

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 226 of 2016**

State of Chhattisgarh through Station House Officer Police Station Soamni
District Rajnandgaon Chhattisgarh

---- Petitioner**Versus**

1. Hari Ram S/o Thanwar Deshmukh aged about 50 years
2. Parmanand Sahu S/o Dashru Ram aged about 42 years

Both R/o village Dewada Police Station Soamni Tahsil and District Rajnandgaon
Chhattisgarh

---- Respondents

For Petitioner/State : Shri R.K. Gupta, Deputy Advocate General.

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

Order on Board**Per Navin Sinha, Chief Justice****23/02/2016**

1. The present application has been filed for leave to appeal against acquittal of the Respondents under Sections 302, 201 and 34 IPC dated 5.12.2015 in Sessions Trial No. 9 of 2015.
2. Learned Counsel for the State submits that the present is a case of circumstantial evidence. The postmortem of the deceased revealed a ligature mark around the neck. The Respondents were arrested and on their confession, a cable used for strangulation was recovered from Respondent No. 1. The chappal worn by the deceased on his deformed right foot has been recovered from the house of Respondent No.1. It was identified in the TIP by PW9, Mayabai, wife of the deceased. Blood stained earth was also lifted from the floor

of the house of Respondent No.1. A spade used for assault suspected to have blood stains was also recovered on his confession. The seizures were proved by PW5, Santuram. Even if he went hostile in his cross-examination he did not deny that the chappal of the deceased was recovered from the house of Respondent No.1. An axe was also recovered from the house of Respondent No.2 on his confession. The bicycle belonging to Respondent No.1 on which the body was carried and dumped in the fields was also seized.

3. We have considered the submissions.

4. According to PW9, Mayabai wife of the Deceased, he was missing for approximately 5 days past. His body was recovered dumped in the fields on 23.9.2014. The deceased worked with Respondent No.1 in a Dhaba. The FIR was registered against unknown. PW-1, Dipak Das, Kotwar deposed that a cable was wrapped around the neck and body of the deceased. PW12, Dr. Rajendra Barav who carried out the postmortem also deposed that a cable was wrapped around the neck of the deceased with two knots in it and his right hand was tied with the same.

5. The confession of Respondent No. 1 was recorded one week later on 30.9.2014. A cable is alleged to have been recovered pursuant thereto. No evidence has been placed by the prosecution to even remotely suggest that it was a part of that broken cable the remains of which were found either on the body or neck of the Deceased. Therefore the recovery of any cable on the confession of Respondent No.1, in our opinion, does not lead to any conclusion in a case of circumstantial evidence that it was used for strangulation or was a part of the cable used for strangulation.

6. The Learned trial Judge has concluded from the evidence of the Investigating Officer PW13, Ajay Shankar Tripathi that only the viscera of the deceased was sent for forensic examination and not the cable, blood stained

earth, spade and axe. PW13, Ajay Shankar Tripathi, the Investigating Officer was seriously amiss in performance of his duties as police officer investigating a criminal offence. It is for the Police Department of the State Government to take corrective action for the same both against the Investigating Officer and also to prevent such recurrence in future. The recovery of chappal worn on the right foot by the deceased stated to be from the house of Respondent No.1 does not inspire confidence reading the evidence of PW1, Dipak Das, the Kotwar and wife of the deceased Mayabai, PW9. Even otherwise, there is no evidence with regard to the nature of deformity on the right foot of the deceased and its forensic comparison by the police to conclusively establish that it was the chappal of the deceased alone. The recovery of the bicycle in the background of the above becomes irrelevant.

7. No motive has also been established which may have its own relevance in a case of circumstantial evidence. The recoveries may have been corroborative factors taken collectively provided the prosecution had performed its duty in accordance with law. If the prosecution has investigated a serious offence in such a casual manner, we do not see any reason to interfere with the order of acquittal as the view taken by the Learned trial Judge cannot be said to be irrational or contrary to the evidence available on record.

8. The application for leave to appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE