

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 1679 of 2019**

- State Of Chhattisgarh Through The Police Station Pratappur,  
District- Surajpur, Chhattisgarh.

**---- Petitioner****Versus**

1. Banshrup @ Dudchu Gond S/o Mahipal Aged About 21  
Years R/o Village- Madannagar, Police Station- Pratappur,  
District- Surajpur, Chhattisgarh.
2. Mohan @ Nanhe Gond S/o Phulsai Gond Aged About 22  
Years R/o Village- Kanaknagar, Parsapara, Police Station-  
Pratappur, District- Surajpur, Chhattisgarh.

**---- Respondents**

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For State       :-       Shri Vikash Shrivastava, PL

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

**Order On Board**  
**By**  
**Prashant Kumar Mishra, J.**

**22/07/2019**

1. Heard.
2. On due consideration delay of 77 days in filing of instant  
Criminal Miscellaneous Petition is condoned.

3. Accordingly, I.A. No. 01 of 2019, application for condonation of delay in filing of instant Criminal Miscellaneous Petition is allowed.
4. The trial Court has acquitted the accused of the charges under Sections 302 & 201 read with Section 34 of I.P.C.
5. The deceased was found dead near school premises in the morning of 15.07.2018. Hansraj (PW-1), father of the deceased, had gone for a dinner with his son deceased Dhanukdhari to the house of Phulsai. PW-1 returned from dinner at about 8-9 p.m. on 14.07.2018, however, deceased stayed back in the house of Phulsai. As per the statement of PW-1 Hansraj, when he left the house of Phulsai, apart from his son, Phulsai, Banshrup, Mohan @ Nanhe, Sunil and Chhatar were enjoying liquor. Thus, this witness had last seen the deceased in the company of atleast three more persons in addition to the accused. This witness would also state that deceased had a fight with Vijay Baniya of Kanaknagar in a state of intoxication. Thus, the deceased had enmity with Vijay Baniya and not with present accused persons.
6. The prosecution has not alleged any motive against the accused persons which might have compelled them to commit murder. Rani Singh (PW-7), sister of deceased has

stated that in the night of 14.07.2018 she had called accused Mohan on his mobile during which he informed that deceased is consuming liquor with him at Madannagar but he avoided to connect this witness to the deceased. Budhni (PW-8) also said that Rani Singh called Mohan on her request. Despite this information available with the Police, the Investigating Officer has not collected the call details and mobile tower location of the accused, the deceased and Rani Singh.

7. When best scientific evidence is available non-production of the same by the prosecution would weaken the case of the prosecution.
8. There being no ocular evidence of the crime and there being serious short comings in the chain of circumstantial evidence, as discussed above, we are not inclined to admit this CRMP to grant leave to appeal against the impugned judgment of acquittal.
9. In view of the above, the present CRMP deserves to be and is hereby dismissed.

SD/-  
**(Prashant Kumar Mishra)**  
Judge

SD/-  
**(Gautam Chourdiya)**  
Judge