

(UFG) 8-81-11X

88-9007-7713



APPEAL OF PRISONER

Division Bench (Criminal)

57 79

Name _____

held with

FATHER'S

ગાંધીનિ - શ્રેણી - નોંધ રાજ્ય / પ્રદેશ / વિસ્તાર

35

(0.45) 50

SECRET

Under Section 309, 201

Under section 309, 201
by writing, dated 12/12/2013, at 12/12/2013, 2013

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

	1	2	3	4
Date of Application for copy of Judgement	9.8.92	7.11.92	13.11.92	whether the prisoner wishes to be represented or not - Yes / No .
Date of which copy received				
Date on which Appeal sent				

No.	5464	
Name	<u>Margaret J. Hall</u>	Jail RAPDUC (M.P.)
		Continued in CENTRAL

No. 591/0060m/72 Dated 13-11-82

198

31/12/82 4/1/83 12/2/83
to the CHIEF JUDICIAL MAGISTRATE
11/12/82 3/1/83 20/1/83 20/5/83
to gather which a copy of order passed in the case for favour of transmission to the

[Signature]
JAMES M. HARRIS
Superintendent

Date of receipt in C. J. M.'s office _____
Date of receipt record to accompany _____
Memo of Appeal of the Appellate court _____
Dated _____ 198 _____
Forwarded to the _____

High Court of Madras
Jabalpur
C. J. Magistrate
Date of receipt in Appellate Court

(P. T. O.)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.1115/1992

Panikam

-Versus-

State of Madhya Pradesh (now Chhattisgarh)

J U D G M E N T

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.1115/1992

Panikram

-Versus-

State of Madhya Pradesh (now Chhattisgarh)

CORAM: HON'BLE SHRI FAKHRUDDIN,
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ

Shri Ranbir Singh Marhas, Advocate with Ku. Samta Jain for the appellant.

Shri J.D.Bajpai, G.A./Addl. Public Prosecutor with Shri Akhil Mishra, P.L. for the State.

J U D G M E N T

(Delivered on 29.07.2005)

Per Dilip Raosaheb Deshmukh, J.

This appeal is directed against the judgment dated 7th August 1992 delivered by Shri D.R.Rahul 1st Addl. Sessions Judge, Raigarh in sessions trial No.20/1992 whereby the appellant was convicted for offence under Section 302 and 201 of the I.P.C. and sentenced under Section 302 I.P.C. to imprisonment for life with a fine of Rs.200/- and in default to undergo further rigorous imprisonment for one month and under Section 201 of the I.P.C. to rigorous imprisonment for one year.

2. Admittedly, the deceased Moha Bai was the wife of the appellant-Panikram. Acquitted co-accused Bhola and Shankarlal, were the sons of the deceased.

3. Briefly stated the prosecution story is that the appellant-Panikram doubted the character of Moha Bai. They were living separately. On 21.12.91 in the afternoon at about 3.00 P.M. Moha Bai had gone near the river stream (Lath Nalah) for filling water. The appellant-Panikram came there armed with an axe and assaulted Moha Bai by the axe. Moha Bai succumbed to the injuries on the spot. Sadharam, a lad of 16 years, P.W.4, who was attending a call of nature nearby saw the occurrence, got frightened and ran away to his home. Later, the appellant-Panikram with the assistance of co-accused Bhola and Shankarlal lifted the dead body of Moha Bai on a cot, took it towards their house in village Tangar and burnt the dead body of Moha Bai to cause disappearance of the evidence of murder by Panikram.

3. Labhudas, Kotwar, lodged marg intimation vide Ex. P.15 on 22nd December 1991 in Police Station Sarangarh. Dehati Nalishi Ex.P.14 was written by Sub-Inspector B.S.Thakur P.W.15 on 23.12.1991. The bones and ashes of the deceased were recovered vide Ex.P.3 on 23.12.1991 by Sub-Inspector B.S.Thakur from the pier. On the basis of statement of the appellant Panikram Ex.P.4, one axe having blood like stains was seized vide Ex.P.5, a wooden cot was also seized from the appellant vide Ex.P.6. The articles were sent to the Forensic Science Laboratory Science, Sagar vide Ex.P.10. However, the report of the F.S.L. could not be produced before the trial Court. After completion of investigation, the appellant Panikram and two accused persons namely Bhola and

Shankarlal were prosecuted for offence under Sections 302 and 201 of the I.P.C.

4. The appellant abjured his guilt and claimed trial. He pleaded innocence in defence and led no evidence. The prosecution examined as many as 15 witnesses in this case. The trial Court placing implicit reliance on the testimony of Sadhuran P.W.4 duly corroborated by Labhudas P.W.1 and Vijay Singh P.W.6, convicted the accused appellant-Panikram under Section 302 and 201 of the I.P.C. and sentenced him to imprisonment as shown in paragraph 1 (supra).

5. The learned counsel for the appellant has heavily relied upon paragraph 6 of P.W.4 Sadhuran wherein this witness has stated that he could not see in a hurry whether the assailant on Moha Bai was Panikram or not and has contended that the above statement creates a strong suspicion about the complicity of the appellant-Panikram in the murder of Moha Bai. He also argued that the presence of Sadhuran P.W.4 who appears to be a chance witness at the scene of occurrence is also doubtful. In a nutshell, the learned counsel for the appellant argued that the evidence led by the prosecution fell short of the standard of proof required for coming to the conclusion of the guilt against the appellant. On the other hand, learned Government Advocate has supported the judgment of the trial Court and has countered the arguments advanced by the counsel for the appellant by saying that the testimony of Sadhuran P.W.4 is corroborated by Labhudas P.W.1 and Vijay Singh P.W.6 to whom Sadhuran P.W.4 had narrated the

incident on the next day. He also contended that Sadhuran P.W.4 bears no grudge against the appellant and his presence near the scene of occurrence is natural. It was also argued that the testimony of Sadhuran P.W.4 in paragraph 6, which was referred to by the counsel for the appellant, has to be read conjunctly with the statement made by this witness just a line above the narrated version. It appears that this witness was wholly denying the suggestion of the defence that he could not properly see the appellant since after hearing the shouts of Moha Bai, he got frightened and ran away.

6. We have considered and given our thoughtful consideration to the rival submissions and have also gone through the record minutely. We are conscious that the case against the appellant rests wholly on the testimony of Sadhuran P.W.4, who is a young lad of 16 years, and therefore, the testimony of this witness needs to be considered with care and caution. On such scrutiny, we find that Sadhuran P.W.4 has narrated that he was attending a call of nature near the nalah and had seen Moha Bai walking ahead of him towards the river stream (lath nalah). While he was attending the call of nature, he heard shouts of Moha Bai who was crying for help and he saw that the appellant-Panikram was assaulting Moha Bai by a Tangia on the face. He got frightened and ran away to his house. So far as the testimony of Sadhuran P.W. 4 is concerned, we find that Suritram P.W.3 had stated that he heard the cries of Bhola, the son of the deceased, and had gone there. He saw that the dead body of Moha Bai was lying on the ground with injuries

and blood oozing from the face and four broken teeth were also lying nearby. This evidence stands wholly un rebutted in cross-examination and lends full corroboration to the testimony of Sadhura m P.W.4 that he had seen Panikram assaulting Moha Bai by an axe on the face. Vijay Singh P.W.6 is the witness at whose house Sadhura m P.W.4 was working as a servant. He has deposed that on Sunday i.e. next day after occurrence, the father of Sadhura m brought Sadhura m to his house who told him that while he was attending the call of nature near the Nalah he had seen Moha Bai walking ahead of him and heard the cries of Moha Bai and also saw that Panikram was assaulting Moha Bai by an axe. There is absolutely nothing in the cross-examination of this witness which would render the testimony unworthy of credit. The testimony of Vijay Singh also explains the conduct of Sadhura m P.W.4 in narrating the occurrence day later to this witness. P.W.1 Labhodas is the Kotwar, who has also deposed that on being asked, Sadhura m had told him that he had seen Panikram assaulting Moha Bai. We thus find that Sadhura m P.W.4 is a truthful witness and can be safely relied on.

7. So far as the contention of the counsel for the appellant relating to portion of testimony of Sadhura m P.W.4 in paragraph 6 of the cross-examination is concerned, we find that it is wholly untenable. Firstly, because Sadhura m P.W.4 ^eknow the appellant and the deceased and the incident had taken place in broad day light. Though the witness Sadhura m P.W.4 in cross-examination paragraph 6 has deposed that he saw the occurrence in a hurry yet

in the next three to four lines he has categorically denied that he was implicating Panikram at the instigation of other persons or at the inducement of police. We find that the testimony of Sadhuram is wholly reliable and has rightly been relied on by the learned trial Judge who had the opportunity to see the demeanour of this witness, for bringing home the guilt of the accused appellant Panikram under Section 302 of the I.P.C.

8. The testimony of Suritram P.W.3 also establishes beyond doubt that the appellant had carried the deadbody of Moha Bai on a cot to village Tangar. Investigating Officer Sub-Inspector B.S.Thakur P.W. 15 has also proved seizure memo Ex.P.3 which establishes beyond doubt that the dead body of Moha Bai had been burnt and reduced to ashes and that the bones and ashes of Moha Bai were recovered from village Tangar. No explanation whatsoever is forthcoming from the appellant in this regard. Thus the offence under Section 201 I.P.C. also stands proved beyond doubt against the appellant.

9. Having thus considered the prosecution evidence in its entirety and also the arguments advanced by learned counsel for the parties we find that the evidence led by the prosecution brings home the guilt under Sections 302 and 201 of the Indian Penal Code against the appellant Panikram beyond all reasonable doubt. The appeal has therefore no substance and is accordingly dismissed.

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10. Before parting we appreciate the valuable assistance rendered by learned counsel for the parties.

**Sd/-
Fakhruddin
Judge**

**Sd/-
Dilip Raosaheb
Deshmukh
Judge**

Amari