

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 541 of 2019**

- State Of Chhattisgarh Through Station House Officer, Police Station Kapu District Raigarh Chhattisgarh

---- Petitioner**Versus**

1. Yashpal Chauhan S/o Mangal Sai Chauhan Aged About 23 Years Occupation Labour, R/o Village Kunkuri, Police Station Sitapur, District Surguja Chhattisgarh
2. Shankar Yadav S/o Faguram Yadav Aged About 21 Years R/o Village Bilaidhodhi, Police Station Sitapur, District Raigarh Chhattisgarh
3. Rajaram Rathiya S/o Late Baigaram Rathiya Aged About 44 Years Occupation Teacher, R/o Village Kamrai, Police Station Kapu Tahsil Dharamjaigarh District Raigarh Chhattisgarh

---- Respondents

For Petitioner/State : Shri K.K.Singh, Govt. Advocate

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Order On Board**10/04/2019**

Heard on I.A.No.1/19, application for condonation of delay in filing appeal.

Upon due consideration, the application is allowed.

Delay is condoned.

Also heard on prayer for grant of leave to appeal.

Learned counsel for the appellant would argue that though the learned Trial Court has convicted Shankar Yadav- one of the co-accused, the other two co-accused – Yashpal Chauhan and Rajaram Rathiya have been acquitted even though the prosecution witness has clearly come out with last seen evidence that the deceased and all the accused were seen together in a marriage function and they were found consuming liquor. He would further argue that the prosecution has come out with a history of enmity between the accused -Rajaram Rathiya and the family of the deceased. According to him, upon recording memorandum statement of Yashpal and

Rajaram, clothes of the deceased were also found from their possession as also a mobile. Therefore, a complete chain of circumstances was proved.

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

We find that acquittal of respondents / accused - Yashpal Chauhan and Rajaram Rathiya has taken place upon consideration of evidence on record and that the prosecution came out with a circumstantial evidence of last seen together. Last seen evidence is only with regard to the presence of the accused and the deceased in a marriage function and it is not a case that they were seen together in a remote or lonely place in the night and later on, dead body of the deceased was found. As far as recovery of mobile and clothes are concerned, we find that the prosecution could not establish any live link for want of identity of mobile and clothes. Therefore, the learned Trial Court has given benefit of doubt to the respondents / accused.

The view taken by the learned Trial Court appears to be plausible and possible. Keeping in forefront the limited scope of interference against judgment of acquittal, we do not find any good ground to interfere with the judgment of acquittal.

Application for grant of leave to appeal is accordingly rejected. The present CrMP is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge