

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 773 of 2013**

State of Chhattisgarh, Through Police Station Janakpur, District Korea
Chhattisgarh.

---- Appellant**Versus**

1. Semkali @ Bijayain Bai, W/o Vijay Singh Gond, Aged about 20 years.
2. Surajiya Bai W/o Hirmohan Gond, aged about 45 years.

Both are resident of Semriha, P.S. Janakpur, District Korea, Chhattisgarh.

---- Respondents

For Appellant/State	:	Shri Gary Mukhopadhyay, Panel Lawyer.
For Respondents	:	Smt. Usha Chandrakar, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****14/08/2015**

1. Heard Learned Counsel for the parties.
2. The present application for leave to appeal has been filed assailing the order of acquittal dated 4.4.2013 of Respondent No. 1 under Section 302 IPC and Respondent No. 2 under Section 201/34 IPC, ordered by Second Additional Sessions Judge, Manendragarh in Sessions Trial No. 91 of 2011.
3. There is a delay of 42 days in filing the application. It is condoned.
4. The case of prosecution is based on circumstantial evidence. Even that is not conclusive with regard to the fact that after the deceased was called to the house of Respondent No. 1, she remained there exclusively the whole night. The evidence of PW-7, Sonsai suggests that the deceased had left for a

wedding at the house of Krishnapal in village Semariya. Respondent No. 1 suspected that the deceased was having illicit relationship with her husband. Mere suspicion will not be sufficient in a case of circumstantial evidence based on last seen theory unless all links in the chain of circumstances are complete ruling out any possibility of the deceased and the accused having parted company at any stage. This is more important in cases of last seen theory.

5. The submission on behalf of the Appellant that the deceased left home for the house of Respondent No. 1 and after which the dead body of the deceased was found lying in the drain, the scarf of the deceased was recovered from the mud in the drain on confession of Respondent No. 1, does not appeal to us. The body and the scarf were both found in the drain. If the drain had silt in it which has been described as mud and the scarf had got embedded in the silt, it cannot be given the description of a recovery from a concealed place not visible to others as a drain is an open place accessible to one and all.

6. No explanation has been furnished by the prosecution that if tuft of hair were recovered from the clenched fist of the deceased and hair samples of Respondent No. 1 were also sent to the forensic laboratory, how and why it was found to be insufficient for purpose of forensic identification by matching the two. In a case like present based on circumstantial evidence, considering the extremely shoddy investigation notwithstanding availability of sufficient forensic material, we find no reason to interfere with the order of acquittal.

6. Leave to appeal application is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE