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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No. 2011 of 2023**

Vedprakash Rana S/o Natthuram Rana Aged About 32 Years R/o  
Village- Kekrabhata, Chowki Faguram, P.S.- Dabhara,, District Janjgir-  
Champa, Chhattisgarh

---- Appellant

**Versus**

State of Chhattisgarh Through Chowki Faguram, Police Station-  
Dabhara, District : Janjgir-Champa, Chhattisgarh

---- Respondent

(Cause-title taken from Case Information System)

For Appellant : Mr. Alok Kumar Dewangan, Advocate.  
For Respondent/State : Mr. Sangharsh Pandey, Government Advocate

**Hon'ble Shri Ramesh Sinha, Chief Justice**

**Hon'ble Shri Arvind Kumar Verma, Judge**

**Judgment on Board**

**Per Ramesh Sinha, Chief Justice**

**05/02/2024**

1. This criminal appeal preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (*for short, the Cr.P.C.*) is directed against the impugned judgment of conviction and order of sentence dated 08.09.2023 passed by the learned Second Additional Sessions Judge, Sakti, District Janjgir-Champa, in Sessions Trial No.11 of 2020 by which the appellant has been

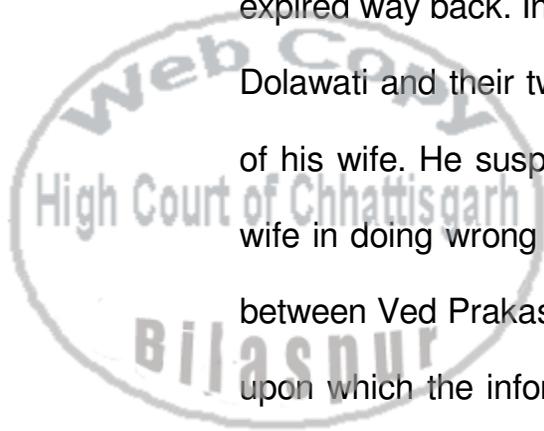


convicted for offence under Section 302 of the Indian Penal Code (IPC) and sentenced to undergo rigorous imprisonment for life and to pay fine amount of Rs. 5,000/-, in default of payment of fine, to undergo additional rigorous imprisonment for six months.

2. This case was listed today for consideration of IA No. 1 of 2023 which is an application for suspension of sentence and grant of bail to the appellant/accused. However, with the consent of learned counsel for the parties, the matter has been heard finally.

3. Case of the prosecution, in brief, is that on 20.06.2020, the informant Hirabai Rana (PW-1) gave an information at Police Chowki, Faguram that she resides at village Kekrabhanta and does the household work. Her husband had expired way back. In his house, his elder son Vedprakash Rana, daughter-in-law Dolawati and their two children reside. Vedprakash used to doubt the character of his wife. He suspected that the sister of the informant also used to help her wife in doing wrong things. On this ground, a quarrel took place on 19.06.2020 between Ved Prakash and his wife. He said that he would not keep her with him upon which the informant and her sister Nankun Bai (*hereinafter referred to as 'the deceased'*) took the wife of the Vedprakash to the house of former Sarpanch of the village Surendra Kumar Rana. On 20.06.2020 at about 5:30 a.m. when she and the appellant were at home, at that time, Nankun Bai came to their house and was advising the appellant not to quarrel with his wife. Upon this, the appellant got enraged and stated as to who she was to give him any advice and stated that she helps her wife in doing wrong things and he would kill her on that day. Uttering all these words, the appellant brought a sword like weapon from a room and assaulted on the neck of deceased. The deceased fell on the ground and died.

4. On the basis of above information, an unnumbered merg intimation (Exhibit P/3) was registered at 7:30 a.m. of 20.06.2020 by C.P.Kanwar (PW-15). On the basis of said merg intimation, Dehati Nalishi (PW-1) was registered at





about 8:00 a.m. and later on, at about 10:40 a.m, FIR (Exhibit P/42) bearing Crime No. 256/2020 was registered by Mitthu Barman (PW-17) for the offence punishable under Section 302 of the IPC.

5. Dead body of the deceased was sent for postmortem to Community Health Centre, Dabhra where Dr. Shalini Kurrey (PW-13) conducted the postmortem. The memorandum statement (Exhibit P/14) of the accused/appellant was recorded at 12:20 hours and was arrested (Exhibit P/10) on the same day at about 14:10 hours.

6. After investigation, Criminal Case No. 139/2020 was registered against the appellant/accused and charge sheet was filed by the police before the Court of Judicial Magistrate First Class, Dabhra. However, as the said case was triable by the Court of Sessions, the same was committed to the Court of 1<sup>st</sup> Additional Sessions Judge, Sakti vide order dated 14.09.2020.

7. Charges were framed on 06.09.2021 against the accused/appellant for the offence under Section 302 of the IPC which was denied by the appellant and prayed for trial.

8. In order to bring home the offence, the prosecution examined as many as 17 witnesses and exhibited 43 documents. The defence has neither examined any witness nor has exhibited any document.

9. The learned trial Court upon appreciation of oral and documentary evidence on record and considering that it is the appellant who has committed the murder of the deceased, convicted and sentenced him under Section 302 of the IPC, against which the instant appeal under Section 374(2) of the Cr.P.C. has been preferred.

10. Mr. Alok Kumar Dewangan, learned counsel for the appellant submits that the appellant has been falsely implicated in the present case. The deceased is the aunt (Mousi) of the appellant. The motive for commission of the crime has not been properly proved. There are omissions and contradictions in



the statement of the prosecution witnesses. There is no criminal antecedents of the appellant and the appellant was entitled to be given the benefit of doubt as the prosecution has failed to prove its case beyond reasonable doubt.

**11.** On the other hand, Mr. Sangharsh Pandey, learned Government Advocate appearing for the State/respondents submits that the learned trial Court has committed no illegality by convicting and sentencing the appellant/accused and as such, no interference is warranted by this Hon'ble Court.

**12.** We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the original records of the trial Court with utmost circumspection.

**13.** In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.

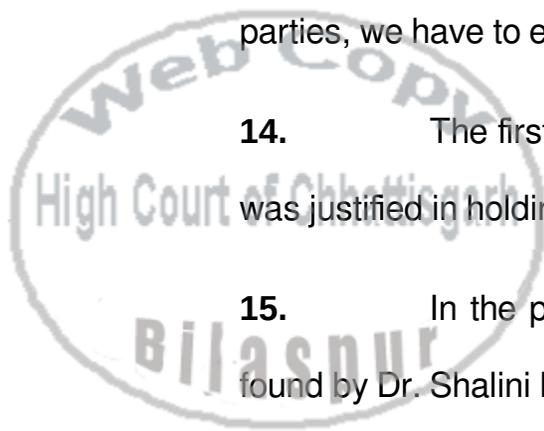
**14.** The first question for consideration would be, whether the trial Court was justified in holding that death of deceased was homicidal in nature ?

**15.** In the postmortem report (Exhibit P-23), the following injuries were found by Dr. Shalini Kurrey (PW-13):

“Injury No. 1- Present on right side of neck. It is incised wound of 7x3x2½ inch. Underlying muscle, vessels, ligaments, tendons, esophagus and trachea are cut with fracture of cervical bone. Clotted blood present around wound.

Injury No. 2- Present on head right parietal region. It is incised wound 4x1x1 inch. Underlying muscle, vessels, ligaments, tendons are cut with separation of part parietal bone. Clotted blood present around wound.

Injury No. 3- Present on head left parietal region. Super medially. It is incised wound of 2.5x1x0.5 inch. Underlying muscles, vessels, ligaments, tendons are cut with fracture of bone. Clotted blood present around wound.





Injury No. 4- Present on fingers of right hand posterior side. (i) Incised wound at proximal phalanx, posterior side of 1x0.5x0.3 inch. Underlying muscles vessels, tendons are cut of little finger.

(ii) Incised wound at proximal phalanx of ring finger. Posterior side of 1x0.6x0.3 inch. Underlying muscles, vessels, tendons, bone fractured.

(iii) Incised wound at proximal phalanx of middle finger of 1.2 x0.5x0.2 inch.

(iv) Incised wound at middle phalanx of index finger 0.5x0.2x0.2 inches.”

**16.** On examination of the skull, Dr. Shalini (PW-13) found that meninges were torn, cortex damaged, haematoma present with fracture of right and left parietal bone. All the injuries were ante-mortem in nature, caused by hard and sharp object. Cause of death was opined to be cardio-respiratory failure as a result of shock and hemorrhage due to mentioned injuries and the nature of death was stated to be homicidal.

**17.** The learned trial Court, relying upon the statement of Dr. Shalini Kurrey (PW-13) who had conducted postmortem on the body of deceased, has clearly come to the conclusion that death of deceased was homicidal in nature. The said finding recorded by the trial Court is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. We hereby affirm the said finding.

**18.** The next question for consideration would be, whether the trial Court has rightly held that the appellant is author of the crime as there was no explanation given by the appellant in his statement under Section 313 of the Cr.P.C as to how the deceased was found dead in his house. Thus, burden of proof was on the appellant to explain such circumstance, which he failed to explain.

**19.** Now, the question would be, whether Section 106 of the Evidence



Act would be applicable or not?

20. Section 106 of the Indian Evidence Act, 1872, states as under:

***“106. Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”***

21. This provision states that when any fact is specially within the knowledge of any person the burden of proving that fact is upon him. This is an exception to the general rule contained in Section 101, namely, that the burden is on the person who asserts a fact. The principle underlying Section 106 which is an exception to the general rule governing burden of proof applies only to such matters of defence which are supposed to be especially within the knowledge of the other side. To invoke Section 106 of the Evidence Act, the main point to be established by prosecution is that the accused persons were in such a position that they could have special knowledge of the fact concerned.

22. In the matter of ***Shambhu Nath Mehra v. The State of Ajmer***<sup>1</sup>, their Lordships of the Supreme Court have held that the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 of the Evidence Act is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution, to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience. The Supreme Court while considering the word “especially” employed in Section 106 of the Evidence Act, speaking through Vivian Bose, J., observed as under: -

***“11. ... The word "especially" stresses that it means facts that are preeminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the***

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1 AIR 1956 SC 404



*burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. The King, 1936 PC 169 (AIR V 23) (A) and Seneviratne v. R. 1936-3 ER 36 AT P.49 (B).”*

Their Lordships further held that Section 106 of the Evidence Act cannot be used to undermine the well established rule of law that save in a very exceptional class of case, the burden is on the prosecution and never shifts.

23. The decision of the Supreme Court in **Shambhu Nath Mehra** (supra) was followed with approval recently in the matter of **Nagendra Sah v. State of Bihar**<sup>2</sup> in which it has been held by their Lordships of the Supreme Court as under:

*“22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.*

*23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence*

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2 (2021) 10 SCC 725



*Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused.”*

24. Similarly, the Supreme Court in the matter of **Gurcharan Singh v. State of Punjab**<sup>3</sup>, while considering the provisions contained in Sections 103 & 106 of the Evidence Act, held that the burden of proving a plea specially set up by an accused which may absolve him from criminal liability, certainly lies upon him, but neither the application of Section 103 nor that of 106 could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It was further held by their Lordships that it is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a *prima facie* case, that the question arises of considering facts of which the burden of proof may lie upon the accused. Their Lordships also held that the burden of proving a plea specifically set up by an accused, which may absolve him from criminal liability, certain lies upon him.

25. The principle of law laid down by their Lordships of the Supreme Court in **Gurcharan Singh** (supra) has been followed with approval by their Lordships in the matter of **Sawal Das v. State of Bihar**<sup>4</sup> and it has been held that burden of proving the case against the accused was on the prosecution irrespective of whether or not the accused has made out a specific defence.

26. Though the mother of the appellant/accused namely Hirabai Rana (PW-1) is the informant and at her instance, Dehati Nalishi and thereafter FIR was registered wherein she had narrated how the appellant/accused assaulted her sister i.e. the deceased with a sword like weapon, but before the learned Trial Court, she has turned hostile and not supported the prosecution case. She has stated that she is an illiterate lady and had put her thumb impression on Dehati Nalishi (Exhibit P/1), Spot Map (Exhibit P/2) and Merg Intimation (Exhibit P/3). Similarly, Dolawati Rana (PW-2) who is the wife of the appellant/accused has

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3 AIR 1956 SC 460

4 AIR 1974 SC 778



also turned hostile and not supported the prosecution case. However, one of the villager namely Kirtiram Patel (PW-3) has deposed that the mother of the appellant/accused came crying and informed him that his son i.e. the appellant had assaulted her sister i.e. the deceased and killed her. Upon hearing this, Kirtiram Patel went to the place of incident where the appellant came out with a weapon and informed them that he had killed the deceased and that they should leave that place. The appellant further stated that he would come out of the house when the police would arrive. Kirtiram Patel called on his mobile phone to the police i.e. Dial 112 and when the police arrived, he sat in their vehicle. This witness went inside the house and saw that blood was oozing out of the neck and head of the deceased.

**27.** Satanand Rana is also a relative of the deceased. He knew both the deceased and the appellant. He has stated that on 20.06.2020 when he woke up in the morning, at that time, Kirtiram Patel (PW-3) came to his house and informed his Uncle (Bade Pitaji) Sugriv Rana (PW-7) that the appellant had killed the deceased. While going to the house of the appellant, he met Parmanand Rana (PW-5). When he reached the house of the appellant they called him upon which the appellant informed them that he had killed the deceased and asked them to call the police and then only he would open the door. However, this witness has admitted that he himself had not seen the incident. Similar deposition has been made by Parmanand Rana (PW-5).

**28.** Surendra Kumar Rana (PW-6) is the nephew of the deceased. He stated some dispute was going on between the appellant and his wife for about one month. One day before the incident, at about 2 p.m., the deceased came to call him and stated that the appellant and his wife were quarreling. This witness went to the house of the appellant and asked them not to fight. This witness further states that on the date of incident, mother of the appellant came to him screaming and stating that his son had killed the deceased. In front of the house of deceased, Kirti Ram Patel (PW-3), Parmanand (PW-5), Satanand (PW-4) and



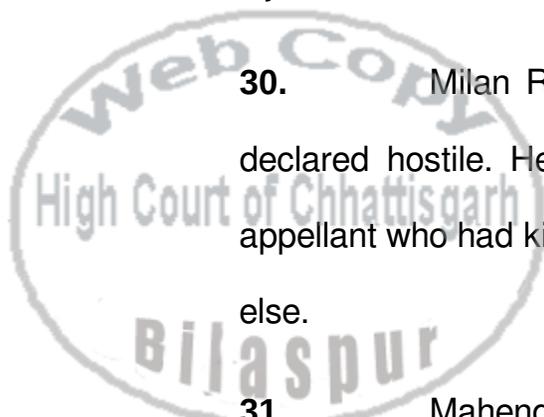
Sugriv (PW-7) were standing who informed him that appellant had killed the deceased. After the appellant sat in the police vehicle, he alongwith others went inside the house where the dead body was lying.

**29.** Sugriv Rana (PW-7) is the husband of the deceased. He stated that Kirti Patel (PW-3) informed him that the appellant had killed his wife. When he alongwith others reached the place of incident, Parmanand (PW-5) tried to call the deceased upon which the appellant opened the door slightly and said that they should not make any noise there and that he had killed the deceased and would kill them all and went to leave that place. After the police came and the appellant sat in the police vehicle, this witness alongwith other villagers went inside the house and saw the the neck of the deceased was severed and had injuries on her head.

**30.** Milan Rana (PW-8) is the father-in-law of the appellant who was declared hostile. He stated that some thieves had entered the house of the appellant who had killed the deceased and except that, he did not know anything else.

**31.** Mahendra Kumar Maheshwari (PW-9) is the constable who was on Dial 112 duty. He stated that Kirti Ram Patel (PW-3) had made a call on Dial 112 and upon information being received, he alongwith the Station House Officer went to the place of incident. When they reached the house of the appellant, the appellant came out of his house and he was made to sit in the police vehicle. They went inside the house where they saw the dead body of the deceased lying on the floor of the house.

**32.** Shyamlal Sidar (PW-10) is the Sarpanch Representative of village Kekrabhata who knew both the appellant and the deceased. He has also made similar deposition as was made by Kirti Patel (PW-3), Parmanand (PW-5) Satanand (PW-4) and Sugriv (PW-7). He further stated that police had taken memorandum statement of the appellant in his presence where the appellant had



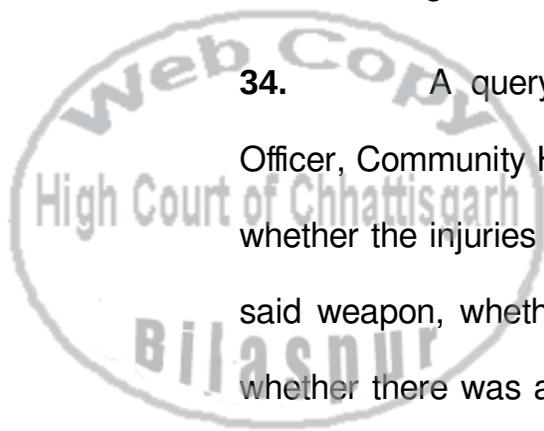


admitted that he had committed the murder of the deceased. In his presence, a sword like weapon was seized from the accused/appellant (Exhibit P/15). In his presence, pieces of bangles, plain soil and blood stained soil, clothes of appellant/accused, one towel which was blood stained, one black coloured Sando were seized. Blood stains of the deceased found on the body of the appellant was also collected on a piece of white cotton as sample was also seized. Similar deposition has been made by Tekram (PW-11) with regard to memorandum statement of the accused and the seizures made.

**33.** Dr. Shalini (PW-13), in her deposition had described about the injuries found on the body of the deceased as has been stated at paragraph 4 of this judgment. On examination of the skull, she found that meninges were torn, cortex damaged, haematoma present with fracture of right and left parietal bone.

**34.** A query (Exhibit P-24) was made by the police to the Medical Officer, Community Health Centre, Dabhra with regard to the seized sword as to whether the injuries sustained by the deceased could have been caused by the said weapon, whether the injuries could have caused death of the deceased, whether there was any human blood present on it and any other opinion which may be necessary. The said query was duly replied vide Exhibit P/25 by Dr. Shalini Kurrey (PW-13) in affirmative. However, with regard to presence of human blood, she advised for sero-chemical examination. Another query (Exhibit P-26) was made by the police with regard to the underwear, towel, Sando and the blood which was wiped on a white cotton cloth from the body of the appellant, as to whether they contained blood stains or not. The said query was also replied to by Dr. Shalini Kurrey (PW-13) in affirmative (Exhibit P/27). However, for ascertaining as to whether the same was human blood or not, all the articles were sealed and handed over to the Constable for sero-chemical examination.

**35.** Various articles like plain soil from the place of incident, cotton, sword like weapon, underwear, towel, Sando of the appellant/accused, petticoat and blouse of the deceased were sent to FSL, Bilaspur for examination. In the





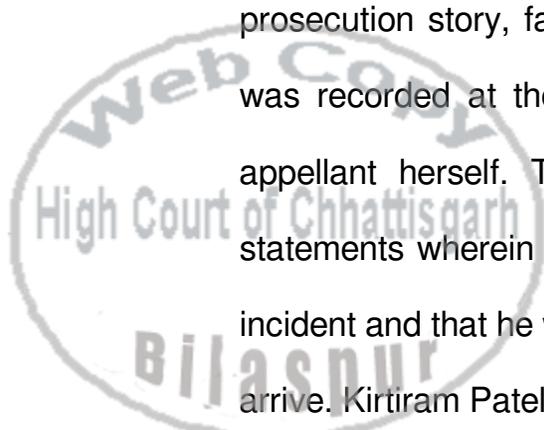
FSL report, blood was found on all the articles except article D which was a piece of cotton cloth and the group of the blood found on the petticoat of the deceased was 'O'. Blood group could not be ascertained with regard to articles C, F, G, H as the stains were disintegrated.

**36.** Exhibit P/15 is the seizure memo with regard to seizure of sword like weapon from the house of the appellant at the instance of the appellant.

**37.** In the case in hand, there is a strong motive for the appellant to commit murder of her aunt i.e. the deceased as he suspected her aunt that she used to encourage her wife for doing wrong things and in this regard, they used to quarrel. Though the prosecution witnesses i.e. the mother, wife and father-in-law of the appellant/accused have turned hostile and not supported the prosecution story, fact of the matter is that *Dehati Nalishi* and merg intimation was recorded at the instance of Hirabai Rana (PW-1) i.e. the mother of the appellant herself. There are number of witnesses who have given similar statements wherein the appellant himself had asked them to leave the place of incident and that he would open the door of the house only when the police would arrive. Kirtiram Patel (PW-3), Satanand Rana (PW-4), Parmanand Rana (PW-5), Surendra Kumar Rana (PW-6), Sugriv Rana (PW-7) have made such depositions.

**38.** When the motive has been proved, weapon of assault has been recovered at the instance of the appellant/accused and human blood has been found on the said weapon, coupled with the fact that under Section 106 of the Evidence Act, it was for the appellant/accused to explain as to how the dead body of the deceased was found in his house which he failed to do so, the learned trial Court has not committed any error in arriving at a finding that the appellant/accused is the perpetrator of the crime in question.

**39.** In the light of aforesaid discussion, we are inclined to endorse the conclusion arrived at by the learned trial Court convicting the appellant on the





basis of evidence adduced by the prosecution witnesses. Therefore, conviction of the appellant for the offence under Section 302 of the IPC as well as the sentence imposed upon him by the learned trial Court is well merited and does not call for any interference by this Court.

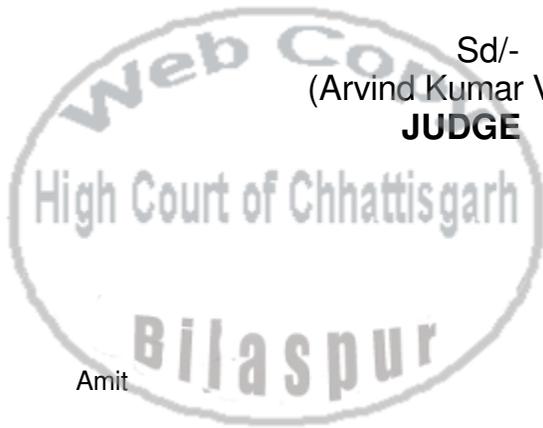
**40.** For the foregoing reasons, the criminal appeal being devoid of merit and is liable to be and is hereby **dismissed**.

**41.** It is stated at the Bar that the appellant is in jail, he shall serve out the sentence as ordered by the learned trial Court.

**42.** Let a copy of this judgment and the original record be transmitted to the learned trial court concerned forthwith for necessary information and compliance.

Sd/-  
(Arvind Kumar Verma)  
**JUDGE**

Sd/-  
(Ramesh Sinha)  
**CHIEF JUSTICE**



Amit



**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No. 2011 of 2023**

Appellant : Vedprakash Rana

**Versus**

Respondent : State of Chhattisgarh

(Head Note)

Even if the complainant turns hostile, conviction can be based on the basis of other relevant materials available on record.

(हिन्दी)

भले ही शिकायतकर्ता पक्षद्रोही हो जाये, रिकार्ड पर उपलब्ध अन्य प्रासंगिक सामग्रियों के आधार पर दोषसिद्धि की जा सकती है।

