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GA 2553/98

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APPEAL PRISONER

S.T. No. 265/97

No. 90/98

Name मुचाकी हिडमा

Father's Name मुचाकी भुष्का

Resident श्री. दुबेराय थांग. ककानार बस्ती (म.प्र.)

Age 33 वर्ष

Sentenced to आजीवन कारावास on 22/7/98

Under Section 302 भादो वि. by सहाय्यालय जगदलपुर जेल (म.प्र.)

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 bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :-

2. Date of which copy received :- 22/7/98

3. Date on which appeal sent :- 17/98

4. Whether the prisoner wished to be represented or not :-

Yes / No.

No. 90/98

Name मुचाकी हिडमा श्री. मुचाकी भुष्का

Continued in सिले Jail जगदलपुर

No. 973/10/98 Dated 18/98

Forwarded to the CHIEF JUDICIAL MAGISTRATE जगदलपुर जेल (म.प्र.)

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

Su perintendent District / Sub-Jail.

Date of receipt in C. J. M. Office. 7-8-98

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. 36 dated 10-8-98

Forwarded to the साहबजी लाल साहाय्य नरहर, जगदलपुर

G. R. MAGISTRATE

Date of receipt in Appellate Court

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 2553/98 सन् 200—

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p><u>DIVISION BENCH</u> <u>HON. SHRI VIJAY KUMAR SHRIVASTAVA, J</u> <u>& HON. SHRI DHIRENDRA MISHRA, J</u></p> <p><u>31.10.2006</u></p> <p>Shri J.K. Shastri, counsel for the appellant. Shri U.N.S. Deo, Addl. Public Prosecutor with Shri Dinesh Chandra Pandey, P.L. for the State/respondent.</p> <p>Heard finally.</p> <p>Judgment dictated on Dias.</p> <p><u>Per Vijay Kumar Shrivastava, J</u></p> <p>Sessions Judge, Bastar at Jagdalpur holding the appellant guilty for committing murder of his wife Muchki Kosi punishable under Section 302 of the Indian Penal Code vide judgment of conviction and order of sentence dated 22.7.1998 passed in S.T.No. 265/97, sentenced him to undergo imprisonment for life.</p> <p>Prosecution version as unfolded during trial is that on 22.6.1997 in the night at around 10.00 p.m. a quarrel in between appellant and his wife Muchaki Kosi, who was pregnant, took place. The appellant assaulted her by foot on her stomach, she fell down. Thereafter, the appellant by pressing her neck, killed her. Dudhi Hadma, brother of deceased Muchaki Kosi witnessed the incident. On the next day Panchayat was convened, the appellant was called</p>	

मामला क्रमांक **Cr.A..2553/98** सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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	<p>who made extra judicial confession before the Panchayat. Appellant's brother Muchaki Bhuska on 23.6.1997 gave merg intimation and lodged First Information Report at Police Station – Kukanar. Assistant Sub Inspector Ram Nivas Saxena after recording both the documents directed Head Constable Shankarlal to conduct inquest and investigate the crime. Head Constable Shankarlal conducted inquest, prepared inquest report and forwarded the dead body for autopsy to Primary Health Centre, Chindgarh. Dr. Ramesh Kumar Nachankar conducted autopsy and opined that Muchaki Kosi died due to asphyxia as a result of throttling. After mentioning complete details and also describing injuries, he forwarded the postmortem report to the police station. Statements of the witnesses have been recorded under Section 161 of the Cr.P.C. and after completion of the investigation charge sheet has been led in the Court of Judicial Magistrate Second Class, Sukma, who committed the case to the Court of Session for trial.</p> <p>Charge under Section 302 of the IPC was framed, read over and explained to the appellant who abjured the guilt and in his defence claimed himself to be innocent.</p>	

आदेश पत्रक (पूर्वानुबद्ध)

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	<p>Learned trial Court, appreciating evidence on record held the appellant guilty for committing murder of his wife Muchaki Kosi and accordingly, convicted and sentenced him.</p> <p>Death of Muchaki Kosi being homicidal in nature has not been disputed. Even otherwise from the statement of Dr. Ramesh Kumar Nachankar (P.W.1) and autopsy report (Ex.P/2), it has been established that following external and internal injuries have been found on the body of the deceased, her death was homicidal in nature and cause of her death was asphyxia due to throttling.</p> <p><u>External Injuries:</u></p> <p>(i) One contusion present on right side of neck 4 cm. below the angle of mandible, size 2.5 x 4 c.m.</p> <p>(ii) On left side of neck four contusions distributed from above downwards and outwards. Size 2 x 4 c.m., 2 x 5 c.m., 2 x 3 c.m.</p> <p>(iii) Crescentic scratch is present in right ear (inner upper side).</p> <p><u>Internal Injury:</u></p> <p>Fracture second and third ribs, 3.0 c.m. away of their joints with sternum left side.</p>	

मामला क्रमांक Cr-A-2553/98 सन् 200-

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>Dudhi Hadma (P.W.2), brother of deceased Muchaki Kosi, in his statement categorically stated that the appellant and his wife Muchaki Kosi were quarreling; therefore, he went to appellant's house. Appellant assaulted her sister by foot on her stomach and threw her down and thereafter he pressed her neck. After seeing the incident he came back to his house. On the next morning he went to see his sister. He found her lying dead in her house. Appellant was absent. He apprised this fact to his brother-in-law Bhuska.</p> <p>Learned counsel for the appellant contended that Dudhi Hadma (P.W. 2) in his statement has given the version in past tense, therefore, he is not an eyewitness. We are afraid to accept this contention. Statement of Dudhi Hadma (P.W. 2) is to be read as a whole. In his cross examination nothing has been brought so as to discredit his statement or to accept that this witness has not seen the incident. After careful scrutiny of his statement, we are of the opinion that this witness has witnessed the incident and in his presence the appellant not only kicked his wife who was pregnant but also pressed her neck.</p>	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

C.A. 2553/98

मामला क्रमांक सन् 200—

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>Dudhi Hadma (P.W. 2) further stated that Panchayat was convened and appellant when asked about the incident, stated that Muchaki Kosi did not serve him meal, therefore, he has killed her. Muchaki Bhuska (P.W. 6) in his statement deposed that a Panchayat was convened, the appellant before the Panchayat confessed that by pressing the neck he killed his wife Muchaki Kosi.</p> <p>Learned counsel for the appellant contended that extrajudicial confession has been made before Panchayat and different version has been stated by the witnesses, therefore, no reliance can be placed on such extrajudicial confession and placed his reliance on the judgment rendered by the Hon'ble the Apex Court in <u>Kishan Lal Vs. State of Rajasthan</u> reported in <u>AIR 1999 SC 3062</u>. On the other hand, learned counsel for the State placed his reliance on the judgment rendered by the Hon'ble the Apex Court in <u>Gura Singh Vs. State of Rajasthan</u> reported in <u>2001(2) SCC 205</u> and contended that if the extrajudicial confession is voluntary and not obtained by coercion, inducement or promise, that alone is sufficient to convict the offender.</p>	

T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक (पूर्वानुबद्ध)

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	<p>On the fact of the case, the judgment rendered by the Hon'ble the Apex Court in the matter of Kishan Lal (supra) is distinguishable. Law is settled on extrajudicial confession whether it has been made before Panchayat or anybody else, if it is natural and voluntary and has not been obtained by threat, coercion or promise, the same is to be accepted and that alone is competent to convict the culprit.</p> <p>Here, in the instant case although there is some minor discrepancies in the statements of witnesses who are villagers and whose statements have been recorded after a lapse of time, but reading as a whole the gist of their statements is that the appellant confessed killing his wife by pressing her neck. There is no evidence to suggest that the appellant was threatened, promised or pressurized to make any confession but from the evidence available on record it is evident that before Panchayat the appellant voluntarily confessed his guilt, therefore, extrajudicial confession made by him before Panchayat is trustworthy and that alone can be relied on for his conviction.</p> <p>Thus, from the statement of eyewitness and extrajudicial confession made by the appellant, it has been established that the</p>	

मामला क्रमांक सन् 200—

आदेश पत्रक (पूर्वानुबद्ध)

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	<p>appellant killed his pregnant wife. In the result, we are of the considered opinion that the learned trial Court did not commit any error in holding the appellant guilty for committing the murder of his wife Muchaki Kosi and imposing sentence on him. The appeal being devoid of substance is liable to be dismissed and the same is accordingly, dismissed.</p> <p>Sd/- V.K. Shrivatava Judge</p>	<p>Sd/- Dhirendra Mishra Judge</p>

P.T.O.

6.11.08
10.11.08