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M. (Cri.) P. 1781/2001

IN THE HON'BLE HIGH COURT OF JUDICATURE AT BILASPUR

CRIMINAL APPEAL NO. 3289/99

APPELLANT
(in jail)

: Vikramsingh, S/o. Budhram Gond,
aged about 42 years, R/o. Sinhpur,
P.S. Khargawan, Dist - Korea.

VERSUS

RESPONDENT

: The State of Chhattisgarh.

APPLICATION U/S 389 OF CODE OF CRIMINAL PROCEDURE

मामला क्रमांक ...स.स.नं.१०...३२.८७/९९
सन् २००७

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p><u>DB:- Hon'ble Shri L.C. Bhadoo, Ag. C.J. & Hon'ble Shri Sunil Kumar Sinha, J.</u></p> <p><u>31-1-2007:-</u></p> <p>Mr. Abhay Tiwari, counsel for the appellant.</p> <p>Mr. Sudhir Bajpai, Deputy Govt. Advocate for the State/respondent.</p> <p>Oral judgment dictated on <i>Dais</i>.</p> <p><u>Per Sunil Kumar Sinha J.</u></p> <p>This appeal is directed against the judgment of conviction and order of sentence dated 28-10-99 passed by the Additional Sessions Judge, Manendragarh, in S.T. No.182/99 whereby learned Additional Sessions Judge convicted the appellant under Section 302 of the I.P.C. and sentenced him to undergo imprisonment for life & to pay a fine of Rs.500/-, in default of payment of fine to further undergo imprisonment for 6 months.</p> <p>The case of the prosecution is that on 2-3-99 deceased namely Shanti Bai and appellant Vikram Singh, who is the husband of the deceased, were taking their meals. The meals were served by their daughter-in-law namely Ramrati (PW-1). The appellant after taking few breads went away from that place whereas, his wife (deceased) continued with her meals. Seeing this, the accused/appellant came to the place of occurrence along with Tangia in his hands and gave 3 Tangia blows on the head of the deceased, on account of which the deceased fell down on the ground. Seeing this, the daughter-in-law raised hue and cry, on which the neighbourers came to the spot. Seeing them, the appellant started running away but he was caught by the neighbourers. Merg intimation</p>	

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स. A. 3289 / 99
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>(Ex.-P/2) was lodged by Ramrati (PW-1) based on which First Information Report was registered vide Ex.-P/1 on 2-3-99.</p> <p>After registration of the FIR, concerned Investigating Officer left for scene of occurrence and on 2-3-99 under Ex.-P/8 inquest was done on the body of the deceased. The body was sent for postmortem to the Government Hospital, Podi (Bachhra), P.S. Khadgawan. The postmortem was conducted by Dr. R.P. Singh (PW-5) and report Ex.-P/11 was prepared. The doctor opined that cause of death was coma due to head injury and was homicidal in nature. On the memorandum under Section 27 of the Evidence Act prepared under Ex.-P/3 Tangia was seized from the possession of the accused/appellant vide Ex.-P/4 on 3-3-99. Plain soil and blood stained soil were also seized under Ex.-P/5 on 2-3-99 and clothes of the accused were also seized under Ex.-P/6 on 3-3-99. Site plan was prepared under Ex.-P/13.</p> <p>After completion of enquiry, charge sheet was filed against the accused in the Court of Judicial Magistrate, 1st Class, Manendragarh, who in turn committed the case to the Court of Session Judge from where case was received by the Additional Sessions Judge, Manendragarh, who conducted the trial, convicted and sentenced the accused/appellant as aforementioned.</p> <p>Conviction of the appellant is based upon the sole testimony of Ramrati (PW-1) who is the daughter-in-law of the appellant.</p> <p>Learned counsel for the appellant argued that in the facts and circumstances of the case, offence under Section 302 of the I.P.C. would</p>	

मामला क्रमांक Cr. A. 3289/99 सम 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>not be made out and this case would fall under Section 304 Part-II of the I.P.C.</p> <p>We have heard learned counsel for the parties at length and we have also perused the record of the Sessions trial.</p> <p>Ramrati (PW-1), daughter-in-law of the accused/appellant, has stated that on the fateful day she was serving meals to her in-laws. Her father-in-law and mother-in-law both were taking meals. Both have taken breads. After eating breads, when she was serving rice to them, the accused/appellant did not take rice and he went from the said place and lay down on a cot. However, her mother-in-law (deceased) took some rice and started eating. In the meanwhile, the accused/appellant could search a Tangia in the house, came along with Tangia and gave 3 Tangia blows on the head of the deceased. The deceased fell down and died. PW-5 Dr. R.P. Singh has stated that the deceased had sustained following injuries:-</p> <ol style="list-style-type: none"> (1) Lacerated wound in the size of 2½" x 2" bone deep on the skull slight upper portion of right year; (2) Lacerated wound in the size of 1½" x ½" on forehead, bone deep at left side; (3) Lacerated wound in the size of 1½" x 1" at right parietal region of scalp with fracture of underline parietal bone. Pieces of fractured bones have penetrated deep into skull. Blood clots were present in brain portion. All the injuries were ante-mortem in nature. 	

r.T.O.

मामला क्रमांक ... Cr. A. 3283/99 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Barve	<p style="text-align: center;">-4-</p> <p>In view of the evidence of eyewitness and also in view of the evidence of Dr. R.P. Singh (PW-5) specially the description which has been given about Injury No.3 that pieces of fractured bones of skull have penetrated deep into inner portion of the skull, we are unable to accept the argument advanced by learned counsel for the appellant that this case would fall under Section 304 Part-II of the I.P.C. The nature of weapon used by the appellant is an "axe" and with the help of said axe, the appellant gave repeated blows on the head of the deceased, out of which the deceased received 3 injuries in which description of Injury No.3 is self evident to show the force used by the appellant against the deceased. In the circumstances, when Tangia was used and same was used with a very great force so as to cause fracture and pieces of fractured bones have penetrated into the skull, we are of the considered opinion that this case would fall under Section 302 of the I.P.C. and none of the exceptions would be attracted in this case. Hence, argument advanced by learned counsel for the appellant has no force and same cannot be accepted.</p> <p>Considering the facts and circumstances, particularly considering evidence of eyewitness and also evidence of the doctor, we are of the view that a case under Section 302 of the I.P.C. is made out against the appellant. Learned Additional Sessions Judge has committed no illegality or irregularity while convicting the appellant under Section 302 of the I.P.C. and sentencing him to undergo imprisonment for life.</p> <p>The appeal has no merit, the same is liable to be dismissed and is accordingly dismissed.</p> <p style="text-align: center;">Sd/- L.C. BHADOO Judge</p>	<p style="text-align: center;">Sd/- SUNIL KUMAR SINHA Judge</p> <p style="text-align: right;">P.T.O</p>