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Neutral Citation No. - 2023:AHC-LKO:33351-DB

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW BENCH, LUCKNOW

"A.F.R."

**Reserved on 19.04.2023
Delivered on 30.05.2023**

Court No. - 9

Case :- CRIMINAL APPEAL No. - 267 of 1983

Appellant :- (1) Karuna Shanker

(2) Rajkishore

Respondent :- State of U.P.

Counsel for Appellant :- Sri Rajesh Tiwari

**Counsel for Respondent :- Ms. Smiti Sahay,
Additional Government Advocate**

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Mrs. Saroj Yadav,J.

(Per Justice Saroj Yadav for the Bench)

1. This criminal appeal has been filed by the convicts/appellants namely Karuna Shankar alias Pappu and Rajkishore alias Kallu (herein after referred to as Karuna Shankar and Rajkishore) against the judgment and order dated 15.04.1983

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passed in Sessions Trial No. 562 of 1982 by IVth Additional Sessions Judge, Unnao wherein convicts/appellants were convicted and sentenced under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short I.P.C.) for life imprisonment.

2. The facts necessary for disposal of this appeal are as under:-

A first information report (in short F.I.R.) was registered as Case Crime No.126 of 1982, under Section 302 read with Section 34 of IPC at Police Station Achalganj, District Unnao at about 7.30 pm on 17.06.1982, on the basis of a written report presented by the complainant namely Ashok Kumar. It was stated in the written report (Exhibit Ka-1) that about four years ahead of the incident, some miscreants committed loot in his house. After sometime he came to know that the incident of loot was got committed by Rajkishore alias Kallu and Rajnarayan alias Munna, resident of his own

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(complainant's) village. For that reason, they developed animosity and were not on talking terms. In October 1981, one Vijay Bajpai, resident of Village Badarka purchased one orchard and some land consisting of 8-9 Bighas from one Satyanarayan belonging to the family of Rajkishore and that was being looked after by Gaurishankar alias Badri Prasad, father of the complainant. Rajkishore asked many times, father of the complainant not to look after the said land and also warned him with dire consequences but he (deceased) did not care. For that reason Rajkishore became more inimical towards him (deceased). Due to this enmity on the day of incident i.e. 17.06.1982 when the complainant, his father and maternal brother Ram Kumar son of Baijnath, resident of Mawaiya, Police Station Chakeri, District Kanpur were coming back to home from 'Anta Banthar' Market, at about 5.30 pm they reached near the field of Banshlal Dixit, then Karuna Shankar armed with

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gun, Rajkishore armed with Katta (country-made pistol) and their two associates, one armed with Farsa (Spade) and another with Kulhari (Axe) who were hidden there. Rajkishore asked his associates to kill the father of the complainant so as to teach a lesson for taking the land of others. On this, they (complainant, his father and cousin) took turn to run away. At the sametime Rajkishore fired a shot with Katta (country made pistol) on his father which hit him (deceased) on right side of abdomen. On it they all three i.e. complainant, father and cousin ran shouting/crying. Hearing their voice/cry, Sri Ram son of Lallaunu Lodh and Pusu Raidas resident of Badarka, who were present in their orchards came running and they challenged Rajkishore and his associates but they (complainant and the people gathered there) did not go nearby out of fear. Rajkishore and his associates chased his father (deceased) while running and in the orchard of Lallan Dixit Karunashankar and Rajkishore fired

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one shot each by gun and country made pistol with which they were armed. His father fell down, then their two associates assaulted his father with 'Kulhari' (Axe) and Farsa (Spade). Thereafter, all the four miscreants ran to assault towards the complainant and his cousin but could not do so seeing many people coming after hearing the sound of fires and cry of the complainant side and they ran away towards the village Supasi. Thereafter the complainant and others reached near the deceased in the orchard of Lallan Dixit and complainant found his father dead. The right hand of the deceased was cut apart from wrist. He recognized the miscreants Rajkishore and Karunashankar very well but did not know the names of other two miscreants. The dead body of the deceased was lying at the spot.

3. After registration of the F.I.R., investigation started. The panchayatnama of the body of the deceased was conducted on the same day in the night. The body was sent for post mortem

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examination. The post mortem examination was conducted on the cadaver of the deceased. Site plan of the place of incident was prepared by the Investigating Officer. The accused persons surrendered before the concerned Court.

4. After completing the investigation the Investigating Officer found the involvement of both the convicts/appellants in the crime and submitted charge-sheet against them under Sections 302/34 IPC. On the charge-sheet so submitted learned Magistrate concerned took the cognizance and committed the case to the Court of Sessions for trial. The Court of Sessions framed the charges under Sections 302/34 IPC against the convicts/appellants namely Karunashankar and Rajkishore. Both the convicts/appellants denied the charges and claimed to be tried.

5. In order to prove its case the prosecution examined the following witnesses:-

P.W. 1- Ashok Kumar (complainant, an eye

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witness);

P.W. 2- Radhey Lal (an eye witness);

P.W. 3- Dr. J.N. Bajpai, who conducted post mortem examination of the deceased;

P.W. 4- Sub-Inspector Hardeo Singh, Investigating Officer;

P.W. 5- Head constable Amir Singh, who registered the F.I.R.

Apart from above oral evidence relevant documents have also been proved by the prosecution, which are as under:-

Exhibit Ka 1- Written report;

Exhibit Ka 2- Post mortem examination report;

Exhibit Ka 3- Inquest report;

Exhibit Ka 4- Police Form No. 379;

Exhibit Ka 5- Police Form No. 13;

Exhibit Ka 6- Letter to Reserved Inspector, Police Lines, Unnao for getting the post mortem conducted;

Exhibit Ka 7- Letter to Medical Officer In-charge,

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Post mortem duty, Unnao for getting the post mortem conducted and sending the clothes of the deceased found on the body in a sealed bundle;

Exhibit Ka 8- Recovery memo of empty cartridges recovered from the place of occurrence;

Exhibit Ka 9- Recovery memo of collection of blood soaked and plain soil from the place of occurrence;

Exhibit Ka 10- Recovery memo of shoes of the deceased recovered from nearby spots to the place of occurrence;

Exhibit Ka 11- Site plan of the place of occurrence;

Exhibit Ka 12- Charge sheet;

Exhibit Ka 13- Chik F.I.R.;

Exhibit Ka-14- Copy of concerned General Diary.

6. After completion of evidence of prosecution, statements of convicts/appellants under Section 313 of the Code of Criminal Procedure 1973 (in short Cr.P.C.) were recorded. Both the convicts/appellants in their statements admitted that

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Gauri Shankar (deceased) was the father of the complainant (Ashok Kumar) and also admitted that Rajkishore and Rajnarayan were the real brothers but denied that any dacoity was got committed by them as stated by P.W. 1. Both the convicts/appellants denied any enmity with the complainant. They denied the incident being committed by them as has been alleged and stated by the witnesses. They also denied the place of occurrence. Further they stated that they have falsely been implicated in the crime. They have stated that both the eye witnesses are the man of one Vijay Bajpai of Village Badarka and they have deposed under the influence of Vijay Bajpai. They further stated that they had no reason to commit murder of Gauri Shankar. It has also been stated by convict/appellant Rajkishore that Vijay Bajpai was the man of criminal character and he was challaned under the Goonda Act and he (accused Rajkishore) and his father did Pairvi in that case, for that reason

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Vijay Bajpai was inimical against him. He further stated that he filed a suit against Vijay Bajpai. Both the convicts/appellants further stated that witnesses have deposed falsely as they are the man of Vijay Bajpai. The accused persons filed some documentary evidence in support of their contentions. No witness was produced in defence by the convicts/appellants though opportunity was given by the trial Court.

7. Learned trial Court after completion of evidence heard the arguments of both sides. After analyzing the evidences available on record, the trial Court relied upon the evidence of witnesses P.W. 1- Ashok Kumar (complainant) and P.W. 2- Radhey supported by medical evidence and other evidence and came to the conclusion that the case of the prosecution has been proved by the witnesses P.W 1 and P.W. 2 though there are contradiction in the evidence of P.W. 1 and P.W. 2 but of minor nature. What has been written in the FIR and stated by the

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P.W. 1 (complainant) has been supported by the medical evidence of medical witness P.W. 3, who conducted the post mortem examination. The F.I.R. was lodged promptly. It was a broad day light murder as the same was committed at 5.30 pm in the month of June. In day light incident can be witnessed from a distance also. Learned trial Court found the evidence of P.W. 1 and P.W. 2, witnesses of facts/eye witnesses reliable. Three empty cartridges were also recovered from the place of occurrence. The shoes of the deceased were recovered by the Investigating Officer from the nearby places where the incident was committed after chasing the deceased. Hence learned trial Court came to the conclusion that the prosecution has proved its case beyond all reasonable doubts and held the convicts/appellants guilty under Section 302/34 IPC and sentenced them with imprisonment for life. Being aggrieved of this conviction and sentence this criminal appeal has

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been preferred.

8. Heard Sri Rajesh Tiwari, learned counsel for the convicts/appellants, Sri Ashu Dubey, learned counsel for the complainant and Ms. Smiti Sahay, learned Additional Government Advocate for the State respondent.

9. Learned counsel for the convicts/appellants submitted that impugned judgment and order is erroneous and not sustainable in the eyes of law because there was mention of two more unknown persons in the FIR but those unknown persons could not be traced by the Investigating Officer. No weapon allegedly used in the crime was recovered by the Investigating Officer. Only eye witness Ashok Kumar (P.W. 1) has been examined before the Court below. Though P.W. 2 has been presented as eye witness but his name was not there in the FIR as an eye witness. Hence his evidence cannot be relied upon. His presence on the spot is highly doubtful. He further submitted that motive which

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has been alleged for committing the crime is not sufficient because the land was purchased by Vijay Bajpai and not by the deceased. The deceased was allegedly looking after the land/orchard so purchased. The factum of enmity due to dacoity has also not been proved by the prosecution. He further submitted that injury suffered by the deceased on his right side of abdomen could not have occurred as per the version of witness that he turned on the other side. Furthermore, after receiving injury in the abdomen the deceased could not have run the distance where he was finally killed. He further submitted that P.W. 2 Radhey is a servant of Vijay Bajpai, hence his testimony is not reliable as he is an interested witness. He further submitted that prosecution has failed to prove the case against the convicts/appellants beyond all reasonable doubt, therefore, impugned judgment and order should be set aside.

10. Contrary to it, learned A.G.A. appearing on

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behalf of the State respondent as well as learned counsel for the complainant submitted that in the present case the incident occurred in a broad day light i.e. at 5.30 pm in the month of June. The F.I.R was lodged promptly i.e. at 7.30 pm on the same day. The inquest was conducted without any delay. In the FIR out of four miscreants two were named and those are the convicts/appellants and two were unknown whom the complainant did not recognize as they were unknown persons but he has written in the FIR that he can recognize them if they are brought before him. The injuries are in corroboration to what has been mentioned in the FIR. It is further submitted that recovery of weapon is not necessary for convicting the accused if direct evidence is there. Learned A.G.A. further submitted that to prove the motive is also not necessary if there is eye witness account of the incident. She further submitted that it differs from person to person and depends upon the capacity, will power

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and courage of the person how long he could run after receiving injuries. Even Doctor has not stated with certainty that he could have run only 6-7 paces. Hence the arguments advanced by the learned counsel for the convicts/appellants have no force and the appeal should be dismissed.

11. Considered the rival submissions advanced by the learned counsel for the parties and perused the original record as well as record of the appeal.

12. The evidence available on record as well as perusal of the impugned judgment shows that there is no dispute regarding day of occurrence and date and time of lodging the F.I.R. The F.I.R. of the case was lodged against two named persons (appellants/convicts) and two unknown persons alleging that the complainant, his father and his maternal brother were coming back to home from 'Anta Banthar' market, at about 5.30 pm they reached near the field of Vanshlal Dixit, then Karuna Shankar armed with gun and Rajkishore

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armed with Katta (country made pistol) and their two associates were armed with Farsa (spade) and another with Kulhari (axe) all of sudden came there. Appellant Rajkishore exhorted his associates to kill the father of the complainant so as to teach him a lesson for taking the lands of others. Thereupon they (complainant, his father and cousin) took a turn to run away. At the sametime Rajkishore fired a shot with Katta (country made pistol) on his father which hit him (deceased) on the right side of abdomen. On it they all three i.e. complainant, father and cousin ran crying. Hearing their voice/cry, Sri Ram son of Lallaunu Lodh and Pusu Raidas resident of Badarka, who were present in their orchards came running and they challenged Rajkishore and his associates but they (complainant and the people gathered there) did not go nearby out of fear. Rajkishore and his associates chased his father (deceased) while running and in the orchard of Lallan Dixit Karunashankar and Rajkishore fired

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one shot each by gun and country made pistol with which they were armed. His father fell down, then their two associates assaulted his father with 'Kulhari' (Axe) and Farsa (Spade). Thereafter, all the four miscreants ran to assault towards the complainant and his cousin but could not do so seeing many people coming after hearing the sound of fires and cry of the complainant side and they ran away towards the village Supasi. Thereafter the complainant and others reached near the deceased in the orchard of Lallan Dixit and complainant found his father dead.

13. The complainant Ashok Kumar has been examined as P.W. 1. He in his examination-in-chief has stated that his father Gauri Shankar was killed. He was also known as Badri Prasad. About 4-5 years ahead of the murder of his father, some loot was committed in his house. After some time it was revealed that loot was got committed by Ramnarayan alias Munna and Rajkishore alias

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Kallu. He identified Rajkishore in the Court. He further stated that Ramnarayan is real elder brother of Rajkishore. Karunashankar, who is present in the Court has friendship with Rajkishore. When it came to the knowledge of the complainant side that in the loot committed in the house of complainant was got committed by Rajkishore then Rajkishore developed animosity towards him. Before the murder of father of the complainant one person Vijay resident of Badarka purchased 8-9 Bighas of land from one Satyanarayan belonging to the family of Rajkishore. The land so purchased was looked after by the father of the complainant. Rajkishore asked his father not to look after the said land otherwise he (deceased) will have to face dire consequences but the father of the complainant did not yield. For this reason, they (appellant Rajkishore and family) became more inimical.

14. The incident took place on 17.06.1982. On that day he (complainant), his father and his son of

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maternal uncle Ram Kumar went to the market of Anta Banthar. They started back from the market at about 2.30 pm. They reached near the field of Vanshlal Dixit of Badarka . At about 5.30 pm his father was ahead and they (he and his cousin) were behind them by 8.-10 paces. In the way Rajkishore, Karunashankar and two unknown persons came out, who were hidden there. Karunashankar armed with gun, Rajkishore armed with Katta (country-made pistol) and two unknown persons, one armed with Farsa (Spade) and other with 'Kulhari' (Axe). Rajkishore challenged his father and asked his associates to kill him so as to teach a lesson for taking the property of others. His father took a turn to run away but at the same time Rajkishore fired a shot at his father, which hit him on right side of the abdomen. On this his father took turn on the left side and ran towards north but the miscreants chased his father and surrounded him in the orchard of Lallan Dixit. Rajkishore and Karunashankar fired

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one shot each on his father with country made pistol and gun respectively. His father fell down then both unknown miscreants assaulted his father with 'Farsa' (spade) and 'Kulhari' (Axe). When the miscreants chased his father then the complainant and his cousin ran crying. Near the orchard of Maithali Sharan, Radhey and Pusu resident of Village Badarka met them and they all witnessed the incident but did not go near out of fear. Upon their cry many people of village Badarka reached there and accused persons and their associates ran away towards the Village Supasi. He further stated that after running away of the accused persons the complainant and others went near his father and found him dead. The blood was oozing from his wounds. He asked the persons present at the spot to take care of the dead-body and he went to his home and narrated the incident to his mother and wrote the report. This witness proved the written report Ext. Ka-1 in his hand-writing. He further stated that

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he went along with Chowkidar to the Police Station to lodge the report. He handed over the written report to Head Moharrir in the Police Station and he (head moharrir) prepared the chik FIR and gave to him. Thereafter the Investigating Officer recorded his statement.

15. P.W. 2-Radhey Lal is another eye witness, whose name does not figure in the F.I.R. as witness but he came to depose as an eye witness of the incident. He in his examination in chief has stated that he knew Gauri Shankar (deceased) before the incident. The incident took place about six months ahead at 5-5.30 pm. At the time of incident he was in the orchard of Lallan Dixit. He reached in the orchard of Lallan Dixit from the orchard of Maithali Sharan. At that time, he was plucking mangoes in the orchard of Maithali Sharan along with Pusu. Pusu is resident of his village. He heard the sound of fire and cry when he was in the field of Maithali Sharan. On this he reached in the orchard of Lallan

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Dixit and saw four persons were chasing Gauri Shankar among whom Rajkishore and Karunashankar and two other unknown persons were there. Karunashankar was armed with gun, Rajkishore was armed with Katta (country-made pistol) and out of two other unknown persons, one armed with 'Kulhari' (Axe) and another with 'Farsa' (spade). All the four persons surrounded Gauri Shankar in the orchard of Lallan Dixit. After surrounding him Rajkishore and Karunashankar fired upon Gauri Shankar. After being fired Gauri Shankar fell down. Thereafter two unknown persons assaulted him with Kulhari and Farsa. At the place where he (P.W. 2) was standing at the same place Ashok and one of his relative were also standing. Pusu was also standing near him. All these persons witnessed the incident. After hearing the cry and noise other people of village Mawaiya and Badarka came there then accused persons ran away towards the village Supasi. When the accused persons ran

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away then they saw Gauri Shankar and found him dead. He further stated that blood came out on the spot from the injury of Gauri Shankar. He remained at the spot for 5-7 minutes thereafter went to his home. On the next day of incident the Investigating Officer recorded his statement.

16. P.W. 3 is Dr. J.N. Bajpai, Radiologist, who conducted the post mortem examination on the cadaver of the deceased. He has stated before the Court that on 18.06.1982 he conducted the post mortem examination of the deceased Gauri Shankar, whose body was identified by Constable Police 523 Ram Swaroop of Police Station Achalganj. He found following ante mortem injuries on the body of the deceased:-

(i) Gun shot wound of entry 1/2" X 1/2" X abdominal cavity deep, on the left side of abdomen 2" below right costal margin, blackening and tattooing was present.

(ii) Multiple gun shot of entry 1/5" X 1/5" each

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spread in an area 5" X 3" on the middle of chest.

(iii) Incised wound 3-1/2" X 1" X bone deep on the front of right fore arm lower part, front of right wrist and front of right hand. Both radius and ulna bones were cut out on their lower part.

(iv) Incised wound 3-1/2" X 1/2" X bone deep on the right side of back of head 1" above and behind right ear.

(v) Incised wound 4" X 1" X bone deep in the back of neck upper part.

(vi) Incised wound 2-1/2" X 1/5" X muscle deep on the front of right arm.

(vii) Incised wound 2-1/4" X 1/5" X skin deep on the outer middle part of right arm.

(viii) Incised wound 2-1/2" X 2" X bone deep on the lower part of right fore arm along with amputation of right hand at the wrist joint. The bones of the wrist joint were cut.

(ix) Incised wound 3/4" X 1/3" X bone deep on the back of right hand.

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(x) Multiple gun shot wound of entry 1/3" X 1/3" each spread in an area 11" X 8" on the right side of abdomen.

According to the Doctor (P.W. 3), death of the deceased might have occurred on 17.06.1982 at about 5.30 pm. Gun shot injuries might have occurred with gun and pistol. There is little possibility that incised wound would have come with Axe and Spade but might have come with a small axe. He further stated that injury no. 8 would have occurred with spade. He proved post mortem report Exhibit Ka-2 as prepared by him and written in his hand-writing and signed by him at the time of post mortem examination.

17. P.W. 4 is the Investigating Officer. He has stated in his examination in chief that even on 17.06.1982, he was posted at Police Station Achalganj as Sub-Inspector. On that day, investigation of this case was handed over to him. He recorded the statement of the complainant at the

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Police Station, thereafter went to the spot. The body of the deceased was lying in the orchard of Lallan Dixit. He took the dead body in his possession and prepared inquest after nominating Panches. He prepared Panchayatnama, Khaka Lash and Challan lash (Exhibit Ka3 to Ka 5) in his own hand writing and signed them. Thereafter dead body got sealed and sent for post mortem examination. He wrote letter to Reserved Inspector (R.I.) (Exhibit Ka-6) and to Medical Officer (Exhibit Ka-7). He also inspected the place of incident on the same day. He recovered three empty cartridges from the spot, collected blood soaked and plain soil from the spot and prepared the recovery memos (Exhibit Ka-8 and Ka-9). He also recovered shoes of the deceased from the nearby places to the spot, which fell down while running and prepared the recovery memo (Exhibit Ka-7) He further deposed that he prepared the site plan (Exhibit Ka-11) and site plan so prepared is correct. Thereafter he recorded the

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statement of Panches and other witnesses of recovery memos. He has further submitted that on 18.06.1982, he recorded the statement of witnesses namely Ram Kumar, Radhey Lal and others. He made search for the accused persons but he could not find them. The accused persons surrendered in the Court where he recorded the statement of accused persons in 'Hawalat' (police lock-up). After investigation he submitted the charge sheet (Exhibit Ka-12) against the accused persons on 31.07.1982.

18. P.W. 5 is Head Constable Amir Singh, who has proved Chik FIR (Exhibit Ka-13) and relevant General Diary (GD) (Exhibit Ka-14). He registered the FIR and wrote Chik FIR and handed over the investigation to Sub-Inspector Hardeo Singh.

19. Both the eye witnesses i.e. P.W. 1 and P.W. 2 have been cross-examined at length by the defence side but nothing material could be brought out in their cross examination as to make their statements unreliable. Both the eye witnesses have

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proved the incident giving narration step by step. P.W. 1-complainant has proved what he has written in the first information report about the incident. P.W. 2 has also proved what was witnessed by him when the incident was being committed by the accused persons. Though some contradictions are there in the statements of P.W. 1 and P.W. 2 but these contradictions are of minor nature and may occur.

20. Learned counsel for the convicts/appellants argued that name of P.W. 2-Radhey Lal was not there in the F.I.R. Had he witnessed the incident the complainant had mentioned the name of Radhey Lal in the F.I.R., hence he could not be relied upon. This arguments advanced by the defence was not tenable because the statement of witness Radhey Lal was recorded on the next day of incident by the Investigating Officer. The Investigating Officer P.W. 4 has stated in his statement about it. Non mentioning of name of the P.W. 2 in the FIR in such

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circumstances is immaterial. Merely non mentioning of the name of P.W. 2 in the FIR did not make his testimony unreliable. Further it is settled law that F.I.R. is not an encyclopedia to mention every fact about the incident. The evidence of both eye witnesses P.W. 1 and P.W. 2 proves the incident and their narration of facts is very well being supported by the medical evidence given by the Doctor P.W. 3. Ante mortem injuries found on the body of the deceased corroborates the facts what has been stated in the F.I.R. and also proved by P.W. 1 and P.W. 2. There is no reason to doubt the testimony of P.W. 1 and P.W. 2.

21. Learned counsel for the convicts/appellants argued that two unknown persons could not be traced and identified by the Investigating Officer, as such, the incident narrated by the complainant could not be believed. This argument advanced by the learned counsel for the convicts/appellants is baseless because it is up to the Investigating Officer

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to trace them but if they remained untraced, it cannot be presumed that whole incident is false. He further argued that no weapon used in the crime was recovered by the Investigating Officer neither fire arm nor 'Farsa' (Spade) or Kulhari (Axe), as such, the incident could not be deemed proved. This argument of the appellants' counsel also not tenable because to prove the case of prosecution recovery of weapon is not always necessary specially if eye witness account is there. In the present matter, two witnesses have proved the incident who witnessed the incident. Mere non recovery of weapon cannot demolish the case of prosecution. Recently in **Mekala Sivaiah Versus State of Andhra Pradesh (2022) 8 Supreme Court Cases 253**, Hon'ble Apex Court in this regard as held as follows:-

"When there is ample ocular evidence corroborated by medical evidence, mere non-recovery of weapon from the appellant would not materially affect the case of the prosecution.

iii. If the testimony of an eye witness is otherwise

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found trustworthy and reliable, the same cannot be disbelieved and rejected merely because certain insignificant, normal or natural contradictions have appeared into his testimony.

22. In *Kalua alias Koshal Kishore Versus State of Rajasthan (2019) 16 Supreme Court Cases 683*

also Hon'ble Apex Court held that "*Non recovery of weapon would not materially affect the prosecution case.*"

23. Learned counsel for the convicts/appellants also argued that the motive for commission of murder though alleged but has not been proved and the motive is not sufficient for committing the murder of the deceased by the accused persons. This argument put-forth by the learned counsel for the convicts/appellants has no force because where there is direct evidence of the crime then motive loses its importance. Though generally there remains a motive for commission of a crime but that motive remains hidden in the mind of the

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miscreants. In the present matter the incident has been proved by direct evidence of P.W. 1 and P.W. 2 supported by medical evidence of P.W. 3. In *Surinder Singh Versus State (Union Territory of Chandigarh) 2021 SCC Online SC 1135*, Hon'ble Apex Court in this regard has held as under:-

"We are thus of the considered opinion that whilst motive is infallibly a crucial factor, and is a substantial aid for evincing the commission of an offence but the absence thereof is, however, not such a quintessential component which can be construed as fatal to the case of the prosecution, especially when all other factors point towards the guilt of the accused and testaments of eyewitnesses to the occurrence of a malfeasance are on record."

24. Learned counsel for the convicts/appellants further argued that P.W. 1 is a related witness being the son of the deceased, so his testimony could not be relied upon. This argument of the learned counsel for the appellants did not carry weight because it is well settled law that the testimony of

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the related witness cannot be discarded merely on the ground that he is a related witness. A person whose close relative is killed will never spare the real culprit just to implicate the others falsely. In *Rahul Versus State of Haryana (2021) 11 Supreme Court Cases 149*, Hon'ble Apex Court has held as under:-

" While rejecting the plea that the witnesses were in close relation to the deceased, in the case of Ram Chander & Ors. v. State of Haryana this Court has held as under:

"33. The submission of the learned counsel for the appellants that since Guddi (PW 9) was in close relation with the deceased persons, she should not be believed for want of evidence of any independent witness, deserves to be rejected in the light of the law laid down by this Court in Dalbir Kaur v. State of Punjab (1976) 4 SCC 158 and Harbans Kaur v. State of Haryana (2005) 9 SCC 195, which lays down the following proposition (Harbans Kaur case, SCC p.198, para 7).

"7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of

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partiality is raised to show that the witnesses have reason to shield the actual culprit and falsely implicate the accused." " While rejecting the plea that the witnesses were in close relation to the deceased, in the case of Ram Chander & Ors. v. State of Haryana this Court has held as under:

"33. The submission of the learned counsel for the appellants that since Guddi (PW 9) was in close relation with the deceased persons, she should not be believed for want of evidence of any independent witness, deserves to be rejected in the light of the law laid down by this Court in Dalbir Kaur v. State of Punjab (1976) 4 SCC 158 and Harbans Kaur v. State of Haryana (2005) 9 SCC 195, which lays down the following proposition (Harbans Kaur case, SCC p.198, para 7).

25. Learned counsel for the convicts/appellants further argued that the presence of the P.W. 2 on the spot is not reliable because at the time of incident he has no reason to be there but this argument is also of no help to the accused appellants because the P.W. 2 in his cross-examination has stated that he was there as he was plucking mangoes in the orchard of

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Maithali Sharan from whom he purchased the crop of mangoes, hence his presence at the spot cannot be deemed doubtful.

26. Learned counsel for the accused appellants also argued that the deceased could not have run after receiving fire arm injury which was shot at him initially, to cover a distance of 60-65 paces as he was finally allegedly killed in the orchard of Vanshlal Dixit. Learned counsel for the accused appellants further referred the statement of P.W. 3 (Doctor) wherein he has stated that after getting the injury of fire arm wound the deceased could not have run more than 6-7 paces. This argument of the learned counsel for the accused appellants also does not carry weight because it differs from person to person depending upon strength, will power and courage of a particular person that how one reacts after receiving the injuries. Even Doctor P.W. 3 has stated that he cannot say so with certainty.

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27. From the above discussion it is established that in the present matter the incident occurred in a broad day light i.e. 5.30 pm in the month of June. The F.I.R. was lodged promptly at 7.30 pm. The inquest was conducted on the same night. The statement of the complainant was recorded on the same day. The statement of another witness Radhey Lal was recorded on the next day by the Investigating Officer as has been stated by the Investigating Officer. Eye witnesses have proved the case of the prosecution beyond all reasonable doubts. There is no reason to doubt the testimony of eye witnesses. Hence it is well established from the evidence on record that murder of the deceased was committed by the convicts/appellants namely Karuna Shankar and Rajkishore in association with two unknown miscreants. Hence the trial Court has rightly held the accused persons guilty and sentenced them accordingly with imprisonment for life. There appears no ground or reason for

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interference in the conviction and sentence recorded by the trial Court.

28. Hence, the present appeal deserves to be dismissed and is **dismissed** accordingly.

29. The convicts/appellants Karuna Shankar and Rajkishore are on bail. They are directed to surrender before the trial Court within ten days to serve out the sentence awarded to them.

30. In this case learned trial Court has not imposed any fine on the convicts/appellants though the fine is mandatory under Section 302 of IPC. Considering the fact that the present appeal is old enough and pending since 1982, it appears just to impose a nominal fine of Rs.1000/- each in addition to the life imprisonment awarded by the trial Court. With this addition the impugned judgment and order is hereby upheld.

31. Office is directed to send a copy of this order along with the lower Court record to the trial

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Court concerned for necessary information and compliance forthwith.

(Mrs. Saroj Yadav J.) (A.R. Masoodi, J.)

Order Date:- 30.05.2023

Arun