

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 886 of 2016**

1. Ravi Kumar Janghel S/o Late Dwarika Prasad Lodhi Aged About 22 Years R/o Village Khairi, Police Station - Saja, Distt. Bemetara Chhattisgarh

---- Petitioner**Versus**

1. Chetan Verma S/o Shyam Lal Verma Aged About 22 Years R/o Village Khairi, Police Station - Saja Distt. - Bemetara Chhattisgarh
2. Vijay @ Tolu S/o Kanhaiya Gond Aged About 25 Years R/o Village Khairi, Police Station - Saja, Distt. - Bemetara Chhattisgarh
3. State Of Chhattisgarh Through - Police Station - Saja, Distt. Bemetara Chhattisgarh

---- Respondent

For Petitioner Shri Sameer Singh, Advocate

For Respondent/State Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

Per Prashant Kumar Mishra, J.

19/08/2016

1. In this application under Section 372 of the Cr.P.C. the applicant has sought leave to appeal against the judgment of acquittal dated 3-6-2016 passed by the Sessions Judge, Bemetara, in ST No.42/2014 acquitting the accused persons from the charges under Sections 302/34 & 201/34 of the Indian Penal Code.
2. The accused persons were sent for trial for committing the murder of deceased namely; Dwarika Prasad Lodhi during the period between 25-1-2014 to 5-2-2014. According to the prosecution, the deceased had gone to the agricultural field at about 9.00 am on 25-1-2014 along with his wife and other villagers. His wife came back to the house at about 3.00 pm, however, the deceased stayed back. At about 8.00 pm he called his wife to send dinner to which his wife stated that it may not be possible, therefore, he should come to the house for having dinner. After sometime the deceased again called his wife and informed her that one Angad Sinha has brought chicken, etc. which they have consumed and are controlling the flow of water (irrigating the field) in the agricultural field. Thereafter, the deceased did not come back and his phone was not connecting. His son went to the field on the next morning, but deceased was not available. On 3-2-2014 the report of missing person was lodged. On 5-2-2014 village Kotwar Chhabilal saw one dead body at Kehka Khar on which son of the deceased namely Ravi went to the place and identified the dead body.

3. In course of investigation, the accused persons were apprehended on suspicion that sometime back the respondent No.1 Chetan Verma had gifted some article to the daughter of the deceased on which a dispute had occurred, therefore, he may have committed the offence. On the basis of his memorandum statement (Ex.P/7) some articles were recovered vide Ex.P/19. Similarly, on the strength of memorandum statement vide Ex.P/8 some bloodstained clothes were recovered vide Ex.P/13. During FSL examination bloodstains were found on some of the articles recovered from the accused persons, however, serological report was not obtained to match the blood group.
4. The present is not a case of last seen together or extra judicial confession. It is only based on recovery of some clothes wherein human bloodstains were found, however, blood group was not matched.
5. It is the settled law that mere suspicion howsoever strong cannot take place the proof of guilt of accused persons for committing the murder.
6. In **Sujit Biswas v. State of Assam**¹ the Supreme Court held thus :

¹ AIR 2013 SC 3817

“6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that ‘may be’ proved, and something that ‘will be proved’. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between ‘may be’ and ‘must be’ is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between ‘may be’ true and ‘must be’ true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between ‘may be’ true and ‘must be’ true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant Govind Nargundkar & Anr. v. State of M.P., AIR 1952 SC 343; State through CBI v. Mahender Singh Dahiya, AIR 2011 SC 1017; and Ramesh Harijan v. State of U.P., AIR 2012 SC 1979)”.

7. Having considered the entire material available on record, we are not in a position to take any different view of the matter, which has been taken by the trial Court because there is absolute lack of cogent evidence to connect the accused persons with the crime.

8. Considering the state of evidence available on record, this Court does not find any substance in the CrMP seeking leave to appeal. Accordingly, the same is dismissed.

Sd/-

sd/-

Judge
Prashant Kumar Mishra

Judge
Chandra Bhushan Bajpai

Gowri