

Neutral Citation No. - 2025:AHC:109488-DB

Judgement Reserved On:- 24.4.2025

Judgement Delivered On:- 10.7.2025

Court No. - 42

Case :- CRIMINAL APPEAL No. - 739 of 1984

Appellant :- Malkhan

Respondent :- State

Counsel for Appellant :- A Kumar Srivastava, Chandra Prakash
Garg, P.V. Singh

Counsel for Respondent :- A.G.A.

Hon'ble Vivek Kumar Birla, J.

Hon'ble Jitendra Kumar Sinha, J.

(Per: Hon'ble Jitendra Kumar Sinha, J.)

1. Heard Sri Chandra Prakash Garg, learned counsel for the appellant, Sri Krishna Manohar Tiwari, learned AGA for the State and perused the record.
2. The appellant has preferred this criminal appeal challenging his conviction under section 302 IPC and sentence for imprisonment of life vide judgement and order impugned dated 6.3.1984 passed by Special Judge E.C. (Special Provision) Act 1981 Banda in Session Trial No. 412 of 1983. The ground taken in this appeal is that conviction awarded to the appellant is against the weight of the evidence and the same is not sustainable in the eye of law.
3. The prosecution story in brief is that Brij Gopal lodged first information report at P.S. Mataundh, District Banda alleging therein that Saukhi, Ram Nath and Devi Dayal are real brothers and Malkhan is son of Saukhi. About 11-12 years prior to the occurrence in question, a dacoity was committed at the house of deceased Rajwa in which real brother of accused Saukhi was

done to death. The said Saukhi and his family members suspected that Rajwa concocted a false case of dacoity and at his instigation Chunnu was murdered. After the offence of dacoity, accused Ram Nath falsely implicated Shiv Balak in a false case under section 307 IPC but said Shiv Balak was acquitted in the said case and due to this Rajwa and his family members turned inimical towards Saukhi and his family members. In order to take revenge, Saukhi, Ram Nath, Devi Dayal and Malkhan armed with country-made pistol and Ballam etc. entered the '*Bada*' of the house where Rajwa was sleeping along with complainant Brij Gopal, Shiv Mohan and Lalloo. On hearing the sound of foot steps, the informant got up from his sleep, flashed the torch and saw that Malkhan opened fire with pistol at the back of Rajwa whereas Ram Nath assaulted Rajwa with Ballam. On alarm being raised, persons from near by place, got up from the sleep and they also started making hue and cry.

4. On the basis of above report, the case was registered against four persons, namely Saukhi, Ram Nath, Devi Dayal and Malkhan. Investigation of the case commenced and after completion of investigation, charge sheet was submitted before the learned Magistrate. Learned Magistrate took cognizance of the offence and committed the case to Court of Session for trial and learned trial court framed charge against accused Saukhi, Ram Nath, Devi Dayal and Malkhan under section 302 IPC r/w 34 IPC. The prosecution examined six witnesses, namely P.W. 1 Brij Gopal, P.W. 2 Lalloo, P.W. 3 Dr. Vikash Chandra, P.W. 4, Head Constable Sri Sant Kumar, P.W. 5 Sri D.C. Srivastava and P.W. 6 Constable Bhaiya Lal. The prosecution has also proved documentary evidence, as written report- Ext. Ka.1, P.M. Report-

Ext. Ka 2, FIR- Ext. Ka 3, Panchayatnama- Ext. Ka 7, Charge Sheet Mool- Ext. Ka. 15 and Site Plan With Index- Ext. Ka. 12.

5. After conclusion of the prosecution evidence, statement of the accused persons were recorded under section 313 Cr.P.C. in which they denied their involvement in the case and stated that they have been falsely implicated in the case due to enmity.

6. Learned trial court after hearing the arguments of the parties passed the judgement impugned convicting the appellant Malkhan and sentencing him to undergo life imprisonment whereas three other accused, namely, Saukhi, Ram Nath, Devi Dayal were acquitted of charge under section 302 IPC.

7. Sri Chandra Prakash Garg, learned counsel for the appellant submitted that there are two eye witnesses of the occurrence P.W. 1 Brij Gopal and P.W. 2 Lalloo who have been produced by the prosecution but their testimonies are not worth believable.

8. Learned counsel further submitted that P.W. 1 and P.W. 2 have material improvements in their testimonies before learned trial court from their earlier statement given to the investigating officer of the case under section 161 Cr.P.C. Learned counsel further submitted that the first information report is highly delayed for which no sufficient explanation has been offered by the prosecution. Learned counsel further submitted that the deceased Rajwa was a person of criminal antecedent and it is quite possible that some other person, other than the accused, might have murdered him.

9. Learned counsel further submitted that apparently there was enmity between the informant side and the accused side and it is well settled that enmity is a double edged weapon which

cuts both ways. Enmity can be cause of false implication as well as it can be cause of commission of the offence.

10. Learned counsel further submitted that presence of the eye witnesses P.W. 1 Brij Gopal and P.W. 2 Lalloo at the place of occurrence is highly doubtful as both have stated that Ram Nath gave a blow of Ballam to the deceased Rajwa whereas as per post-mortam report of deceased Rajwa, there is no injury of Ballam on his neck.

11. Further contention of the learned counsel for the appellant is that learned trial court has acquitted three other accused persons, namely, Saukhi, Ram Nath, Devi Dayal on the same evidence whereas he has convicted the appellant Malkhan under section 302 IPC. Further the fire-arm wound which is said to have been inflicted by appellant Malkhan on the person of deceased Rajwa could not have been caused in the manner as alleged by the prosecution as it is stated by the P.W. 1 that Rajwa was lying on his right side.

12. Learned counsel for the appellant further submitted that learned trial court has seriously erred in passing the judgement and order impugned which deserves to be set aside and the appeal is liable to be allowed.

13. In support of his argument, learned counsel for the appellant placed reliance on the judgement of Hon'ble Supreme Court passed in *Yudhishtir Rajkumar vs. State of M.P., 1971 3 SCC 436 ,Goverdhan and another vs. State of Chhattisgarh, 2025 0 Supreme (SC) 74 and Rishi Kesh Singh and others vs. the State respondent, AIR 1970 Allahabad 51.*

14. On the other hand, learned AGA for the State supported the judgement of the learned trial court and submitted that

learned trial court was right in convicting and sentencing the appellant under section 302 IPC as from the testimonies of eye witnesses it is amply true that it was the appellant Malkhan who shot the deceased Rajwa from his fire arm weapon.

15. Learned AGA further submitted that the testimony of P.W.1 and P.W. 2 are consistent and are worth believable regarding the role of appellant Malkhan. Learned counsel further submitted that rule of *falsus in uno, falsus in omnibus* has no application in India and if the witness has not stated truth regarding some facts but his version is otherwise trustworthy, the same cannot be discarded in totality.

16. P.W. 1 Brij Gopal has supported the prosecution case in his examination-in-chief and narrated the prosecution story as it is in FIR. In cross examination this witness has stated that the appellant Malkhan opened fire on his father. Some part of the evidence of this witness has not been believed by the learned trial court regarding the role of the co-accused persons who have been acquitted but it is well settled that in India *falsus in uno, falsus in omnibus* is not applicable. On this point Hon'ble Supreme Court has held in paragraph no. 7 of the judgement of ***T.G. Krishnamurthy and others vs. State of Karnataka and others passed in Criminal Appeal No. 1265 of 2012***, which reads as under:-

“7. The principle governing “Falsus in uno, falsus in omnibus” has got no application to the courts in India. Therefore, it is the duty of the Court to remove the chaff from the grain in its pursuit for truth. As rightly held by the High Court PW1, PW27 and PW28 are the injured eyewitnesses. They were attacked along with deceased no.1. The reasoning adopted for the acquittal of the accused qua the death of deceased no.2 cannot be imported to that of the first accused and the injuries caused to the aforesaid three witnesses. Thus, we do not find any error in the approach adopted by the High Court.”

17. Similarly, P.W. 2 Lalloo has also stated that Malkhan was armed with *Tamancha* and he opened fire on his uncle Rajwa who received gun shot injury. This witness is consistent in his statement regarding the role of the assault by the accused. This witness has clearly stated in his cross examination that he was about 10-12 fit away from Malkhan where he was standing and Malkhan had opened fire. Further this witness has stated that when Malkhan opened fire his face was towards South and head of the deceased Rajwa was towards East and Rajwa was lying on his right side and his face was towards South. Further this witness has stated that on receiving Ballam injury Rajwa turned flat. This witness has further stated that when Malkhan opened fire on Rajwa, he was at very close range. Further this witness has stated that the accused person did not flee away from the spot when he lighted the torch rather they fled away from the spot after committing the offence.

18. P.W. 1 Brij Gopal and P.W. 2 Lalloo are categorical in their statement regarding the role of the appellant that he opened fire on the deceased from close range. Although P.W. 1 and P.W. 2 have made some improvements in their statement from their earlier statement given to the investigating officer but they are not of such nature which can erode their credibility in toto. Further by referring to the material improvements in their statement before learned trial court from their earlier statement recorded under section 161 Cr.P.C., the learned trial court has acquitted the co-accused persons. However, the role of the Court is to separate the chaff from the grain.

19. In view of the testimony of P.W. 1 and P.W. 2, they are wholly reliable with regard to the role of the appellant regarding opening fire from his country made pistol which hit Rajwa as a

result of which he died which finds corroboration from the medical evidence of P.W. 3 Dr. Vikash Chandra who has found following injuries:-

“A. Lacerated wound 2 cm x 1 cm x muscle deep over front of face below the chin.

B. Gun shot wound of entry 2cm x 2cm x cavity deep over back of chest on left side 10 cm from mid to 5 cm above the lower angle of left scapula at 1’o’ clock position. Tatooing and charring present in an area of 6 cm x 6 cm. Divercion medially downwards, toward right. Margins inverted.”

20. The other witnesses P.W 4 and P.W. 6 are formal in nature and P.W. 5 is investigating officer of the case.

21. So far as the case laws relied upon by the learned counsel for the appellant is concerned, their facts are different from the facts of the present case. It is well settled law that each criminal trial has to be decided on its own facts and circumstances.

22. In view of the above discussions since P.W. 1 and P.W. 2 have been consistent and believable beyond reasonable doubt regarding their testimony with respect to the appellant’s, role of firing which finds corroboration from medical evidence of P.W. 3, prosecution has been successful in bringing home the charge against the appellant under section 302 IPC and the learned trial court has rightly convicted and sentenced the appellant vide judgement impugned dated 6.3.1984.

23. In view of the above discussions, appeal lacks merit and deserves to be dismissed.

24. Appeal is accordingly ***dismissed***.

25. Appellant is directed to surrender within two weeks before the learned trial court to serve the sentence as awarded by the learned trial court in Session Trial No. 412 of 1983.

26. Let a copy of this order be communicated by the Registrar (Compliance) to the Chief Judicial Magistrate, Banda for compliance forthwith.

27. The Chief Judicial Magistrate, Banda is also directed to send his compliance report within one month to Court from the date of receipt of this order.

Order Date :- 10.7.2025

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