

A.F.R.
Reserved on : 12.7.2022
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Case :- CRIMINAL APPEAL No. - 7788 of 2010

Appellant :- Rambhajan And Others

Respondent :- State of U.P.

**Counsel for Appellant :- P.N.Misra,Apul Mishra,Mridul
Tripathi,P.N.Misra**

Counsel for Respondent :- Govt. Advocate

Hon'ble Suneet Kumar,J.

Hon'ble Vikram D. Chauhan,J.

Suneet Kumar,J.

1. Heard Ms. Mridul Tripathi, learned Amicus Curiae appearing for the appellant, Shri Om Prakash Mishra, learned Additional Government Advocate and perused the lower court record with the assistance of the learned counsel for the parties.
2. The instant appeal has been filed against the judgment and order dated 18 November 2010, passed by the Additional Sessions Judge/F.T.C. No. 7, Shahjahanpur, in Session Trial No. 526 of 2004, along with Session Trial No. 527 of 2004, arising out of Crime No. 283 of 2003 connected with Crime No. 287 of 2003, P.S. Kanth, District Shahjahanpur, whereby, convicting the appellant no.2 Ram Kishore under Section 302 IPC and further convicting the appellant no. 1 Ram Bhajan and appellant no. 3 Udai Veer under Section 302/34 IPC and sentencing them to imprisonment for life and fine of Rs. 5,000/- each, further convicting the appellant no. 1 Ram Bhajan under Section 25/27 of Arms Act and sentencing him to 3 years rigorous imprisonment and fine of Rs. 1,000/-. In case of the default of payment, the

appellant will have to undergo further 1 month simple imprisonment.

3. The prosecution case setup in the FIR is that on 5 November 2003, Mool Shankar, son of the complainant (P.W.-3) had gone to Kanntha town to get the quilt stuffed. The complainant had gone to the market, where he was informed by Jagdish and Pratap, residents of his village, that his son Mool Shankar (deceased) was caught by accused Rambhajan and Udayveer at about 2 PM on Kurriya Road and their brother Ramkishore shot his son in the stomach with a country-made pistol. The injured Mool Shankar was taken to the Shahjahanpur Hospital on a tempo by some persons. It is further stated that complainant reached the Government Hospital and found his son admitted. It is further alleged that injured Mool Shankar told the complainant that accused Ramkishore shot with a country-made pistol in his stomach while accused Udayveer and Rambhajan caught him. It was further alleged that 5-6 months earlier a case under Section 307 IPC was lodged by accused Rambhajan against the son of the complainant and Tej Ram. It is due to this enmity the accused have committed the crime. Mool Shankar (deceased) succumbed to the injury in the hospital during treatment on 8 November 2003.

4. A report came to be lodged and registered on the written complaint of the informant on 9 November 2003. The Investigating Officer (IO) recorded the statement of the witnesses, prepared the site plan on the pointing out of the complainant. Postmortem on the dead-body of the deceased was conducted on the same day at 3:30 PM. On the arrest of accused Rambhajan, the country-made pistol of 315 bore, empty cartridge and one live cartridge was recovered on the disclosure made by the

accused on 15 November 2003. Recovery memo was prepared on the spot. On the basis of recovery memo, Case Crime No. 287 of 2003 was registered against accused Rambhajan under Section 25/27 of Arms Act.

5. The Investigating Officer prepared the site plan after investigating the spot. The blood stained clothes of the deceased, the bullet recovered from the body of the deceased and the country-made pistol, the empty cartridge and one live cartridge recovered on pointing of accused Rambhajan was sent to the Forensic Science Laboratory (for short 'FSL') for chemical examination. The charge-sheet under Section 302 IPC came to be filed against all the accused persons, whereas, charge-sheet under Section 25/27 Arms Act was filed against accused Rambhajan.

6. Upon committal of both the cases Sessions court framed charges against the accused Ramkishore, Rambhajan and others under Section 302, read with, Section 34 IPC. The Sessions court framed charges against Rambhajan under Section 25/27 Arms Act. The accused denied the charges and claimed trial.

7. In support of the charge prosecution examined the following witnesses:

1. P.W.-1 Jagdish, eyewitness.
2. P.W.-2 Pratap Singh, eyewitness.
3. P.W.-3 Kaptan, complainant, father of the deceased.
4. P.W.-4 Inspector-in-Charge, Sri Babu Ram Sagar (I.O.), in the case of Section 302 IPC and complainant in the case of Section 25/27 Arms. Act.
5. P.W.-5 Dr. Prem Prakash, conducted post-mortem
6. P.W.-6 Sub-Inspector, Sri Hari Singh (I.O.), of case under Section 25/27 of the Arms Act.

7. P.W.-7 Constable Jitendra Kumar Singh, writer of the chick FIR and G.D. of the registered case
 8. P.W.-8 Sub-Inspector, Sri Tej Bahadur prepared panchayatnama
 9. P.W.-9 Constable Clerk Sri Mahesh Chandra, writer of the chick and G.D. of the registered case Section 25/27 of Arms Act.
8. The details of the documents which was proved on behalf of the prosecution are as follows:
1. Exhibit Ka-1, written report, which has been proved by P.W.-3 complainant Kaptan.
 2. Exhibit Ka-2, site plan, regarding case of Section 302 of I.P.C.
 3. Exhibit Ka-3, recovery memo of country-made pistol and cartridge.
 4. Exhibit Ka-4, charge-sheet regarding case of Section 302 of I.P.C.
 5. Exhibit Ka-5, letter sent to forensic science laboratory, Exhibit Ka-2 to Exhibit Ka-5 has been proved by Dr. Prem Prakash.
 6. Exhibit Ka-6, post-mortem report, which has been proved by Dr. Prem Prakash.
 7. Exhibit Ka-7, site plan regarding the case of Section 25/27 of Arms Act.
 8. Exhibit Ka-8, sanction for prosecuting, regarding Section 25/27 of Arms Act.

9. Exhibit Ka-9, charge-sheet regarding Section 25/27 of Arms Act. Exhibit Ka-7 to Exhibit Ka-9 have been proved by P.W.-6 Sub-Inspector Hari Singh.
 10. Exhibit Ka-10, chick F.I.R. regarding Section 302 of I.P.C.
 11. Exhibit Ka-11, G.D. of the registered case regarding Section 302 of I.P.C. Exhibit Ka-10 and Exhibit Ka-11 has been proved by P.W.-7 Jitendra Kumar.
 12. Exhibit Ka-12, panchayatnama which has been proved by P.W.-8 S.I. Tej Bahadur Singh.
 13. Exhibit Ka-13, challan body.
 14. Exhibit Ka-14, sealed samples.
 15. Exhibit Ka-15, photo of the body.
 16. Exhibit Ka-16, report of C.M.O. Exhibit Ka-12 to Exhibit Ka-16 has been proved by P.W.-8 Tej Bahadur Singh.
 17. Exhibit Ka-17, chick F.I.R. regarding section 25/27 of Arms Act.
 18. Exhibit Ka-18, G.D. of the registered case regarding Section 25/27 of Arms Act. Exhibit Ka-17 and Exhibit Ka-18 have been proved by P.W.-9 Constable Mahesh Chandra.
9. The accused persons on being confronted with the prosecution evidence, denied of having committed the crime. They further stated that they have been falsely implicated due to enmity. In defence the accused persons did not produce any evidence.

10. The trial court upon scrutiny of the oral and documentary evidence reached a finding that the prosecution has been able to prove the charges beyond reasonable doubt against the accused persons, accordingly, recorded conviction and sentence, hence, the present appeal.

11. Learned Amicus Curiae appearing for the appellants submits that the witnesses of fact P.W.-1 and P.W.-2 claim to be eye-witnesses of the incident, but have not supported the prosecution case and stated that they had not seen the accused either catching hold the deceased or being shot by the accused Ramkishore. The witnesses were declared hostile. The conviction of the appellants rests on the testimony of P.W.-3 complainant/father of the deceased who admittedly is not an eye-witness and his testimony rests of the information given by the deceased during treatment that the accused-appellants had committed the crime.

