



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 style="text-align: center;">HIGH COURT OF CHHATTISGARH BILASPUR</p> <p style="text-align: center;">CRIMINAL APPEAL NO. 168 OF 2002</p> <p><u>DIVISION BENCH</u></p> <p><u>APPELLANT</u> (In Jail)</p> <p><u>NON-APPLICANT :</u></p> <p>Present</p> <p>Mr. R.P. Tripathi, counsel for the accused/appellant. Mr. Ashish Shukla, Additional Public Prosecutor for the State/non-applicant.</p> <p style="text-align: center;"><u>ORAL JUDGMENT</u> (29th June 2007)</p> <p><u>Per L.C. Bhadoo, J</u></p> <p>This appeal is directed against the judgment of conviction • and order of sentence dated 30th January 2000 passed by Additional Sessions Judge, Janjgir in Sessions Trial No. 141/2000 whereby learned Additional Sessions Judge after holding the</p>	<p><u>HON'BLE SHRI L.C. BHADOO, & HON'BLE SHRI DHIRENDRA MISHRA, JJ</u></p> <p>Satrughan aged about 27 yrs. S/o Balram Devangan, r/o. Beldarpara, Champa Distt.- Janjgir-Champa (C.G.)</p> <p><u>Versus</u></p> <p>State of Chhattisgarh, through Presiding Officer, P.S. Champa, Distt. Janjgir- Champa (C.G.)</p>

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	<p>accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life and to pay a fine of Rs.200/-. It has further been mentioned that life imprisonment means imprisonment for rest of the life.</p> <p>2. Case of the prosecution, in brief, is that in the morning of 27th February 2000, some quarrel took place between the accused and his wife Sumitrabai (since deceased), the accused dashed the head of Sumitrabai against the door frame 3-4 times, as a result of which Sumitra sustained injuries on the head and became unconscious. Thereafter, the accused poured kerosene oil on the body of Sumitrabai and set her on fire, as a result of which she succumbed to the 100% burn injuries sustained by her. Merg intimation (Ex.P/ 12) of the incident was given by Sudarshan (PW-1) on the basis of which Merg No. 16/2000 was registered by P.S. Janjgir-Champa. Receiving this report S.H.O., P.S. Janjgir Champa left for the scene of occurrence and after giving notice to the Panchas, he prepared the Panchanama (Ex.P/ 1) on the body of deceased Sumitrabai. Panchanama (Ex.P/5) regarding the door frame of house of the accused was prepared. Dead body of Sumitrabai was sent for postmortem examination to Govt. Hospital, Champa under Ex.P/6 where Dr. V.P. Soni (PW-10) conducted postmortem on the body of deceased Sumitrabai and prepared the postmortem report (Ex.P/7) in which he opined that</p>	

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	<p>cause of death is shock due to ante mortem extensive burn 100%. Nature of the death seems to be homicidal. Site plan (Ex.P/9) was prepared by the Halka Patwari. Based on the postmortem report and other documents, S.H.O. P.S. Champa registered the First Information Report (Ex.P/17) for commission of the offence under Section 302 of the IPC. One container of tin of kerosene oil, burnt clothes of the deceased, half burnt blanket and one half burnt bedsheet were seized under Ex.P/19.</p> <p>3. After completion of investigation charge sheet was filed against the accused/appellant in the Court of Chief Judicial Magistrate, Janjgir who in turn committed the case to the Court of Sessions Judge, Bilaspur from where learned Additional Sessions Judge, received the case on transfer for trial.</p> <p>4. Prosecution in order to establish the charge against the accused examined 14 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which in reply to question No. 2 he himself admitted that on the date of incident at 9.00 a.m. in the morning he and his wife were the only two persons at his residence. He further stated that he did not indulge in <i>marpeet</i>, fire smoke was seen. In reply to question No. 7 he has admitted that his wife got burnt in his house and was lying on the ground. However, he denied that there was any injury on the head of Sumitrabai. He has also pleaded ignorance about the death of Sumitrabai on account of burn injuries. He has stated that witness</p>	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>Semvel is a police witness, therefore, he is lying. Ultimately, he has stated that he is innocent, he did not commit <i>marpeet</i> with his wife, there was some altercation as his wife came late after taking bath, he was working in another room whereas his wife was in another room, the door was bolted from inside and as to how she burnt, he does not know.</p> <p>5. Learned Additional Sessions Judge, after hearing counsel for the respective parties convicted and sentenced the accused/appellant as aforementioned.</p> <p>6. We have heard Mr. R.P. Tripathi, counsel appearing on behalf of the accused/appellant and Mr. Ahsish Shukla, Additional Public Prosecutor for the State/non-applicant.</p> <p>7. As far as homicidal death of Sumitrabai is concerned, Mr. Tripathi, has not disputed the homicidal death of Sumitrabai. Moreover, Dr. V.P.Soni (PW-10) who conducted postmortem on the body of deceased Sumitrabai has stated that on 27.2.2000 he conducted postmortem on the body of Sumitrabai and found following injuries:</p> <p>(1) rigor mortis were present on the dead body, the dead body was 100% burnt from top to bottom, the skin was turned blackish, hair of the head were burnt, the tongue was between the teeth and was protruding. Smell of kerosene oil was emanating from the dead body;</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>(2) there was an injury on the occipital region in the size of 2.5 x 2 c.m. near the ear, blood was oozing out from right ear;</p> <p>(3) there was an abrasion on the wrist of the right hand in the size of 2.5 x 3 cm, there was an abrasion in the size of 1cm on the middle finger of the left hand;</p> <p>On dissection of the head, it was found that there was a fracture in the center of the head, dark black coloured blood was accumulated, carbon particles were present in the trachea. Injuries were ante mortem in nature, they were caused by hard and blunt object. In his opinion, the cause of death was due to shock as a result of 100% burn injuries and death was homicidal in nature.</p> <p>The above, medical evidence is corroborated by the evidence of PW-8 Semvel Kumar who is a neighbour of the accused. Therefore, in view of the above medical and ocular evidence it is established that death of Sumitrabai was homicidal in nature.</p> <p>8. As far as involvement of the accused/appellant in crime in question is concerned, in this case there is no direct or ocular evidence against the accused. Conviction of the accused/appellant rests on the circumstantial evidence, which are as follows;</p>	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>(1) That in the morning before Sumitrabai sustained burn injuries, there was some altercation between the accused and his wife Sumitrabai (since deceased);</p> <p>(2) That at the time of incident only the accused and his wife Sumitrabai were present in the house;</p> <p>(3) That, in the postmortem examination fracture was found on the head of the deceased, there were other injuries on her person, she died on account of 100% burn injuries;</p> <p>(4) That, smell of kerosene oil was emanating from the dead body of Sumitrabai;</p> <p>(5) That, false explanation was given by the accused/appellant that his wife sustained burn injuries with electric heater.</p> <p>9. As far as the first circumstances is concerned, PW-8 Semvel Kumar has stated that at about 9.00 a.m. on the fateful day he was at his residence, his residence is at the distance of 10-20 ft. from the residence of the accused. Sumitrabai was married to the accused about one year's back. On the fateful day, while he was plucking beans, at that time both the husband and wife were quarreling, they were abusing each other, Shatrughan gave beating to his wife. Though he heard the sound of beating, but he thought that it would be a family dispute. After about five minutes, he saw kerosene oil smoke coming out from the house of the accused, the</p>	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>accused was standing there, seeing this he rushed towards the house of the accused. His son Sushil came after him, thereafter 2-3 other persons also reached there and extinguished the fire. He saw that Sumitra was lying on the floor in the middle room of the house of the accused in a burnt condition. Thereafter, the accused came running from front gate, he tried to take out plug of the heater from the main switch but the main switch was in another room, not in the room where Sumitra sustained burn injuries. Accused Shatrughan said that Sumitra was heating the water and got burnt from the heater. Smell of kerosene oil was emanating from the room where Sumitra got burnt. In paragraph 5 he has stated that he had seen the heater, it was off and it was not even hot.</p> <p>10. Learned counsel for the appellant argued that PW-8 Semvel Kumar is a cooked up witness as he is a stock witness of the police and in the cross-examination, he was cross-examined on the aspect that in number of cases he was a police witness. He further argued that other witnesses have not supported the prosecution case, therefore, implicit reliance cannot be placed on the evidence of this witness.</p> <p>11. It is true that other witnesses namely PW-2 Netram Dewangan, PW-3 Chetanlal, PW-4 Sushil Kumar have turned hostile and they have not supported the prosecution case, therefore, there is only one witness i.e. PW-8 Samvel Kumar, to the</p>	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 8	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
		<p>fact that there was a quarrel between the accused and his wife in the morning of the date of incident, at that time only the accused and deceased were present in the house, smell of kerosene oil was emanating from the body of deceased and that the accused gave false explanation that Sumitra sustained burn injuries with the electric heater. In the cross-examination of this witness on the aspect that earlier his tailoring shop was near the police station therefore, he was a witness of police in 150-200 cases, he has denied the suggestion and stated that two years prior to the date of incident he had closed the shop and in that year only in 2-3 cases he gave the evidence. The evidence of this witness that he is neighbour of the accused, has not been challenged in the cross-examination. It has not come on record in the cross-examination that this witness was having any animosity against the accused. Moreover, the fact remains that as per medical evidence Sumitrabai sustained 100% burn injuries and smell of kerosene oil was emanating from her body. Therefore, the evidence PW-8 Semvel Kumar stands corroborated, in material particulars, by the medical evidence. The fact that there was no animosity between the accused and this witness, who is admittedly residing in the neighbourhood of the accused, has been established. Therefore, there was no reason before the trial Court to disbelieve the evidence of PW-8 Semvel Kumar.</p>

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 9	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>12. Learned counsel for the appellant further argued that there is improvement in the evidence of this witness. This witness in his police case diary has not stated anything about the quarrel that took place between the accused and the deceased on the fateful day in the morning and he has also not stated that at the time of incident he was plucking beans. This witness in his diary statement has not disclosed that he heard the cries of Sumitrabai.</p> <p>13. In order to appreciate the argument advanced by learned counsel for the accused, appellant we have perused the police diary statement (Ex.D/ 1). It is true that in the police case diary statement this witness has not stated that in the morning of the fateful day, there was quarrel between the accused and the deceased. In fact, this witness in police case diary statement has started his statement from the happening of the incident i.e. from 9.00 a.m. He has categorically stated that he heard the cries from the side of house of the accused, he saw that smoke was coming out from his house. Shatrughan was present in the courtyard of his house, he was screaming that Sumitra has burnt, therefore, he went towards the house of the accused and thereafter, number of persons from the vicinity came there. Sumitra was completely burnt, she was lying on the floor. On his enquiry, Shatrughan disclosed that Sumitra has sustained injuries from electric heater whereas smell of kerosene oil was emanating from the room, heater was lying in another room, it was not on and on being checked, it</p>	

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	<p>was not found hot. Therefore, if we look into the police diary statement and the statement made before the Court by this witness, we find that in both the statements material particulars of the incident are mentioned except the fact that in the morning of the fateful day, there was some quarrel between the accused and the deceased. However, on the basis of this omission the evidence of a prosecution witness cannot be disbelieved. Only material contradiction or improvement can be considered, that too, if the witness tries to improve his evidence before the Court in such a manner which is not consistent with the police case diary statement in material particulars. Such minor omission and contradiction are but natural because there is always substantial gap of time between the two statements, therefore, in natural course there is every likelihood of minor omission and contradiction. Unless the omission and contradiction are material in nature, the evidence of a natural witness should not be rejected. In the present case, the presence of PW-8 cannot be doubted being neighbour of the accused, apart from that his evidence is corroborated by the ground situation at the spot and the medical evidence.</p> <p>14. As discussed above, we do not find any such inconsistency or improvement in the evidence of PW-8 Semvel Kumar whose presence, being a neighbour of the accused, in his house at about 9.00 a.m. in the morning was but natural. Even the accused in his</p>	

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	<p>statement under Section 313 of the Cr.P.C. in reply to question No. 29 has himself stated that he did not commit <i>marpeet</i> with his wife and as she took some more time in taking bath there was exchange of some hot words, therefore, in view of this fact that there was some altercation between the two, the evidence of PW-8 Semvel Kumar finds support from the statement of the accused himself. Thus, from the evidence of PW-8 Semvel Kumar and admission of the accused himself it is established that on the fateful day some quarrel took place between the accused and the deceased in the morning.</p> <p>15. As far as the second circumstance that on the date of incident only the accused and his wife were present in house is concerned, even the accused in his statement under Section 313 of the Cr.P.C. in reply to question No. 2 has admitted the same, therefore, it is established that on the date of incident the accused and his wife were the only two persons present in the house.</p> <p>16. So far as the third, fourth and fifth circumstances are concerned, from the medical evidence and the postmortem report, it is established that there was a fracture in the occipital region of the deceased and she died on account of 100% burn injuries sustained by her. From the doctor's evidence, the postmortem report and the evidence of PW-8 Samvel Kumar, it has come on record that smell of kerosene oil was emanating from the body of deceased Sumitrabai, therefore, based on the above evidence it is</p>	

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	<p>established that smell of kerosene oil was emanating from the body of Sumitrabai. So far as the last circumstance that the accused offered false explanation that his wife sustained burn injuries from the heater, is concerned, PW-8 has stated that the accused on enquiry as to how Sumitra sustained injuries, informed him that she sustained burn injuries from electric heater. As per the evidence of this witness, the heater was lying in another room, even then the accused tried to take out the plug of heater from the main switch which was in another room. He has further stated that he himself checked the heater, it was not hot at that time. Therefore, as per the evidence of this witness, it is established that the accused gave false explanation that Sumitra sustained burn injuries with the electric heater when she was heating the water.</p> <p>17. From the above, it is established that the accused and the deceased were the only two persons present in the house at the time of incident, as per medical evidence Sumitrabai died on account of 100% burn injuries sustained by her, smell of kerosene oil was emanating from the body of Sumitrabai and also from the room where she was lying burnt, there was a fracture in the center of her head and false explanation was given by the accused that his wife sustained burn injuries with the electric heater. In fact, when the accused and the deceased were the only persons present in the house, as per Section 106 of the Evidence Act the burden was on the accused to explain the circumstances under which his</p>	

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	<p>wife Sumitrabai sustained burn injuries. On the contrary, the accused gave false explanation regarding the burn injuries sustained by her wife, which is also an additional factor showing involvement of the accused in crime in question.</p> <p>18. Therefore, the cumulative effect of the above circumstances establishes involvement of the accused/appellant in crime in question beyond all reasonable doubt. From the above proved incriminating circumstances the only irresistible inference can be drawn that accused Shatrughan was author of the crime in question and there is no possibility of any third person committing the above offence.</p> <p>19. For the foregoing reasons, we do not find any illegality or infirmity in the judgment of the trial Court convicting the accused/appellant under Section 302 of the IPC. Accordingly, the conviction and sentence imposed upon the accused/appellant is maintained.</p> <p>20. Learned Additional Sessions Judge in concluding paragraph of the judgment has observed that life imprisonment means imprisonment for rest of the life. After awarding life imprisonment there was no need to make this observation as it is superfluous because life imprisonment itself means in law that a person sentenced to life imprisonment is bound to serve the life term in prison.</p>	

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	<p>21. In the result, the appeal being devoid of substance is liable to be dismissed and is hereby dismissed.</p> <p>Sd/- L.C.BHADOO Judge</p>	<p>Sd/- Dhirendra Mishra Judge</p>

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