

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1962 of 2018**

- State Of Chhattisgarh Through The Station House Officer, Police Station- Darbha, O.P.- Pakhnar, District- Bastar, Chhattisgarh

---- Petitioner**Versus**

1. Baman Kunjami @ Raghu, S/o Handa Kunjami Aged About 50 Years, Caste Madiya
2. Mahangu Kadti S/o Hunga Kadti Aged, Caste Madiya, About 32 Years
3. Ediya Kadti S/o Saiykot Kadti Aged About 35 Years, Caste Madiya
4. Hadma Kadti, S/o Late Konda Kadti, Caste Madiya, Aged About 55 Years

All are R/o Village - Chandrgiri Kadtipara, O.P.- Pakhnar, P.S.- Darbha, District- Bastar, Chhattisgarh

---- Respondents

For Appellant

Shri R. K. Mishra, Dy. AG

Hon'ble Justice Mr. Prashant Kumar Mishra

Hon'ble Justice Mrs. Rajani Dubey

Order On Board By

Prashant Kumar Mishra J.

10/12/2018

1. The State has preferred this application seeking leave to appeal against the judgment of acquittal rendered by the 2nd ASJ, Jagdalpur, District Bastar acquitting the accused persons of the charges under Section 302/34 of IPC.

2. The accused persons were tried for committing murder of deceased Chetan Kashyap, the Village Kotwar of Village Chandragiri, Police Station Darbha, District Bastar. The deceased had gone to attend the weekly market at Chingitarai on 12.11.2017 but when he did not return to his house, his son, the informant, Bhagirathi Kashyap started making enquiries. At about 4-5 pm on 14.11.2017, two witnesses Vimla and Sukdi informed him that his father was going towards Farsabuta in the evening of 12.11.2017. Thereafter, informant Bhagirathi, his mother Manki Bai, Aunt Jhuno and his sister-in-law (Bhabhi) went to trace the deceased and found his dead body in the agricultural field of one Govind. The incident was informed to Pakhnar Police Outpost over mobile at about 8:30 pm, on which *dehatinalisi* (Ex-P-1) was registered and upon completion of investigation, the charge sheet was filed.
3. There is no eye witness to the crime. The case of prosecution rests on circumstantial evidence. However, the Trial Judge has found that the chain of circumstantial evidence is not complete so as to point towards guilt of the accused persons. There is no evidence of last seen together or extra judicial confession. The prosecution case is based on the memorandum statement of the accused persons vide Ex-P-13 & P-14 and seizure memos (Ex-P-15 to P-20). However, PW-8 Bahadur Nag and PW-9 Somaru Yadav, who are the witnesses of the memorandum statement and seizure, would state that their signatures were taken at the Police Station. PW-8 Bahadur has projected himself as eye witness during his examination in Court, however, in his case diary

statement (Ex-D-4), he has not informed the Police that he had seen the accused persons committing murder of the deceased. He admits in his court statement that for the first time, he is informing in Court that he had seen the accused persons committing murder. Thus, the statement of this witness is also not reliable.

4. PW-1 Bhagirathi Kashyap, PW-2 Baliram Kashyap have also not seen the accused persons at or near the place of occurrence at the relevant time. PW-3 Govind Kunjami has turned hostile. Similarly, PW-4 Ganpati Sinha has also turned hostile. PW-5 Sahdeo Kawde had met the deceased in the weekly market on the date of incident, however, he is not making any statement that the deceased was seen in the exclusive company of the accused persons in the market. The only statement which he would make is that amongst other villagers, the accused persons were also present in the weekly market. This evidence does not lead the case to any definite direction because so many persons attend weekly market and there is nothing unusual if some villagers were seen in weekly market where the deceased was also present. Statements of PW-6 Manu Kawde and PW-7 Narendra Kumar Mandavi also do not throw much light on the complicity of the accused persons as they have not made any material statement involving the accused.
5. The only incriminating evidence against the accused persons is that the club and katri (a sharp edged sickle like instrument) have been recovered from them and the blood stains were found on

these articles. However, firstly the seizure witnesses would state that the recoveries were made at the Police Station and secondly there is no serological examination because the blood found over the articles was disintegrated.

6. For the above reasons, no case for grant of leave to appeal is made out. Accordingly, the CRMP is dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Rajani Dubey
Judge

Nirala