

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.636 of 2015**

Laxman Kashyap S/o Late Chhannu Kashyap Aged About 38 Years Caste Bhatra R/o Village Sukma, Nakapara, P.S. Sukma, District Sukma Chhattisgarh
---- Appellant

Versus

State Of Chhattisgarh S/o Through The Station House Officer, Police Station – Sukma, District Sukma, Chhattisgarh
-----Respondent

For Appellant:	Shri Manoj Kumar Jaiswal, Advocate.
For Respondent/State:	Shri Sudeep Verma, Deputy Government Advocate.

<u>Division Bench:</u>	<u>Hon'ble Shri Arvind Singh Chandel</u> <u>& Hon'ble Shri Deepak Kumar Tiwari, JJ</u>
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Judgment/Order On Board**07.12.2021****Per Deepak Kumar Tiwari, J.**

1. This Appeal is directed against the judgment of conviction dated 17.03.2015 passed in Sessions Trial No.48/2008 by the Sessions Judge, South Bastar, Dantewada, whereby the Appellant has been convicted under Section 302 IPC and sentenced to undergo RI for life.

2. Brief facts of the case are that 26.11.2007, at about 7.30 p.m, in village Nakapara, Sukma, the Appellant returned home from *murga bazar* after consuming liquor and demanded food from his deceased wife Lakshmi Kashyap and for which a quarrel took place between them. As the deceased wife scolded him for consuming liquor as also for gambling in cock fight, therefore the Appellant got annoyed and poured kerosene oil over her body and set her on fire with match box. On being burnt, when the deceased wife was crying, then the accused/Appellant got frightened and doused the fire by

pouring water over her burning body, due to which, she suffered burn injuries on her both hands, chest, mouth and back portion of the body.

3. Tularam (PW-1), brother of the accused and the neighbours came to the house of the accused/Appellant and scolded him and taken the deceased to Sukma Hospital, from where, she was referred to the District Hospital, Jagdalpur and during her treatment, she died on 30.12.2007 at 7.30 p.m. Tularam (PW-1) had lodged the FIR (Ex.P-1) on 27.11.2007 at PS Sukma vide Crime No.70/2007. After completing the necessary investigation, the charge sheet was filed and after committal proceeding, the matter was tried.

4. In order to prove the charge, the prosecution has examined as many as 13 witnesses. Tularam (PW-1), brother of the accused/Appellant, Dr. KM Gupta (PW-2) conducted the postmortem on 30.12.2007 and found 60% to 70% anti postmortem burn injuries on the body of the deceased. RP Sahu (PW-3), Tahsildar who recorded the dying declaration on 27.11.2007 (Ex.P-5) NK Sahu (PW-4), the ASI, Manish Mishra (PW-5), Tahsildar recorded the dying declaration (Ex.P-14) on 30.11.2007. Smt Godawari (PW-6), Mangal Baghel (PW-7), Smt Gomtin (PW-8), mother of the accused/Appellant, Dr. RPS Paikra (PW-9), who examined the deceased on 26.11.2013 and found 30%-35% burn injuries vide his report Ex.P-23, Giridhar Netam (PW-10), Constable and KS Thakur (PW-11), Revenue Inspector.

5. The Appellant has abjured his guilt and in his statement 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 and examined three witnesses in his defence i.e. SP Netam (DW-1), MM Dewangan (DW-2) and Mangdu Baghel (DW-3).

6. After hearing the parties, learned trial Court has convicted and sentenced the accused/Appellant as mentioned in para-1.

7. It is argued by learned Counsel for the Appellant that the trial Court has

erred in convicting the accused/Appellant under Section 302 IPC particularly when the prosecution has non alleged any motive or intention of the Appellant to commit the murder of the deceased. It is submitted further that the deceased remained alive for more than one month and died on 30.12.2007. He placed reliance on Shiv Prasad Choure vs. State of CG reported in **2020 (1) CGLJ 359 (DB)**.

8. Per contra, State Counsel supported the impugned judgment.

9. We have heard learned Counsel for the parties at length and have also scrutinized the evidence available on record.

10. The case is based on the dying declaration of the deceased which was recorded by RP Sahu (PW-3), Tahsildar on 27.11.2007 vide Ex.P-5 and Manish Mishra (PW-5) Tahsildar on 30.11.2007 vide Ex.P-14. We find no infirmities to accept and rely on such evidence. In the dying declaration (Ex.P-14) by Manish Mishra (PW-5), the deceased Smt Laxmi Bai has clearly stated that on the date of incident i.e. 26.11.2007, the accused/Appellant came home from *murga bazar* after consuming liquor and started demanding for dinner and on such sudden quarrel, the accused poured kerosene oil on the body of the deceased and set her on fire through lighting the match box and when she cried, he got frightened and tried to douse fire by pouring water over her body. She further stated that the brother-in-law of the deceased (dewar) Tularam (PW-1) and her neighbours have scolded her husband and have taken her to hospital.

11. The deceased remained alive till 30.12.2007. From the evidence available on record, it is clear that the accused/Appellant himself tried to save his wife after the incident and doused fire by pouring water on her body. In Shiv Prasad Choure vs. State of CG (supra), in paragraph-22, it was observed that the moment there is evidence that the accused tried to douse fire by remaining at the place of occurrence, without trying to flee from the spot, it

would clearly prove that he had no intent to cause murder. In the present case, looking to the subsequent conduct of the accused/Appellant after the incident, it would clearly prove that he had no intent to cause murder of his wife as the accused/Appellant was under the state of intoxication and in the facts and circumstances of the case, we are of opinion that the Appellant had knowledge about the consequences of his act but had no intention to commit murder. Therefore, the offence would fall under the IVth Exception of Section 300 IPC. We have applied Exception-IV for the reason that the Appellant being in the state of intoxication, has committed an act, without premeditation and subsequently, tried to save the deceased.

12. Therefore, we are of the view that the conviction recorded under Section 302 IPC is required to be altered to Section 304- Part-II IPC.

13. Resultantly, the Appeal is allowed in part and the conviction of the Appellant under Section 302 IPC is set aside and instead, he is convicted under Section 304- Part-II IPC. The Appellant is in jail since 27.11.2007 and under Section 304- Part-II IPC, maximum sentence is upto 10 years, so the Appellant has already suffered jail sentence, therefore, he be released forthwith, if not required in any other case on his furnishing a personal bond for a sum of Rs.5,000/- which shall remain in operation for a period of 6 months from today as required under the provisions of Section 437-A Cr.P.C. He shall appear before the higher Court as and when directed.

Sd/-

(Arvind Singh Chandel)
JUDGE

Sd/-

(Deepak Kumar Tiwari)
JUDGE