

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 541 of 2015**

State Of Chhattisgarh Through The Station House Officer, Police
Station Bande, District North Baster, Kanker C.G.

---- Petitioner**Versus**

1. Amit Roy, S/o Ramesh Roy, aged about 23 years, R/o Village P.V-96.
 2. Pavitro Mistri, S/o Jatin Mistri, aged about 29, Village P.V 79
- Both are Police Station Bande, Distt. North Baster, Kanker CG.

---- Respondent

For Petitioner/State:	Shri Vinod Deshmukh, Govt. Advocate.
For Respondent:	None.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board**Per Navin Sinha, Chief Justice****15/07/2015**

1. Heard Learned Counsel for the Petitioner/State.
2. This appeal is against acquittal of the Respondents of the charge under Sections 302/34 and 435/34 IPC.
3. Learned Counsel for the Petitioner/State submits that Harshit Viswas, PW-1 and Laxmi Viswas, PW-2, the parents of the deceased have named the Respondents as the persons who took away the deceased from home on a motorcycle after which his dead body was found. He next submits that Mankuram, PW-9 was an eyewitness to the assault.
4. The Learned Trial Judge, after appreciation of evidence, has observed that Harshit Viswas, PW-1 and Laxmi Viswas, PW-2, did not make any such statement when they lodged the police report with regard to their missing son and their statement in Court for the first time that the Respondents had come

home and taken the deceased along with them was an afterthought and embellishment. Likewise, Mankuram, PW-9, the alleged eyewitness went hostile denying having seen the occurrence or even recognizing the Respondents.

4. The Court, after appreciation of the evidence, also found it suspicious that Mankuram, PW-9 remained silent for five years which was highly unnatural if he was an actual eyewitness to the assault, to doubt his credibility completely.

5. In a case of circumstantial evidence based on the last seen theory, there must be close proximity between the time the accused and the deceased were seen together and the discovery of the body. If the time factor between these two is sufficiently large, the possibility of death having taken place in some other manner or by another cannot be ruled out. The deceased left home in the evening of 4.11.2008 and his body was found on 5.11.2008 abandoned.

6. In the circumstances, we find no reason to interfere with the order of acquittal.

7. The Cr.M.P is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE