

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 231 of 2010**

- State Of M.P. (Now C.G.) Through The Police Station Kondagaon, District Basar (M.P.)

---- Appellant**Versus**

1. Siyaram Dead
2. Lakhna Dead
3. Photku S/o Lakhma Gond Aged About 32 Years
4. Duwaru S/o Lakhma Gond Aged About 34 Years
5. Mangal S/o Domaru Gond Aged About 32 Years
6. Rihra @ Lakhma S/o Osar Gond Aged About 32 Years
7. Johan S/o Lakhma Gond Aged About 35 Years

All R/o Village Titkhand Chouki Makdi Police Station Kondagaon District Bastar (M.P.) Now Chhattisgarh

---- Respondents

For Appellant

Shri Arvind Dubey, PL

For Respondents

Shri A. K. Mishra, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Ram Prasanna Sharma****Order On Board****09/04/2018**

1. This appeal is preferred against the judgment dated 26.04.1999 passed by the 2nd Additional Sessions Judge, Bastar, Jagdalpur in ST No.175/1998, wherein the said Court acquitted all the

respondents for the charges under Sections 302, 120-B and 201 of IPC for committing murder of one Salim and causing disappearance of evidence of the said offence and for conspiracy of the said offence on or before 22.02.1998 at Village Ghamri, Police Station Kondagaon, District Bastar.

2. In the present case, the name of the deceased is Salim. In the FIR lodged on 22.02.1998, no one was named as culprit. Surprisingly, on the next day i.e. on 23.02.1998, two persons namely, Ankaluram (PW-4) and Akturam (PW-5) came forward claiming themselves to be the eye witness of the incident of assault on the deceased Salim. Though, they had stated that the respondents have assaulted the deceased and dragged him, but they did not inform anyone about the said incident for 3 days. They have not explained as to why the incident was not informed to anyone. The trial Court after close scrutiny of the evidence opined that both the witnesses are got up witnesses and their evidence cannot be acted upon. Apart from these two witnesses, other witnesses are corroborating in nature and it was not safe for the trial Court to act on statement of so called eye witnesses.
3. As per the opinion of Dr. U. S. Navratan (PW-1) who conducted autopsy in the case, the body was found beheaded and cause of death is excessive bleeding due to cut of vessels of throat, but from the evidence, it is not established that as to how the vessels were cut and there is nothing incriminating against any of the respondents for what is mentioned in the postmortem report. The view taken by the trial Court is one of the plausible view and it is

settled law that if two views are plausible, the view favourable to the accused should be accepted.

4. On an overall assessment of the evidence, we are satisfied that the infirmity pointed out by the trial Court in the evidence of so called eye witnesses and other corroborating piece of the evidence is based on proper marshaling of evidence and the same is also based on legally admissible evidence.
5. We do not find any infirmity in the finding recorded by the trial Court leading to acquittal of all the 7 respondents, in which two respondents namely, Siyaram and Lakhna died during the pendency of this appeal. In this view of the matter, we do not find any scope for interference in the present appeal and the same is liable to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Ram Prasanna Sharma