

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 405 of 2010**

- Tarkeshwar Singh S/o Late Kuldeep Singh R/o Subhash Chowk, Near Rawanbhata Supela, Police Station Supela Bhilai, District Durg Chhattisgarh.

---- Petitioner**Versus**

1. Hiranjan Tripathi @ Lalu, S/o Nirmal chandl Tripathi, aged about 34 years, R/o. House No. 230-231, Model Town, Supela, Bhilai, District Durg (C.G.)
2. Pawan Paliya S/o Awadh Bihari Paliya, aged about 34 years, R/o House No.29, Street No.15, Smriti Nagar, Police Station Supela, District Durg C.G.
3. Gulab Mahto @ Santosh Mahto S/o Kishor Mahto, aged about 34 years, R/o. Model Town, Supela, Bhilai, District Durg C.G.
4. Rajkumar Sharma @ Gugli S/o Kundan Lal Sharma R/o Hardware Line, Supela, Police Station Supela Bhilai, District Durg C.G.
5. Niranjana Tripathi @ Satpathi S/o Nirmal Chand Tripathi, aged about 37 years, R/o Model Town, Supela, Bhilai, District Durg C.G.
6. Sona @ Sanjeev Mukherjee S/o Himanshu Mukherjee, aged about 37 years, R/o House No.239, Street No.6, Smriti Nagar, Supela, Bhilai, District Durg C.G.
7. State of Chhattisgarh through District Magistrate Durg, District Durg C.G.

---- Respondent

For Petitioner	Shri Shrawan Agrawal, Advocate.
For State	Shri Rajendra Tripathi, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

By

Prashant Kumar Mishra, J.

04/01/2018

1. This Acquittal Appeal would challenge the judgment of acquittal rendered by the trial Court acquitting the accused persons from the charges under Sections 120-B, 302 and 201 of Indian Penal code.
2. The accused persons were tried for committing murder of deceased Dhanji @ Santosh during the intervening night of 2nd and 3rd March, 2005.
3. According to the prosecution, the accused persons came to the house of the deceased in the late evening of 2nd March and thereafter the deceased went along with the accused persons. They had gone to one Lalu Dhaba at about 11 P.M. At this place the accused persons hatched criminal conspiracy and committed murder of the deceased by causing injury over his neck by means of knife.
4. From the evidence on record, it was established that the death of the deceased was homicidal. The FIR was registered on the oral information provided by Accused No. 2 Pavan Paliya, however, the contents of the FIR cannot be used against Pawan Paliya.
5. In course of trial the prosecution examined about 20

witnesses. The prosecution case is based on circumstantial evidence as the Investigating Officer could not collect any eye witness account of the incident in course of investigation. The circumstantial evidence is in the nature of memorandum statement of the accused persons, consequent seizure of the incriminating articles and the evidence of last seen together as stated by PW-14 Tarkeshwar Singh (the present appellant), who happens to be the father of the deceased.

6. The witnesses to the memorandum and seizure have turned hostile. The trial Court has highlighted the lacunas in the investigation as mentioned in Paras 22 and 23 of the judgment. It is observed that one Constable Raj Kumar has made statement to the police mentioning that the accused persons assaulted the deceased; committed his murder; and took away the dead body in Bolero vehicle for burrying the same in some graveyard but later on threw the dead body in the forest area. However, the case diary statement of Raj Kumar was not made part of the charge sheet nor Raj Kumar was examined in course of trial.
7. It is settled law that a conviction cannot rest solely on the evidence of last seen together unless there is strong corroborative evidence connecting the accused persons with the commission of crime and the time of last seen together is so proximate to the time of incident that there is the least possibility of any other intervening factor being available so as to be a cause of murder or death of the deceased. No such corroborative evidence has been purforth and proved by the prosecution which would substantiate the theory of last seen together.

8. Considering the limited scope of interference in acquittal appeals where the High Court is entitled to interfere only when the judgment is patently perverse, having gone through the evidence, we do not find any such perversity in the impugned judgment, therefore, the present Acquittal Appeal deserves to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Ram Prasanna Sharma

Akhilesh