

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.274 of 2001**

Seetu Bai, aged about 19 years, Wife of Heeraman Sahu, R/o.
Village Demar, PS Arjuni, Distt. Dhamtari (CG)

---- Appellant**Versus**

State of Chhattisgarh

---- Respondent

For the appellant : Ms. Meenu Banerjee and Ms. Soniya
Kuldeep, Advocates
For the Respondent/State: Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****21.10.2019**

1. The appeal is preferred against judgment dated 20.02.2001 passed by Additional Sessions Judge, Balod Distt. Durg (CG) in Session Trial No.152/2000 wherein the said Court convicted the appellant for the commission of offence under Sections 307 and 328 of the Indian Penal Code and sentenced her to undergo rigorous imprisonment for three years on each count and to pay fine of Rs.500/- each, with default stipulations on each count.

2. As per the prosecution case, on 03.4.1999 at about 2.45 pm, the accused appellant administered poison on food and served to her husband namely Heeraman in order to cause injury to him. There was bitter relation between the parties that is why the appellant did the criminal act against her husband Heeraman. The matter was reported and investigated and after completion of

the trial, the Court below convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) No injury was found on the body of Heeraman and there is no report that the articles which were sent for chemical examination had contained poisonous or other unwholesome drug.

(ii) Prosecution witnesses are interesting witnesses and their evidence is not corroborating with medical report, therefore, charge under Section 328 IPC is not made out.

(iii) The trial Court has not evaluated the entire evidence in its true perspective and recorded a wrong finding for commission of offence under Sections 307 and 328 IPC which is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. Now the question for consideration before this Court is whether the appellant administered or caused to be taken by Heeraman any poison or any stupefying, intoxicating or unwholesome drug, with intent to cause hurt.

6. In the present case Dr. RS Bharadwaj (PW-5), who was the Senior Medical Officer, deposed before the trial Court that he is not able to depose that any chemical substance which is harmful

to the body was found in the rice and vegetables sent for chemical examination. Again he did not find any indication of consuming of poisonous substance by Heeraman who is the victim of the case. From the evidence of the medical expert, it is not established that any poisonous or unwholesome drug was found after examination.

7. Case of the prosecution is based on the extra judicial confession made by the appellant before Munnaram (PW-1), Bisru (PW-2), Bharat (PW-3) and Ramnarayan (PW-4). But the fact remains that by the medical evidence it is not proved that any kind of poison was infact administered, which is the basic ingredient for commission of offence under Section 328 IPC. The same evidence is used by the trial Court for commission of offence under Section 307 IPC.

8. Looking to the evidence, it is evident that there is no connecting piece of material regarding administering poison, therefore, the trial Court is not right in holding the appellant guilty on the basis of extra judicial confession made by her, hence, the finding of the trial Court is not sustainable.

9. The prosecution was under obligation to establish the intention of the appellant for commission of causing hurt by means of poison or attempt to murder but the same is not substantiated by any medical evidence.

10. Resultantly, the appeal is allowed. Conviction and sentence passed by the trial Court against the appellant is hereby set aside and she is acquitted of the charges under Sections 307

and 328 of IPC. She is reported to be on bail. Her bail bond shall remain operative for a further period of six months from today in terms of Section 437A of the CrPC.

Sd/-
(Ram Prasanna Sharma)
JUDGE

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