

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Miscellaneous Petition No.1058 of 2015**

State of Chhattisgarh through the Station House Officer, Police Station
Charcha, District Korea, Chhattisgarh

---- **Petitioner****versus**

1. Rajesh Kumar Sonwani, S/o Jagdish Prasad Sonwani, age 20 years, R/o Katora, P.S. Patna, District Korea, Chhattisgarh
2. Vijay Kumar Das @ Pintu S/o Vimal Kumar Das, age 22 years, R/o Village Handadih, P.S. & District Giridih (Jharkhand), presently R/o near Shivpur Hanuman Mandir Charcha P.S. Charcha District Korea, Chhattisgarh
3. Koushlendra Kurre @ Babla S/o Vibhishan Lal Kurre, age 21 years, R/o Village Kaluwa, P.S. Surajpur, District Surajpur, Chhattisgarh, presently R/o V.T.C. Colony Charcha, P.S. Charcha, District Korea, Chhattisgarh
4. Parmeshwar Sonwani @ Sonu S/o Hiralal Sonwani, age 20 years, R/o Village Katora, P.S. Patna, District Korea, Chhattisgarh
5. Umesh Kumar Sonwani, S/o Shri Ram Sonwani, age 20 years, R/o Village Chhindiya, P.S. Patna, District Korea, Chhattisgarh, presently, R/o Rupnagar Charcha, P.S. Charcha, District Korea, Chhattisgarh

---- **Respondents**

For State/Petitioner : Ms. Smita Ghai, Panel Lawyer

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

Order on Board**Per Navin Sinha, Chief Justice****10/12/2015**

1. I.A. No.1 of 2015 has been filed to condone 88 days' delay in preferring the Criminal Miscellaneous Application assailing acquittal of the

Respondents of the charges under Sections 302, 34, 120-B, 201 and 202 IPC dated 29.4.2015 passed by the Additional Sessions Judge (FTC), Baikunthpur in Sessions Trial No.104 of 2013.

2. Learned Counsel for the State submits that the Trial Court erred in not properly appreciating the electronic evidence which showed that calls were made from the mobile phone of Respondent No.2, Vijay to the deceased soon in proximity to the occurrence.

3. We have considered the submissions.

4. The deceased, according to his father PW-2, Panchuram, left home without informing where he was going. PW-2 therefore lodged a missing person's report on 27.7.2013. The body was found 8 days later on 2.8.2013 abandoned in the water. The entire case of the prosecution was based on circumstantial evidence and there was no eyewitness to the occurrence and neither there was any evidence to invoke the last seen theory. The Trial Judge has observed that in a case of circumstantial evidence motive becomes important and yet the prosecution did not lead evidence of the witness Roshni Bharti with whom the deceased is alleged to have had an illicit relationship and which was the reason for his death because she allegedly was the paramour of one of the accused Vijay. Evidence by way of call details may be corroborative evidence in a case of circumstantial evidence, but cannot be substantive material for conviction. Furthermore, the Trial Judge with reference to the computer print of the call details has observed that the call details have not been proved in accordance with Section 65B(4) of the Indian Evidence Act, 1872.

5. In a case of circumstantial evidence, it was for the prosecution to establish the links in a chain of circumstances pointing inevitably to the only

conclusion of the guilt of the accused. In absence of which, we find no reason to interfere. Delay is condoned and the application for leave to appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE