



XI-HC-78

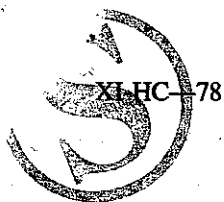
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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.A. No. 561 सन् 2007

आदेश पत्रक (पूर्वानुबद्ध)

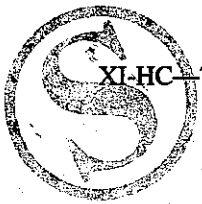
आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p><u>APPELLANT:</u> (In Jail)</p> <p style="text-align: center;">-Versus-</p> <p><u>RESPONDENT:</u></p> <p><u>Division Bench: -</u> <u>Hon'ble Shri L.C. Bhadoo &</u> <u>Hon'ble Shri T.P. Sharma, JJ.</u> <u>31-3-2008:-</u></p> <p>Shri Viprasen Agrawal, counsel for the appellant. Shri Akhil Mishra, Deputy Govt. Advocate for the State/respondent. Oral judgment dictated on <u>Dais</u>.</p> <p><u>L.C. Bhadoo, J.</u></p> <p>Today this appeal is listed for admission. As the accused is in detention since 12-9-93, therefore, with the consent of learned counsel for the parties, the appeal is heard for final disposal.</p> <p>This appeal is directed against the judgment of conviction and order of sentence dated 19th January, 1998, passed by the 1st Additional Sessions Judge, Jagdalpur, in S.T. No.537/93 whereby learned Additional Sessions Judge after convicting present accused/appellant Sodi Pandu and co-accused Sodi Soma for commission of offence under Section 302 read with</p>	<p>Sodi Pandu, Son of Hunga Muriya, aged 44 years, R/o Village Korra, P.S. Gadiras, District Bastar, M.P. (now C.G.)</p> <p>State of Madhya Pradesh (now Chhattisgarh), Through: Incharge P. S. Gadiras, District Bastar, Madhya Pradesh (now Chhattisgarh)</p>



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>Section 34 of the I.P.C., sentenced each of the accused to undergo imprisonment for life.</p> <p>The case of the prosecution, in brief, is that Sodi Bandi lodged a report on 10-7-93 at about 3.05 p.m. in the Police Station Gadiras to the effect that he is residing with his father. For the last one month their two buffaloes are missing, therefore, they were searching for those buffaloes. After some time, they came to know that buffaloes were taken by appellant Sodi Pandu and co-accused Sodi Soma. They have sold one buffalo in the market whereas, after slaughtering the other they have eaten the same. Therefore, deceased Sodi Muda called the accused/appellant and asked him that he has committed theft of buffalo, on which the accused threatened him. When in the fateful night, the deceased was sleeping in the Varanda of his house, Bandi, son of the deceased, heard the cries of his father. He saw that the accused persons were holding the deceased by hands and legs. Accused Soma attacked him with knife. When they saw complainant Bandi, they called him also, but being frightened he hid himself and saw from that place that 3 accused persons after attacking Muda ran away. Sodi Soma was carrying knife whereas, Sodi Pandu and Raja were carrying axe. When he raised cries, villagers namely, Sodi Kosa, Sodi Budhu and Sodi Joga came. They were informed about the incident. Panchayat was convened in the village. Bandi, son of the deceased, lodged a report Ex.D/1 in the Police Station Gadiras.</p> <p>The investigating officer left for the scene of occurrence and prepared inquest Ex.P/1 on the body of the deceased. Blood stained soil and plain</p>	



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	<p>soil was seized from the place of occurrence under Ex.P/2. Blood stained knife, earth and shirt of the deceased were sent for chemical examination to the FSL, Raipur and report Ex.P/10 was received. Accused/appellant Sodi Pandu gave memorandum under Ex.P/4, in pursuance of that one knife was seized under Ex.P/5. The body of Sodi Muda was sent for postmortem examination to the Government Hospital, Dantewada where Dr. B.K. Tirki conducted the postmortem and opined that cause of death was coma, due to brain haemorrhage and death was homicidal in nature. He prepared the report Ex.P/13.</p> <p>After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Sukma, who in turn committed the case to the Sessions Judge, Jagdalpur where the prosecution examined 6 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them. Learned Additional Sessions Judge after hearing learned counsel for the respective parties acquitted accused Sodi Joga whereas convicted accused Sodi Pandu and Sodi Soma and sentenced each of the accused as aforementioned.</p> <p>We have heard learned counsel for the parties.</p> <p>Learned counsel for the accused/appellant has not disputed homicidal death of the deceased. Moreover, PW-6 Dr. B.K. Tirki has stated that on 12-7-93 he conducted the postmortem on the body of the deceased. He saw that there was stab wound behind ear in the size of 1.5 cm x 5 cm x</p>	



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	<p>5 cm. Injuries were ante mortem in nature and caused by sharp and hard object. On dissection of the body, he noticed that bone beneath the injury was fractured. In his opinion, cause of death was coma, brain haemorrhage, as a result of head injury. His report is Ex.P/13. In view of the above evidence of the doctor, it is established that death of the deceased was homicidal in nature.</p> <p>As far as complicity of the accused in the crime in question is concerned, PW-1 Sodi Bandi has stated that when he heard cries of his father, he came out and saw that accused Joga was pressing the neck of his father with club whereas, Sodi Pandu attacked with club and Soma attacked with knife, as a result of which he died spontaneously. This witness in cross-examination has stated that the incident took place in the mid night. He was sleeping inside the house. His father was sleeping in the Varanda. When he heard cries of his father, he came out of the room. PW-2 Sodi Budhu in cross-examination has stated that he did not see the incident. In para-4 he has stated that it is correct to say that there was quarrel between accused Pandu and the deceased that is why Bandi, son of the deceased, has lodged a report against accused Pandu. Therefore, in this case, only PW-1 Sodi Bandi, eyewitness remains and his evidence is appreciated in the light of evidence of Sodi Budhu, who has stated that as the relations between the deceased and the accused were strain that is why report against Pandu was lodged by PW-1 Sodi Bandi. PW-1 Sodi Bandi has stated in his evidence that accused Pandu attacked with club whereas, in the first information report Ex.D/1 he mentioned that Soma attacked with knife, whereas, Pandu and Raja were holding axe. There is only one injury</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

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	<p>of the sharp edged weapon. There is no other injury of the axe whereas, in fact, knife has been recovered from accused Pandu. Therefore, there is material contradiction in respect of weapon which the accused was carrying at the time of commission of crime. In the evidence, PW-1 Sodi Bandi has stated that accused Pandu attacked with club whereas, in the first information report Ex.D/1 he has simply stated that the accused was carrying axe and in contrary to that knife has been recovered at the instance of the accused. Moreover, the incident was of dark night, the deceased was sleeping in the Varanda whereas, PW-1 Sodi Bandi was inside the room. He has stated that when he heard the crimes, he came out. PW-2 Sodi Budhu has stated that on account of animosity between the deceased and accused Pandu report has been lodged against him. Therefore, in the circumstances, no clear, cogent and clinching evidence has been adduced by the prosecution to connect the accused with the crime in question. There was only one injury on the body of the deceased and PW-1 Sodi Bandi, son of the deceased, has stated that accused Soma attacked the deceased with knife and there is only one injury, therefore, in the circumstances, it becomes doubtful that the accused attacked with any weapon.</p> <p>For the foregoing reasons, the prosecution has utterly failed to establish beyond reasonable doubt that the accused was party to the attack made on the deceased, as such, conviction of the accused under Section 302 read with Section 34 of the I.P.C. cannot be sustained.</p> <p>In the result, the appeal succeeds and same is allowed. Conviction and sentence imposed upon the accused/appellant under Section 302 read</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

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	with Section 34 of the I.P.C. are set aside. He is acquitted of the said charge. He be set at liberty forthwith unless required to be detained in any other case, as it is stated that the accused/appellant is in detention since 1993.	
Barve	Sd/- L.C.BHADOO Judge	Sd/- T.P Sharma Judge