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HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on 14-01-2020Judgment delivered on 02-03-2020CRA No. 282 of 2013

[Arising out of judgment of conviction and order of sentence dated 17-1-2013 passed by the 4th Additional Sessions Judge, Durg, in ST No.173 of 2011]

1. Vijendra Shukla S/o Shyam Sundar Shukla Aged About 38 Years R/o Sector - 07/30/1A Bhilai, Distt. Durg C.G.

---- Appellant

Versus

1. State Of Chhattisgarh Through District Magistrate, Durg, Distt. Durg C.G.

----- Respondent

For Appellant

Ms Indira Tripathi, Advocate

For Respondent/State

Shri Chitendra Singh, Panel Lawyer

Hon'ble Shri Prashant Kumar Mishra, J.Hon'ble Shri Gautam Chourdiya, J.CAV Judgment

The following judgment of the Court was delivered by

Prashant Kumar Mishra, J.

1. Appellant would call in question the legality and validity of the impugned judgment whereby the trial Judge has convicted the appellant for committing offence under Section 302 of the Indian Penal Code (for short 'the IPC') and has been sentenced to undergo imprisonment for life.

2. The prosecution case, briefly stated, is that Sunita Shukla (since deceased), wife of the present appellant, informed her sister namely; Sarita Choudhary (PW-2) at about 7.30 am on 24-3-2011 that her life should be saved as she has been set ablaze. PW-2 Sarita reached the house of the deceased and took her to Sector-9 Hospital, Bhilai, and thereafter to Medical College Hospital, Raipur. At this place dying declaration (Ex.P/9) was recorded by PW-5 Yamini Pandey in which the deceased disclosed that her husband has set her on fire and that her in-laws provoked her husband and were demanding dowry, failing which Vijendra (appellant herein) will be married again elsewhere.
3. PW-1 Ramapati Tiwari lodged First Information Report (FIR) (Ex.P/1) on 25-3-2011, which was registered by PW-6 Nand Kumar Dubey. The deceased succumbed to the burn injuries at Dr. B.R. Ambedkar Memorial Hospital, Raipur, on 25-4-2011. Merg intimation (Ex.P/10 & Ex.P/11) was recorded and the dead body inquest was prepared vide Ex.P/6. Postmortem was conducted by PW-3 Dr. Shivnarayan Manjhi, who submitted the postmortem report (Ex.P/8) opining that death was due to cardiorespiratory failure as a result of burns and their complications. The Investigating Officer recovered semi brunt white printed maxi of the deceased in presence of

witnesses PW-1 Ramapati Tiwari & PW-4 Premnath Sinha together with burnt black petty coat and burnt bra. One plastic bottle containing half filled kerosene oil was recovered (Article 'B') vide seizure memo Ex.P/3. The seized articles were sent for FSL examination to the State Forensic Science Laboratory, Raipur, who submitted the FSL Report vide Ex.P/14 finding traces of kerosene oil on the burnt/ semi burnt clothes and kerosene oil in the plastic bottle (Article 'B').

4. While the trial Court framed the charges under Sections 302 & 120-B read with Section 34 of the IPC against the accused persons and examined as many as 9 witnesses to bring home the charges, the appellant abjured the guilt, raised defence of mental illness and examined one defence witness namely; Dr. Amit Kumar Vishwas (DW-1).
5. On the basis of evidence on record, the trial Court convicted the accused/appellant for committing offence under Section 302 of the IPC and sentenced him to undergo life imprisonment. The trial Court has acquitted the father-in-law and mother-in-law of the deceased upon finding that the evidence against them do not establish their guilt.
6. Learned counsel appearing for the appellant would argue that the dying declaration (Ex.P/9) is a concocted document as it

carries overwriting while mentioning the date and that the appellant has been falsely implicated. Learned counsel would also argue that the appellant was mentally ill, therefore, he cannot be convicted for committing the offence.

7. Learned counsel appearing for the State, *per contra*, would argue that the dying declaration (Ex.P/9) has been proved by PW-5 Yamini Pandey, the Executive Magistrate, who recorded the dying declaration and the overwriting is insignificant. Learned counsel would also argue that the dying declaration (Ex.P/9) is duly corroborated by two oral dying declarations made by the deceased before PW-1 Ramapati Tiwari & PW-2 Sarita Choudhary.
8. Since the case of the prosecution is mainly based on the dying declaration of the deceased, we shall first discuss the evidence adduced by the prosecution on this particular aspect of the matter.
9. Dying declaration (Ex.P/9) was recorded by PW-5 Yamini Pandey, who was posted as Tahsildar, Raipur, at the relevant time. As per her statement, she received written instructions from the superior officers that she is required to record the dying declaration of Sunita Shukla who suffered burn injuries and is admitted at Medical College Hospital, Raipur. She

went to the hospital at 7.25 pm in the evening and recorded dying declaration of the deceased. The witness thereafter reproduced the entire dying declaration in her deposition. The deceased has clearly stated that when she had gone to prepare Tea her husband poured kerosene oil from the front and set her ablaze by igniting matchstick. When asked as to why she was put on fire, the deceased stated that her husband was not doing any work, therefore, when she insisted that he should attend work he first kicked her and thereafter, poured kerosene oil and put her on fire. When asked who else were present in the house, the deceased stated that she and her husband were alone in the house with further statement that her in-laws used to instigate her husband and demanded dowry from her. PW-5 Yamini Pandey also stated that the deceased put her thumb impression. This witness has also explained the overwriting while mentioning the date.

10. In view of clear statement of PW-5 Yamini Pandey proving the dying declaration (Ex.P/9), we are satisfied that the prosecution has fully proved the dying declaration.
11. In addition to the recorded dying declaration (Ex.P/9), the deceased has also made oral dying declaration before PW-1 Ramapati Tiwari & PW-2 Sarita Choudhary.

12. PW-1 Ramapati Tiwari, brother of the deceased, who was at Korba at the relevant time, would state that on the date of incident he received telephonic message from his sister PW-2 Sarita Choudhary about the burn injuries suffered by the deceased. He immediately telephoned his friend Premnath Sinha (PW-4) to proceed to Sector-9 Hospital where the deceased was admitted. After some time he again received message from PW-2 Sarita Choudhary that the deceased is shifted to MEKAHARA Hospital, Raipur. He reached Raipur in the evening and saw his deceased sister, who had suffered burn injuries. He met the deceased in the hospital on which she informed that her husband Vijendra has assaulted her, poured kerosene oil and set her ablaze. This witness also speaks about cruelty committed by the appellant as well as the in-laws of the deceased in connection with demand of cash. The deceased was married with Vijendra in 2000. He also states that earlier also an effort was made by the accused persons to put the deceased on fire. This witness states that on 22-3-2011 i.e. two days prior to the incident deceased had telephoned him that her in-laws are likely to come back to Durg from their native place Pratapgarh (Uttar Pradesh) and informed their son (husband of the deceased) Vijendra that

they have identified a girl for second marriage and he should proceed as instructed.

13. PW-2 Sarita Choudhary, sister of the deceased, is a witness to whom the deceased herself informed about the incident requesting her to save her life. According to this witness, when she rushed to the house of the deceased on a scooty and reached there, the deceased was writhing in pain and the appellant who was standing nearby was smiling. She immediately informed her brother PW-1 Ramapati Tiwari and thereafter, the deceased was taken to Sector-9 Hospital. She would further depose that her husband Mayuk Choudhary suggested that the deceased should be shifted to MEKAHARA Hospital, Raipur where the deceased for the first time informed about the whole incident. This witness would also narrate the cruelty committed by the accused persons on the deceased in connection with demand of dowry and the threat extended to get her husband married for the second time.
14. Neither in the cross-examination of PW-2 Sarita Choudhary nor of PW-1 Ramapati Tiwari there is any such material contradiction and omission which would dilute their case or make them untrustworthy. They being the brother and sister

of the deceased are the most natural and reliable witnesses as PW-2 Sarita Choudhary reached the place of occurrence and attended the deceased immediately after the incident whereas PW-1 Ramapati Tiwari reached MEKAHARA Hospital, Raipur, in the evening. The deceased having died almost after one month of the incident. There is no suspicion that she might not be in a position to record her dying declaration or to make oral dying declaration in front of these witnesses. It is also mentioned in the document (Ex.P/17) that the deceased had suffered 42% burn injuries.

15. PW-3 Dr. Shivnarayan Manjhi has proved the postmortem report (Ex.P/8) whereas PW-4 Premnath Sinha is the friend of PW-1 Ramapati Tiwari. This witness is a resident of HUDCO, Bhilai, therefore, since PW-1 Ramapati Tiwari was at Korba at the time of incident he requested this witness to help PW-2 Sarita Choudhary in getting the deceased treated at Sector-9 Hospital, Bhilai. PW-6 Nand Kumar Dubey has registered the FIR whereas PW-7 Raje Singh Negi has registered the merg. PW-8 Smt. Baby Nanda is the Investigating Officer and PW-9 Narhari Hota is the Ward Boy who made the entries concerning death of the deceased.

16. DW-1 Dr. Amit Kumar Vishwas has treated the appellant on 7-1-2008, however, he has not proved any document of providing treatment to the appellant. Statement made by this witness would only indicate that the appellant was suffering from depression and lack of sleeping. He was also treated on 28-2-2012 during his incarceration. Whenever the appellant used to visit him his wife accompanied him and informed that he consumed some tablets and thereafter he does not sit in the *thela*/kiosk. Thus, it appears, the appellant was in the habit of taking some drugs of which he has become an addict. It is clear from the statement of this witness that the appellant was brought to him only once in January, 2008 whereas the incident occurred in March, 2011. Thus, even if he was suffering from some depression or lack of sleep that happened in the year 2008 i.e. more than three years prior to the date of incident. Statement of this witness would not prove that the appellant suffered such mental illness for which he was not aware as to the act he is performing and that he committed the crime unknowingly without being aware of the consequences of his act.
17. In view of the above discussion, it is fully proved by the prosecution on the basis of dying declaration (Ex.P/9) and the oral dying declaration made by the deceased in presence of

PW-1 Ramapati Tiwari (brother of the deceased) and PW-2 Sarita Choudhary (sister of the deceased) that it was the appellant who poured kerosene oil over the body of the deceased and set her on fire by igniting matchstick, he has rightly been held guilty for committing murder of his wife Sunita Shukla. The impugned judgment of conviction and order of sentence is just and proper warranting no interference of this Court.

18. In the result, the instant criminal appeal, *sans substratum*, is liable to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Gowri