

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 662 of 2015**

The State of Chhattisgarh, Through District Magistrate, Rajnandgaon
Chhattisgarh.

---- Appellant**Versus**

Rekhchand Sahu S/o Dhanauram Sahu, aged about 35 years, R/o village
Barhapur, P.S. Dhamdha, District Durg, Chhattisgarh.

---- Respondent

For Appellant/State : Shri Neeraj Mehta, Panel Lawyer.

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

Order on Board**Per Navin Sinha, Chief Justice****28/09/2015**

1. In this application for leave to appeal, acquittal of the Respondent under Sections 302/34 and 201/34 on 29.5.2015 in Sessions Trial No. 15 of 2013 by the Additional Sessions Judge, Khairagarh, District Rajnandgaon, is assailed by the State.
2. Learned Counsel for the State submits that the Respondent had lodged the FIR. He was last seen in the company of the deceased till previous night alongwith co-accused Fagu. The Trial Judge had aptly opined that in the circumstances onus lay on the Respondent under Section 106 of the Evidence Act to prove how the deceased died an unnatural death.
3. We have considered the submission. The Respondent examined himself as a defence witness stating that co-accused Fagu had assaulted the deceased with a stone, while the Respondent was asleep and suddenly woke up. On the own showing of the prosecution, there is no allegation of assault

against the Respondent. It was for the prosecution to establish that the Respondent was the assailant or had any common intention with the co-accused who absconded. The prosecution miserably failed to do so and no material has been pointed out to us from the Trial Court records to the contrary. The Trial Court has adequately discussed that the evidence in support of the last seen theory was also not convincing.

4. We find no reason to interfere with the order of acquittal. The application for leave to appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE