



CF0000060283

(39)

C-11762/96

(62)

Division Bench (Criminal)

/- APPEAL OF PRISONER -/

No. 444 Name कुवारी खोडा
 Father's Name पान्ड Resident ग्राम- गिदावली
जिला- दरभंगा, बिहार
 Age 45 Sentenced to आजीवन कारावास on 17.5.96
 Under Section 302 I.P.C. by तृतीय अति-सत्र न्यायाधीश जगदलपुर

S.T. No. 518/93

It is explained to the prisoner that if he states or wishes to be represented by a 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 be heard at all if 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. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 17.5.96
3. Date on which appeal sent :- 29.5.96
4. Whether the prisoner wished to be represented or not. Yes/No

No. 444 Name कुवारी खोडा पिंग पान्ड
 Continued in जिला Jail प्रथम भेणी जगदलपुर
 No. 336 / अलकोण/96 Dated 29/5/96

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur
 together with a copy of Judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent Central/Dist/Sub-Jail.

Date of receipt in C.J.M.'s Office. 30/5/96
 Date of receipt of record to accompany.
 Memo of Appeal of the Appellate Court. =

No. 12 dated 1.8.96

Forwarded to the 46th Sessions Judge Jagdalpur

C.E. MAGISTRATE. मुख्य न्यायिक दंडाधिकारी

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक

C.A. 1762/96
सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p><u>Division Bench:</u> <u>HON'BLE JUSTICE L.C.BHADOO,</u> <u>HON'BLE JUSTICE V.K. SHRIVASTAVA, JJ</u></p> <p><u>23.12.2005</u></p> <p>Ms Sangita Mishra, counsel for the appellant.</p> <p>Shri Ashish Shukla, Additional Public Prosecutor with Shri Alok Bakshi, Panel lawyer for the State.</p> <p>Oral Judgment.</p> <p>By this appeal through the Superintendent, District Jail, Jagadalpur, accused Kawasi Bodda has questioned the legality of the judgment of conviction and sentence dated 17.05.96 passed by the 3rd Additional Sessions Judge, Bastar, Jagadalpur in Sessions Trial No.518/93, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Section 302 of the IPC and sentenced him to undergo imprisonment for life.</p> <p>The prosecution case, in brief, is that on 05/08/1993 - Thursday, the deceased Beti Mangdu was going to his residence along with Poyami Baman (PW2) and Beti Mahadev (PW3). When the deceased reached near a pit on the way, the accused all of a sudden came out of the pit and attacked the deceased with an axe on his head and neck two - three times and thereafter he ran away. The information of the incident was given by Poyami Baman (PW2) and Beti Mahadev (PW3) to the</p>	

[पीछे देखिये]

आदेश पत्रक

मामला क्रमांक सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>brother of the deceased namely Beti Kanu (PW1). Then, Beti Kanu came to the scene of occurrence with his wife - Mangali and saw Beti Mangdu in an unconscious stage and blood was oozing from the injuries. Beti Kanu brought the injured to his residence, where, after some time, he died. The matter was reported to the Police Station : Darbha on 07.08.1993 by Beti Kanu (PW1). The Head Constable Hiralal recorded the report under Ex.P/1 and registered the crime No.518/93 under Ex.P/5. The Investigating Officer namely Albert Tirkey (PW5) went to the scene of occurrence, prepared Panchanama (Ex.P/8) of the body of Beti Mangdu. The dead body was sent to the Primary Health Centre, Darbha, where post-mortem was conducted by Dr PC Karun, Assistant Surgeon, (PW6) on 08.08.1993. He prepared the post-mortem report under Ex.P/14. During the Police custody, the accused/appellant gave a memorandum (Ex.P/3) to the Investigating Officer (PW5) and in pursuance of that, the axe, weapon of the offence was got recovered under Ex.P/4. the Investigating Officer took into possession the plain soil and the blood stained soil from the place of occurrence and he sent the seized articles for examination to the Forensic Science Laboratory Raipur, from where the report under Ex.P/13 was received.</p> <p>After completion of investigation, charge sheet was filed against the accused/ appellant in the Court of Additional Chief Judicial Magistrate, Jagadalpur, who in turn committed the</p>	

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आदेश पत्रक

मामला क्रमांक सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>case to the Sessions Judge, Jagadalpur from where the 3rd Additional Sessions Judge received the case on transfer for trial.</p> <p>The prosecution in order to establish the charge against the accused, examined 6 witnesses. Learned Additional Sessions Judge recorded the statement of the accused under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. After hearing the argument of Additional Public Prosecutor and the Counsel for the accused, learned Additional Sessions Judge convicted the accused as mentioned in Para 1 of this judgment.</p> <p>We have heard Ms Sangita Mishra, learned counsel for the accused /appellant and Shri Ashish Shukla, Additional Public Prosecutor with Shri Akhil Mishra, Panel lawyer for the State.</p> <p>The fact of the homicidal nature death of Beti Mangdu has not been disputed by the counsel for the appellant. Apart from that, from the evidence of PW2 - Poyami Baman, and PW3 - Beti Mahadev, who witnessed the crime and also from the medical evidence of PW6 - Dr. P.C Karun, it is established that the death of Beti Mangdu was homicidal in nature.</p> <p>As far as the involvement of the accused/appellant in crime in question is concerned, learned counsel for the accused / appellant argued that the witnesses PW2 & 3 namely Poyami Baman and Beti Mahadev are interested witnesses. They have stated that the accused assaulted the deceased three times,</p>	

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मामला क्रमांक सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>whereas as per the medical evidence, only two injuries were found on the head and neck of the deceased. Therefore, the evidence given by these witnesses is not trustworthy. She further submitted that the incident took place on 05.08.1993, whereas the report was lodged on 07.08.1993 and the delay has not been explained. Therefore, the prosecution has failed to establish the charge against the accused/appellant.</p> <p>On the other hand, Shri Alok Bakshi supported the judgment of the trial court.</p> <p>In order to appreciate the arguments advanced by the counsel for the accused / appellant, we have perused the evidence of PW2 - Poyami Baman, and PW3 - Beti Mahadev, who witnessed the crime. They have stated that on the fateful day, the deceased Beti Mangdu and these witnesses were going to the house of Beti Mangdu. On the way, in a pit, the accused was sitting and when Beti Mangdu reached near the pit, the accused attacked on Beti Mangdu all of a sudden with an axe on his head and neck three times and ran away. As far as the question that these witnesses are interested witnesses, in the cross examination of these witnesses, nothing has been brought on record which shows that Beti Mahadev, being nephew of the deceased has falsely implicated the accused/appellant and similarly, in the cross examination of Poyami Baman, defence has not been able to elicit that this witness has deposed against the accused / appellant on account of any relation with the</p>	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

सामला क्रमांक सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 5 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>deceased. It is true that in the evidence of Poyami Baman (PW2), in para-1 he has clearly stated that he witnessed the crime in assaulting the deceased with the axe. In cross examination, in para-4, he has stated that he came to know about the incident from the villagers. But in para-6 of his evidence, when the Court questioned this witness to explain as to which part of his statement is correct, i.e. what he has stated in para-1 or para-4, then this witness replied that he saw the accused attacking Beti Mangdu i.e. as stated in para-1. Therefore, we do not find any substance in the argument advanced by the counsel for the accused / appellant that they being interested witnesses, have falsely implicated the accused, and any infirmity in the evidence of these two witnesses regarding witnessing the crime by them.</p> <p>As far as the argument advanced by learned counsel for the accused / appellant regarding Poyami Baman (PW2) that the accused has assaulted three times, whereas only two injuries were found on the body of the deceased is concerned, we do not find any substance in this point also, for the reason that both the injuries were on the neck and head of the deceased. Therefore, there was every possibility that the third assault was made on the place of the previous assault, which was already caused by the accused / appellant. Moreover, the presence of witnesses PW2 & PW3 can not be doubted as they have clearly stated that they were going together with the</p>	

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मामला क्रमांक सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 6 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>deceased to the house of the deceased and they witnessed the crime. Moreover, their evidence has been corroborated by the medical evidence of Dr. P.C. Karun (PW6). He has stated that when he conducted the post-mortem, he saw that there was injury on the parietal region in the irregular oval shape in the size of 3cm, scalp was broken and brain material was coming out. Skull bone was turned into pieces. He further stated that another injury was found on the left side of the neck in size of 4cm X 2cm. The axe in question, the weapon of offence was also recovered at the instance of the accused in pursuance of the memorandum Ex.P/3, given by him. It is true that the origin of the blood has not been ascertained, but in the evidence of Dr.PC Karun (PW6), he has stated that he saw the axe stained with blood and he further found that the injuries which were found on the body of the deceased could be caused by the axe in question and his report is Ex.P/10. Therefore, in view of the medical evidence, the recovery of the weapon of the offence at the instance of the accused and the oral evidence of PW2 & 3 stand corroborated.</p> <p>As far as the question of delay in lodging the FIR is concerned, as per the settled law, delay in lodging the report can be fatal for the prosecution if the same is lodged with delay in order to cook-up a false case against the accused. In this case, it is admitted position that the incident took place in the evening of 05.08.1993. As per the evidence of Beti Kanu (PW1),</p>	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>when he was informed about the incident, he went to the place from where he brought his brother Beti Mangdu to his house and there, he died. Thereafter Panchayat was convened in the village and then the matter was reported on 7th morning. Looking to the ocular evidence, medical evidence and recovery of the weapon, it cannot be said that the delay was caused for implicating the accused in a false case. Therefore, in view of the above discussion, we are of the considered opinion that involvement of the accused in crime in question is established beyond reasonable doubts, to this extent we do not find any illegality or infirmity in the judgment impugned.</p> <p>Learned counsel for the accused / appellant argued that there was a dispute between the accused and the deceased in connection with the agricultural field on 02.08.93, Monday on account of that dispute, accused attacked the deceased all of a sudden. Therefore, the offence under Section 304 part 2 of the IPC was made out against the accused / appellant. In order to appreciate the argument advanced by learned counsel for the accused / appellant, we have perused the evidence. In the cross examination of Beti Mahadev (PW3), it has come that there was a dispute between the deceased and the accused regarding "Medh" (fence) of the agricultural field, but on the fateful day, there was no quarrel between them and as per the prosecution evidence, the accused was sitting in a pit and when the deceased was going to his residence, by the time he reached</p>	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 8 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>near the pit, all of a sudden, the accused / appellant came out of the pit and attacked with the axe on vital parts of the deceased i.e. neck and head with such a force that even the skull bone was turned into pieces and brain material started coming out of the injury. One injury was caused on the neck also. The deceased was armless; even then, the accused assaulted the deceased repeatedly without any reason and mercy.</p> <p>In order to ascertain the intention of the accused in committing the crime as has been held in the matter of <u>Thangaiya vs. State of Tamil Nadu, reported in 2005 Criminal Law Journal Pg 684</u>, that in order to ascertain the intention, the Court has to take into account the weapon used, size of the weapon, place where the assault took place, facts leading to assault, and the part of body where the blood was coming are the factors to be considered. As has been mentioned above, the deceased was armless when the accused attacked with an axe, deadly weapon, that too on the vital parts of the body - neck and head and the attack was made with such a force with the axe that the skull of the deceased turned into pieces. Therefore, the accused with a pre-planned intention, armed with an axe, attacked the deceased on his neck and head, as a result of which the deceased died and Dr.PC Karun (PW6) has stated that injury was fatal to the life and homicidal in nature. He further stated that the deceased died on account</p>	

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>of shock as a result of haemorrhage. In view of the above facts, we do not find any illegality or infirmity in convicting the accused under Section 302 of the IPC by the trial Court.</p> <p>In the result, the appeal is devoid of merit and liable to be dismissed, It is hereby dismissed</p> <p>Sd/- L.C.BHADOO Judge</p>	<p>Sd/- Vijay Kumar Shrivastava Judge</p>

padma

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