

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 666 of 2019

- State Of Chhattisgarh Through Police Station Dhourpur, District Surguja Chhattisgarh.

---- Applicant

Versus

1. Rustam S/o Amiruddin Ansari, Aged About 24 Years,
2. Moh. Hamid Raja Ansari, S/o Gulam Ansari, Aged About 21 Years,

Both R/o Village Batwahi, Police Station Lundra, District Surguja Chhattisgarh.

---- Respondents

For Applicant :- Shri K.K. Singh, G.A.

Hon'ble Shri Prashant Kumar Mishra &

Hon'ble Smt. Rajani Dubey, JJ.

Order On BoardBy

Prashant Kumar Mishra, J

13/05/2019

1. This application seeking leave to appeal has been preferred by the State challenging the judgment of acquittal rendered by learned Special Judge (Atrocities Act), Ambikapur in Special Sessions trial (Atrocities) case No. 50 of 2017 acquitting both the accused of the

charges under Sections 302/34, 201/34 of IPC as also under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The accused persons were sent for trial for committing murder and causing disappearance of the evidence of crime in respect of death of deceased Phulmatia Bai during the period of 4 pm on 04.03.2017 to 2 pm on 08.03.2017.
3. The prosecution's case was based on circumstantial evidence as there was no ocular version of the crime. Deceased's husband Jagdish lodged a report of missing person on 06.03.2017 stating that his wife had gone to attend some training on 04.03.2017 but has not returned back thereafter. Few villagers including informant, Manoj Kumar Singh witnessed dead body lying inside a gorge in the forest of Phulpani at about 2 P.M. on 08.03.2017. The body was identified by Jagdish to be belonging to his wife deceased Phulmatia Bai.
4. In the postmortem report, the autopsy surgeon could not record any definite opinion about the cause or nature of death, as in the said report it is mentioned that the mode and cause of death could not be ascertained due to advance putrefaction and destruction of the body.
5. During further investigation, the investigating officer recorded the statement of accused Rustam Ansari pursuant to which pieces of mobile set and Sandle belonging to the deceased were recovered from the place where the dead body was recovered. The memorandum statement and the seizure memo also stated that burnt

pieces of purse of the deceased were recovered from the backyard of the accused Rustam's residence. Further, the said burnt purse was not put to identification by the husband of the deceased even though some other articles were identified by him.

6. We have heard learned State counsel at length and perused the papers.
7. Admittedly, there is no eyewitness to the crime. The circumstantial evidence put-forth by the prosecution was only in respect of the recovery of some articles belonging to the deceased. There is no evidence of last seen together or extra judicial confession made by the accused in the presence of any of the witnesses. The recovery of articles has also been effected from the place of occurrence and not from the residence of the accused. The only article recovered from the residence of the accused i.e. the burnt pieces of the lady's purse belonging to the deceased has not been put to identification. Thus, there was no recovery of weapon of the offence or any other instrument which was used for committing murder; neither the dead body has been recovered at the instance of any of the accused persons.
8. To make the case worst for the prosecution, deceased's husband Jagdish has not raised any suspicion on the accused persons. Another witness Bhagwati had a conversation with the deceased sometime in the evening of 04.03.2017, when she informed this witness that she is accompanied by his brother-in-law. Thus, even

this evidence would not nail the accused persons, rather it does not even raise suspicion on them for commission of crime.

9. The evidence of call detail which was collected by (PW-14) Anshul Sharma would only prove that the accused Rustam and the deceased had some conversation on 04.03.2017, however, this evidence would also not connect the accused Rustam for committing murder of the deceased because only call detail would not be a proof of the fact that the accused and the deceased were together at the time of their conversation over mobile phone on 04.03.2017.
10. There is absolutely no evidence against the accused persons which would involve them in commission of crime, therefore, their acquittal does not call for any interference and the present is not a fit case for granting leave to appeal.
11. Accordingly, the Cr.M.P is dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Rajani Dubey)
Judge

Ayushi