

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2166 of 2018

- State Of Chhattisgarh Through The Station House Officer Police Trikunda District Balrampur Ramanujganj Chhattisgarh

---- Petitioner

Versus

1. Jadu @ Yadunath S/o Dilbodh Aged About 45 Years R/o Village Murkaul Police Station Basantpur, District Balrampur Ramanujganj Chhattisgarh
2. Ramlal Gond S/o Ram Prasad Aged About 29 Years R/o Village Baghadu , Police Station Duddhi, District Sonbhadra Madhya Pradesh
3. Jeet Singh @Guddu S/o Sheetal Prasad Aged About 26 Years R/o Village Naarola, Police Station Ramkola District Surajpur Chhattisgarh

---- Respondents

For Petitioner/State : Shri Ramakant Mishra, Dy.A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order On Board

27/11/2018

There is an application (I.A.No.1) for condonation of delay in filing appeal.

Upon due consideration of the grounds urged in the application, the same is allowed. Delay is condoned.

1. Heard on prayer for grant of leave to appeal.

Learned State counsel would argue that the learned Trial Court has wrongly disbelieved the evidence of identification of the accused because the prosecution witnesses i.e. Jukul (PW1), Bikul (PW2), Sushila (PW3) and Fulkunwar (PW4), family members of the victim have clearly stated during trial that they identified the appellants as dacoits, who had entered the house and looted cash and silver ornaments.

The other submission of learned State counsel is that even though the independent witnesses of memorandum and seizure have not supported the prosecution case but the investigating officer clearly states regarding memorandum

statement and on that basis, recovery of ornaments made.

2. We have gone through the impugned judgment and also the evidence led by the prosecution.

3. Learned Trial Court, taking into consideration the evidence of Jukul (PW1), Bikul (PW2), Sushila (PW3) and Fulkunwar (PW4) that all of them have stated in their evidence that dacoits, who entered the house, had covered their face with clothes, it was dark and there was no light and therefore, they could not identify them, disbelieved the prosecution evidence regarding identification of the respondents.

The memorandum and seizure prepared by the prosecution to prove recovery of looted ornaments at the instance and disclosure of the respondents has been disbelieved because the independent witnesses have not supported the case of the prosecution and turned hostile. Learned Trial Court also taken into consideration that one of the investigating officer has also not been examined.

4. On the aforesaid set of evidence, we find that the view taken by the learned Trial Court is plausible view as the benefit of doubt may be given to the accused where the prosecution witnesses have stated regarding face of the accused covered with clothes, it being dark and no light and it was stated in the cross examination that it was difficult to identify them.

The doubt with regard to memorandum statement and recovery on the basis of the independent witnesses who turned hostile and not supported the case of the prosecution, does not appear to be suffering from patent illegality or perversity warranting interference to the judgment of acquittal. Therefore, no case for grant of leave is made out. The petition is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge