

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 536 of 2015

1. Deelep Singh Rajput S/o Late Shri Kripal Singh, aged about 30 years, R/o Vikas Nagar, Kusmunda, District Korba (C.G.).

**---- Appellant
(In Jail)**

Versus

1. State of Chhattisgarh, through Station House Officer, Police Station Kusmunda, District Korba (C.G.).

---- Respondent

For Appellant : Ms. Soniya Kuldeeep, Advocate.
For Respondent/State : Dr. (Ms.) Veena Nair, Dy. Advocate General.

Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board

18/11/2021

- 1) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 19/03/2015 passed by Additional Sessions Katghora, District Korba (C.G.) in Session Trial No. 67/2011 whereby the appellant Deeleep Singh Rajput stands convicted and sentenced as under:-

Conviction	Sentences
U/s. 306 of Indian Penal Code (in short "IPC")	R.I. for 10 years & fine of Rs. 500/- in default of fine additional R.I. for 3 months.

- 2) Case of the prosecution, in brief, is that the appellant was married to Rekha Singh @ Dimpy (since deceased) on 12/05/2007. The appellant was an alcoholic and after few days of marriage he started ill treating the deceased over trivial issues. Even after birth of a son out of their wedlock, the conduct of the appellant did not improve and he continued to ill treat the deceased physically and mentally. Being fed up with this

continuous cruelty, on 20/05/2011 at around 10 PM she committed suicide by pouring kerosene on her body and setting herself ablaze. Immediately thereafter she was taken to Apollo Hospital, Bilaspur by her neighbours where she was medically examined by Dr. Arvind Kumar vide Ex. P-10 who noticed burning of scalp including some hairs, face, except eyes, both upper limbs, chest, abdomen, back, thigh and upper part of the legs. According to the Doctor, the injury was grievous in nature and she suffered 85-90 percent burn injury. On 25/05/2011 dying declaration of the deceased (Ex. P-15 & Ex. P-22) were recorded by the Executive Magistrate and the Police respectively where she stated that as her husband used to beat her frequently, used to say her “**Jao mar Jao**”, he was in the habit of consuming excessive liquor and would come back home late at night by 1-2 AM, she poured kerosene on her body and set herself ablaze. However during the course of treatment she died on 16/06/2011 in Apollo Hospital Bilaspur. Merg intimation was given by Security Guard of the Hospital to the Police vide Ex. P-18. On 25/05/2011 initially FIR Ex. P-21 was registered against the appellant under Section 498A of IPC. Postmortem report on the dead body of the deceased was conducted on 17/06/2011 by Dr. Anil Kumar vide Ex. P-17 who noticed that the whole body was burned except the soles, it was a case of deep septic burn about 90%. In his opinion the cause of death was Cardio Respiratory failure as a result of shock due to burn. Dehati Naleshi Ex. P-20 was recorded on 25/05/2011. Site plan Ex. P-23 was prepared by the Patwari. Another site plan Ex. P-26 was prepared by Inspector Manjulata Rathore. Statements of the witnesses were recorded and after completing usual investigation, charge sheet was filed against the appellant for the offence under Sections 498A and 306 of IPC.

- 3) Learned Trial Court framed charges under Sections 498-A & 306 of IPC which were abjured by the appellant and he prayed for trial.
- 4) The prosecution in support of its case examined as many as 16

witnesses namely PW-01 Durga Prasad Nayak (Supervisor), PW-02 Bilchedan Kujur, PW-03 Rajesh Kumar Kurrey, PW-04 Pradeep Singh, PW-05 Dr. Arvind Kumar, PW-06 Dr. A.N. Kanwar, PW-07 Balram Singh (father of the deceased), PW-08 Dhananjay Kumar Singh, PW-09 Ashok Kumar Marble (Executive Magistrate/Tehsildar), PW-10 Ritesh Yadav, PW-11 Dr. Madhulika Sen, PW-12 Kapilram Sahu, PW-13 Chitgovind Dubey, PW-14 Sandhya Namdeo (Patwari), PW-15 Ajay Sonwani (Head Constable) and PW-16 Manjulata Rathore (Inspector). The statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. No witness was examined by the accused in his defence.

- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned above in para 1 of this judgment.
- 6) Learned counsel for the appellant submits that though there used to be quarrel between the appellant and the deceased over households matters but there is nothing on record to show that the act of the appellant amounts to abetment to the deceased to commit suicide and as such the Trial Court was not justified in holding guilty under Section 306 of IPC. PW-07 Balram Singh father of the deceased has not supported the prosecution case. There are major contradictions and omissions in the statements of the witnesses which have not been appreciated by the Trial Court. He submits that even in the dying declaration Ex. P-15 there is no mention about the satisfaction of the treating Doctor that the deceased was in a fit state of mind to make such declaration. Therefore, the impugned judgment is liable to be set aside and the appellant deserves to be acquitted of the charge leveled against him.
- 7) Alternatively it is submitted that if this Court ultimately comes to the conclusion that the conviction of the appellant is just and

proper, considering the fact that the incident took place way back in the year 2011, the appellant was 30 years of age at that time, he is the first offender, he has suffered more than half of the sentence, he may be sentenced to the period already undergone by him.

- 8) On the other hand learned counsel for the State/respondent supports the impugned judgment.
- 9) Heard counsel for the parties and perused the material available on record.
- 10) It is not disputed that the deceased was married to the appellant on 12/05/2007 and within 7 years of her marriage she died due to burn injuries on 16/06/2011 in her matrimonial home. The death of the deceased due to burn injuries has been duly proved by the medical evidence in the form of her MLC Ex. P-10, Postmortem report Ex. P-17 as well as the oral evidence of the witness namely PW-01, PW-02 & PW-04. As per postmortem report, the deceased suffered deep septic burn about 98% and her cause of death was Cardio Respiratory failure as a result of shock due to burn.
- 11) PW-01 Durga Prasad Nayak has proved this fact that the deceased suffered burn injuries in the house of the appellant and she was immediately taken to Hospital for treatment by her neighbours. This witness has stated that the appellant and deceased were living happily. However, he has been declared hostile by the prosecution.
- 12) PW-02 Bilchedan Kujur states that upon hearing the hue and cry he came out of his house and saw the deceased in burnt condition and that she was taken to Hospital for treatment where she died during the course of treatment. However, he has expressed his ignorance about any sort of quarrel between the appellant and the deceased. This witness has also been declared hostile.

- 13) PW-03 Rajesh Kumar Kurrey has also turned hostile and not supported the prosecution case.
- 14) PW-04 Pradeep Singh younger brother of the appellant has proved this fact that his sister-in-law/deceased died due to burn injury suffered in the house of the appellant.
- 15) PW-05 Dr. Arvind Kumar medically examined the deceased and found 85-90% burnt (vide Ex. P-10) and he noticed burning of scalp including some hairs, face, except eyes, both upper limbs, chest, abdomen, back, thigh and upper part of the legs. After primary treatment he referred her to Apollo Hospital, Bilaspur. He proved MLC report vide Ex. P-10.
- 16) PW-06 Dr. A.N. Kanwar had examined the appellant vide Ex. P-12 and found blisters on his left palm and middle finger of left hand which were simple in nature.
- 17) PW-07 Balram Singh and PW-08 Dhananjay Kumar Singh have turned hostile.
- 18) PW-09 Ashok Kumar Marble, Executive Magistrate recorded dying declaration vide Ex. P-15 of the deceased in Hospital. He has categorically stated that before recording dying declaration he had inquired from the treating Doctor whether the victim is conscious to give such statement and after satisfying himself about the mental fitness of the declared only, he recorded her dying declaration where she stated that as the appellant was in the habit of consuming excessive liquor, would come back to house late at night at 1-2 AM, beat her frequently, therefore, she attempted to commit suicide by pouring kerosene on her body part and setting herself ablaze. Nothing has been elicited from this witness by the defence to render his evidence untrustworthy or doubtful. There is no reason to disbelieve the statement of the witness or to doubt the authenticity of the dying declaration Ex. P-15.
- 19) PW-11 Dr. Madhulika Sen conducted postmortem with Dr. Anil Kumar and noticed the whole body burnt to the extent of 98%.

She had duly proved the postmortem report vide Ex. P-12.

- 20) PW-12 Kapilram Sahu and PW-13 Chitgovind Dubey, Police personnel conducted part of the investigation and duly supported the prosecution case.
- 21) PW-14 Sandhya Namdeo (Patwari) prepared the site plan Ex. P-23. PW-15 Ajay Sonwani, ASI had made an application Ex. P-25 to SECL Hospital Kusmunda for recording dying declaration of the deceased which bears his signature. He has proved the same.
- 22) PW-16 Manjulata Rathore, the Investigating Officer, has duly supported the prosecution case.
- 23) Though most of the prosecution witnesses in this case have turned hostile and does not supported the prosecution case on material particulars, however PW-09 Ashok Kumar Marble and PW-13 Chitgovind Dubey, ASI have duly supported the prosecution case and there is no reason to disbelieve their evidence as there is nothing on record to show that they were inimical to the appellant or were interested in his false implication.
- 24) True it is that father of the deceased PW-07 Balram Singh has not supported the prosecution case, however considering the continuous ill treatment, torture, harassment physically and mentally she committed suicide which is evident from her dying declarations Ex. P-15 & Ex. P-22 of the deceased where she has categorically stated that as her husband used to beat her frequently, used to say her “**Jao mar Jao**”, he was in the habit of consuming excessive liquor and would come back home late at night by 1-2 AM, the willful conduct of the appellant which drew to put an end to her life by setting herself ablaze, the overall evidence on record including the evidence of PW-09 Ashok Kumar Marble (Executive Magistrate) and PW-13 Chitgovind Dubey, ASI, nothing has been brought on record by the defence of the ill treatment of the husband/appellant which

led her to commit suicide, this Court is of the opinion that the Trial Court was justified in holding the appellant guilty for the offence under Section 306 of IPC.

- 25) As regards the sentence, considering the facts and circumstances the case, the age of the appellant at the relevant time i.e. 30 years, the fact that the incident took place way back in the year 2011, the appellant is behind the bars for about more than 7 ½ years, this court is of the opinion that the ends of justice would be served if he is sentenced to the period already undergone by him while keeping the fine amount with default stipulation as imposed by the Trial Court intact.
- 26) In the result, the appeal is **allowed in part**. While maintaining conviction of the appellant under Section 306 of IPC, his jail sentence is reduced to the period already undergone by him. However, the fine amount of Rs. 500/- with default stipulation imposed by the Trial Court shall remain intact. Since the appellant is reported to be in jail, therefore he be set at liberty forthwith if not required to be detained in connection with any other offence.

**-Sd/-
(Gautam Chourdiya)
Judge**