

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISCELLANEOUS PETITION NO. 40 OF 2016

State of Chhattisgarh, through the Incharge Police Station Nandghat,
District Bemetara (C.G.)

... Appellant

Versus

1. Ashok Kumar Dhruw, S/o Sadharam Dhruw, age 29 years, occupation- Rajmistri.
2. Surendra Dhruw, S/o Budhram Dhruw, age 32 years, occupation- Labour.
3. Mahesh Pal, S/o Sukhram Pal, age 36 years, occupation- Agriculturist.

All are R/o Village Kapua, P.S. Pathariya, District Mungeli (C.G.)

4. Smt. Rajkumar Dhruw, W/o Late Baisakhu Dhruw, age 34 years, occupation- Labour, R/o Village Putpura, Police Outpost Maro, P.S. Nandghat, District Bemetara (C.G.)

... Respondents

For Appellant-State : Mr. R.K. Gupta, Deputy Advocate General.

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

Order on Board

Per NAVIN SINHA, C.J.

10/02/2016

1. The present application has been filed for leave to appeal against acquittal of the Respondents dated 30.9.2015 in Sessions Trial No. 72 of 2013 by the Sessions Judge, Bemetara, from the charges under Section 302/34 and 201/34 IPC.
2. Learned Counsel for the State submits that Respondent No.4 is the wife of the deceased. Respondent No.1 is the brother of Respondent No.4. The other two are friends of the latter. Respondents No. 1 to 3 came to the house of the deceased on 5.6.2013 at 2:30 pm. They had meal together and then a fight ensued between them. The deceased was not seen outside the house thereafter and the dead body was found next morning at 5:00 am. If death has taken place inside the

house and the Respondents were last seen with the deceased, the onus is on them to prove how death had taken place and when they had parted company with the deceased. The last seen theory therefore applies and acquittal should not have been ordered.

3. We have considered the submissions.

4. Respondents No. 1 to 3 came to the house of the deceased on 5.6.2013 at about 2:30 pm where they had liquor and food. A quarrel then ensued between them. The fight spilled out to the street. There is no evidence that Respondents No. 1 to 3 thereafter again went back inside the house of the deceased. The possibility that they parted company with the deceased at this stage cannot be ruled out. Respondents No. 1 to 3 are not stated to have been seen inside or near the house of the deceased thereafter. In case of any doubt, the benefit has to go to the accused. According to other prosecution evidence, the wife of the deceased, Respondent No.4, also left home and went to her parental home. The body of the deceased was discovered hanging inside the house the next morning at 5:00 am. The prosecution has not been able to establish that the Respondents were seen at home with the deceased in close proximity of time to death for invoking the last seen theory. The observation in the post-mortem report that the injuries on the elbow, feet and on the head were ante-mortem in nature is hardly considered relevant in view of the evidence of PW-1, Dinesh Dhruw that there was a scuffle earlier between Respondents No. 1 to 3 and the deceased and which had spilled out to the street also. The injuries may well have been sustained at that time.

5. We therefore find no reason to interfere with the order of acquittal.

6. The application for grant of leave to appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

/Sharad/