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HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 169 of 2012

- State of Chhattisgarh, Through - District Magistrate, Bemetara C.G.
...Appellant
- versus**
- Anil Sahu, S/o Krishna Murari Sahu, aged about 29 Years, R/o Village Murta, PS - Navagarh, Distt. - Bemetara C.G.
.. Respondent

For Appellant	:	Mr. Narayan Prasad, Panel Lawyer.
For Respondent	:	None.

Hon'ble Shri Justice Radhakishan Agrawal
Judgment on Board

26.02.2026

1. This acquittal appeal has been preferred by the State/Appellant against the judgment dated 13.03.2012 passed by the learned Additional Sessions Judge, Bemetara, Revenue District Bemetara, Civil District Durg, Chhattisgarh, in Sessions Trial No.11/2012, whereby the learned trial Court acquitted the accused/respondent- Anil Sahu, of the charges under Sections 498-A and 306 of the Indian Penal Code (for short, "IPC").
2. Case of the prosecution, in brief, is that the deceased- Heeramani Sahu, was married to the accused/respondent about eight years prior to the incident. It is alleged that after the marriage, the accused/respondent subjected her to cruelty by assaulting her and

taunting her on the ground that she belonged to a poor family, was illiterate, and was not suitable for him. It is further alleged that, being fed up with the persistent ill-treatment meted out by the accused/respondent, on 30.09.2011, deceased poured kerosene oil over herself and set herself ablaze. She was initially taken to the Community Health Centre, Navagarh, and thereafter referred to Mungeli for further treatment. During the course of treatment, her dying declaration was recorded by the Tahsildar (Ex.P-3), wherein she allegedly stated that her husband had beaten her, poured kerosene over her and told her to die, after which, she set herself on fire. Despite treatment, she succumbed to her burn injuries on 09.10.2011.

3. During the course of investigation, a mere intimation was recorded, pursuant to which, FIR (Ex.P-11) was registered against the accused/respondent. Thereafter, inquest proceedings were conducted vide Ex.P-6 and the dead body of the deceased was sent for post-mortem examination. PW-7 Dr. Suresh Ratre, conducted the post-mortem examination and submitted his report (Ex.P-8), opining that the cause of death was shock resulting from burn injuries. Statements of the witnesses were recorded during investigation, and the accused/respondent was taken into custody vide Ex.P-13.
4. After completion of investigation, charge sheet was filed against the accused/respondent before the competent trial Court. The accused/respondent denied the allegations, pleaded not guilty and prayed for a trial.
5. The trial Court, after hearing counsel for the parties and appreciating the evidence on record, by the impugned judgment acquitted the accused/respondent herein of said charges leveled against him.

6. Learned counsel appearing for the appellant/State submits that the judgment of acquittal passed by the learned trial Court is contrary to law and the evidence available on record. It is contended that the trial Court has failed to properly appreciate the material evidence, particularly the dying declaration of the deceased (Ex.P-3), which clearly implicates the accused/respondent in subjecting her to cruelty and instigating her to commit suicide. Despite such cogent and clinching evidence on record, the learned trial Court committed a grave error in acquitting the accused/respondent. Thus, the impugned judgment of acquittal suffers from perversity and illegality and is, therefore, liable to be set aside.
7. Heard learned counsel for the appellant and perused the material available on record.
8. The Supreme Court in the matter of *Jafarudheen and others vs. State of Kerala*¹ has considered the scope of interference in Appeal against acquittal, which reads as under:-

“25. While dealing with an appeal against acquittal by invoking Section 378 CrPC, the appellate court has to consider whether the trial court's view can be terms as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”
9. So far as the nature of death of the deceased is concerned, the prosecution examined PW-7 Dr. Suresh Ratre, who conducted the post-mortem examination. He found ante-mortem burn injuries on the face, neck, chest, both hands, and knees of the deceased. He also

¹ (2022) 8 SCC 440

noted that the trachea and lungs were congested. According to him, the death of the deceased occurred due to shock as a result of burn injuries. His post-mortem report (Ex.P-8) supports the prosecution case that the death of the deceased was unnatural and caused due to burns. Therefore, the factum of death of the deceased due to burn injuries stands duly established.

10. Now, the next question for consideration is whether the learned trial Court was justified in acquitting the accused/respondent of the aforesaid offences?

11. In order to bring home the charge under Section 306 against the accused, the prosecution is first required to prove that there was abetment on the part of the accused as defined under Section 107 of IPC which compelled the deceased to commit suicide. Section 107 of IPC reads as under:-

“107. **Abetment of a thing**- A person abets the doing of a thing, who-

Firstly – Instigates any person to do that thing; or

Secondly – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if any act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.”

12. To attract the provisions of Section 498-A of the IPC against the accused persons/appellants, the following ingredients, as contained therein, are required to be examined, which read as under:-

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, "cruelty means"—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

13. In the light of the above enunciation of law, the facts of the present case are required to be examined minutely.
14. The prosecution has primarily relied upon the testimony of the close relatives of the deceased and the alleged dying declaration recorded by the Tahsildar (PW-3 S.S. Som).
15. PW-1 Shravan Kumar Sahu, father of the deceased, deposed that his daughter was married to the accused/respondent about eight years prior to the incident and they had two sons. He stated that the accused informed him over the phone that the deceased had poured kerosene on herself and set herself on fire, and that he did not know the reason for her act. He further stated that Hiramani died about 9–10 days after sustaining burn injuries and that when he visited her in the hospital, she did not tell him anything about the incident. He also admitted that he did not ask her about the cause, expecting to do so after her recovery. According to him, the deceased never complained of any harassment and used to say that she was living properly in her matrimonial home. He also denied the suggestion that the accused used to beat or harass her or that she had stated in the hospital that the accused poured kerosene on her and instigated her to die. In his cross-examination, he admitted that Hiramani was living properly in her matrimonial home and had never made any complaint against her in-laws. He further admitted that the deceased was of a stubborn nature and used to get angry

easily. He also stated that due to the burn injuries, Hiramani was not in a position to speak properly and was in great distress and agony. He further admitted that he had not lodged any report regarding the incident. Thus, this witness has turned hostile and has not supported the case of the prosecution.

16. PW-2 Smt. Gyan Bai, mother of the deceased, also did not support the prosecution case. She stated that she did not know whether her daughter had been set on fire by someone or had set herself ablaze. She denied the suggestion that the accused/respondent used to harass or assault her daughter. She further admitted that the deceased was living properly in her matrimonial home and had never made any complaint. She was accordingly declared hostile.
17. Thus, the material witnesses, namely the father and mother of the deceased, have not supported the prosecution case with regard to any cruelty or instigation by the accused/respondent. There is also no independent witness on record to establish any persistent cruelty within the meaning of Section 498-A of IPC.
18. Apart from this, the prosecution has heavily relied upon the dying declaration (Ex.P-3) allegedly recorded by PW-3, S.S. Som, Tahsildar, Navagarh, on 30.09.2011 between 12:15 PM and 12:30 PM. In the said statement, the deceased is alleged to have stated that her husband had assaulted and abused her, poured kerosene on her, and told her that he would not keep her and that she should die, whereafter she set herself on fire.
19. PW-3 S.S. Som, deposed that on receiving a memo from the Station House Officer, he went to the hospital and recorded the statement of the injured woman. He stated that the injured disclosed her name as

“Hiraman Bai” and affixed her thumb impression on the statement as she was unable to sign. In his cross-examination, he admitted that the deceased had sustained burn injuries and was in severe pain at the time of recording the statement. He further stated that she was visibly distressed and groaning in pain. He also admitted that he did not obtain any independent medical examination or certification regarding the mental fitness of the injured either before or after recording her statement. He, however, stated that the police had given him a written memo containing a doctor’s endorsement that the injured was fit to give her statement, but the said certificate has not been brought on record. He further admitted that the statement was recorded on 30.09.2011 at about 12:15 PM inside a Sumo vehicle parked within the hospital campus and that the deceased was in severe pain and groaning at that time.

20. PW-6 Dr. Shashikant Swarnkar, who examined the injured at the Community Health Centre, Navagarh on 30.09.2011, stated that she had sustained about 45–50% burn injuries. He further stated that after giving primary treatment, he referred the injured woman to a higher centre. In his cross-examination, he stated that the patient was brought to the hospital at about 12:00 noon and the medical examination form was filled at 12:30 PM. However, according to PW-3 S.S. Som, the dying declaration (Ex.P-3) of the deceased was recorded between 12:15 PM and 12:30 PM. Thus, the timings given by PW-3 S.S. Som and PW-6 Dr. Shashikant Swarnkar overlap, and there is no explanation as to how both the medical examination and the recording of the dying declaration (Ex.P-3) were conducted simultaneously. Further, the prosecution has failed to establish that the doctor had certified the mental fitness of the

deceased either before or after the recording of the dying declaration. No such medical endorsement has been duly proved in accordance with law.

21. Thus, from the aforesaid evidence, it is evident that the parents of the deceased have not supported the prosecution case and have been declared hostile. Further, the discrepancy in the name of the deceased as recorded by the Tahsildar, the absence of any clear and independent medical certification regarding her mental fitness and the inconsistency relating to the timing of the recording of the alleged dying declaration collectively cast serious doubt upon its authenticity and reliability. It is well settled that a dying declaration can form the sole basis of conviction; however, it must be wholly reliable, voluntary, and free from any suspicion. However, in the present case, the circumstances in which the alleged dying declaration was recorded make it unsafe to rely upon it as the sole basis for conviction. Moreover, there is no other cogent, independent and clinching evidence on record to substantiate the prosecution case. Therefore, sustaining a conviction solely on the basis of the alleged dying declaration would not be legally sustainable. In the absence of legally admissible and reliable evidence establishing cruelty, harassment, instigation, or any demand for dowry, the essential ingredients of the offences punishable under Sections 306 and 498-A of the IPC are not proved against the accused/respondent.

22. The Hon'ble Apex Court in its judgment dated 12.02.2024 passed in Criminal Appeal No.1162 of 2011 in case of *Mallappa and Ors. Versus State of Karnataka*, has held in para 36 as under:-

"36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are

intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-

- "(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive inclusive of all evidence, oral and documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;'
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

23. Considering the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in *Jafarudheen & Mallappa* (supra), the view taken by the learned trial Court appears to be a plausible and possible view. In the absence of any patent illegality or perversity, this Court is not inclined to interfere with the impugned judgment.

24. Accordingly, the acquittal appeal filed by the appellant/State against the acquittal of accused/respondent is hereby dismissed.

Sd/-
(Radhakishan Agrawal)
Judge