

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक Cr. App. 625 सन् 2003

आदेश पत्रक (पूर्वानुबद्ध)

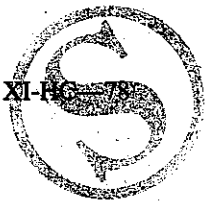
आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p style="text-align: center;">HIGH COURT OF CHHATTISGARH, BILASPUR Criminal Appeal No.625/2003</p> <p><u>APPELLANT</u> Fagnu Singh s/o Sunher Gond aged about 32 years, R/o village Sarai Patera, P.S. Rangakhar, District Kawardha(CG)</p> <p style="text-align: center;">Versus</p> <p><u>RESPONDENT</u> State of Chhattisgarh, Through P.S. Rengakhar, District Kawardha(CG)</p> <p>DB: HON'BLE SHRI L.C. BHADOO & HON'BLE SHRI SUNIL KUMAR SINHA, JJ.</p> <hr/> <p><u>Appearance:</u></p> <p>Shri K.S. Singh, Counsel for the appellant. Shri N.K.Mehta, Panel Lawyer for the State.</p> <hr/> <p style="text-align: center;"><u>ORAL JUDGMENT</u> (20.12.2007)</p> <p>Following judgment of the Court was passed by <u>L.C.Bhadoo, J.</u></p> <p>(1) This appeal is directed against the judgment of conviction and order of sentence dated 25.10.2002, passed by the Additional Sessions Judge(FTC), Kawardha in Sessions Trial No.89/2001, whereby the learned Additional Sessions Judge after holding the accused/appellant guilty of the offence</p>	



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	<p>under Sections 302 & 451 of I.P.C. for committing murder of Mahasingh, sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 1 month; & R.I. for 2 years and to pay a fine of Rs.200/-, in default thereof to further undergo R.I. for 1 month respectively. Both the sentences were directed to run concurrently.</p> <p>(2) The case of the prosecution in brief is that in the intervening night of 21st and 22nd of March, 2001, in between 11-12 p.m. when Mahasingh (since deceased), his daughter - Milabai (PW-3), his son- Chaitram (PW-6) aged about 13 years were sleeping in their house, the accused/appellant- Fagnu Singh came there and called Mahasingh, on which, Mahasingh enquired as to who is there? In reply thereto, the accused/appellant disclosed his name. In the meantime, PW-3- Milabai woke up. The accused/appellant came inside the house and started talking to Mahasingh, his father-in-law. When the accused and the deceased were talking, the accused picked up an axe, lying near the hearth and attacked on the head of Mahasingh for 2 times and thereafter he ran away. On the attack being made by the accused/appellant, Mahasingh raised cries, therefore, PW-2 - Heeralal and PW-4- Keharsingh came on the spot. As a result of the attack made by the accused/appellant, Mahasingh sustained injury on the right side of the head</p>	



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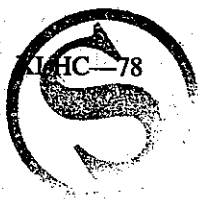
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	<p>and ear and blood started oozing out of the injury. The villagers namely- Chamrusingh(PW-5) and Kangalsingh (PW-7) also came there. The matter was reported by Heeralal (PW-2) in the night itself to the P.S.Keranar under Ex.P/2. Mahasingh was taken to the Police Station, thereafter, he was taken to the hospital where he died while undergoing the treatment, therefore, the merg intimation Ex.P/1 was sent by Dr. R.K. Buora (PW-1). After giving notice to the Panchās, inquest on the body of Mahasingh was prepared under Ex.P/3. Blood stained soil; plain soil and one wooden peace stained with blood were also seized from the place of occurrence under Ex.P/4. Site plan (Ex.P/5) was prepared by the Investigating Officer. Site plan (Ex.P/6) was prepared by Halka Patwari. While in the police custody, the accused/appellant gave his memorandum (Ex.P/7), on the basis of which, the axe was recovered under Ex.P/8. Postmortem on the body of Mahasingh was conducted by Dr. R.K.Baxi (PW-9). He opined that the cause of death was coma, as a result of head injury. He prepared postmortem report under Ex. P/9. The axe in question was sent to Dr. R.K. Baxi, who after examination of the axe gave report (Ex.P/10) and opined that the injury found on the head of the deceased-Mahasingh would be caused by the axe in question. When Mahasingh was sent to the Community Health Centre, Kawardha, Dr.M.R.Deshpande (PW-10)</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

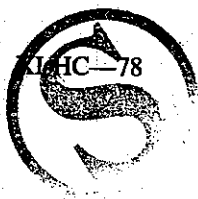
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	<p>examined the injuries and prepared injury report Ex.P/11. X-rays of the head injuries were taken and x-ray report Ex.P/12 was prepared by the Medical officer C.H.C.Kawardha. The seized articles were sent to F.S.L., Raipur from where report Ex.P/15 was received.</p> <p>(3) After completion of the usual investigation, charge sheet was filed in the Court of Chief Judicial Magistrate Kawardha, who in turn committed the case to the Sessions Judge, Rajnandgaon from where, the learned Additional Sessions Judge received the case on transfer for trial.</p> <p>(4) The prosecution in order to establish the charges against the accused/appellant examined as many as 13 witnesses. The statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, in which, he denied the material appearing against him in the prosecution evidence and stated that his wife, sister of Milabai and Chaitram had died and he could not perform the last rites ceremony of his wife, therefore, they have implicated him in a false case.</p> <p>(5) The learned Additional Sessions Judge after hearing the counsel for respective parties convicted and sentenced the accused/appellant as aforementioned.</p> <p>(6) We have heard Shri K.K.Singh, learned counsel for the accused/appellant and Shri N.K.Mehta, learned Panel Lawyer for the State.</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>(7) At the outset, Shri K.K.Singh, learned counsel for the accused/appellant has not disputed the homicidal death of Mahasingh. Moreover, PW-3- Milabai, daughter of the deceased and sister-in-law of the accused/appellant has categorically stated that the accused/appellant attacked her father-Mahasingh with an axe on his head. The said oral testimony of Milabai is corroborated by the medical evidence of Dr. R.K.Baxi (PW-9) who conducted postmortem on the body of Mahasingh. He has stated that on 24.3.2001, he was working as a Medical Officer in Government Hospital Bodla, on that day at about 1.30 p.m.; on the requisition of Police Station -Rengakhar, he conducted postmortem on the body of Mahasingh and noticed the following injuries :</p> <ol style="list-style-type: none">an injury on the right side of the head in the size of 6cm x 2cm x bone deep and infection was present.an incised wound in the middle of right ear and infection was present. There was bleeding from the eyes.on dissection it was found that temporal and mandible bones were fractured into pieces, clotted blood was present there. <p>Injuries were ante mortem in nature and caused between 6-12 hours prior to examination. The cause of death was coma, as a result of head injury. He has further stated that the injury found on the head of Mahasingh could be caused</p>	



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	<p>by the axe, which was produced before him. Therefore, in view of the above ocular evidence and medical evidence, it is established that the death of Mahasingh was homicidal in nature.</p>	
	<p>(8) As far as the complicity of the accused/ appellant in crime in question is concerned, the conviction rests on the testimony of PW-3- Milabai and PW-6- Chaitram, daughter and son of Mahasingh (since deceased). The incident, as alleged, took place in the mid-night when all the three i.e. the deceased and these two eye-witnesses were present in the house of Mahasingh. At that time, as per the evidence of PW-3- Milabai, accused/ appellant-Fagnu Singh came there and called Mahasingh, on which, Mahasingh asked as to who is calling? Then the accused/ appellant disclosed his identity and came inside the house, thereafter, the deceased and the accused/ appellant talked for some time; and all of a sudden, he attacked the deceased with axe, on which, his father raised cries. The incident was seen by her brother- Chaitram (PW-6), who was present in the house. The above testimony of Milabai has been corroborated by the evidence of Chaitram-PW-6.</p>	
	<p>(9) Learned counsel for the accused/ appellant argued that being night, it was not possible for Milabai to identify the accused. He further argued that Dr. R.K. Baxi(PW-9) has stated that there was only one injury on the head, whereas,</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>Milabai has stated that the accused/appellant attacked for 2-3 times and Chaitram has stated that the accused attacked twice, therefore, there is difference between ocular evidence and medical evidence, hence, no reliance can be placed on these witnesses.</p> <p>(10) As far as the question of identification is concerned, it is not disputed that the accused/appellant is the real brother-in-law of these 2 eye-witnesses and son-in-law of the deceased-Mahasingh. Milalbai (PW-3) has stated that when the accused/appellant came, he sat there for an hour and talked with her father and thereafter, he attacked her father, therefore, the accused being a close relative of these 2 eye-witnesses remained there for about one hour. It was but natural for them to identify him. Moreover, Milabai has stated that she was standing at a distance of about two hands. She has also stated that at that time, the hearth was burning; therefore, the question of not identifying the accused would not arise.</p> <p>(11) As far as the variance between the ocular evidence and medical evidence is concerned, PW-3- Milabai has stated that the accused/appellant-Fagnu attacked her father with axe on the right side of the head on ear for three times, whereas, PW-6- Chaitram has stated that the accused attacked twice. Even though PW-9, Dr. R.K. Baxi in his cross-examination has stated that there was only one</p>	



XLHC-78

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	<p>injury, but in para 3 of his evidence, he has stated that at the time of postmortem, he saw that there was an injury on the right side of head in size of 6cm x 2cm x bone deep. He has also stated that there was an incised wound in the middle of the ear. In fact, he examined the injuries after examination by Dr. M.R. Deshpande (PW-10), who examined the injuries in the first instance and has categorically stated that there were 3 injuries i.e. (1) a wound on the right ear in size of 2cm x 1 cm x bone deep, margins were regular and bleeding was stopped. (2) a wound was present on the external ear horizontally placed in a total width of 2 cm in length, cartilage was cut, regular margins were there (3) a wound above injury No.2 on the external ear in size of 1 cm x ½ cm, cartilage was cut, margins were regular (4) eyes became blackish. Therefore, in view of Dr. M.R. Deshpande (PW-10) he saw 3 injuries on the right side of the head in the area of right ear. It appears that the accused/appellant attacked the deceased repeatedly at one place. On examination Dr. Deshpande noticed 3 injuries. In this way, there is no variance between the ocular evidence and medical evidence. Moreover, being midnight presence of Milabai and Chaitram in their house was but natural and it cannot be doubted. As per their evidence, other witnesses on hearing cries came immediately on the site. PW-4 Keharsingh has stated that when he reached on the spot, Milabai informed him that Fagnu has attacked his father</p>	

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	<p>and ran away. PW-2 - Hiralal uncle of these witnesses and brother of the deceased has stated that at about 1 p.m. in the night, he heard the cries and went to the house of his brother, where, Milabai and Chaitram, daughter and son of the deceased were present and they informed him that the accused/appellant Fagnu has attacked their father. Hiralal (PW-2) lodged report Ex.P/2 in the Police Station at about 2.15 p.m. on 22.3.2001, in which, name of the accused as assailant has been mentioned, therefore, from the evidence of Hiralal; FIR Ex.P/2 and the evidence of PW-4- Keharsingh, it is established that they were immediately informed by Milabai that the accused Fagnu Singh had attacked their father. On account of their evidence, evidence of Milabai and Chaitram stands corroborated. Moreover, the accused/ appellant being a son-in-law of the deceased, there is no reason to implicate him in a false case, leaving the real culprit. The accused/appellant in his statement under Section 313 of Cr.P.C. has stated that as his wife, daughter of Mahasingh and sister of Milabai and Chaitram had died, as he could not perform the last rites ceremony of his wife, that is why, they have implicated him in a false case.</p> <p>(12) The defence put forth by the accused in his statement is not plausible. Moreover, no such cross-examination has been affected to PW-3-Milabai and PW-6- Chaitram that they have implicated the accused in a false case because he had</p>	

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मामला क्रमांक सन् 200

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	<p>not performed the last rites ceremony of their sister. This is the belated defence and afterthought of the accused, therefore, this defence cannot be believed.</p> <p>(13) Learned counsel for the accused/appellant argued that the Investigating Officer and other 2 witnesses have stated that the axe in question was seized from the house of the accused under Ex. P/8, based on the memorandum Ex.P/7, whereas, PW-6-Chaitram has stated that the axe was snatched on the spot itself, then the recovery becomes doubtful. Without going into the merits of recovery of the axe, other ocular evidence of PW-3- Milabai and PW-6-Chaitram, Hiralal and Keharsingh, which has been discussed earlier, it establishes the complicity of the accused/appellant in crime in question.</p> <p>(14) Learned counsel for the accused/appellant argued that the prosecution has not come with clear cogent evidence against the accused regarding his motive, it is not established that the accused/appellant attacked the deceased with an intention to cause his death. It is true that the accused is the close relative, being a son-in-law of the deceased and the prosecution has not come forward with any motive of the accused to cause death of Mahasingh, but it is a settled law that when there is clear cogent evidence regarding attack, question of motive becomes irrelevant even if it is not proved.</p>	

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	<p>(15) Now coming to the intention of the accused/appellant, the intention of the accused can be inferred from the material available on record, showing the nature of weapon used, by which the attack was made, part of the body where the attack was made. In present case, the accused/appellant used the axe as an weapon of offence and he attacked the deceased on right side of his head on parietal region, the skull bone and mandible bones were fractured into many pieces and thereafter, he was taken to hospital, where he died while undergoing the treatment on 24.3.2001, i.e. within a period of 3 days, therefore, the intention of the accused/appellant to cause death of Mahasingh was writ large.</p> <p>(16) As far as the conviction under Section 451 of IPC is concerned, even though, there is no clear cut evidence to establish that the accused went to the house of the deceased after making preparation i.e. house-tress in order to commit offence punishable with imprisonment. But the accused/appellant entered the house of Mahasingh in the mid-night and he attacked the deceased with axe, this conduct of the accused establishes the fact that the accused/appellant trespassed the house with an intention to commit crime. Therefore, the accused/appellant has rightly been convicted and sentenced under Section 451 of IPC.</p>	

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	(17) For the foregoing reasons, we do not find any irregularity or infirmity in the judgment of the trial Court. There is no substance in the appeal and the same is dismissed.	
	Sd/- L.C.BHADOO Judge	Sd/- Sunil Kumar Sinha Judge

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