

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr.M.P. No. 910 of 2015**

State Of Chhattisgarh Through S.H.O., Police Station Bhatgaon, Distt. Surajpur Chhattisgarh.

**---- Petitioner****Versus**

1. Rajman @ Charka S/o Ghuran Cherwa Aged About 29 Years Occupation Farmer, R/o Village Kewtali, Police Station Bhatgaon, District Surajpur Chhattisgarh.
2. Santosh @ Nano S/o Birbal Cherwa Aged About 26 Years Occupation Farmer, Occupation Farmer, R/o Village Kewtali, Police Station Bhatgaon, District Surajpur Chhattisgarh.
3. Dhanushdhari S/o Samelal Aged About 27 Years Occupation Farmer, R/o Village Kewtali, Police Station Bhatgaon, District Surajpur Chhattisgarh.

**---- Respondents**

For Petitioner/State:  
For Respondents:

Smt Madhu Nisha Singh, Panel Lawyer.  
None.

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

**Order On Board****Per Navin Sinha, Chief Justice****17/11/2015**

1. The present application has been filed for leave to appeal against acquittal of the charge under Sections 302/34 and 201 IPC dated 12.3.2015 in Sessions Trial No.125/2013 ordered by the Sessions Judge, District Surajpur.
2. I.A. No.12/15 has been filed to condone delay of 19 days.
3. Considering the duration, delay is condoned.
4. Learned Counsel for the State submits that acquittal was not justified as the deceased was last seen in the company of the Respondents. Based on their confession, there has been recovery of the sickle used for assault and blood stained clothes.

5. We have considered the submissions on behalf of the State. There is no direct eye-witness account available. The case of the prosecution is based on the last seen theory which is but a part of circumstantial evidence. Time and again, it has been held that there must be a reasonable proximity between the deceased being last seen and the recovery of the dead body. The availability of a large amount of time between the two events can leave much myriad possibilities based on which conviction cannot be safely held applying the last seen theory. The deceased is said to have left home at around noon with the Respondents the previous day and his body was found the next morning in the nursery near the pond. There is no evidence that he was seen with Respondents late in the evening. Further more, the corroborative evidence with regard to recovery of the sickle and blood stained clothes on confession is inconsequential in absence of any FSL report with regard to the same. Indira Kumar, PW-3, the wife of the deceased stated that Respondent Santosh came home at mid night and informed that the deceased was drunk and fighting but does not explain why she did not step out to locate the deceased at that time and waited to be informed of the recovery of the dead body of her husband only the next morning. The evidence by the prosecution may at best raise suspicion against the Respondents which cannot suffice for conviction in absence of proof beyond reasonable doubt of having been last seen with the deceased and the Respondents thus alone being the assailants.

6. We therefore find no reason to grant leave to appeal.

7. The Cr.M.P is dismissed.

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

Sd/-  
(P. Sam Koshy)  
**JUDGE**