

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

CRA No.353 of 2017

1. Johar Mandavi S/o Late Faguram Mandavi, Aged About 48 Years R/o Murnar, Police Station Tadoki, District North Bastar Kanker, Chhattisgarh
 2. Mannuram Mandavi, S/o Johar Mandavi, Aged About 25 Years R/o Murnar, Police Station Tadoki, District North Bastar Kanker, Chhattisgarh
- Appellants**

Versus

State Of Chhattisgarh Through Station House Office, Police Station Tadoki, District North Bastar Kanker, Chhattisgarh

---Respondent

08/07/2021	Mr. Mukesh Shrivastava, counsel for the appellant/s. Mr. Ravish Verma, G.A. for the State. Heard on application for suspension of sentence and grant of bail. The appellants have been convicted under the impugned judgment of conviction and order of sentence dated 23.02.2017 passed by Sessions Judge, North Bastar, Kanker (C.G.) in Sessions Trial No.26/2015 for the offence as follows : <table><tr><th>Conviction</th><th>Sentence</th></tr><tr><td>Under Section 302/34 of IPC</td><td>For life imprisonment and fine of Rs.5000/- in default of payment of fine 3 months additional R.I.</td></tr></table> Learned counsel for the appellants would submit that the conviction of the appellants is founded on the sole evidence of so-called eyewitness Sukdev (PW6), who has clearly stated in his cross-examination that the road through which he was passing, was about 100 gaj away from the field, it had become dark, he could not see who were quarreling neither he heard nor he seen anything nor he can say that from whose weapon, Phool Singh died. He would submit that except this, there is no other evidence of recovery, extra-judicial confession or last seen to connect the appellant with the offence.	Conviction	Sentence	Under Section 302/34 of IPC	For life imprisonment and fine of Rs.5000/- in default of payment of fine 3 months additional R.I.
Conviction	Sentence				
Under Section 302/34 of IPC	For life imprisonment and fine of Rs.5000/- in default of payment of fine 3 months additional R.I.				

On the other hand, learned State counsel opposes the prayer for suspension of sentence and grant of bail and submits that Sukdev (PW6) was re-examined by the trial Court on subsequent date wherein, he stated regarding he having given a voluntarily statement under Section 164 Cr.P.C. before the Magistrate regarding the incident, therefore, the said statement under Section 164 Cr.P.C. provides corroboration to the evidence of Sukdev (PW6).

Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration that the conviction of the appellant is based on the evidence of Sukdev (PW6) and further taking into consideration what has been stated by Sukdev (PW6) in his cross-examination regarding the distance being 100 gaj, it was dark in the night and it has been stated that he could not see who were quarreling neither he heard nor he seen anything and further considering what has been stated by this witness in his cross-examination on subsequent date and that except this, there is no other corroborative evidence of extra-judicial confession or last seen or recovery and the axe has not been found to be bloodstained, we are inclined to allow the application.

Accordingly, the application is allowed. It is directed that the substantive jail sentence awarded to the appellants shall be released on bail on each of them furnishing a personal bond of Rs.25,000/- along with two local sureties of the like amount to the satisfaction of the Trial Court, for their appearance before the concerned Trial Court on 31st August, 2021 and on all such further dates as may be directed during the pendency of this appeal and thereafter in interval which shall not be less than six months.

List this case for final hearing along with **CRA No.1730 of 2019**.

Sd/-

(Manindra Mohan Shrivastava)

Judge

Sd/-

(Vimla Singh Kapoor)

Judge