

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr. M. P. No. 451 OF 2015

State of Chhattisgarh, through : Station House Officer, Police Station
Tamnar, District – Raigarh (C.G.)

... Appellant

Versus

1. Santosh Kumar, S/o Pyarelal Bhatt, aged about 30 years,
 2. Sanjay Khadia, S/o Sunder Khadia, aged about 22 years,
- Both R/o Kauhakunda Pahad Mandir, Raigarh, P.S. - Chakradhar
Nagar, District – Raigarh (C.G.)

... Respondents

For Appellant : Mr. B. Gopa Kumar, Deputy Advocate General

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

Order on Board

Per NAVIN SINHA, C.J.

05/08/2015

1. The present Criminal Miscellaneous Petition assails acquittal of the Respondents in Sessions Trial no. 127 of 2013, dated 3.1.2015, of the charges under Sections 302/120B IPC, 302/34 IPC, 394/120B IPC and 397 IPC, ordered by First Additional Sessions Judge, Raigarh.
2. Learned Counsel for the State submits that the father of the deceased, Muslim Ali (PW-1), had deposed that the deceased on the date of occurrence had told him that someone had called him and that he was going to meet that person and would return the next day. Respondent no.1 would accompany the deceased at times. The deceased had gone on that day also on asking of the Respondent who wanted to get rid of him as the Respondent was unable to repay

the loan. This aspect of the matter has not been considered properly while granting acquittal.

3. It was next submitted that the recovery of the bag of the deceased, Exhibit P-11, on the confession of Respondent no.1, has also not been considered adequately by the Trial Court.

4. We have considered the submissions on behalf of the State and are not satisfied to entertain this Criminal Miscellaneous Petition.

5. The case of the prosecution rested on circumstantial evidence. There was no eye-witness to the assault. Though carpenter's tool is alleged to have been recovered on the confession of Respondent no.1 and blood was found on his clothes, in absence of FSL report it is inconsequential.

6. The next material is the mobile call allegedly made to the deceased by Respondent no.1, after which the deceased had left home to meet him and his dead-body was found subsequently. The Trial Judge has adequately discussed that there was no material to hold that the mobile number in question belonged to the deceased as the name and address of the owner of the SIM card has also not been brought on record, much less the name of the service provider. The Trial Court therefore rightly disbelieved the evidence of PW-1, Muslim Ali, and held that there was no material to suggest that the deceased had left home on a phone call from Respondent no.1.

7. Merely because the bag of the deceased may have been recovered on confession, marked Exhibit P-11, or that the diary of the deceased was recovered from the bag also, marked Exhibit P-13, in the circumstances, cannot be considered sufficient material in a

case of circumstantial evidence for conviction. There was absolutely no material for the Trial Judge to opine that the deceased was last in the company of the Respondents.

8. In a case of circumstantial evidence relating to the last seen theory it is for the prosecution to establish the entire chain of circumstances linked with one another consistent only with the hypothesis of the guilt of the accused ruling out any possibility of innocence.

9. In our considered opinion, derived from the Trial Court's judgement which has elaborately discussed the nature of evidence brought on record by the prosecution, in a case of circumstantial evidence, the order of acquittal calls for no interference.

10. The Criminal Miscellaneous Petition is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge