Kumar Banjare (PW5) and Munni Bai Satnami (PW6), the appellant was a drunkard and on the date of alleged incident, he had come to the house in the morning in inebriated condition. The entire criminal overt act is alleged to have been committed by the appellant in this inebriated condition and therefore, principles incorporated in Section 86 of the IPC needs to be applied. Therefore, in the present case, no intention can be attributed but at the most knowledge could be attributed on the appellant and therefore, the act of criminality would not travel beyond the scope and ambit of Section 300 of IPC. In support of submission so made, learned counsel for the appellant has placed reliance upon the **judgment dated 19.11.2019 passed by the Division Bench of this Court in the case of Shiv Prasad Choure Vs. State of Chhattisgarh in Criminal Appeal No.1148 of 2014 and another judgment of the Bombay High Court reported in 1986 Cri.L.J. 739 in the case of Babu Sadashiv Jadhav V. State of Maharashtra.**

6. On the other hand, learned State counsel, supporting the judgment of conviction and order of sentence would argue that the prosecution case is proved from reliable and clinching evidence in the form of dying declaration, duly proved from the evidence and material on record, wherein, deceased has clearly stated regarding appellant pouring kerosene on her and then setting her ablaze. He would next submit that even though, in the present case, the evidence of doctor has not been led nor dying declaration contains any endorsement of the doctor regarding fitness, the Executive Magistrate has clearly deposed that he recorded dying declaration only after satisfaction that the injured was in a fit condition to give dying declaration which is corroborated on this aspect from the evidence of Suraj Kumar Banjare (PW5) and Munni Bai Satnami (PW6). His next submission is that though in the FIR, it has been stated that the appellant was in a drunken condition, degree and extent of drunkenness cannot be said to be such that it can be said that the appellant had kept besides his mind altogether for the time being, unable to understand what was he doing. He would further submit that before the Court, no witness including Suraj Kumar Banjare (PW5) and Munni Bai Satnami (PW6) has also stated regarding high degree of intoxicated condition, therefore, provision contained in Section 86 of IPC will not apply in the present case. Next submission of learned counsel for the State is that it is not a case where the appellant soon after the incident attempted to douse the fire or took his wife to

hospital or made any attempt to save her, therefore decision cited by learned counsel for the appellant are distinguishable on facts.

7. We have heard learned counsel for the parties and perused the records of the case.

8. The First Information Report in Ex.P/15 is said to have been lodged by Suraj Kumar Banjare (PW5), brother of the appellant, however Suraj Kumar Banjare, in his examination in the Court, has denied having given any such report. On the other hand, Santosh Kumar Sharma (PW11) Assistant Sub Inspector, in his evidence, has stated that Suraj Kumar Banjare (PW5) had lodged FIR in the Police Station, which was recorded by him in Ex.P/15 and Suraj Kumar Banjare (PW5) signed also. Suggestion that no such report was given by Suraj Kumar Banjare, in the cross-examination, has been denied. Suraj Kumar Banjare has admitted his signature in FIR (Ex.P/15). As far as lodging of FIR in the police station regarding pouring kerosene and setting his wife on fire is concerned, it can be said that such an FIR is written in the Police Station.

9. The Postmortem report Ex.P/5 has been proved by Dr. Narendra Dixena (PW3), who conducted postmortem. From the postmortem report, it has been proved by him and from his evidence, it is clear that deceased had sustained burn injuries which ultimately proved to be fatal and because of such burn injuries, the injured succumbed to death. The contents of FIR and evidence of doctor having remained uncontroverted with regard to mode of death, it lends support to contents of FIR regarding the incident of burning of deceased and dying as a result of burn injuries.

10. The question, however which arises for consideration in the present case is whether the prosecution has succeeded in proving that it is the appellant, who set the deceased ablaze. The contents of the FIR is to the effect that it is the appellant, who poured kerosene on his wife and then set her on fire. The injured Shashi Banjare did not die immediately but she was taken to hospital where she remained hospitalized for about 4 days and thereafter unfortunately, she succumbed to burn injuries and died. Prosecution has led the evidence and dying declaration given by deceased to Executive Magistrate, Sandeep Thakur, Tahsildar (PW8). This witness has stated that after having arrived at satisfaction that the injured was in a fit condition to give statement, he had recorded dying declaration. He has proved dying declaration, contents in para 3 of his evidence

and his signature on dying declaration in Ex.P/19 and has further deposed that the injured had also put her thumb impression on the dying declaration. Suggestion in the cross-examination that no such dying declaration was recorded as stated by injured has been denied. In the cross-examination, this witness has stated that he had taken an endorsement from the doctor recorded in separate memo though not in the dying declaration statement. Such memo, however, has not produced by prosecution, therefore, in the present case, it is found that there is no certification by the doctor nor any doctor has been examined to support the statement of Executive Magistrate that at the time of recording dying declaration, deceased was in a fit state of mind. We would have taken this as a case of doubt had there not been the evidence of Suraj Kumar Banjare (PW5) & Munni Bai Satnami (PW6) corroborating the statement of the Executive Magistrate, Sandeep Thakur (PW8) regarding fitness of the deceased at the time of giving dying declaration.

11. Suraj Kumar Banjare (PW5), FIR Informant, has admitted in para 7 of his cross-examination that during the period, his sister-in-law Shashi Banjare remained admitted in the hospital for 4 to 5 days, she was talking. Similar is the evidence of Munni Bai Satnami (PW6) is the mother-in-law that during the period, Sahshi Banjare remained admitted in the hospital, she was talking with them. Moreover, it is found that present is not a case that right from the beginning, Shashi Banjare was so extensively burnt that there was no possibility of her remaining in senses. The extent of burn injuries as per the evidence of Dr. Anshul Lal (PW4) and postmortem is that Shashi Banjare had sustained 40% to 45% burn injuries, therefore, taking a view on the evidence of Suraj Kumar Banjare (PW5), Munni Bai Satnami (PW6) and Executive Magistrate, Sandeep Thakur (PW8) and the extent of burning, there is no reason to doubt that at the time of giving dying declaration, Shashi Banjare was in a fit condition and only because the doctor has not been examined or there does not appear any endorsement of doctor in the dying declaration itself, we are not inclined to disbelieve the dying declaration.

12. The contents of dying declaration clearly speak out the manner, in which, Shashi Banjare sustained burn injuries. She has clearly stated before the Executive Magistrate that kerosene was poured on her by her husband, the appellant and thereafter, she was set on fire. It is therefore, apparently clear that the deceased sustained burn injuries as she was set on fire by none other than her husband.

13. Suraj Kumar Banjare (PW5) & Munni Kumar Satnami (PW6) both have

stated that Shashi Banjare had sustained burn injuries. She was at home and she had requested them to take her to hospital, whereafter she was taken to hospital. Therefore, it is also very clear that Shashi Banjare was at home when she was set on fire by her husband.

14. The next question which arises for consideration is whether present is a fit case for alteration of offence from Section 302 of IPC to one under Section 304 part II IPC treating it to be a case of absence of intention and only knowledge. In this regard, the main argument of learned counsel for the appellant is that according to the contents of the FIR and the statement of Suraj Kumar Banjare (PW5) & Munni Bai Satnami (PW6), the appellant is a drunkard and on that date of incident, in the morning, he had come to the house in inebriated condition and while he was quarreling with his brother Suraj Kumar Banjare, his wife came in and pacified the quarrel and then appellant out of sudden anger, poured kerosene on her and set her ablaze. He would submit that this story according to contents of FIR clearly shows that the appellant was in intoxicated condition and therefore, in view of the provision contained in Section 86 of IPC only knowledge could be attributed and not the intention. He would also submit that this case would fall under exception stated in Section 300 IPC as it was a sudden act without premeditation.

15. Having given our anxious consideration to the lengthy submission made by learned counsel for the appellant in this regard and after going through the impugned judgment, we are unable to accept the submission.

16. At the threshold, application of Section 86 of IPC would depend upon whether a person does an act in state of intoxication. The principle laid down under Section 86 of IPC is to the effect that where a person does an act in a state of intoxication, he shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated. Even such knowledge may not be attributed to him if thing which is intoxicated him was administered to him without his knowledge or against his will. This aspect of intent, knowledge came for consideration before the Coordinate Bench of this Court in the case of Shiv Prasad Choure (supra). Therein, reference was made to earlier judgment of the Supreme Court in the case of **Basdev Vs. State of Pepsu reported in AIR 1956 SC 488**.

17. In the case of Basdev (supra), the Supreme Court 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”.

18. The aforesaid observation of the Supreme Court clearly delineates where the line of applicability of Section 86 IPC would begin. If inebriated condition is taken into consideration, then in order to hold that there was no intention but only knowledge needs to be attributed, There has to be evidence on record that the degree of intoxication was so much so that a reasonable inference can be drawn that the man was beside his mind altogether for the time being. But if there is no evidence to support and the Court is left only to other inference that he had not gone so deep in drinking and from the facts it could be found that he knew what he was doing, rule of general application will apply that a man is presumed to intend the natural consequences of his act.

19. If the aforesaid principle is applied in the present case, except the contents of FIR that the appellant had come in drunk condition, there is nothing in the evidence of Suraj Kumar Banjare (PW5) and Munni Bai Satnami (PW6) nor emerging from any other piece of evidence led by the prosecution that the appellant was so deep intoxicated and degree of intoxication was so much so that it could be inferred that the appellant was completely beside his mind for the time being unable to understand what was he doing.

20. Though Suraj Kumar Banjare, brother-in-law (PW5) & Munni Bai Satnami mother-in-law(PW6) of the deceased have stated that the appellant is a drunkard, in order to apply Section 86 of IPC, there has to be cogent and clinching evidence on record to enable the Court to draw a reasonable inference of accused/appellant being so deeply intoxicated that no intention could be attributed to him and all that could be done was to attribute knowledge as provided in Section 86 of IPC. In the present case, there is hardly any evidence on record to come to the conclusion that the appellant was so deeply and highly intoxicated as to completely loose control and intend what was he doing and what was the consequences of his overt act. Content of FIR and what has been stated by the deceased in the dying

declaration is that the appellant had poured kerosene on his wife and then set her ablaze. This conscious act of collecting kerosene from somewhere in the house, a matchbox and then setting the wife on fire cannot be said to be outcome of completely intoxicated mind. No doubt the incident happened at the spot and it cannot be said that the husband had entered the house with intention to kill his wife, when the quarrel arose at the spot, the appellant came in anger and then proceeded to set his wife ablaze. It is not a case that all of a sudden without premeditation this criminal overt has been committed by the appellant. Moreover, present is not a case that after having set the wife ablaze, the appellant attempted to douse the fire so that this Court could draw inference that what was done by the appellant was without any intention and that was the reason why he immediately doused fire. These two distinctive features of the present case may distinguishable from the facts and circumstances of the case of *Shiv Prasad Choure (supra)* decided by Coordinate Bench of this Court and therefore, the appellant is not entitled to benefit of aforesaid decision.

21. Setting the wife ablaze by pouring kerosene, just because there was a quarrel, is certainly an act of cruelty. Once applicability of Section 86 of IPC is taken out, cruel act on the part of the husband would also render inapplicable Exception 4 appended to Section 300 IPC and leaves us to form an opinion that present is a case of a cruel act of burning wife on a very petty issue and quarrel in the family. In other words, this is nothing but murder. The argument of learned counsel for the appellant for alteration of conviction to Section 304 part II IPC therefore must fail.

22. In the result, we do not find any ground to interfere with the impugned judgment of conviction and order of sentence against the appellant and the appeal is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
 Judge

Sd/-
(Vimla Singh Kapoor)
 Judge