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DB (क्रि.)

(2)

XL-189 / (Jail)
C. P. R. 11/94/2,000



APPEAL OF PRISONER

No. 1420 Name एतवार सिंह
Father's name मयत राम
Residence साकेत चल्हा गाना काठु Age 40 वर्ष
Sentenced to साजिलन कारावास On 14.7.90
Under section 302 भा. दं. वि. by मयत अमर सत नारायण रायगढ़

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 base 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 Date of Application for copy of Judgement 14.7.90
- 2 Date on which copy received 13.8.90
- 3 Date on which Appeal sent 13.8.90
- 4 Whether the prisoner wishes to be represented or not - Yes / No

No. 1420 Name एतवार सिंह
Confined in जिला Jail रायगढ़
No. 9227 Dated 13.8.1990
Forwarded to the CHIEF JUDICIAL MAGISTRATE रायगढ़

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

निर्णय प्रतिलिपि संलग्न
पत्र
अपील आवेदन पत्र

Superintendent
Superintendent
District Jail Raigarh (M.P.)

Date of receipt in 13/8/98 office
Date of receipt record to accompany the 19/8/98
Memo of Appeal to the Appellate court

No 9127 Dated 19/8/98 1998
Forwarded to the District & Sessions Judge Raigarh

Date of receipt in Appellate Court

ह. न्यायिक दण्डविभाग
रायगढ़ 19/8/98
(P. T. O.)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.A. 2542/98 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>DB: <u>HON'BLE SHRI V.K. SHRIVASTAVA &</u> <u>HON'BLE SHRI DHIRENDRA MISHRA, JJ</u></p> <p><u>31.10.2006:</u></p> <p>Mr. M.K. Baeg, counsel for the appellant.</p> <p>Shri U.N.S. Deo Additional Public Prosecutor with Shri D.C. Pandey, Panel Lawyer for the State.</p> <p>Heard finally.</p> <p>Judgment dictated on Dias.</p> <p><u>Per Vijay Kumar Shrivastava, J.</u></p> <p>The appellant has preferred this appeal under Section 374 (2) of the Code of Criminal Procedure against the impugned judgment of conviction and order of sentence dated 14.7.1998 passed by First Additional Sessions Judge, Raigarh in Sessions Trial No. 175/1997 whereby he has been held guilty for committing murder of his wife Dhanmet Bai punishable under Section 302 of the Indian Penal Code, and has been sentenced to undergo imprisonment for life.</p> <p>Factual matrix of the case is that Dhanmet Bai, wife of the appellant was living along with the appellant. On 25.6.1997 appellant and Dhanmet Bai both consumed liquor. Appellant asked her to prepare food, Dhanmet Bai who was drunk refused to do that, therefore, quarrel erupted. Appellant assaulted her with club and killed her by throttling. On the next morning he narrated the incident to Rattidas. Rattidas after ascertaining</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

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	<p>that Dhnmet bai is dead went to the police station Kapu, gave merg intimation and also recorded first information report. Head constable Rajanand Yadav conducted inquest, prepared his report and forwarded the dead body of Dhamet Bai to Primary Health Centre, Dharamjaygarh for post mortem examination. Dr. G.S. Bhodalkar conducted autopsy and opined that deceased died due to suffocation caused as a result of smothering by means of closure of nose and mouth and the death is homicidal in nature. During investigation burn fuel wood which is said to have been used for assaulting Dhanmet Bai and one Lungi were recovered and seized from the appellant, blood stained earth and control earth were collected and seized from the place of incident. One Sari was also seized from one Aartidas. Statements of witnesses have been recorded under section 161 of Cr.P.C. All the seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur. On examination blood stains were found on the stained earth, burn fuel wood and Sari.</p> <p>Charge under section 302 of the IPC was framed against the appellant and it was read over and explained to him who abjured the guilt. Learned trial Court after appreciation of the evidence held the appellant guilty for committing murder of his wife Dhanmet Bai, therefore, convicted and sentenced him.</p> <p>Dr. Bodalkar (PW-10) who conducted autopsy has stated in his evidence that the deceased died due to suffocation caused as a result of smothering and the death was homicidal in nature. Learned counsel for</p>	

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>the appellant disputed the death being homicidal in nature. Evidently no external injury has been found on the body of Dhanmet Bai and even no mark of violence was there. Dr. Bodalkar (PW-10) in his cross examination has admitted that normally in cases of suffocation right chamber remains filled with blood and left chamber remains empty but in the instant case both the chambers have been found empty. Blood froth in the nostril or mouth has not been seen, therefore, from all these facts the death being homicidal in nature appears to be doubtful.</p> <p>So far involvement of the appellant in the death of Dhanmet Bai is concerned, although a number of witnesses have been examined by the prosecution but no one has stated in their evidence that on the fateful night appellant and Dhanmet Bai were inside the house. So far as consumption of liquor is concerned, there is no evidence to support that Dhanmet Bai or the appellant had consumed liquor on the fateful night.</p> <p>PW-3 – Khusiyal Singh, PW-4 – Rajendra Prasad, PW-6 – Ratiram, PW-11 Chaitram, PW-12 – Ganeshram, PW-13 – Lalsingh, PW-14 – Mahliram, PW-15 – Bachanram, PW-19 Ganesh Ram, PW-20 – Sankunwar, PW-21 – Marichauroni and PW-22 – Jankari, have been examined by the prosecution but all of them, turned hostile and did not support the prosecution version. Rattiram PW-6 who in examination in chief stated that the appellant did not tell anything about the assault, however, when he was declared hostile and cross examined by the prosecution, in reply to suggestive questions stated that appellant confessed that he pressed his wife's neck as a result of which she died</p>	

मामला क्रमांक सन् 200

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आदेश पत्रक (पूर्वानुबद्ध)

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	<p>but when he was cross examined by the defence, he stated that the appellant apprised him that his wife died due to fall. On statement of such a witness who is not worth reliance, it cannot be accepted that appellant made any extra judicial confession. Learned trial Court also held the extra judicial confession doubtful. There is no other evidence to connect the appellant with the crime; therefore, we are of the considered opinion that prosecution utterly failed to prove beyond doubt that appellant caused death of his wife Dhanmet Bai.</p> <p>In the result, the appeal is allowed. The impugned judgment of conviction and order of sentence passed by the trial Court is set aside. The appellant is acquitted of the charge under section 302 of the IPC and is directed to be set at liberty forthwith if not required in any other case/matter.</p>	
	<p>Sd/- V.K. Shrivatava Judge</p>	<p>Sd/- Dhirendra Mishra Judge</p>

P.T.O.

9/11/06