

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 222 OF 2016

Manju Thakur, W/o Komal Singh Thakur, aged about 28 years, R/o Village Tekari, Police Station Vidhansabha, Raipur, District Raipur (CG)

... Appellant

Versus

1. Ashish Bargah, S/o Ramgopal Bargah, aged about 21 years, resident of Nagoi, Police Station Sarkanda, District Bilaspur (C.G.)
2. Girish Bargah, S/o Badri Prasad Bargah, aged about 24 years, resident of Nagoi, Police Station Sarkanda, District Bilaspur (C.G.)
3. Dishan Bargah @ Golu Bargah, S/o Yogendra Singh Bargah, aged about 23 years, resident of Nagoi, Police Station Sarkanda, District Bilaspur (C.G.)
4. The State of Chhattisgarh, through the Station House Officer, Police Station Sarkanda, District Bilaspur (C.G.)

... Respondents

For Appellant	:	Mr. P.P. Sahu and Mr. R.K. Pali, Advocates.
For Respondents	:	Ms. Madhunisha Singh, Panel Lawyer.

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

Order on Board

Per NAVIN SINHA, C.J.

29/02/2016

1. The present application has been filed for leave to appeal against acquittal dated 5.11.2015 of Respondents No. 1 to 3 from the charge under Section 302/34 IPC by the Special Judge (Atrocities)/Additional Sessions Judge, Bilaspur in Sessions Trial No. 57 of 2015.
2. Learned Counsel for the Appellant submits that the Trial Judge has erred in not adequately dealing with and considering the aspect of motive especially when the wife of the deceased, PW-4, Mandvi, had expressed suspicion against the Respondents in view of past enmity.
3. We have heard Learned Counsel for the State also.

4. The body of the deceased was discovered on 12.2.2015 at about 9:00 am near the pond. The head had been smashed with a stone and a vest was wrapped around his neck by which it appeared he had been pulled. PW-4, Mandvi, the wife of the deceased, on learning of the recovery of the body also came to the place. The post-mortem determined the death to be homicidal by the doctor who conducted the post-mortem. Death was opined to have occurred 6 to 30 hours earlier. Stones were seized from the place of occurrence as also some clothes of the Respondents stated to have been recovered on their confessional statement and sent for forensic examination. The witness to the confession and seizure acknowledged his signature on the same.

5. The Trial Judge noticed the deposition of PW-4, Mandvi, wife of the deceased, that she suspected the Respondents due to previous enmity. We find no infirmity in his reasonings that suspicion could not take the place of proof. In a case of circumstantial evidence, motive may assume importance but it does not appear from the evidence of PW-4, Mandvi, that any specific incident or reason for motive was highlighted by her except mere suspicion. Apparently, as noticed by the Trial Judge her suspicion was itself founded on information provided to her by certain others. She was not even consistent with the name of the persons who allegedly had an altercation with her husband about eight days back. On the contrary, she acknowledged that her husband had been protesting against persons making encroachments in the village, without naming anyone specifically and who had threatened him earlier. The possibility that the assault may have been committed by anyone of the others who may have made encroachments therefore cannot be completely ruled out.

6. In the forensic report disintegrated bloodstains incapable of a serological report are stated to have been found on the seized trouser of Respondent No.1. It could not be confirmed that the bloodstains were of the same group as that of the deceased. Furthermore, the Trial Judge has also noticed that in the FSL report no blood has been found on the clothes and stones seized from the other Respondents. In these circumstances, the Trial Judge has granted benefit of doubt to the Respondents. It is trite law that in a case of circumstantial evidence, motive may be one of the vital links in the chain of circumstances but cannot be conclusively proof by itself. All other links in the chain of circumstances must also be complete pointing conclusively to the guilt of the accused leaving out the possibility of any hypothesis with regard to innocence. It is not the case of the prosecution that the Respondents were last seen with the deceased. Apart from the above there is no other material against the Respondents. The materials relied upon by the prosecution are considered insufficient to sustain conviction.

7. In these circumstances we find no reason to interfere with the acquittal granting benefit of doubt.

8. The application for leave to appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge