

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

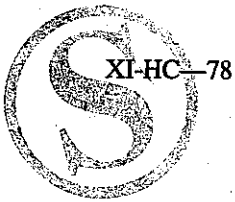
आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p align="center"><u>CRIMINAL APPEAL No.232 of 2005</u></p> <p><u>APPELLANT</u> Santram Kevat, S/o Prajaram, aged 36 years, In Jail R/o Sarhar, P.S. Baradwar, District Janjgir- Champa (CG)</p> <p align="center">Vs</p> <p><u>RESPONDENT</u> State of Chhattisgarh, through Station House Officer, Police Station-Baradwar, District Janjgir-Champa, District Janjgir-Champa (CG)</p> <hr/> <p>Present: Mr. V.C. Ottalwar, Advocate for the appellant. Mr. Arun Sao, Government Advocate for the respondent-State.</p> <hr/> <p align="center"><u>ORAL JUDGMENT</u> (30th November, 2007)</p> <p><u>Per Dhirendra Mishra, J:</u></p> <p>This criminal appeal is directed against the judgment of conviction and order of sentence dated 9.2.2005 passed in S.T. No.393/04 whereby learned Additional Sessions Judge, Sakti has convicted the appellant under Section 304 (Part II) of Indian Penal Code (for short IPC) and sentenced with R.I. for 10 years and to pay a fine of Rs.1,000/-, in default of payment of fine to undergo additional R.I. for 3 months.</p> <p>Case of the prosecution, in brief, is that complainant Balbhadra Prasad Chandra is the Secretary of Backward Classes Fish Development Sahkari Samiti Maryadit, whereas, the appellant was removed from its membership. On 27.7.2004 at about 9.00 p.m. the complainant and deceased Chhoturam were on guard duty of the Bandhwa Pond, which they had taken on lease for stocking fish. At that time, the appellant went to</p>	



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	<p>the tank, deceased Chhoturam was abusing the fish thieves and the appellant considering that the abuses were directed against him, picked up a quarrel, abused the deceased in the name of his mother and started beating him. He pushed the head of Chhoturam in the step of pond as a result of which Chhoturam fell in the pond and thereafter, the appellant mounted on him and pushed his head into water. The complainant raised alarm and called the villagers, however by that time Chhoturam was already dead. The appellant made extrajudicial confession before Motiram, Malakram & Dhaneshwar that he has killed Chhoturam by drowning him.</p> <p>Report of the incident was lodged immediately at 22.45 hrs in the Police Station Baradwar. Inquest over the dead body of the deceased was prepared vide Ex.P-15 in the presence of witnesses. Thereafter the dead body was sent for autopsy to the Primary Health Centre, Baradwar where Dr. J Singh (PW-5) conducted the postmortem and gave his report of Ex.P-18. Registration certificate of the society and the order of allotment of tank on lease by the Collector of Ex.P-8 & P-9 was taken into possession. Blood stained wearing apparels of the deceased and the appellant were also taken into possession. Seized articles were sent for medical examination to Forensic Science Laboratory, Raipur and the report of the FSL is Ex.P-35 in which blood has been found in the banyan of the deceased and t-shirt of the appellant. The appellant was also sent for medical examination.</p>	



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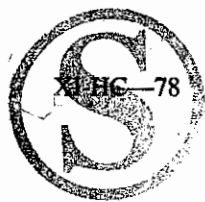
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	<p>After completing investigation, the charge sheet was filed against the appellant for the offence punishable under Section 302 of the IPC & accordingly, the charge was framed by the trial court. During trial, the prosecution examined 12 witnesses in all and thereafter statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the evidence appearing against him in the prosecution case and pleaded innocence and false implication. The appellant has stated that the deceased died as he was assaulted by Balbhadra and since he was asking for the account from Balbhadra as the Member of the society, he has been roped in on the basis of false evidence and he did not make any confession before the witness. He also examined Damodar Prasad Sahu, Smt. Satt Bai, Nasram Kewat & Anup Kumar Bajpai as defence witnesses.</p> <p>The trial court after hearing learned counsel for the respective parties, acquitted the appellant from the charge under Section 302 of the IPC, however, convicted him under Section 304 (1) of the IPC and sentenced him as mentioned in Para-1 of this judgment.</p> <p>The only argument urged by learned counsel for the appellant is that the trial court has recorded a finding in Para 62, 63 & 64 of the impugned judgment that from the evidence available on record it is clear that the offence was not committed with premeditation in a cruel manner but incident occurred as a result of sudden dispute between the appellant and the deceased and therefore, the offence falls within the category of culpable homicide not amounting to murder and in spite of recording the</p>	



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	<p>above finding the appellant has been convicted under Section 304(1) whereas the conviction ought to have been under Section 304 (II) of IPC.</p> <p>On the other hand, learned counsel for the State supported the impugned judgment.</p> <p>I have heard learned counsel for the parties. I have perused the impugned judgment as also the evidence available on record.</p> <p>Homicidal death of the deceased is not in dispute. Even otherwise from perusal of the statement of complainant Balbhadra (PW-1) and also from the statement of Dr. J. Singh (PW-5) it is clear that all of sudden dispute ensued between the appellant and the deceased, they started quarelling, whereupon the appellant threw the deceased on the step of pond, the deceased fell in the pond, the appellant mounted over the deceased and pressed his head under the water as a result of which he died and the cause of death of the deceased was asphyxia due to drowning. Thus, homicidal death of Chhoturam is established.</p> <p>So far as the involvement of the appellant in crime in question is concerned, from the statement of witness Balbhadra (PW-1) as also from the deposition of Jagnandan @ Jaggu Shrivastava (PW-2), Lakhanlal Chouhan (PW-3), Dhaneshwar Prasad Rathore (PW-4) & Dileshwar Rathore (PW-7), before whom the appellant has made extrajudicial confession that he killed Chhoturam, the involvement of the appellant in crime in question is established. Even learned counsel for the appellant has not disputed this aspect.</p>	



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	<p>From the deposition of Balbhadra Prasad (PW-1), who is only eyewitness of the incident, it is clear that the incident occurred all of a sudden when the deceased was abusing the fish thieves, the appellant considering that the abuses were directed towards him picked up the quarrel, initially both were engaged in verbal exchange and ultimately the appellant lifted the deceased and smashed his head against the step of tank as a result of which he fell in the tank and thereafter he mounted over him and pressed his head under the water as a result of which he died. Thus, from the evidence of this witness it is clear that the offence was committed without premeditation in sudden fight in a heat of passion upon a sudden quarrel and the same is covered with the Exception-IV of Section 300 of the IPC. However, considering the act of the appellant in mounting over the deceased while he fell in the pond and pressing his head under the water, the intention of the accused to cause death of the deceased can be safely inferred and the trial court has rightly held that the offence committed by the appellant is culpable homicide not amounting to murder and the same is punishable under Section 304 (1) of the IPC.</p> <p>In the result, there is no merit in the appeal, the same is liable for dismissal and it is accordingly dismissed.</p>	<p>Sd/- Dhirendra Mishra Judge</p>