



2025:CGHC:7784-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No.773 of 2020

Judgment reserved on 16.01.2025

Judgment delivered on : 13.02.2025

1 - Smt. Usha Bai Sahu W/o Horilal Sahu, Aged About 40 Years R/o Village - Pised, Police Station Kasdol, District - Baloda Bazar - Bhatapara Chhattisgarh

Appellant

versus

1 - State Of Chhattisgarh Through - Station House Officer, Police Station - Kasdol, District - Baloda Bazar - Bhatapara Chhattisgarh

Respondent(s)

CRA No. 229 of 2021

1 - Bhagwat Prasad Sahu S/o Horilal Sahu Aged About 27 Years R/o Village Pised, P. S. Kasdol, District Baloda Bazar-Bhatapara Chhattisgarh

2 - Horilal Sahu S/o Reshamlal Sahu Aged About 61 Years R/o Village Pised, P. S. Kasdol, District Baloda Bazar-Bhatapara Chhattisgarh

Appellants

Versus

1 - State Of Chhattisgarh Through P. S. Kasdol, District Baloda Bazar-Bhatapara Chhattisgarh

Respondent(s)

For Appellants : Mr. Amarnath Pandey and Mr. Gagan Pandey,
Advocates
For Respondent(s) : Mr. Devesh G. Kela, PL

Hon'ble Smt. Justice Rajani Dubey
Hon'ble Shri Justice Sachin Singh Rajput

C A V Judgment

Per Rajani Dubey J.

1. Since both the appeals arise out of the common judgment of conviction and order of sentence, therefore, both the appeals are heard together and are being decided by a common order.
2. The present appeals are directed against the judgment of conviction and order of sentence dated 12.03.2020 passed by the learned 3rd Additional Session Judge, Baloda Bazar-Bhatapara (C.G.) in ST No.74/2017, whereby the appellants have been convicted under Sections 498-A/34 and 304-B/34 of IPC and sentenced to undergo RI for 3 years and life imprisonment with default stipulations.
3. The prosecution case, in brief, is that on 23/05/2017, the Police of Police Station, Kasdol received information that Archana Sahu has been burnt from the fire and has been admitted in Community Health Center Kasdol, thereafter Police went there and recorded the dying declaration of the deceased Archana Sahu, wherein she stated that appellants committed maarpeet with her and poured kerosene oil on her and set her ablaze. After investigation, the charge sheet was filed before the Magistrate

concerned. After appreciating the oral and documentary evidence available on record, the learned Trial Court convicted the appellants, as mentioned in para 2 of the judgment.

4. Learned counsel for the appellant submits that the judgment of conviction and order of sentence passed by learned trial court is bad in law as well as facts available on record. That the judgment of conviction passed by the learned trial court is bad in law as well as facts available on record. The learned Trial Court have not considered the statements of PW-1 Raghuvver Sahu, PW-2 Rameshwari, PW-3 Smt. Ram Bai and PW-4 Neetu Manikpuri, who are the neighbors of the appellants. There is no eye witness to the incident and only on the basis of conjectures and surmises, the appellants have been convicted. Most of the important witnesses have turned hostile and have not supported the prosecution case, but these aspects of the matter have not been considered by the learned Trial Court. Therefore, the impugned judgment is liable to be set aside. Reliance has been placed on the judgment rendered by the Hon'ble Supreme Court in the matter of **Phulel Singh vs State of Haryana**, reported in **(2024) 1 SCC CR 64**.
5. Per contra, learned State counsel supports the impugned judgment and submits that the prosecution has proved its case beyond reasonable doubt. The learned Trial Court has minutely appreciated the oral and documentary evidence and rightly

convicted the present appellants. Therefore, the appeals are liable to be dismissed.

6. Heard learned counsel for the parties and perused the material available on record.
7. It is clear from the record of the learned Trial Court that the learned Trial Court framed charges under Section 498-A and Section 304-B read with Section 34 of IPC and in alternate Section 302 read with Section 34 of IPC against all the appellants and after appreciating the oral and documentary evidence the learned Trial Court convicted the appellants, as mentioned in para 2 of the judgment.
8. It is not disputed in this case that the deceased Archana is the wife of Bhagwat and their marriage was solemnized prior to 2 years of the incident. It is also not disputed that the deceased died due to burning. PW-18 R. K. Khande stated that he was posted as Head of the Medical Record Department in Narayana Hospital and Archana Sahu was admitted in the siad hospital on 23.05.2017 and she died on 27.05.2017. As per hospital memo, merg intimation was recorded vide Ex-P/21 and he admitted his signature on A to A part.
9. Dr. A. S. Chouhan (PW-21) stated that he is posted at CHC, Kasdol as Medical Officer and on 23.05.2017, Archana Sahu was brought by Constable Mratyunjay. He examined the deceased on 12:40 pm and after examination he found that her body was burnt 80-85% and deep burn and grievous injuries were found due to

burning by kerosene oil and gave report (Ex-P/22). Dr. Om Prakash Dubey (PW-27) stated that he is working as Medico Legal Officer at Ramkrishna Care Hospital, Raipur and Archana was admitted on 23.05.2017. As per family members of patient, she was burnt by kerosene oil and she died during treatment on 27.05.2017. Her medical documents are Ex-P/35 and he admitted his signatures on A to A part.

10. Dr. O. P. Tandon (PW-33) stated that he conducted postmortem of the deceased Archana Sahu and after examination he opined that death was due to cardio respiratory failure as a result of burn injuries and its complications and gave his report (Ex-P/43) and nothing came out in his cross-examination to negate the same so it is proved beyond reasonable doubt that Archana died due to burn injuries prior to 7 years of marriage.
11. As per prosecution, the appellants committed murder of the deceased Archana and two dying declarations were recorded during investigation. Ex-P/12 is the first dying declaration. Mohit Kumar Thakur (PW-22) Head Constable stated that he recorded statement of Archana at CHC Kasdol and he gave application (Ex-P/24) for examination of Archana and also gave application for recording of dying declaration (Ex-P/26) and he admitted his signatures on A to A part and also recorded FIR under Sections 307 & 498-A of IPC vide Ex-P/27. In the cross-examination, he admitted that Ex-P/12 was written in his handwriting. In the said dying declaration, the deceased Archana Sahu stated that her in-

laws used to commit maarpeet with her for want of money and her sister-in-law poured kerosene oil on her and her husband got her burnt. The second dying declaration is Ex-P/42 recorded by PW-31 Executive Magistrate Nand Kishore Sinha. In Ex-P/42, it was alleged by the deceased that her mother-in-law and husband have got her burnt.

12. The learned Trial Court found that both the dying declarations were recorded as per statement of the deceased, but the learned Trial Court convicted the appellants under Section 304-B of IPC and not convicted under Section 302 of IPC. If dying declarations are trustworthy, then all the appellants are guilty of murder of the deceased. As per both dying declarations, deceased's mother-in-law Usha poured kerosene oil on the deceased and appellant Bhagwat got her burnt by matchbox, but it is clear from Ex-P/12 that there is no fitness certificate given by doctor in this regard that patient is fit for statement or not. Only signatures and seal of doctors were taken. Dr. A. S. Chouhan (PW-21) admitted his signature on Ex-P/12 but in the cross-examination, he admitted that Ex-P/12 was not written in his handwriting, policemen have written but who has written he does not know. He also admitted that blood pressure and pulse rate have not been written by him in Ex-P/12. He stated that he gave fitness certificate (Ex-P/23) but in Ex-P/23, no time was recorded in this certificate and it is also not proved by doctor A. S. Chouhan and head constable that at what time Ex-P/12 was recorded. As per Executive Magistrate,

he started recording of statement of the deceased at 5 pm and he admitted his signatures on E to E part and above his signature date 24.05.2017 is recorded and time is recorded as 6 pm and below his signature, signature of doctor is being shown and below signature of doctor, date is recorded as 25.05.2017 and time as 5 pm. In first page of dying declaration (Ex-P/42), it is written as 'प्रमाणित किया जाता है कि अर्चना साहू जल गई है किंतु पूर्ण होशो हवास के साथ बयान देने की स्थिति में है।'

As per Executive Magistrate, he recorded this dying declaration on 24.05.2017, but it is clear from this document that signature of doctor was obtained before or after recording of the statement and below his signature, date 25.05.2017 is written.

13. Thus, both dying declarations are concocted and not definite and trustworthy. The learned Trial Court relied upon these dying declarations but the learned Trial Court has not convicted the appellants under Section 302 of IPC. If both the dying declarations were found trustworthy, then definitely the appellants are guilty of commission of murder of the deceased and they are liable to be punished under Section 302 of IPC but the learned Trial Court after appreciating all these facts recorded finding that dying declarations are trustworthy and recorded as per statement of the deceased but did not convict the appellants under Section 302 of IPC, as such this finding is not sustainable.
14. The prosecution has also not challenged this finding and acquittal

of appellants under Section 302 of IPC so we did not consider statement of witnesses for charge of Section 302 of IPC, but the prosecution has proved this fact that the deceased died within 7 years of her marriage and she died due to burn injuries.

15. Now we have to consider this fact that whether the appellants are guilty of offence under Section 304-B of IPC or not.
16. PW-1 Raghuvir Sahu stated that neighbor of appellants namely Sushila Bai one telephoned him that Bhagwat committed maarpeet with Archana, then he along with Suryaprakash went to the house of the appellants and made them understand not quarrel. Later on he came to know that the deceased has burnt. Sushila Bai (PW-8) has not supported the prosecution case and she stated that Bhagwat and Archana were living peacefully. She had seen Archana in burnt condition. The prosecution declared her hostile and cross-examination her but she denied all suggestions of prosecution and denied her police statement (Ex-P/10) on A to A part and B to B part. Smt. Rameshwari (PW-2) Smt. Ram Bai (PW-3) and Neetu Manikpuri (PW-4) neighbors of the appellants stated that appellant Usha Bai called all neighboring women of society and told them that her daughter-in-law does not do household work, as such they should make her understand, but they did not support the prosecution case. The prosecution declared them hostile, but they denied their police statement.

17. The father of the deceased Manbodhi Ram Sahu (PW-5) stated that the in-laws of her daughter used to commit maarpeet with her and when he objected the same, then the appellant Horilal, father-in-law of the deceased told him that your daughter does not do household works that's why she committed maarpeet with her. In para 3 he stated that on 23.05.2017, neighbor of the appellant informed him that his daughter has got burnt then he rushed to Kasdol where he came to know that her daughter was admitted in Narayana Hospital and later on referred for Raipur, then he went there where he saw her daughter got burnt and when he asked her, then she told that her mother-in-law and husband have got her burnt.
18. Smt. Chandrakala Sahu (PW-7) stated that Usha Bai once called her and told her that deceased Archana does not do the household work. The appellant Bhagwat used to commit maarpeet with her daughter and they did not provide food to her. She also stated that a son was born out of their wedlock but he died due to weakness, as her daughter was not provided proper food and they also used to commit maarpeet with her, as such the baby inside the stomach must have received injuries. In para 5 she stated that the accused Bhagwat and Horilal came to her home and took the child with them, but did not take her daughter Archana with them. She also stated that she deposited Rs.50,000/- in the account of her daughter, which was withdrawn by Horilal. In the cross-examination, she admitted that all these

statements were not told by her before Police vide Ex-D/2.

19. PW-9 Babulal Sahu, maternal uncle (mama) of the deceased did not support the prosecution. The prosecution declared him hostile and cross-examined him but he denied this suggestion of prosecution that the appellants used to assault her. He also denied his police statement (Ex-P/11). PW-10 Dudhram also stated that one he along with other family members on deceased' mother saying had gone to make the in-laws of the deceased understand not to quarrel with her, upon which they agreed to live peacefully and after few days he came to know that the deceased has died due to burn injuries.
20. Bajrangi Prasad Sahu (PW-11), younger brother of accused Bhagwant of son of accused Usha Bai and Horilal stated that on the date of incident, he was not at home. When he came back, he came to know that his sister-in-law (bhabhi) has got burnt. Labourers told him that Archana poured kerosene on her and got burnt herself, upon which the appellants poured water and took her to hospital. Surya Prakash (PW-13) stated that he was ex president of Sahu Society. Horilal had come to him prior to incident to intervene and stated that there is dispute between the deceased and the accused Bhagwant, then he told him that give all these statements in written. The prosecution declared him hostile and cross-examined him. He admitted this suggestion of prosecution that he had gone to the house of Archana along with her family members to make the appellants understand not to

commit maarpeet with her and told them to live peacefully.

21. A close scrutiny of statement of all the witnesses clearly shows that before death of deceased, some dispute took place between Archana and family members and members of society went to make them understand.
22. The Hon'ble Supreme Court in the matter of **Phulel Singh** (supra) held in paras 21, 22 & 23 as under:-

"21. In the dying declaration recorded by Shri Sadhu Singh (PW-5), Executive Magistrate, the deceased is said to have stated that on 5th November 1991 at around 12.00 noon, her husband Phulel Singh, i.e., the appellant herein, Jora Singh, father-in-law and Dhan Kaur, mother-in-law caught hold of her. Her husband, the appellant herein put kerosene on her person and set her ablaze. She further stated that when she was set on fire, she raised an alarm but the accused overpowered her.

22. It is relevant to note that the deceased received burn injuries on 5th November 1991 but the dying declaration came to be recorded on 8th November 1991 after an application was made by the relatives of the deceased to the SDM, Ludhiana. Shri Sadhu Singh (PW-5), Executive Magistrate, in his evidence, admitted that the boys, who had brought the application containing the order of the SDM, Ludhiana had told him that the statement of the deceased should be recorded and that she was in a position to make the statement. He further admitted that those boys had told him that whatever they had to tell the deceased, they had told her and that he should accompany them to record her statement. He has further admitted that those 2-3 boys were related to the deceased and some other persons were also in the room in which he recorded the statement of the deceased.

23. It could thus be seen that there is a grave doubt as to whether the dying declaration recorded by Shri Sadhu Singh (PW-5), Executive Magistrate was a voluntary one or tutored at the instance of respondent No.5. It is further relevant to note that Dr. Jatinder Pal

Singh (PW-8), in his deposition itself, states that Shri Sadhu Singh (PW-5), Executive Magistrate had recorded the dying declaration of the deceased on 8th November 1991 at 04.40 p.m. whereas the opinion with regard to her fitness was given by him at 06.00 p.m. on 8th November 1991. He has further admitted that he had not mentioned in the bed-head ticket that he had attested the statement of the deceased at 04.40 p.m. on 8th November 1991. It is thus doubtful as to whether Dr. Jatinder Pal Singh (PW-8) had really examined the deceased with regard to her fitness prior to her statement being recorded by Shri Sadhu Singh (PW-5), Executive Magistrate.”

23. Section 304-B of IPC provides as under:-

“304B. Dowry death. -- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

24. Section 113B of Evidence Act provides as under:-

“113-B. Presumption as to dowry death.[Inserted by Act 43 of 1986, Section 12 (w.e.f. 1.5.1986).]- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.”

25. In light of above, it is clear that the prosecution has proved only this fact that the deceased died unnatural death prior to 7 years

of marriage but the prosecution has failed to prove this fact beyond reasonable doubt that she was subjected to cruelty for demand of dowry. The learned Trial Court only on the basis of dying declarations of deceased convicted the appellants under Sections 498-A and 304-B of IPC. The finding recorded by the learned Trial Court is not based on the proper appreciation of oral and documentary evidence, as such the impugned judgment is liable to be set aside.

26. Consequently, the appeals are allowed and the impugned judgment of conviction and order of sentence is hereby set aside. The appellants are acquitted of the charges under Sections 498-A and 304-B read with Section 34 of IPC.
27. The appellants Usha Bai and Bhagwat are in jail, whereas the appellant Horilal is on bail. The appellants Usha Bai and Bhagwat be released forthwith if they are not required to be detained in any other offence.
28. Keeping in view the provisions of section 481 of BNSS 2023, the appellants are directed to furnish a personal bond for a sum of Rs.25,000/- before the court concerned forthwith, which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.
29. The trial Court record along with a copy of this judgment be sent

back immediately to the trial Court concerned for compliance and necessary action.

Sd/-

Rajani Dubey
Judge

Sd/-

Sachin Singh Rajput
Judge

Nirala