12. Learned counsel submits that the testimony of P.W.-3 is not corroborated by any independent evidence, therefore, is merely a hearsay evidence. He further submits that recovery of the assault weapon from accused Rambhajan is planted and the weapon has not been connected with commission of the offence. It is urged that the finding reached by the trial court is *per se* perverse and the conviction is not based on credible evidence, but merely on the uncorroborated confessional statement of the accused.

13. As per prosecution case, complainant (P.W.-3) is not the eye-witness of the incident. At the market he received information from Jagdish (P.W.-1) and Pratap Singh (P.W.-2) that his son has been shot by accused Ramkishore while the other accused held him. It is further stated by P.W.-3 that during treatment deceased informed him that the accused persons had

committed the crime. The eye-witness i.e. P.W.-1 and P.W.-2 have not supported the prosecution case and were declared hostile. P.W.-3 in examination-in-chief reiterates the prosecution version and further states that injured was taken to the hospital by some police personnel. He further states that he first directly went to the thana where his son was not found and was informed that his son is admitted in the hospital. From thana complainant went to the hospital where his son informed him that accused had committed the offence.

14. He further stated that a civil case is pending against accused persons, therefore, are inimical, and 4-5 months earlier a report was lodged against his son by accused Udayveer. He further stated that his son succumbed to the injury in the hospital after three days (08.11.2003). Complainant got the report transcribed by Chhavi Nath and was submitted to the thana on the following day i.e. 9 November 2003, the report came to be registered at 12:45 PM. In cross-examination, he admitted that he first visited the thana and then the spot of the incident where Ramavtar a shop owner told him about the incident of firing on his son. He reached the hospital at about 4-5 PM and found his son admitted. He further stated that his son had informed him about the incident being committed by the accused. He further admitted that he alone was attending his son in the hospital. P.W.-3 further admitted that he is one of the witnesses to the Panchayatnama and further stated that he had informed the police officer preparing the Panchayatnama about the accused persons who had committed the crime.

15. He further stated that he had got arrested the accused Rambhajan from a sugarcane field.

16. P.W.-4 Babu Ram Sagar the Investigating Officer stated that the FIR came to be registered on the written complaint of the complainant on 9 November 2003, the statement of the complainant was taken on the same day and that of Jagdish (P.W.-1). The site of the incident was inspected in the presence of the complainant and the witnesses; the site map (exhibit-Ka-2) was prepared. Accused Rambhajan came to be arrested on 14 November 2003 (7:30 AM) on the information of Mukhbir. The assault weapon, country-made pistol of 315 bore, an empty cartridge and live cartridge was recovered on the disclosure and at the pointing out of the accused. The accused confessed of committing the crime with the recovered weapon.

17. P.W.-5 Dr. Prem Prakash Srivastava conducted autopsy on the body of the deceased on 9 November 2003 at 3:30 PM. The following injuries were found on the body of the deceased:

“1. Gunshot wound of entry was 0.9 cm x 0.8 cm (illegible) abdominal cavity deep. The said wound was present on the left side of the chest and was 10 cm below the left nipple. It was from inside to outside. There was blackening and tattooing around the wound. The left lung was lacerated. The diaphragm was lacerated. The horizontal collar was lacerated. The stomach was also lacerated. The right side of the liver was lacerated. The direction of the wound was from left to right and downwards.

Rigor mortis was present on the upper part and lower part of the body i.e. on the whole body. In the internal examination of the deceased, he found that the brain, spleen and both kidneys were dry. There was no blood. The left pleura was lacerated. Semi-digested food was present in the small intestine. The urine bag and heart were empty. Feces were present at many place in the large intestine. The right side of the liver was lacerated and dry. A metallic bullet was found on the right side of the cavity. About 2 liters of blood mixed with feces were present in the abdominal cavity. In his opinion, the death of the deceased Mool Shankar was due to the bleeding caused by the bullet and the shock caused by it. The injuries of the deceased was possible to come on the date of 5.11.2003 at 2:00 pm. Injuries were possible to come from firearms such as country-made pistols.

The deceased died on 8.11.2003 at around 6:10 pm in the district hospital.”

18. The trial court on the evidence of P.W.-3-complainant and the confessional statement recorded by the accused-Ram Bhajan and recovery of the assault weapon on his pointing out recorded conviction. The relevant portion of the trial court order is extracted:

“The son of the complainant i.e., the deceased Mool Shankar had told the complainant about the incident. The complainant says that there was no one there at that time. There is no reason not to believe his statement. When the complainant’s son narrated the incident to the complainant, no one else was present there.

The complainant also states that deceased Mool Shankar did not have any other attendant other than the complainant. The complainant has got his report written from Chhavinath Singh. It is true that Chhavinath Singh is not an eyewitness to the incident. The non-appearance of Chhavinath Singh in evidence does not adversely affect the prosecution story.

Before lodging the report in police station, Kanth, Sub-Inspector P.W.-8 Tej Bahadur Singh of police station Kotwali, District Shahjahanpur has filled the panchayatnama of deceased Mool Shankar in District Hosapital, Shahjahanpur, and the dead body was sealed there. At that time complainant himself was present there. If the complainant has stated the names of the accused to the witness filling the Panchayatnama i.e. P.W.-8 Tej Bahadur Singh and he has not written the names of the accused on the Panchayatnama, then it does not adversely affect the prosecution story because the case was not investigated by Sub-Inspector Tej Bahadur nor this witness recorded the statement under Section 161 Code of Criminal Procedure.

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Recovery memo was made by the police on the spot and the pistol and cartridges was sealed. It is recorded in the recovery memo Exhibit Ka-3 that on 15.11.2003, S.H.O. Babu Ram Sagar, along with other police personnel, arrested accused, Rambhajan S/o Ramdulare, resident of Bhudhia police station, Shahjahanpur, at present in lock-up, after handcuffing, in the hope of recovery of murder weapon [country made pistoll] regarding the main crime number 283/03 under Section 302 Indian Penal Code, Police Station Kanth, in a government jeep, No. UP 27 B/ 6000, left from police station with constable driver Shrikrishna, and handing over report number 6, at 6:45 A.M., before the saw machine of Munshilal Lohar R/o Rawatpur, on Kurriya road, accused asked to stop the vehicle and the

accused got out of the jeep, the persons commuting were asked to testify stating the purpose of arrest, but everyone went away without revealing their names and addresses. That after searching each other's clothes and on being assured that no one has any firearm, cartridge, then the accused Rambhajan went ahead and recovered a country made pistol 315 bore, wherein, a empty cartridge was stuck in the barrel and a live cartridge 315 bore, from the bunch of patail and the accused stated that this is the same country made pistol that I had given to my brother Ramkishore on the day of the incident, all three of us shot Mool Shankar in front of the agency of Ram Avatar at 2:00 P.M. All three of us had run away after shooting. The police station was nearby from the spot, so out of fear, the pistol with empty cartridge and the cartridge was hidden in this patail. Mool Shankar shot my brother. All three of us have avenged his killing. This pistol belongs to him. Therefore, the crime of accused Rambhajan reaches the extent of Section 25/27 Arms Act. The police took possession of the country made pistol, cartridges at 7:30 A.M., on the spot, the signatures of fellow officials were made after reading aloud the recovery memo written by HCP Shri Krishna Yadav. The country made pistol and cartridge was sealed. Samples were sealed.

The evidence collected by the investigator under Section 27, Evidence Act, is credible.

To prove a criminal incident, it is not necessary that the eyewitnesses should be available on the spot, because the accused wants to execute any criminal incident in such a way that no one can see or recognize them at the time of causing the incident and are able to escape safely after causing the incident. As happened in this case. Those who are said to be eye-witness of the incident have not supported the incident. In this case, the deceased Mool Shankar did not die on the spot and he told his father in the hospital about the incident caused by the accused.

Thus, in the opinion of the Court, the prosecution has proved its case beyond doubt.”

(English Translation by the Court)

19. In the given facts, prosecution case rests upon motive; the testimony of PW-3, father of the deceased, and confession of the accused made in the disclosure statement before the police that the accused committed the offence with the recovered assault weapon.

20. The question that arises is as to whether the dying declaration made by the deceased to his father during treatment in secrecy is reliable and credit worthy. PW-3 is not the eye witness. PW-1 and PW-2 setup as eyewitnesses in the FIR did not support the prosecution case. They flatly denied their presence on the spot and at the time of the incident. As per PW-3 he was informed by PW-1 and PW-2, while he was in the market that his son was shot by Ramkishore while other accused were catching hold the deceased. In cross examination PW-3 admits that first he went to the thana, where he was informed that his son has been hospitalised. He, thereafter, went to the hospital. PW-3 reached the hospital between 4 to 5 PM, whereas, the incident is of 2 PM. He further, deposed that his son succumbed to the injuries after three days of the incident on 8 Nov 2013. He (PW-3) further stated that he was the lone person attending to his son in the hospital; the deceased during treatment informed him that the accused had committed the offence. Ramkishore shot him while others held him. PW-3 further clarifies in cross examination that he was alone, Medical Officer or staff of the hospital was not present at the moment deceased informed him the names of the accused persons.

21. The dying declaration is generally accepted, but has to be accepted with caution. The declarant is not available for cross examination. It is not the case of the prosecution that after receiving gunshot injury deceased was in a position to speak. Had it been so, the Medical Officer or the hospital staff would have said so or informed the police or the magistrate to record the statement of the deceased. Further, the prosecution has not produced any evidence to corroborate the testimony of dying declaration. The eye witnesses setup in the FIR (PW-1 and PW-2)

have not supported the prosecution case. PW-3 being an interested witness and his statement is without corroboration from independent witness, is not sufficient to prove the prosecution case.

22. There is no requirement of law that such a statement must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such statement, must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the basis of a dying declaration in the light of the facts and circumstances of the case.

23. In the case of **Laxman Vs. State of Maharashtra**¹, at para 3, it was observed as follows :-

The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness.

24. In **Arun Bhanudas Pawar Versus State of Maharashtra**², Supreme Court declined to accept the testimony of the mother of the deceased that deceased upon regaining consciousness disclosed the name of the accused to her. The mother of the deceased categorically deposed that when she went to civil hospital she found her son in unconsciousness condition, however, later on, deceased regaining consciousness informed her the names of accused who assaulted him with knife. She further stated that

1. ((2002) 6 SCC, 710)

2. MANU/SC/7056/2008, (2008) 11 SCC 232

doctor was present when the deceased made oral dying declaration to her. The Court declined to accept her testimony being an interested witness and her testimony was not without corroboration from independent witness, including, medical officer. The court observed as follows:

“21....It is well-settled law that the oral dying declaration made by the deceased ought to be treated with care and caution since the maker of the statement cannot be subjected to any cross-examination. In the present case, admittedly, the alleged dying declaration had not been made to any doctor or to any independent witness, but only to the mother...The prosecution has not brought on record any medical certification to prove that after operation the deceased was in a fit condition to make the declaration before his mother.”

26. Similarly **Heikrujam Chaoba Singh vs. State of Manipur**³, Supreme Court declined to accept the testimony of the brother of the injured made to him in the ambulance by the injured/deceased. The relevant portion of the report is extracted:

We are, therefore, called upon to examine the evidence of PW 2 and 5 to find out whether the Courts below were justified in relying upon their testimony and in believing the statements alleged to have been made by the deceased while being carried to the hospital in ambulance and thereafter while he was an indoor patient in the hospital itself. So far as the statement in the ambulance is concerned, it was made to PW 2 who is the brother of the deceased. He stated in his evidence that on inquiry about the injuries sustained by his brother, Hera Singh the injured told him that he had been given blows by Heikrujam Chaoba Singh with a dao, Yumlembam Paka Singh with a hockey stick and another person with a lathi. In his cross-examination, he candidly admitted that there were three or four persons inside the ambulance when his brother told him the names of his assailants but none of those disinterested persons have been examined by the prosecution to corroborate said PW 2. He also admitted in his cross-examination that those persons who were in the ambulance were present near him when his brother stated the words and yet the prosecution has not offered any explanation as to why

3. AIR 2000 SC 59

none of those persons were examined who could have been disinterested persons deposing about the dying declaration said to have been made by the deceased inside the ambulance while he was being carried to the hospital. In the aforesaid premise, we do not think it safe to hold the evidence of PW 2 to be reliable and, therefore, the oral dying declaration as deposed to him by him cannot be pressed into service for bringing home the charges leveled against the accused/appellant.

27. Further, no suggestion was given to the doctor (PW-5), as to whether the deceased was conscious or able to communicate verbally or by gestures. The postmortem report notes blackening and tattooing, meaning thereby, that the deceased was shot from a close range. The wound is abdominal cavity deep. Left lung lacerated; diaphragm lacerated; stomach lacerated, right side of the liver lacerated. In internal examination PW-5 noted that brain, spleen and kidneys were dry. There was no blood. About two litre blood was present in the abdominal cavity. The condition of the deceased was not such to suggest he was conscious, his vital organs were dry and blood had drained and collected in the abdomen. The prosecution had not produced the Bed-Head ticket of the deceased. The Investigating Officer PW-4 had stated that he had not recorded the statement of the treating doctor or medical staff. In the circumstances, the trial court committed an error in resting conviction of the accused on the dying declaration of the deceased alleged to have made to his father (PW-3). The finding reached by the trial court is per se perverse.

28. Further, the conviction of the accused rests upon the disclosure/confession made to the police. The trial court found the evidence collected by the Investigating Officer under Section 27 of the Evidence Act credible. Investigating Officer PW-4, arrested accused Rambhajan after five days of lodging of the FIR (14.11.2013); on his pointing out a 315 bore country made pistol,

one empty cartridge and live cartridge was recovered. The accused confessed of committing the crime with the other accused with the recovered weapon. The prosecution miserably failed to establish the link of the assault weapon with the crime. The recovery of the assault weapon is one circumstance in the chain of circumstances. The statement of the accused during arrest that he shot the deceased cannot be read in evidence.

29. Section 27 of Evidence Act reads thus:-

‘27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.’

30. The expression ‘provided’ that together with the phrase ‘whether it amounts to a confession or not’ show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only ‘so much of the information’ as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word ‘distinctly’ means ‘directly’, ‘indubitably’, ‘strictly’, ‘unmistakably’. The word has been advisedly used to limit and define the scope of the provable information. The

phrase 'distinctly relates to the fact thereby discovered' is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery.

31. The testimony of P.W.-3 having been found to be unreliable, doubtful and fails to inspire confidence of the Court, in the circumstances the prosecution case stands demolished. The independent witnesses P.W.-1 and P.W.-2 claiming to have witnessed the incident have turned hostile. They decline their presence on the spot. Ram Avtar, before whose shop the incident is alleged to have occurred was not examined. Chabinath, scribe of the complaint, visited P.W.-3 at the hospital and was informed of the incident by P.W.-3 was not examined by the prosecution to support the version of P.W.-3 that the injured was in a state of consciousness and was in a position to speak. The police personnel that carried the injured and admitted him to the hospital was not examined. It is not the case of the prosecution that initially FIR was lodged under Section 307 IPC. The medical officer/staff of the hospital was not examined, nor, their statement taken of the I.O.

32. Having regard to the postmortem report and the testimony of the doctor P.W.-5 it appears in all probability the injured was not in a position to speak. The FSL report was not produced by the I.O. In this backdrop, the trial court committed gross error in resting the conviction on the disclosure statement of the accused, that they committed the crime with the recovered weapon which is not admissible in evidence. The recovery of the alleged assault weapon has not been connected with the commission of the crime by the prosecution.

33. Having regard to the facts and circumstances of the case we are unable to persuade ourselves to uphold the impugned judgment and order of conviction and sentence, therefore, appeal is liable to be allowed and the impugned judgment and order of conviction and sentence is liable to be set aside.

34. The criminal appeal is, accordingly, allowed. The impugned judgment and order of conviction and sentence is set aside. The appellants are directed to be released forthwith, if not required in any other offence.

34. The appellants on being released the mandate of Section 437-A Cr.P.C. to be complied.

35. Let the lower court record be sent back to court below along with a copy of this judgment, for ascertaining necessary compliance.

36. It is provided that fees assessed at Rs. 20,000/- shall be released in favour of Amicus Curiae.

Order Date :- 30.09.2022

S.Prakash

(V.D. Chauhan,J.)

(Suneet Kumar,J.)