

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.207 of 2010**

The State of Chhattisgarh

---- Appellant

VersusBhuval, aged about 28 years, S/o. Jeevan Das, R/o. Amraiya Korba,
Distt. Korba (CG)

---- Respondent

For Appellant/State	: Smt. Madhunisha Singh, Panel Lawyer
For respondent	: None present.

**DB: Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Ram Prasanna Sharma**

Order On Board**Per Prashant Kumar Mishra, J****29.01.2018.**

The State has preferred this acquittal appeal challenging the impugned judgment dated 25.8.2001 rendered by Additional Sessions Judge, Korba, Distt. Korba (CG) in Session Case No.372/1992 acquitting the accused of the charges under Section 302 IPC in the alternative 120B, 302/34 IPC.

2. Deceased Kumari Bai @ Manju died on 23.3.1991 due to suspected poisoning. At the time of death she was carrying ten weeks of pregnancy. The basic prosecution case is that Trilok was having an affair with the deceased and the pregnancy was caused on account of his relationship with the deceased. The deceased did not want to keep her pregnancy and had developed suicidal tendency on which Trilok consoled her that he will own the child and marry her.

3. Allegation against the accused/respondent was that of providing poisonous substance to Trilok who in turn handed over the same to the deceased or became instrumental in pursuing the deceased to consume the poisonous substance for which she died subsequently. Trilok could not be apprehended, therefore, the prosecution has not filed any charge sheet against him.

4. During the progress of investigation, the prosecution obtained memorandum statement of the present respondent wherein he informed that he has concealed the bottle in which the poisonous substance was kept and handed over to the deceased, in the agricultural land not belonging to him.

5. The prosecution case as was unfolded during the course of trial is a bit contrary from the allegation made in the charge sheet. In as much as Shanti Bai (PW-3) has tried to develop a case as if the accused/respondent had administered poison. Shanti Bai (PW-3), mother of the deceased, would state that she had seen the respondent leaving out of her house at about 6.00 pm on Saturday, i.e. on the date of incident. After departure of Bhuval she went inside and witnessed that the bottle in which the poisonous substance was handed over to the deceased was wrapped in a piece of paper and lying on the floor. She also deposed that the respondent immediately went to the house of one Vidya Maharaj and informed him that the deceased had consumed some poisonous substance. The respondent while informing this matter to Vidya Maharaj, was not stable and was

wavering, therefore, this witness carried an impression that it was the respondent who is responsible for administering poison to her daughter.

6. Significantly, the prosecution has not been able to establish the poisonous substance which caused the death of the deceased. No such mention is made either in the postmortem report or in any other report in the nature of chemical or viscera report. Strangely, the doctor who conducted the postmortem preserved the viscera but no such report was produced before the trial Court. In the postmortem report (Ex-P/13) mode of death was mentioned as due to coma, however the cause of death was not confirmed, therefore, the viscera was preserved. Thus the prosecution has not been able to establish the origin and identity of poisonous substance which caused the death. In this view of the matter, if the respondent had handed over the same bottle carrying medicine or poisonous substance, in absence of medical or chemical evidence that the death has occurred due to that very substance, it is difficult to conclude that the respondent has committed culpable homicide. As a matter of fact, the reason for death being not certain, it is not established that the death was homicidal in nature.

7. For all the aforesaid stated discussions about the quality of evidence available on record, we fail to take any other view of the matter than the one concluded by the trial Court while writing the impugned judgment of acquittal in favour of the respondent. The

instant acquittal has no substance, which deserves to be, and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Ram Prasanna Sharma)