

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 993 of 2002

- Ramesh @ Pagal Sen, aged 24 years, S/o Pheruram, R/o Village Tarenga, P.S. Bhatapara (Rural), District Raipur

---- Appellant

Versus

- State of Chhattisgarh, Through the S.H.O., P.S. Bhatapara (Rural), District Raipur

---- Respondent/State

For Appellant	:	Shri Alok Kumar Dewangan, Advocate
For Respondent/State	:	Shri Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

19.09.2019

1. This appeal arises out of the judgment of conviction and order of sentence dated 08.08.2002 passed by the First Additional Sessions Judge, Balodabazar, District Raipur in Sessions Trial No. 98 of 2002, whereby the Appellant stands convicted and sentence as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 328 of Indian Penal Code	R.I. for three years and pay a fine of Rs.1,000/-, in default of payment to further undergo R.I. for six months

2. As per prosecution case, prior to the incident, victim Tejram, aged about 14 years, was running a betel shop and the accused/appellant Ramesh @ Pagal, who had Saloon-shop, borrowed some articles amounting to Rs.20/- from Tejram and did not return the same to Tejram. On 03.02.2002, victim Tejram went to shop of appellant and demanded money which was borrowed by appellant, on this, appellant said the victim that he (appellant) has no money and it will be returned after sometime. Thereafter, appellant offered

tea to victim and brought tea from hotel. The appellant mixed the pesticide in the tea of the victim. The victim took the tea and went to his home. When victim reached his home, he was feeling unwell and giddiness. The victim told her sister Anusuiya to call father Kamal (PW-2) and he (victim) became unconscious. Thereafter, Kamal (PW-2) came there and took the victim to the hospital where Dr. Vasudeo Thakur treated the victim and prepared MLC (Ex.-P/6). On 04.02.2002, Dr. Vasudeo informed the police regarding some poison being taken by the victim and *Dehatinalishi* (Ex.-P/1) was registered against the appellant at about 11.45 AM in the hospital, based on which, FIR (Ex-P/9) was recorded by Ramsharan Singh (PW-8), Head Constable under Section 328 of IPC against the appellant.

3. After completion of usual investigation, the charge-sheet was filed against the accused/Appellant under Section 328 of IPC and while framing the charge, the First Additional Sessions Judge, Balodabazar, District Raipur framed the charge under Section 328 of IPC.
4. So as to hold the accused/appellant guilty, the prosecution examined 8 witnesses i.e. victim Tejram (PW-1), Kamal (PW-2), Ajay Kumar Soni (PW-3), Dukaluram (PW-4), Dr. Vasudeo Thakur (PW-5), Nandkishore Tiwari (PW-6), Dr. S. Rajput (PW-7) and Ramsharan Singh (PW-8). Statement of the accused/Appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.
5. After appreciation of the evidence available on record, the learned the First Additional Sessions Judge, Balodabazar, District Raipur by the impugned judgment convicted and sentenced the accused/Appellant as mentioned in para- 1 of this judgment, hence this appeal.
6. Learned counsel for the appellant submits that the there was no motive on the part of the appellant to administer poison in a tea of victim Tejram (PW-

- 1), as such, in absence of motive, it cannot be said that it was only the appellant who could have committed the crime and nor any evidence regarding poisonous substance was having possession by the accused or nor proved by the prosecution that the poisonous substance found on the body of the victim. Therefore, the learned trial Court has erroneously presumed that as the appellant is a Barber, the possession of the poison with him for killing rat is natural and that he had the knowledge that administering poison to Tejram (PW-1) would cause injury to him.
7. On the other hand, learned counsel for the State supports the impugned judgment and submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. Heard learned counsel for the parties and perused the records of the trial Court.
9. PW-1 victim Tejram has stated that the appellant had borrowed some articles from his betel shop which was amounting to Rs.20-25/- and when PW-1 told the appellant to pay amount, the accused/appellant said Tejram to come in his saloon shop where he (appellant) will pay the amount. When Tejram was sitting in saloon shop of the appellant, the appellant offered tea to Tejram and the appellant brought two cup of tea and mixed something in the tea and after taking tea, Tejram started feeling unwell and giddiness. Thereafter, he reached his home and told her sister Anusuiya to call father Kamal (PW-2) and he (victim) became unconscious. Thereafter, Kamal (PW-2) came there and took the victim to the hospital.
10. PW-5 Dr. Vasudeo Thakur has stated that on 03.02.2002, victim Tejram was admitted in the hospital by Kamal (PW-2) in unconscious condition. He stated that on 04.02.2002, the victim became conscious and told that the appellant administered poison to him (victim) by mixing it in tea, therefore,

PW-5 informed the police vide Ex.-P/4 and on 05.02.2002, the victim was discharged from the hospital vide Ex.-P/5.

11. As per MLC (Ex.-P/6) prepared by PW-5, he found some froth coming from nose and mouth of the victim and looking to the symptoms of Tejram, PW-5 suspected that some poison may have been consumed by Tejram.

12. In order to prove offence under Section 328 IPC, the prosecution is required to prove that the substance in question was a poison, or any stupefying, intoxicating or unwholesome drug, etc., that the accused administered the substance to the complainant/victim or caused the complainant to take such substance. As per law laid down by the Supreme Court in **Joseph Kurian Philip Jose Vs. State of Kerala, (1994) 6 SCC 535**, no ingredient of the poisonous substance proved by the prosecution to have been mixed in the liquor by the accused and therefore the accused was acquitted.

13. The Supreme Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra** reported in **(1984) 4 SCC 116**, in the case of death by poisoning held that the Court must carefully scan the evidence and determine the following four important circumstances which can justify a conviction:

- i. there is a clear motive for the accused to administer poison to the deceased.
- ii. that the deceased died of poison said to have been administered.
- iii. that the accused had the poison in his possession.
- iv. that accused had an opportunity to administer the poison to the deceased.

14. In the present case, as per seizure Ex.-P/3, 350 ml liquid extracted from the stomach of the victim was preserved by the Doctor (PW-5) and sent for chemical analysis, but no FSL report was produced before the trial Court and the accused/appellant has been held guilty by the trial Court only on the basis of statement of the victim (PW-1) who states that after taking the tea offered by the appellant, he started feeling unwell and giddiness and further

on the basis of evidence of Dr. Vasudeo Thakur (PW-5), according to whom the victim may have consumed some organic-phosphoric poison. There is no specific evidence against the appellant regarding administering of any poisonous substance to the victim and no poison has been seized from the possession of the appellant, there is nothing on record to indicate as to what kind of poisonous substance/drug was administered to the victim. In these circumstances, keeping in view of the decisions of the Hon'ble Supreme Court in *Joseph Kurian & Sharad Birdhichand Sarda* (supra) and this Court is of the opinion that the trial Court was not justified in convicting the appellant under Section 328 of IPC.

- 15.** For the foregoing reasons and discussions, the appeal is allowed. The conviction and sentence of Appellant under Section 328 of IPC are set aside and he is acquitted of the said charge. If fine amount has been deposited, the same be returned to the Appellant.
- 16.** It is also stated that the accused/Appellant is on bail since 08.10.2002, therefore, his bail bonds shall continue for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge