

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 447 of 2004

Raj Kumar, S/o Lal Babu Singh, aged 21 years, Occupation – Service, Housing Board,
Bhilai, District Durg (C.G.)

---- Appellant

Versus

State Of Chhattisgarh through Police Station Chawani, District-Durg (CG)

---- Respondent

For Appellant	:	Shri Arvind Dubey, Advocate
For State	:	Shri Avinash K. Mishra, Panel Lawyer

Division Bench

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

25/05/2017

Pritinker Diwaker, J.

1. This appeal arises out of impugned judgment and order dated 30.4.2004 passed by 2nd Additional Sessions Judge, Durg in S.T. No.10/2003 convicting appellants- Achhelal and Rajkumar under Section 302 read with Section 34 IPC sentencing them imprisonment for life.
2. As per the prosecution case, deceased- Uday Prakash Choudhary and the deceased/accused Acchelal were the scrap purchasers. There was some monetary transaction between them. It is stated that deceased Uday Prasad Choudhary was required to give about Rs.70,000/- to deceased/accused Acchelal and when he refused to give the same, on 3.9.2002 at 8:30 PM, deceased/accused Acchelal,

with the connivance of accused Rajkumar, committed murder of the deceased by causing several injuries to him by knife and dagger. On 9.3.2002 itself, dehati nalishi, Ex.P-12 was recorded at 10:30 PM at the instance of Rakesh Singh, P.W.10 against unknown person. On the basis of such dehati nalishi, FIR, Ex.P-13 was registered under Section 302 IPC against unknown person. Merg intimation, Ex.P-14 was recorded on 4.9.2002 based on the information received from the hospital. Inquest over the dead body was conducted on 4.9.2002 vide Ex.P-2 and the dead body was sent for postmortem which was conducted on 4.9.2002 by Dr. Neeraj Shende, P.W.11 vide Ex.P-15, who noticed about 11 incised wounds on various parts of the body including the vital ones such as temporal region, neck, and one abrasion on the neck. According to him, cause of death was shock and hemorrhage as a result of injury to vital organs. While framing the charges, the trial Judge has framed the charge against the deceased/accused Acchelal under Section 302 read with Section 34 IPC and against the appellant Rajkumar under Section 302 read with Section 34 IPC and Section 25 (1B) of the Arms Act, 1959.

3. In order to prove guilt of the accused persons, the prosecution examined as many as 16 witnesses. The statements of accused persons were recorded under Section 313 of Cr.P.C. where they pleaded their innocence and false implication. By the impugned judgment, the trial Court convicted both the appellants/accused persons under Section 302 read with Section 34 IPC but has acquitted appellant Rajkumar of the offence under Section 25 (1B) of the Arms Act.
4. This appeal was preferred by both the accused persons namely Acchelal and Rajkumar. However, during the pendency of the appeal, appellant No.1- Acchelal expired and, therefore, the present appeal is confined only in respect of appellant- Rajkumar.
5. Learned counsel for appellant -Rajkumar submits that the appellant has been

convicted solely on the basis of his memorandum, Ex.P-4, based on which recovery of certain articles has been made. He submits that though as per the FSL report, Ex.P-22 blood stains were found on the seized weapon and the clothes of the appellants, however, in the serological report, blood group has not been proved by prosecution and thus, the appellant could not have been convicted on the basis of seizure alone. It has been argued that the witnesses to memorandum and seizure have also not supported the prosecution case.

6. On the other hand, supporting the impugned judgment, it has been argued by learned counsel for the State that the conviction of the appellant is in accordance with law and there is no infirmity in the same.
7. We have heard learned counsel for the parties and perused the records.
8. Paras Nath Rai, P.W.1, has been declared hostile. Narayan Choudhary, father of the deceased, has not stated anything against the appellant. Parmeshwar, P.W.3, who is a witness to memorandum and seizure, has not supported the prosecution case and has been declared hostile. Rajendra Gupta, P.W.4, who is also a witness to memorandum and seizure, has turned hostile. Praveen Kumar Choudhary, P.W.5 has also not stated anything against the accused/appellant. Mohan Prasad, P.W.6 has not stated anything against the accused appellant. K.K. Nag, P.W.7, Sub Inspector, did part of investigation. K.R. Kanwar, P.W.8, Sub Inspector, helped in initial investigation. Subhash Prasad, P.W.9, saw the deceased in the injured condition. Rakesh Singh, P.W.10, is the lodger of dehati nalishi, Ex.P-12. Dr. Neeraj Shinde, P.W.11, conducted postmortem of the dead body of the deceased and noticed about 11 incised wounds on various parts of the body including the vital ones such as temporal region, neck, and one abrasion on the neck and opined cause of death due to shock and hemorrhage as a result of injury to vital organs. R.K. Mishra, P.W.12, Sub Inspector, did part of investigation.

Santosh Kumar Sahani (P.W.13) has not stated anything against the appellants. T.R. Kanwar, P.W.14, is the Investigating Officer. S.N. Manjhi, P.W.15, Patwari, prepared spot map, Ex.P-23. Dr. Kavita Shriniwas, P.W.16, did MLC of accused/deceased Acchelal and gave her report in Ex.P-24. She also examined the accused/ appellant Rajkumar and noticed one abrasion on his linear finger vide Ex.P-25. On the memorandum of the deceased/accused Achhelal wherein he has stated that the accused/appellant Rajkumar was also involved in commission of offence, memorandum of accused/appellant Rajkumar was also recorded vide Ex.P-4 on 5.9.2002 and on the basis of that, seizure, Ex.P-7, Ex.P-8 and P-10 were made . As per Ex.P-7, one scooter, one dagger and one shirt have been seized, whereas vide Ex.P-10, one pant was seized. Vide Ex.P-8, one dagger was seized from the possession of one Mahesh. As per FSL report Ex.P-22, blood has been found on the articles seized from the deceased/accused Acchhelal and the appellant Rajkumar. However, no blood has been found on the dagger which was seized vide Ex.P-8. As per serological report (un-exhibited), in the shirt and pant of the appellant, human blood has been found but it has not been proved by the prosecution that it was of the blood group of the deceased.

9. Minute examination of the evidence makes it clear that there is no legally admissible evidence against the appellant showing his involvement in commission of murder of the deceased. Admittedly, in the present case there was no eyewitness account and the appellant has been convicted solely on the basis of seizure of certain articles made from him pursuant to his memorandum. As already stated, prosecution has utterly failed to prove the origin of the blood and the blood group of the deceased. Thus, only on the basis of FSL and serological report, in the absence of positive evidence, it will not be safe to convict the appellant on the basis of weak type of evidence available against him. But for memorandum of the appellant and seizure made in pursuance thereof, there is nothing against the present appellant

and even the witnesses to memorandum and seizure have not supported prosecution case.

10. Taking a cumulative effect of the evidence, we are of the opinion that the trial Court has erred in law in convicting the appellant on the basis of aforesaid evidence and therefore, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt.

11. The appeal is accordingly allowed and conviction and sentence of the appellant- Rajkumar is set aside. The appellant, who is in jail, shall be set at liberty forthwith, if not required in any other case.

12. The Registry is directed to take prompt steps for sending the copy of this judgment to the trial Court as well as to the concerned Jail Superintendent.

Sd/-
(Pritinker Diwaker)
Vacation Judge

Sd/-
(Sanjay K. Agrawal)
Vacation Judge