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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1063 of 2021**

- Kaushal @ Deepak Nirmalkar S/o Biharilal Nirmalkar, Aged About 22 Years, Resident of Village Salhetola, Police Station Charama, District North Bastar Kanker Chhattisgarh., District : Kanker, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh through the Station House Officer, Police Station Bhanupratappur, District North Bastar Kanker Chhattisgarh., District : Kanker, Chhattisgarh

---- Respondent**CRA No. 1066 of 2021**

- Lokesh Shori @ Loku S/o Motiram Shori, Aged About 18 Years, R/o Village Salhetola, Thana Charama, District Uttar Bastar Kanker Chhattisgarh., District : Kanker, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh through Police Station Bhanupratappur, District U.B. Kanker Chhattisgarh., District : Kanker, Chhattisgarh

---- Respondent**Division Bench:-****Hon'ble Shri Justice Sanjay K. Agrawal &****Hon'ble Shri Justice Rakesh Mohan Pandey**

05/12/2022	Mr. D.N. Prajapati, Advocate for the appellant in CRA No.1063/2021. Mr. Parag Kotecha, Advocate for the appellant in CRA No.1066/2021. Mr. Avinash Singh, P.L. for the State/respondent. Heard on I.A.No.1/2021, applications for suspension of sentence and grant of bail to the appellants in both the appeals. The appellants have been convicted and sentenced by the judgment of conviction and order of sentence dated 07-09-2021 passed in S.T. No.30/2019 by the learned Additional Sessions Judge, Bhanupratappur, District Uttar Bastar Kanker (C.G.) in the following manner with a direction to run both the jail



sentences concurrently:-

Sl. No.	Conviction	Sentence
1.	U/s 302/34 of the IPC	Rigorous imprisonment for life and fine of Rs.2000/-, in default of payment of fine additional R.I. for one year
2.	U/s 201 of the IPC	R.I. for 1 year and fine of Rs.500/-, in default of payment of fine additional R.I. for 15 days

The case of prosecution is that, the present appellants alongwith one juvenile in furtherance of common intention in intervening night of 25-06-2019 and 26-06-2019 committed murder of Paleshwar by using wooden club, nylon rope and stone. The dead body was recovered on 26-06-2019 and merged intimation (Ex.-P/1) was given by one Piritram (PW-1). Consequently, the FIR was registered against unknown person vide Ex.-P/2. During investigation police arrested the present appellants and on the basis of memorandum statements several articles were seized.

Learned counsel for respective appellants submit that there are contradictions and omissions in the evidence of prosecution witnesses, no human blood was found in the seized articles and chain of evidence is not complete. They would further submit that the appellants have been convicted only on the basis of memorandum and seizure which are a weak kind of evidence and thus, they would pray for suspension of sentence and grant of bail to the appellants.

On the other hand, Mr. Avinash Singh, learned counsel for the State would oppose the contentions made by learned counsel for the appellants and he would submit that the prosecution has proved the chain of circumstances against the present appellants. There are recovery on the instance of the present appellants and as per FSL report (Ex.-P/41) in some of the articles human blood was found and therefore, the applications moved by the appellants for suspension of sentence and grant of bail are liable to be rejected.

We have heard learned counsel for the parties and perused the record.



From the record, it appears that on the basis of memorandum of the appellants (Ex.-P/9 and Ex.-P/10), blood stained T shirt of appellant Kaushal @ Deepak Nirmalkar, two motorcycles used in commission of the offence, one blood stained stone and one wooden club were seized, whereas, on instance of appellant Lokesh Sori @ Loku blood stained white and black shirt was seized. Further, on instance of appellants blood stained soil and nylon rope were seized. The police has also seized a green colour scarf from the place of incident on the basis of memorandum of the appellants. The recovery part is admissible under Section 27 of the Evidence Act and in the FSL report in some articles human blood is found. The police have also seized motorcycles used by the present appellants in commission of the offence. With regard to motive, the learned trial Court has clearly held that the deceased was drunkard and used to abuse his brother Kaushal @ Deepak Nirmalkar and mother too, therefore, he has been killed by the present appellants. Considering the above material available on record and reasons assigned by the learned trial Court we are not inclined to allow the applications filed in both these appeals for suspension of sentence and grant of bail to the appellants.

Consequently, I.A.No.1/2021 filed in both these appeals by the appellants for suspension of sentence and grant of bail are hereby rejected.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Rakesh Mohan Pandey)
Judge