

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 77 of 2014**

- State Of Chhattisgarh Through Its Reserve Centre, Gobra Navapara, Distt. Gariyaband C.G., Chhattisgarh

---- Applicant**Versus**

1. Omprakash @ Pinku Dhruw S/o . Bholu Singh Aged About 22 Years,
2. Maneshwar @ Mannu Diwan S/o .Ful Kumar Diwan Aged About 21 Years,
3. Mithlesh Kumar Kunjam S/o Duliram Netam Aged About 23 Years

All are R/o. Village Nahargaon, P.S. Gariyaband, Distt. Gariyaband C.G.

---- Respondents

For Applicant :- Shri R.S. Baghel, Dy.A.G.
For Respondents :- Shri Raza Ali, Advocate.

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Gautam Chourdiya, JJ.**

Order On Board
By
Prashant Kumar Mishra, J.

30/08/2019

1. On due consideration delay of 46 days in filing of the Cr.M.P. is condoned. Accordingly, I.A. No.01 of 2014, application under

Section 5 of Limitation Act for condonation of delay is allowed.

2. The trial Court has acquitted the accused persons of the charges under Sections 120-B (1) / 302 and 302, in alternative 302/34 and 201 of I.P.C.
3. The accused persons were sent for trial for committing murder of the deceased Kunjlal Sen, during the period 6 P.M. of 19.03.2011 to 08 A.M. of 21.03.2011 and thereafter concealing the evidence of crime by burning and thereafter burying the dead body in an agricultural field.
4. According to the prosecution, accused Omprakash was in love with Ranu @ Nageshwari to whom deceased Kunjlal Sen got married on 11.03.2011, on his failure to marry Ranu @ Nageshwari, Omprakash planned to eliminate deceased Kunjlal so that he could marry Ranu @ Nageshwari; he requested the other accused persons to help him in committing murder to which they agreed and all of them went to the Saloon of the deceased in the evening of 19.03.2011 and falsely informed him that they are his relatives. On persuasion of the accused, the deceased accompanied them and on the way the accused persons and the deceased consumed liquor where Omprakash committed his murder by assaulting him by means of *Basula*. The dead body of the deceased was burned and thereafter buried at a place 50 meters away from the place of murder.
5. There being no ocular version of the crime, the case of the

prosecution rested on the circumstantial evidence in the nature of recovery of *Basula*, blood stained Shirt and mobile set of the deceased from accused Omprakash. Though blood has been found over *Basula* but there is no evidence to prove the origin of the blood. Similarly, mobile set of the deceased has been recovered from an open place. The prosecution has tried to prove evidence of last seen together but there is no witness who had seen the accused persons in the company of the deceased just before the incident. There is no witness either to the circumstance of purchase of liquor, petrol and other eateries nor the call details would prove that the deceased had spoken to any of the accused just prior to the incident.

6. The present appears to be a case where the prosecution has not been able to prove the circumstances against the accused persons so as to form an established chain of circumstantial evidence holding them guilty.
7. Having seen the entire evidence available on record, we are not inclined to grant leave to appeal.
8. In view of the above, the Cr.M.P. deserves to be and is hereby dismissed.

SD/-
(Prashant Kumar Mishra)
Judge

SD/-
(Gautam Chourdiya)
Judge