

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 728 of 2020

State of Chhattisgarh, through Police Station Khursipar, District Durg
(CG)

---- Appellant

Versus

Chandrakumar Sharma S/o. Rajbali Sharma, aged about 25 years,
resident of Dr. Rajendra Prasad Nagar, Near Telha Nala, Khursipar,
District Durg (CG)

---- Respondent

For the Appellant :- Mr. Anurag Verma, Govt. Advocate
For the respondent :- None

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Judgment on Board By Vimla Singh Kapoor, J.

25.03.2021

1. This petition is filed seeking leave to appeal against the judgment impugned dated 01.10.2019 passed by Sessions Judge, Durg in ST No. 168/2018, acquitting the respondent/accused of the charge under Sections 120-B, 302 and 201 IPC.
2. Factual scenario in brief reveals that in the night of 05.08.2018 the respondent/accused committed the murder of deceased Vickey in the rooftop of his own house with the help of a carpenter's implement known as *Batasi*. As per the FIR (Ex.P-3) lodged by father of the accused namely Rajbali Sharma (PW-3), after hearing a noise, he went to the rooftop where the accused told him to have killed the

deceased. After seeing the blood spilled there he got frightened and left the house. Complainant thereafter went to the nearby Power House where he spent the whole night. In the next morning, he informed the incident to Jogindar Sharma (PW-1) and then went to the police station to lodge the report. On the basis of FIR, offence under Section 302 IPC was registered against the respondent/accused and on his memorandum (Ex.P-1) the dead body was recovered from the Telha brook kept in a trunk under (Ex.P-6). Certain seizures as per Ex.P-2 were also made on the memorandum of the accused. After completion of investigation, charge sheet was filed under Sections 302, 201 IPC followed by framing of charge under Sections 302, 201 and 120-B IPC.

3. Learned trial Court, however, by the judgment impugned acquitted the respondent/accused of all the charges levelled against him. Hence, this petition seeking leave to appeal by the State.
4. Counsel for the appellant/ State submits that while acquitting the respondent/accused the Court below has not appreciated the evidence of the witnesses in its proper perspective and therefore, the judgment impugned is liable to be set aside.
5. It is relevant to note here that there is no eye-witness to the incident and almost all the witnesses such as Joginder Sharma (PW-1), Rajbali Sharma (PW-3), Sunita Sharma (PW-4), Shankar Sharma (PW-5) and Babling Netam (PW-9) have not supported the case of the prosecution and have been declared hostile. There is no evidence to the effect that there was an animosity between the deceased and the accused which might have driven the accused to commit the murder of the deceased. Though on some of the articles, such as

pieces of mattress, ragged quilt, full pant, underwear of the accused, *Batasi* etc. seized under Ex.P-2 the blood of group "B" was found as per the FSL report Ex.P-24 yet its origin has not been proved by the prosecution to establish that the said blood was of the deceased, as the serological examination which is a *sine qua non* in the like cases to ascertain the blood group of the deceased, has not been done by the prosecution. As per the postmortem report (Ex.P-12), the cause of death of the deceased was shock and hemorrhage resulted by rupture of vital organ and vascular injury on the neck.

6. Thus the prosecution has not established its case beyond all reasonable doubts to demonstrate that it is the accused/respondent who had committed the murder of the deceased, inasmuch as even the motive to do so has not been proved. In these circumstances, the Court below does not appear to have committed any illegality or irregularity in acquitting the respondent/accused and being so, there is no room for this Court to interfere with the judgment impugned. All this apart, it is a settled legal position that if the material available on record gives rise to two possible and plausible views, the one beneficial to the accused has to be picked up.
7. Accordingly in view of the discussion made above, the leave to appeal as sought for by the State is hereby refused.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge