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**IN THE HIGH COURT OF JUDICATURE AT BILASPUR**

**CHHATTISGARH**

Cr. A. No. 369 /2003

**CRIMINAL APPEAL U/S. 374 (2) OF Cr.P.C.**

**APPELLANT**

**(IN JAIL)**

: Ramkunwar Alias Pakali bai  
Aged 32 years, W/o. Ved Prasad,  
R/o. Shiv Talab, Semariya, P.S. Kota  
Tahsil and Distt. Bilaspur (C.G.)

**VERSUS**

**RESPONDENT**

: The State of Chhattisgarh  
Through P.S. Kota, Tahsil  
and District Bilaspur (C.G.)

778/03  
Filed on..... 15/2/03  
by Shri..... Mrs. Sofia Khatun  
..... Advocate

R. to D.R. (J)

**AGAINST THE JUDGEMENT**  
**DATED 03.03.2000 PASSED IN**  
**SPECIAL CASE NO. 354/99 BY**  
**THE SIXTH ADDITIONAL**  
**SESSIONS JUDGE BILASPUR,**  
**DISTT. BILASPUR (C.G.)**

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक (S.T.No. 354/99) सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p><b><u>DIVISION BENCH:</u></b>  <b><u>HON'BLE MR. L.C. BHADOO &amp;</u></b>  <b><u>HON'BLE MR.DHIRENDRA MISHRA, JJ</u></b></p> <p><b><u>30.11.2006</u></b></p> <p>Miss Sofia Khan, Advocate for the appellant.  Mr. D.K. Gwalre, Dy. Govt. Advocate for the State.  Heard.  Oral judgment dictated on <i>Dais</i>.</p> <p><b><u>Per L.C. Bhadoo, J.</u></b></p> <p>This appeal is directed against the judgment of conviction and order of sentence dated 3.3.2000 passed by the 6<sup>th</sup> Additional Sessions Judge, Bilaspur in S.T.No.354/99, whereby Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 of the IPC sentenced her to undergo rigorous imprisonment for life.</p> <p>The case of the prosecution, in brief, is that on 9.7.1999 Sukhiram lodged a report (Ex.P-9) in the Police Station Kota to the effect that Vedram &amp; Ramkunwar, who is his sister were residing in the adjoining house. Ramkunwar was brought by Vedram and they were living as husband &amp; wife since last 20 years. As they were issueless, therefore, his daughters namely Shivkumari, aged 16 years &amp; Saraswati, aged 7 years, were residing with Vedram &amp; Ramkunwar. Today, at about 7.00 a.m. Kalabai came to him and informed that Vedram has been murdered and his body is lying in the house, on which he went to the house of Vedram and saw that he was lying in a pool of blood in an injured &amp; unconscious condition. There was injury on his forehead. He informed the Village Kotwar. When he was making arrangements to take Vedram to Kota for treatment, by 8.00 a.m.</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

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	<p>Vedram died. Receiving this report, the Station House Officer, Police Station Kota registered the offence under Section 302 of IPC, left for scene of occurrence, and after giving notice (Ex.P-14) to the Panchas prepared the inquest (Ex.P-15) on the body of Vedram. He also prepared the site plan (Ex.P-8) of the place of occurrence. While in police custody, accused Ramkunwar gave memorandum (Ex.P-5) and in pursuance of that she got recovered the axe, weapon of offence under Ex.P-6. Body of Vedram was sent for postmortem examination to the Community Health Centre, Kota where Dr. N.K. Samdaria (PW-1) conducted the postmortem examination on the body of Vedram, prepared the postmortem report (Ex.P-1) and opined that death of Vedram was due to shock and <del>external</del> haemorrhage as a result of grievous head injury. The doctor also examined accused Ramkunwar and prepared injury report Ex.P-3. Clothes of accused Ramkunwar were seized under Ex.P-4.</p> <p>After completion of usual investigation, charge sheet was filed against the accused/appellant herein and co-accused Ashok Kumar in the Court of Chief Judicial Magistrate, Bilaspur, who in turn committed the case to learned Sessions Judge, Bilaspur from where 6<sup>th</sup> Additional Sessions Judge, Bilaspur received the case on transfer for trial. The prosecution in order to establish the charge against the accused persons examined 12 witnesses. Statements of accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence.</p> <p>Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused/appellant herein in the manner afore-mentioned, however, acquitted the co-accused Ashok Kumar of the above charge.</p>	

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## आदेश पत्रक (पूर्वानुबद्ध)

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	<p>We have heard Miss Sofia Khan, Advocate for accused/appellant and Mr. D.K. Gwalre, Dy. Government Advocate for the State.</p> <p>Learned counsel for the accused/appellant herein did not dispute the homicidal death of Vedram. Apart from that, from the evidence of PW-5 Shivkumari and the medical evidence of Dr. N.K. Samdaria (PW-1), it is established that the death of Vedram was homicidal in nature.</p> <p>As far as involvement of the accused/appellant in crime in question is concerned, learned counsel for the accused/appellant argued that the appellant has been convicted only on the evidence of PW-5 Shivkumari, but her testimony is not reliable and trustworthy for the reason that her evidence is contradictory to her statement given under Section 161 of Cr.P.C. In the said statement, she has stated that initially deceased Vedprasad (Vedram) &amp; accused Ramkunwar quarreled, some altercation took place between the two, thereafter, Vedprasad (Vedram) picked up the axe lying nearby and assaulted Ramkunwar. As Vedprasad (Vedram) was in a drunken condition, therefore, Ramkunwar snatched the axe and assaulted Vedprasad (Vedram). In the meantime, co-accused Ashok Kumar took that axe from Ramkunwar and assaulted on the right side of the head of Vedprasad (Vedram). In the Court statement, this witness has totally absolved Ashok Kumar and shifted the whole blame on the head of accused/appellant herein and therefore, the co-accused Ashok Kumar, who caused the fatal injury to the deceased, has been acquitted. PW-5 in her examination-in-chief has stated that in fact, Vedprasad (Vedram) picked up the axe and first assaulted the present accused/appellant, who snatched the axe and assaulted Vedprasad (Vedram) only once and remaining assaults were made by Ashok Kumar. Therefore, the above evidence</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

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	<p>probabilised the fact that the accused/appellant herein assaulted the deceased only once in her right of private defence.</p> <p>On the other hand, learned Deputy Government Advocate for the State supported the judgment of the trial court.</p> <p>In order to appreciate the arguments advanced by learned counsel for the parties, we have perused the evidence of PW-5 Shivkumari because she is only witness on whose testimony the accused/appellant has been convicted and she is only witness, who said to have witnessed the crime, and there is no other witness.</p> <p>PW-5 Shivkumari has stated in Para 3 of her evidence that at about 8 p.m. in the night on asking by Vedprasad (Vedram) she was cooking meals. In the meantime, Vedprasad (Vedram) &amp; Ramkunwar started quarrelling. Vedprasad (Vedram) was abusing Ramkunwar in the name of mother &amp; sister and in that process, Vedprasad (Vedram) picked up the axe and attacked Ramkunwar. Ramkunwar snatched that axe from Vedprasad (Vedram) and assaulted him. From the evidence of Dr. N.K. Samdaria (PW-1), it has come on record that on 10.7.1999 he examined accused Ramkunwar and one injury was found on the left side of her face in the size of 1½ x ¾ inch. Therefore, this medical report corroborates the evidence of PW-5 Shivkumari, who has stated that in the first instance Vedprasad (Vedram) attacked Ramkunwar with the axe. Therefore, from her evidence it is clearly established that Ramkunwar in her right of private defence snatched the axe from the deceased when he was attacking her and attacked him and thereafter, as per prosecution case, co-accused Ashok Kumar snatched that axe from Ramkunwar and attacked the deceased, as a result of which he fell down and died.</p>	

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	<p>In view of the above facts, in the first instance, Ashok Kumar caused major injury, accused Ramkunwar snatched the axe from the deceased in her right of private defence and in order to protect herself she attacked him only once. Moreover, deceased was in a drunken condition, in that condition he started abusing Ramkunwar and even attacked Ramkunwar with the axe. PW-5 has partially supported the prosecution case, as she has resiled from her statement made before the police i.e. Ex.P-10 that in fact, Ashok Kumar assaulted the deceased with the axe. Therefore, we are of the considered opinion that the prosecution has failed to establish the charge against accused Ramkunwar for the two reasons i.e. (1) accused Ramkunwar acted in her right of private defence; and (2) that co-accused against whom charge was that he attacked the deceased with the axe, has already been acquitted.</p> <p>In the result, the finding of the trial court convicting the accused/appellant herein for commission of offence under Section 302 of IPC cannot be sustained. As such, the appeal succeeds and same is allowed. Conviction and sentence imposed on the appellant under Section 302 of IPC are hereby set aside and appellant Ramkunwar is acquitted of the said charge. Appellant Ramkunwar is in detention since 9.7.1999, therefore, she be set at liberty forthwith, if not required in any other case.</p> <p>Certified copy as per rules.</p> <p>Sd/- L.C.BHADOO Judge</p>	<p>Sd/- DHIRENDRA MISHRA Judge</p>

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