

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 167 of 2015**

Kamla Bai W/o Late Ram Prasad Uppadhya, Caste-Brahmin, Aged about 65 years, R/o Purani Basti, Korba, District Korba, Chhattisgarh.

---- Appellant.**Versus**

1. State of Chhattisgarh, Through Rakshit Kendra Baloda, District Janjgir Champa Chhattisgarh.
2. Laxmikant S/o Shri Manharan Trivedi, aged about 43 years.
3. Dhaneshwar Singh S/o Late Shri Bundel Singh, aged about 40 years.

Respondent No. 2 and 3 were resident of Bhraman Para, Purani Basti, Ward No. 3, Korba, District Korba, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Arvind Dubey, Advocate on behalf of Shri Jitendra Pali, Advocate.
For Respondent/State	:	Shri Bhupendra Singh, Panel Lawyer.

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

Judgment on Board**Per Navin Sinha, Chief Justice****15/09/2015**

1. The present appeal, filed by mother of the deceased, assails acquittal of Respondents No. 2 and 3 of the charges under Sections 302/34, 201, 394 and 397 IPC dated 30.8.2014 in Sessions Trial No. 10 of 2014 by the Third Additional Sessions Judge, Janjgir-Champa.

2. Learned Counsel for the Appellant submits that the wife of the deceased had deposed that the deceased had left home with the two respondents after

which he was not seen. The deceased had taken out money from the Bank for purchase of a bus because of which the Respondents killed him and threw his body in the jungle. The brother of the deceased had also deposed in his police statement having seen the deceased going with the Respondents in the morning after he received a call on his mobile. If the deceased was last seen in the company of the Respondents, in a case of circumstantial evidence, the last seen theory is attracted and the onus was on the Respondents to demonstrate that they parted ways or the death took place in some other manner.

3. We have heard Learned Counsel for the State also.

4. The wife of the deceased, in her police statement did not mention that the deceased left home with the Respondents. Likewise, the brother of the deceased in his police statement did not make a positive statement of his having left with Respondent No. 2 and on the contrary made an ambivalent statement that the person looked like Respondent No. 2 and that the two Respondents were friends of the deceased. We do not find any allegation that the deceased had left home with the money which he had withdrawn from the bank and which is attributed as the motive to the Respondents much less any allegation has been made that money was missing or had been stolen from the person of the deceased. Moreover, Learned Counsel for the Appellant very fairly acknowledges that from the materials during investigation, he is not in a position to demonstrate the ownership and mobile number of the deceased alongwith SIM card number or that of the Respondents.

5. In a case of circumstantial evidence, the last seen theory, undoubtedly is relevant. But it may not be conclusive under all circumstances. The deceased left home on 31.7.2013 at about 5:00 am and his dead body was found in the jungle on 1.8.2013 at about 9:30 am. In the nature of the evidence available, we find no reason to interfere with the order of acquittal when the

Trial Judge was not satisfied from the evidence brought on record by the prosecution that all links in the chain of circumstances were completed to attract the last seen theory leading to the inevitable conclusion of the Respondents being the assailants with no possibility of false implication

6. We also find that Acquittal Appeal No. 188 of 2014 preferred by the brother of the deceased has already been dismissed on 26.2.2015.

7. Delay of 360 days in filing the appeal is condoned. The appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE