



क्र.स. नं. 167/2002
मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध) °

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p><u>APPELLANT</u> (in Jail)</p> <p><u>RESPONDENT</u></p> <p>(Criminal Appeal under Section 374(2) of the Cr.P.C.)</p> <p><u>Division Bench :</u> <u>Hon'ble Shri L.C. Bhadoo &</u> <u>Hon'ble Shri Sunil Kumar Sinha, JJ</u></p> <p><u>31-8-2007</u></p> <p>Shri N.L. Soni, counsel for the appellant. Shri Sudhir Bajpai, Dy. Govt. Advocate for the State. Oral judgment dictated on <i>dais</i>.</p> <p><u>L.C. Bhadoo, J</u></p> <p>The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 30-1-2002 passed by the Special Judge, NDPS, Raipur, in Sessions Trial No.427/2000 whereby he has been held guilty under Section 302 of the Indian Penal Code for committing murder of Shrawan Kumar and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for two months.</p> <p>2) Case of the prosecution, in brief, is that on 1-10-2000 at about 7.00 p.m. in the evening Shrawan Kumar (since deceased) was standing in front of his house. At that time, the accused came carrying wooden plank of Rickshaw in</p>	<p>Ravideep Udia, S/o Baldeo Udia, aged 28 years, Profession Riksha Driver, R/o Trimurty Nagar, Kapa Station, Fafadih, Raipur (CG).</p> <p>-Versus-</p> <p>State of Chhattisgarh</p>

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	<p>his hand and attacked with the said plank on the head of Shrawan Kumar, as a result of which he fell down. He was taken to Khemka Hospital for treatment and ultimately he succumbed to the injuries in the said hospital on 2-10-2000 at about 1.00 p.m. during the day. Dr. Sunil Kumar Khemka made a report (Ex.P/16) in Police Station Ganj. Investigating Officer after registering the case under Ex.P/18 took up the investigation. He left for the place where the body of Shrawan Kumar was lying. After giving notice (Ex.P/1) to the Panchas, inquest (Ex.P/2) was prepared on the body of Shrawan Kumar. The accused while in police custody gave memorandum (Ex.P/3) regarding the place where he kept the wooden plank. In pursuance of that the wooden plank was got recovered under Ex.P/4. The bed-head ticket of Shrawan was seized under Ex.P/5. The clothes of the deceased were seized under Ex.P/6. The body of Shrawan was sent for postmortem examination to Mekahara, Medical College, Raipur, where Dr. Ulhas Gonnade (PW-9) conducted postmortem and prepared report (Ex.P/7). He opined that the cause of death was coma as a result of head injury. Site plan (Ex.P/9) was prepared by the Halka Patwari.</p> <p>3) After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, Raipur, who in turn committed the case to the Court of Sessions Judge, Raipur, from where learned Special Judge, Raipur, received the same on transfer for trial.</p> <p>4) In order to establish the charge against the accused/appellant, the prosecution examined 17 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence. He stated that deceased Shrawan Kumar was playing cards in front of his house after consuming liquor and he was abusing. Therefore, he persuaded him not to</p>	

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	<p>abuse, on which the deceased attacked him with a liquor bottle. As a result of which he had sustained injuries on his head. Accused also stated that he has been implicated in a false case. He examined two witnesses in his defence namely, Bodhuram Barle (DW-1) & Dr. C.S. Pandey (DW-2). He also tendered into evidence his injury report (Ex.D/3-C).</p> <p>5) Learned Special Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.</p> <p>6) We have heard Shri N.L. Soni, learned counsel for the appellant and Shri Sudhir Bajpai, Dy. Govt. Advocate for the State.</p> <p>7) Shri Soni, learned counsel for the accused/appellant, has not disputed the homicidal death of Shrawan Kumar. Moreover, from the ocular evidence of PW-5 Smt. Kasturi Bai & PW-12 Mamta, it is established that the accused attacked the deceased with a wooden plank on his head. The evidence of these witnesses is also corroborated by the medical evidence of Dr. Ulhas Gonnade (PW-9), who has stated that he conducted postmortem on the body of Shrawan Kumar on 2-10-2000. He noticed that there was a lacerated wound on the head, bone beneath the injury was fractured, as a result of which he died. Therefore, from the above ocular & medical evidence, it is established that the death of Shrawan Kumar was homicidal in nature.</p> <p>8) As far as involvement of the accused in the crime in question is concerned, PW-5 Smt. Kasturi Bai, who is none else than neighbour of the deceased, has categorically stated that on the fateful day at about 7.00 to 7.30 p.m. she went to the house of her neighbour Pandu in order to bring fire. Deceased Shrawan Kumar was standing outside the house. At that time, she saw that accused came carrying wooden plank in his hand and after abusing in</p>	

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	<p>the name of sister, he attacked on the head of Shrawan. As a result of which Shrawan fell down. He was taken to the hospital.</p> <p>9) The above evidence of PW-5 Smt. Kasturi Bai is corroborated by the evidence of PW-12 Mamta, who is also a neighbour of the deceased. Mamta has also stated that the accused attacked the deceased with a wooden plank. The defence has not been able to elicit any circumstance in cross-examination to discredit the evidence of these witnesses.</p> <p>10) Moreover, the ocular evidence of the above witnesses stands corroborated by medical evidence of Dr. Ulhas Gonnade (PW-9), who has stated that he conducted postmortem on the body of Shrawan Kumar on 2-10-2000. He noticed that there was a lacerated wound on the head of the deceased. He has also stated that the wooden plank was sent to him for examination, which was examined by him, he gave his report. As per the report, the injury, which was found on the head of Shrawan, could be caused by wooden plank. From the above evidence, it is established that the accused was author of the crime in question.</p> <p>11) Shri Soni, learned counsel for the accused/appellant, argued that there is nothing on record to show that the accused attacked the deceased with an intention to cause his death. Moreover, just before the incident the deceased was playing cards in front of the house of the accused. When the accused persuaded him not to play cards, then the deceased who was in drunken condition attacked the accused on his head with the liquor bottle, as a result of which the accused received injury. Therefore, in a heat of passion, the accused picked up wooden plank, went to the house of the deceased, which was near to the place of occurrence and attacked the deceased with the said plank only once. Thereafter the accused ran away. From the above</p>	

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	<p>circumstances, it cannot be said that the accused attacked the deceased with an intention to cause his death. Everything happened all of sudden, in a heat of passion, without preparation and premeditation.</p> <p>12) On the other hand, Shri Bajpai, learned Dy. Govt. Advocate, supported the judgment of the trial Court.</p> <p>13) In order to appreciate the arguments advanced by learned counsel for the accused/appellant, we have perused the record.</p> <p>14) Accused in his statement recorded under Section 313 of the Code of Criminal Procedure, has stated that the deceased was playing cards after consuming liquor in front of his house where he asked him not to play cards, then the deceased picked up the liquor bottle and attacked him on his head, as a result of which he sustained injuries.</p> <p>15) DW-1 Bodhuram Barle, Head Constable, has stated that on 1-10-2000 the accused lodged the report in Police Station Ganj, which was registered as crime No.227/2000. As the accused in that crime i.e. Shrawan was already, therefore, final report was submitted.</p> <p>16) DW-2 Dr. C.S. Pandey, has also stated that on 1-10-2000 at 7.40 p.m. he examined the injuries of the accused. He found that there was lacerated wound. He gave his report under Ex.D/3-C. The injury report corroborates the statement of the accused made under Section 313 of the Cr.P.C. The accused immediately went to the house of the deceased, which was near to the house of the accused where he was standing and attacked the deceased with wooden plank once only and ran away.</p>	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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Gowri	<p>17) From the above facts and circumstances of the case, it cannot be held that the accused attacked the deceased with an intention to cause his death. Everything happened in fraction of seconds. When the deceased attacked the accused with the liquor bottle, accused picked up wooden plank, went near the house of the deceased and attacked him only once. Therefore, the offence against the accused is covered under Exception 4 to Section 300 of the I.P.C. and the same does not travel beyond Section 304 Part-II of the I.P.C.</p> <p>18) In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are set aside, instead thereof he is convicted under Section 304 Part-II of the IPC and sentenced to undergo R.I. for 7 years. It is stated that the accused is in detention since 3-10-2000 till today. The accused shall be entitled for set off of the period of sentence he had already undergone.</p> <p>Sd/- L.C.BHADOO Judge</p>	<p>Sd/- Sunil Kumar Sinha Judge</p>