

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 120 of 2010**

- Rajendra Kumar Soni S/o Dataram Soni, aged about 41 years, R/o Premnagar, Chhurakachhar, P.S. Kushmunda, District Korba (C.G.)

---- Applicant**Versus**

1. The State of Chhattisgarh Through Thana In-charge, P.S. Seepat, District Bilaspur (C.G.)
2. Tufan Kurre S/o Dwarika Prasad Kurre, aged about 22 years, R/o Aramsahi, Thana Masturi, District Bilaspur (C.G.)

---- Respondents

For Applicant	:	Shri Anil Gulati, Advocate
For State/Respondent No.1	:	Shri Avinash Choubey, Panel Lawyer
For Respondent No. 2	:	Shri Atul Kesharwani, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra, J**Hon'ble Shri Justice Gautam Chourdiya, J****Order on Board by Justice Prashant Kumar Mishra****15.11.2019**

1. In this criminal revision under Section 397 read with Section 401 of Cr.P.C. the applicant/complainant would challenge the legality and validity of the judgment dated 05.12.2009 passed by the First Additional Sessions Judge, Bilaspur in Sessions Trial No. 172 of 2009 acquitting the accused/respondent No.2 of the charges under Sections 302 and 397 of IPC.
2. The deceased was engaged in selling of silver ornaments in the weekly markets of different villages. On the date of incident, while he was returning from Aramsahi weekly market to his village three accused persons namely respondent No.2 Tufan Kurre, Asmaan Bihari and Raju Bihari intercepted him in the evening and thereafter assaulted him by means of knife and stones, looted the ornaments and mobile-set which was concealed near hillock at NTPC railway line over-bridge Korea road, Seepat. On suspicion the present accused was arrested and on his memorandum statement, the looted ornaments were recovered. Two other accused persons are still

absconding and no charge-sheet has been filed against them.

3. There being no eyewitness to the incidents, the case of the prosecution is based on recovery of the ornaments on the memorandum of respondent No.2/accused. PW-2 Girilal Yadav has not supported the prosecution case on the point of recording of memorandum statement and making recovery from the accused. The other witness to these documents namely PW-3 Raju Sahu has supported the prosecution. However, the trial Court has found that the identification of the ornaments and the mobile is doubtful. It has been observed by the trial Court that the ornaments were lying on a table in open condition in the police station. Similar is the case with mobile set. The articles were sealed immediately after the recovery, however, it was found in open condition in the police station. It is also observed that there were many small items but each of the articles has not been put to identification. The trial Court has also found that the provision contained in Section 157 Cr.P.C. has not been followed inasmuch as copy of the FIR was not sent to the concerned Magistrate within 24 hours of registration. In such state of evidence on record, the trial Court has held that merely on the basis of recovery of ornaments and mobile-set, offence of commission of loot and murder is not established.
4. We have scrutinized the evidence to find out whether the trial Court's finding is based on proper appreciation of the overall evidence on record. Despite our close scrutiny, we are unable to take any different view in the matter, therefore, no case for entertaining this revision application is made out, it fails and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge