

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 1814 of 2019

- Gopal Singh, S/o Jagat Ram Gond, aged about 42 years, resident of Kohangatola, Police Station Balod, District – Durg, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Balod, District – Durg, Chhattisgarh.

---- Respondent

For Appellant/s : Mr. Anupam Dubey, Advocate

For State/respondent : Mr. Lalit Jangde, Dy. G.A.

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava, J.****28/07/2021**

This appeal is directed against the impugned judgment dated 03.08.2011 passed by Additional Session Judge, Balod, District – Durg, Chhattisgarh in Sessions Case No.59/2011 whereby the appellant has been convicted and sentenced as hereunder:-

Conviction	Sentence
Under Section 302 of Indian Penal Code.	Life Imprisonment and fine of Rs. 100/-. In default of payment of fine, further RI for three months.
Under Section 201 of Indian Penal Code.	RI of seven years and fine of Rs. 100/-. In default of payment of fine, further RI for three months
	Both Sentence shall run concurrently.

2. According to the prosecution case, a merg intimation was given in the police station by Punarad (PW-5) at about 8.30 a.m. on 15.07.2010, that in the night at about 2.00 a.m., Kotwar informed that

his sister-in-law/Ullfi bai died in the house by pouring kerosene. When he went to the spot in the morning, Ullfi bai was lying dead and her daughter/Hulsi Bai and guest Gopal Singh was present. Upon mereg intimation, considering suspicious circumstances of death, mereg inquiry was held by the SHO of the concerned police station, the dead body was already sent for postmortem and when postmortem report revealed that the death appeared to be homicidal in nature as the burn injuries were postmortem and not antimortem, offence was registered by recording FIR on 18.07.2010 against the present appellant, as during mereg inquiry it was also found and informed in mereg intimation itself that at the time of death, the appellant was present in the house. Upon usual investigation charge sheet was filed and on the basis of material contained in the charge-sheet, the appellant was charge of commission of offence of murder of Ullfi bai. Appellant having abjured guilt, was subjected to trial.

In the trial, the prosecution came out mainly with the evidence of the daughter of the deceased - Hulsi Bai (PW-7) and other witnesses who had reached the house of the deceased and found the deceased lying dead. The prosecution also led evidence of seizure of burnt clothes and the ladies bicycle from the possession of the appellant and the witness to support seizure of said articles. The accused was examined under Section 313 Cr.P.C. in respect of incriminating circumstances registered against him but the accused stated that he was innocent and falsely implicated. No defence witness was examined.

Relying upon the evidence led by prosecution, the learned trial Court found that the appellant was one who killed the deceased and

set her dead body on fire. Accordingly, conviction was ordered, which is under challenge in the present case.

3. Learned counsel appearing for the appellant would argue that the prosecution case is founded on a suspicious circumstance which could not transform into cogent, reliable and clinching evidence to record finding of the guilt of the appellant. He would argue that there is no eye-witness to the incident of alleged murder and setting the deceased on fire. The conduct of the daughter of the deceased Hulsai Bai (PW-7) is itself doubtful because she admits that she did not inform the incident to anybody and her presence in the house itself was doubtful. The Investigating Officer in his statement has admitted that during merger inquiry, the daughter/Hulsai Bai (PW-7) stated that deceased, at the time of burning, was crying meaning thereby that she was alive, therefore the evidence of the Dr. S.K. Soni (PW-1) and that of the daughter/PW-7 that deceased was no longer alive while her body was burning itself becomes doubtful. It is also submitted that the conduct of the appellant as stated by Mohandas (PW-6) is that the appellant himself informed regarding deceased having caught fire which is against the hypothesis of guilt because, if the appellant would have killed the deceased, he would not have informed others. His next submission is that suggestion has been given to the witnesses to the effect that it could possibly be a case of burn due to fall of chimney and only an accident. Lastly, it is submitted that the expert opinion of homicidal death is not a clinching evidence because the Doctor, though, stated that it is a case of homicidal death, he reserved his opinion with regard to the cause of death stating that the same could

be definitely opined only after receipt of viscera report but viscera report was never produced.

4. On the other hand, learned State counsel would submit that the evidence of Hushi Bai (PW-7), daughter of the deceased is clear that the appellant was very much present in the house and there was a quarrel between the appellant and deceased with regard to money and also water and thereafter, she went to sleep and when she suddenly woke up, she saw that her mother burning but she was not crying and the appellant was standing over there. The appellant gave a false explanation to Mohandas (PW-6) that deceased sustained burn injuries whereas the evidence led by the prosecution is that the deceased was first killed and thereafter, her dead body was set on fire. It is next submitted that from the spot, a jerry can of kerosene, burnt matchstick were found and the postmortem report also proves presence of kerosene on the dead body. The Investigating Officer has proved seizure of burnt clothes and a ladies bicycle belonging to Hushi Bai (PW-7) from the possession of the appellant. Learned State counsel would further submit that as there is reliable evidence to prove that the appellant was present in the house of the deceased when the deceased died and her dead body burnt, there being no explanation as to how deceased was murdered and who set her body on fire, as required under 106 of the Evidence Act, it proves appellants' guilt.

5. We have heard learned counsel for the parties and perused the evidence on record as also impugned judgment.

6. Merg intimation lodged in the police station on 15.07.2010 at 8.30 in the morning has been proved from the evidence of Punarad (PW-5) and P.C. Shrivastava (PW-11) both. They have proved their signature. The content of the merg intimation as stated by the person lodging merg intimation is to the effect that he was informed in the mid night by the Kotwar regarding his sister-in-law having died due to burnt injury and when he went to see the place of incident in the morning, he saw daughter of the deceased Hulsai Bai (PW-7) and also the appellant Gopal.

7. In the present case, upon receipt of merg intimation the police did not immediately lodge FIR because the report of postmortem was awaited. While merg inquiry was going on, postmortem report was received which revealed that the deceased first died and then dead body was set on fire as it was a case of postmortem burn. At this stage the offence was registered against appellant by recording the FIR on 18.07.2010.

8. One of the most important witness of the prosecution is the daughter of the deceased namely Hulsai Bai (PW-7). Her evidence is that while she was sleeping in the night at about 10.30 – 11.00 p.m. she got up and saw that her mother was burning and she did not hear her voice, her uncle Gopal - the appellant was standing near her mother. She has further deposed that a dispute had arisen between her mother and Gopal on the issue of money and water and she objected to this. When she objected, Gopal scolded her and thereafter she went to her room to sleep. She state that she has all the suspicion that it is the appellant who set her mother on fire. In the cross-examination it has been elicited that after the death of her father,

Gopal - her uncle used to look after, by frequently visiting them. She has also admitted that Gopal used to frequently come and work and Gopal was also paid labor charges. A suggestion that there was no dispute concerning water has been denied, but this witness cannot say her mother herself poured kerosene on her or someone else set her on fire because at that time she was sleeping. She has admitted a suggestion that while her mother was burning, she heard no voice of her mother, a suggestion that there was no quarrel between the accused and her mother has been denied.

The evidence of this witness, though, cannot be said to be an eye-witness account of the appellant killing the deceased or setting her on fire, but the evidence of this girl definitely proves that the appellant being her uncle, was frequent visitor, he used to come and stay in connection with the work and he was actually being paid also. The presence of the appellant on the date of incident in the house is also confirmed by this witness. This witness further states that on the issue of money and water a quarrel had also taken place between the appellant and deceased on that day and she was also scolded by the appellant. The other important piece of evidence of this witness is that when she suddenly got up at about 10.30 – 11.00 p.m. in the night, she saw her mother was burning and the appellant was also standing near her mother. She does not say that the appellant was in any manner trying to extinguish the fire nor any such suggestion was given to this witness in his cross-examination. The uncontroverted testimony of this witness on this aspect therefore proves that the appellant was standing still at the time when the body was burning, making no efforts to extinguish the fire. This conduct of the appellant

creates serious doubt with regard to his role in the entire incident. Another thing which is important to note is that this witness did not call Hulsai Bai (PW-7) the daughter, who was sleeping in the house but PW-7 herself came out and saw that her mother was burning. The evidence of Hulsai Bai (PW-7) further proves that her mother was not speaking. That means, while the body was burning, the burning person was not making any effort, crying for help or doing any other over tact to save from fire.

A doubt has been raised on the testimony of this witness by drawing the attention of the Court to what has been admitted in the cross-examination that she did not go anywhere to inform the incident and the evidence of Punarad (PW-5) and Mohandas (PW-6) shows that she was not present in the house.

Hulsai Bai (PW-7) is a young girl stated to be about 16 years of age and the incident of burning of her mother definitely horrified and put her in state of shock.

The evidence of PW-5, her uncle Punarad and that of Kotwar (PW-6) shows presence of the Hulsai Bai (PW-7) in the house. Mohandas (PW-6) has stated that in the midnight, when he came to know about Ullfi bai burning, he went to the spot along with Punarad (PW-5) and some other villagers and he found that Gopal was not present and when the door was pushed and he went inside he found that the body of Ullfi bai was lying burnt. In para 3 he has further stated that Ullfi bai was residing with her daughter Hulsai Bai (PW-7) and her son, and on the date of incident, her daughter was there and when she was asked about the incident, then she disclosed regarding

the incident. This shows that Hulsai Bai (PW-7) was very much present in the house. According to Mohandas (PW-6), he reached the spot along with other villagers soon after the incident in the midnight at about 2.00 p.m. and there, Hulsai Bai (PW-7) was present and she disclosed the story also. Therefore, the submission of learned counsel for the appellant that Hulsai Bai (PW-7) should be disbelieved because of her doubtful conduct cannot be accepted.

9. Mohandas (PW-6) has deposed in the statement that when he reached the house of the deceased, the body was found lying in burnt condition and when Hulsai Bai (PW-7), the daughter was asked about the incident, she disclosed that on that day there was a quarrel between the appellant and her mother on the issue of money and water, and when she was threatened she went to sleep, and after sometime, she saw her mother burning so she put a blanket on her. On this evidence, nothing could be elicited in the cross-examination to doubt as to what was disclosed to this witness. In his cross-examination, he denied suggestion that Gopal had disclosed regarding deceased dying due to burn by chimney but state that he only informed that deceased caught fire. This witness says that if the deceased would have self inflicted burn injury she would have come out and cried for help and therefore he does not believe that deceased burnt herself.

10. One of the arguments of learned counsel for the appellant is that the conduct of the appellant does not support prosecution story of the appellant being accused because had the appellant burnt the deceased, person, he would not have gone to the house of the Mohandas (PW-6) to inform regarding the incident but would have

simply run away from the spot. In our opinion the attempt on the part of appellant to PW-6 was more in the nature of creating a suspicion as if the deceased died of burning in an accident. However, this has turned out to be a false explanation for the reasons as follows.

11. A startling revelation was made from the postmortem report and which actually led to registration of FIR against the appellant and that is, according to the Doctor, who conducted postmortem, the burnt injuries were postmortem in nature and not antemortem. That means, the deceased did not die of burning but the dead body was set on fire. The opinion of Doctor is that the death was homicidal in nature. The postmortem report and the evidence of the Dr. S.K. Soni (PW-1) on this aspect is very clear that the tongue of the deceased was protruded and froth had come out from the mouth and nostrils. The Doctor's opinion with regard to burn being postmortem in nature has remained firm and emphatic even in the cross-examination. Though, the Doctor has admitted a suggestion that accident could be cause because of burning lamp catching fire to the saree worn by ladies, he has emphatically stated that present is a case of 100% burn as it is a case of burn postmortem. However, his opinion for cause of death was reserved to be disclosed only after receipt of viscera report.

Unfortunately, in the present case viscera report was not received during the entire trial. Nevertheless, even if viscera report has not come, we find that the Doctor report proved that the tongue of the deceased was protruded and froth had come out from nostrils and mouth and this was the reason why the doctor opined that the death was not a normal one but a homicidal one.

We have also noticed what has been stated by Hulsai Bai (PW-7) in her evidence that her mother was not crying or making any noise while she was burning. Certainly if an alive person catches fire, it is normal that the person would try to save himself by extinguishing fire, running out and crying for help. Though, Hulsai Bai (PW-7) has stated regarding she having seen her mother burning in fire, there is absolutely no evidence that any movement was there in the body much less any voice. Even in the cross-examination, no suggestion has been given regarding any body movement or noise. If the evidence of the daughter/Hulsai Bai (PW-7) that the appellant was standing at the spot believed, which we are inclined to believe, the conduct of the appellant clearly reflects upon his guilt. He was present in the house which is clear from the evidence. The daughter had gone to sleep. There is no suggestion given to Hulsai Bai (PW-7) that she had committed offence of setting her mother on fire. In such a situation, the appellant was required to explain as to how deceased died and was set on fire. The failure on the part of the appellant to explain this coupled with his presence at the spot and even at the time when the lady was burning, he making no efforts to extinguish the fire, proves his involvement in the incident in the background that just before the incident, a quarrel had taken place between the appellant and deceased over money and water. Nothing much has come in the evidence of Hulsai Bai (PW-7) with regard to the details of the dispute but what is important is that PW-7 has categorically stated regarding a quarrel between the appellant and deceased before the incident.

12. The postmortem report EX-P/01 and the evidence of the doctor clearly shows that the time of death was somewhere between 7.00

p.m. to 11.00 p.m. on 14.07.2010. According to the daughter of the deceased/PW-7, a quarrel had taken place and then she went to sleep at about 8.30 p.m. She has further stated that when she got up at about 10.30 p.m. to 11.00 p.m., her mother was found burning. The medical evidence shows it was a case of postmortem burn. Therefore, all these chains get linked together to prove that deceased died sometime between 8.30 – 11.00 p.m. and that is what has been stated in the postmortem report also. The appellant was very much present in the house.

In this background and evidence of homicidal death and thereafter the dead body set on fire, the appellant approaching Mohandas (PW-6) and stating that deceased caught fire is a false explanation and attempt to save himself.

13. PW-11 - Investigating Officer has proved seizure of burnt clothes from the house of the appellant, as stated by the witness of seizure from the house of the appellant, supported from the evidence of Khorbahra Ram (PW-2) who has stated that in his presence, such seizure was made. Though in the cross-examination, it has come that when he put his signature in seizure memo (Ex-P/3) it was blank, the substantive evidence given in the Court by this witness has remained impeached. Therefore, the appellant failed to explain how the burnt clothes were found in his house.

14. One of the argument of learned counsel for the appellant is that in the cross-examination of Investigating Officer (PW-11) it has been elicited that during merg inquiry the Dr. S.K. Soni (PW-1) had stated that at the time of burning, her mother was crying, therefore, this

admission renders doubtful whether the deceased was dead or she was still alive while burning.

This should not detain us much for two reasons. Firstly, the evidence of the daughter - PW-7 in the Court is very clear that at the time of burning, her mother was not moving nor making any noise. This has remained uncontroverted. Secondly, postmortem report and the evidence of the doctor is very emphatic on the aspect that the burn injury is postmortem, as the body was 100% burnt and no carbon was found inside. Thirdly, the deceased was reported having died homicidal death as per the evidence of the doctor, though the exact cause of death could not be revealed due to lack of viscera report but her tongue was found protruded and froth was coming from her mouth and nostrils.

Moreover, in the merged inquiry, the statement of Hulsai Bai (PW-7), if any, recorded has not been produced and the statement of the Investigating Officer in the cross-examination is more in the nature of admitting a suggestion. Therefore, what has been stated by Investigating Officer in response to a suggestion does not in any manner weakens the evidentiary value of the expert opinion, postmortem report and the Court evidence of Hulsai Bai (PW-7) regarding death of the deceased being homicidal.

We also find that the prosecution has proved that from the place of incident a jerry can of kerosene and a burnt matchstick has also been seized, as proved by Investigating Officer, supported by evidence of independent witness. The dead body was found containing kerosene and the Investigating Officer has also deposed in

the evidence that the clothes of the appellant which was seized from his house were also containing smell of kerosene.

15. In the result, the conviction of the appellant is legally tenable in law because all the circumstantial evidence form a complete chain to reach to an inference that it is the appellant and the appellant alone who must have killed the deceased.

16. In the result, we do not find any ground to interfere with the impugned judgment of conviction and order of sentence, the appeal is therefore, **dismissed**.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge