

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 438 of 2015

- Sujeet Mondal S/o Nani Gopal Mandal, aged about 27 years, R/o Village Turdih Presentably R/o Plotpara P.S. Makari Revenue and Civil District Kondagaon, Chhattisgarh. --- **Appellant.**

Versus

- State of Chhattisgarh, Through Police Station Makari, District Kondagaon, Chhattisgarh. --- **Respondent**

For the Appellant	:-	Mr. Praveen Kumar Tulsyan, Adv.
For the State	:-	Mr. Ashutosh Mishra, PL.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Vimla Singh Kapoor, J.

08.09.2021

What is under challenge in this appeal is the judgment dated 24.01.2015 passed by Additional Sessions Judge, Kondagaon in Session Trial No.187/2012 convicting the accused/appellant herein under Sections 302 & 201 IPC and sentencing him to undergo imprisonment for life and RI for 7 years respectively with fine of Rs.1000/- on each count, plus default stipulations.

2. Compendiously stated the case put-forth by the prosecution is that on 20.04.2010 at about 10:30 PM deceased Kanchan suffered 95 % burns in her matrimonial house and succumbed to the same on that very day. The prosecution has further made out a case that at the relevant time apart from the deceased, the accused/appellant herein and his father namely Nani Gopal were the only inmates of the house where the gory

incident had occurred involving the valuable life of the deceased who was just in her twenties. The next day i.e. on 21.04.2010 the Merg intimation (Ex.P-5) was given by one Varun Vishwas (PW-4) and on the basis of which FIR (Ex.P-19) came to be registered against the accused/appellant and his father under Sections 304-B & 201 read with 34 IPC. It is relevant to note here that the accused/appellant and his father both had also suffered burns to the extent of around 50% and were medically examined under Ex.P-11 & Ex.P-12 by Dr. Yashwant Kumar Dhruw (PW-7). Body of the deceased was also sent for autopsy on the next day which was performed by the same doctor vide report Ex.P-10. After completion of investigation the charge-sheet was filed under Sections 304-B, 201, 34 & 306 IPC against the accused/appellant and his father. It is worth mentioning here that the father of the accused/appellant namely Nani Gopal died when the investigation was in progress. The Court below however, framed the charge against the accused/appellant under Sections 302, 201 and in the alternative 304-B IPC.

3. Learned lower appellate Court vide judgment impugned herein found the accused/appellant guilty under Sections 302 & 201 IPC and sentenced to undergo life imprisonment and RI for 7 years respectively with fine of Rs.1000/- on each count, with default stipulations. Hence this appeal.

4. Counsel for the accused/appellant submits that in the house in question where the incident had taken place, there were two persons present including the appellant but excluding the deceased and therefore, it cannot be decisively said as to who in fact has killed the deceased. Secondly, it has been argued on the behalf of the accused/appellant that most of the witnesses examined by the prosecution have turned hostile and therefore, also the conviction of the accused/appellant is not sustainable in the eye of law. Referring to the contradictions and omissions present in the statements of the witnesses, learned counsel for the accused/appellant holds the same to be a greater lacuna in the case of the prosecution to entail conviction of the accused/appellant. In sum and substance, the overall submission of the counsel for the accused/appellant is that there is absolutely no evidence which could connect the accused/appellant with the crime in question directly and in these circumstances the conviction of the accused/appellant has no legs to stand on.

5. On the other hand, supporting the judgment impugned learned counsel appearing for the respondent/State submits that the finding recorded by the Court below are based on just and proper appreciation of the evidence of the witnesses and therefore, there is no room for any interference with the

judgment impugned containing the well reasoned findings based on the evidence of the witnesses.

6. Heard counsel for the parties and perused the material available on record.

7. Though most of the witnesses have been declared hostile for one reason or the other yet to arrive at a particular conclusion in respect of guilt or innocence of the appellant, this Court has to look into the proved circumstances of the case in the light of the overall evidence collected by the prosecution as also the conduct of the appellant exhibited during incident. The incident had taken place on 20.04.2010 at about 10:30 PM whereas the postmortem examination on the dead body was conducted on 21.04.2010 at about 1:30 PM. The evidence of the witnesses including that of the Investigating Officer (PW-9) goes to show that the accused/appellant herein and his father (dead) also suffered burn injuries to the extent of around 50% but the accused/ appellant has nowhere taken a defence that he and his father suffered burn injuries while making an attempt to save the deceased. On the contrary, the accused/appellant has taken a defence in his statement recorded under Section 313 Cr.P.C. that on the date of the incident, he was not present in the house where the incident had taken place as he had gone for his driving work. He has not specified as to what was the distance at which he was present at the relevant time or

whether it was not possible for him to go and get back to the place of incident in a short interval. Another glaring contradiction which stands against him is the testimony of the doctor (PW-7) who medically examined him on 21.04.2010 and found burns present on his body to the extent of 45-50 %. According to the doctor, the burn injuries present on the body of the accused/appellant were of 2-3 hours prior to the medical examination. It means that the accused/appellant sustained burn injuries only on 21.04.2010 and not on 20.04.2010. How he suffered those burn injuries is a matter exclusively within the knowledge of the accused/appellant which he has not disclosed during investigation. The postmortem report (Ex.P-10) also opines the burn injuries on the body of the deceased to the extent of 95% and according to him the cause of death was due to compression of neck. He has specifically stated in his postmortem report that the death was homicidal in nature. Thus the controversy whether the death of the deceased was suicidal or homicidal has been set at rest by the specific medical opinion given by the doctor conducting autopsy who has clearly stated that the death was homicidal in nature. If the accused/appellant was elsewhere at the time of incident, how did he suffer burn injuries still remains a mystery which could have been unraveled if the accused/ appellant has presented a clear and true picture to the investigating agency or before the

Court during trial. If these two things, i.e. the defence of alibi taken by the accused and the burn injuries present on the body are put in juxtaposition, the conduct of the accused/appellant in taking two contrary stands are indicative of his suspicious mindset casting a cloud of doubt on his own conduct.

8. The other limb of the case of the prosecution is that on the date and at the time of incident only two persons were present apart from the deceased and therefore, the circumstances in which and in what manner and under what circumstances the deceased lost his life, has to be explained by the accused/appellant only. Unless he proves anything to the contrary, it has to be inferred that it is the accused/appellant who was directly involved in commission of murder of his wife and then in order to eliminate the evidence wiped out the evidence by setting her ablaze. However, in this case no cogent and clinching explanation has come forward from the accused/appellant on the basis of which an implicit reliance could be placed. On the contrary, the overall conduct of the accused/appellant in taking two different defences at different stages speaks in unequivocal terms that it is he who was actively involved in the commission of offence and to keep himself away from the rigor of law he has taken improbable defence of alibi.

9. In view of the aforesaid factual discussion, this Court is of the considered opinion that the prosecution has succeeded in making out its case against the accused/appellant by proving incriminating circumstances and the Court below is fully justified in appreciating the same in its proper perspective and eventually in arriving at the irresistible conclusion regarding the complicity of the accused/appellant in doing away with his wife and then trying to cause disappearance of the evidence. The judgment impugned is thus well founded and does not call for any intervention in this appeal.

The appeal therefore, being without any substance is liable to be and is hereby dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Jyotishi/Ajay

Sd/-
(Vimla Singh Kapoor)
Judge