

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 128 of 2015**

Rudra Singh S/o Rangdev Singh, Aged 54 years, R/o village Kosa, PS Pamgarh,
District Janjgir Champa (Chhattisgarh)

---- Appellant**Versus**

1. State of Chhattisgarh, Through Police Station Masturi, District Bilaspur, Chhattisgarh.
2. Golu @ Harish Thakur S/o Subhash Singh, Aged 32 years, R/o Kargiroad Kota, PS Kota, District Bilaspur, Chhattisgarh.
3. Suraj Chandel S/o Ratan Singh Chandel, Aged 29 years, R/o village Risda, Presently R/o Jairam Nagar, PS Masturi, District Bilaspur, Chhattisgarh.
4. Ku. Tripti @ Tanu D/o Eknandan Singh, aged 24 years, R/o Hospital Colony, PS Sakti, District Janjgir-Champa, Chhattisgarh.
5. Imtiyaz Ahmad S/o Aaftaab Ahmad, aged about 27 years, R/o Kargiroad Kota, PS Kota, District Bilaspur, Chhattisgarh.
6. Vinod Shriwas, S/o Lakhan Singh Sriwas, Aged 28 years, R/o Kargiroad Kota, PS Kota, District Bilaspur, Chhattisgarh.

--- Respondents

For Appellant	: Shri Sumit Singh, Advocate.
For Respondent No. 1	: Ms. Madhunisha Singh, Panel Lawyer
For Respondent No. 3	: Shri Arvind Singh, Advocate.
For Respondent No. 4	: Shri V.R.Tiwari, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Judgment on Board****Per Navin Sinha, Chief Justice****06/05/2016**

1. The present appeal assails acquittal of Respondents No. 2 to 6 dated 31.10.2014 by the 3rd Additional Sessions Judge, Bilaspur, in Sessions Trial No. 190 of 2012 from the charge under Sections 302, 201, 149 and 120-B IPC.
2. The deceased Vikendra Singh was married to Deepti Singh (PW-31). But

he had a love affair with Respondent No. 4 and which is stated to be the cause of occurrence.

3. Learned Counsel for the Appellant submitted that case of the prosecution undoubtedly was based on circumstantial evidence. PW-27, Rudra Singh Chandel, father of the deceased deposed that the latter had left home on 12.4.2011 at about 10:00 am with Respondents No. 2, 5 and 6 on a four-wheeler but did not return home and his dead body was found next morning. The mobile phone of the deceased as also the three Respondents was continuously switched off. The Respondents were given notice by the Investigating Officer under Section 91 of the CrPC to produce their mobile phones and SIM cards which they did not and gave a false explanation that it had been destroyed. This is an incriminating factor against them as according to the investigation, there was frequent conversation between them prior to the occurrence.

4. The call details of the mobile phones were placed before the Court but have not been properly appreciated. Respondent No. 3 wanted to marry Respondent No. 4 and which was the genesis of the occurrence. There can rarely be direct evidence of conspiracy which has to be determined with all surrounding circumstances. To display common object, it was not necessary that there must be assemblance of five persons at one place under all circumstances.

5. Learned Counsel for Respondent No. 3 submitted that according to PW-27, Rudra Singh Chandel, the deceased left home inter alia with him at 10:00 am on 12.4.2011 on a four-wheeler for going to Malhar. PW-36, Yajuvendra Singh was also the brother-in-law of the deceased married to his sister, and therefore equally interested in ensuring that real culprit is brought to book. He deposed that the deceased on 12.4.2011 at about 5:00 pm came to

him at Janjgir and asked for his motor-cycle. The witness did not state that the deceased was accompanied by Respondents No. 2, 5 and 6. Furthermore, PW-27, Rudra Singh Chandel himself stated that his son had told him that he had left Janjgir at about 6:00 pm which coincides from the taking of motor cycle from Yajuvendra Singh at 5:00 pm. The deceased never told his father that he was still in the company of the Respondents No. 2, 5 and 6. If he came in a car with the Respondents and had returned alone on a motor-cycle, apparently the deceased had parted company with the Respondents. There is no material that any one of the Respondents were riding pillion on the motor cycle.

6. Learned Counsel for Respondent No. 3 further submitted that in all the evidence sought to be collected by the police with regard to mobile forensics, there is no compliance with Section 65-B of the Evidence Act by placing necessary certificate from the service provider or leading the evidence of the service provider. There is no evidence that the Respondents spoke to the deceased. According to the allegations, the deceased was in conversation with Respondent No. 4. There is no evidence that the mobile phone on which the conversation was taking place with her belonged to her or that she was using it. There was no evidence of assembling of five persons at any place with common object much less conspiracy.

7. We have considered the submissions on behalf of the parties.

8. In a case of circumstantial evidence and which includes the last seen theory, all the links in the chain of circumstances must be complete. If there is any break in the links of chain of circumstances, the benefit of doubt must go to the accused. Suspicion howsoever strong cannot take place of proof. Reading the evidence cumulatively of PW-27, Rudra Singh Chandel and PW-36, Yajuvendra Singh, it transpires that the deceased left home at 10:00 am with Respondents No. 2, 5 and 6 on a four-wheeler. He had parted their company at

5:00 pm and was returning home alone at 6:00 pm on a motor-cycle belonging to his brother-in-law not on a four-wheeler and was riding alone. If the deceased had parted company, the benefit of doubt has to be given to the accused.

9. The investigation displays awareness of mobile forensics as a tool of investigation but it leaves much to be desired. There is no reason why the police could have located last tower location of the mobile of the deceased before it was switched off and then compared with the mobile phones which the Respondents were alleged to have been using or the SIM cards used in the same. Once the tower locations would have been identified to be last together in proximity to death perhaps different issues may have arisen for consideration. A speculative investigation of mobile forensics cannot be sufficient to reach any conclusion for conviction especially when the mobile phones in question have not been proved as belonging to the Respondents much less the SIM cards.

10. We find no merit in the appeal. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE