

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 1768 of 2019

- State Of Chhattisgarh Through Station House Officer, Police Station- Kartala, District- Korba, Chhattisgarh.

---- Applicant

Versus

- Kanhaiya Lal @ Disco Sriwas S/o Gopal Chand Sriwas Aged About 47 Years R/o Barpali, Police Station- Shyang, District- Korba, Chhattisgarh.

---- Respondent

For Applicant :- Shri Santosh Bharat, PL

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

Order On BoardByPrashant Kumar Mishra, J.30/07/2019

1. Heard.
2. Default has been removed by filing the necessary papers.

3. We have heard learned State counsel on I.A. No.01 of 2019, application for condonation of delay in filing of CrMP as well as on admission.
4. On due consideration delay of 226 days in filing the CrMP is condoned. Accordingly, I.A. No.01 of 2019 is allowed.
5. The trial Court has acquitted the accused of the charges under Section 302 of I.P.C.
6. As per prosecution case, at about 12 noon on 10.01.2017, accused and his wife came to the house of the deceased and requested him to drop them at village Kolga. When the deceased did not return till evening, his wife PW-1 Roshni Pandey went to sleep in the house of one of her relative. When she reached her house the next morning she found her husband lying unconscious having injuries over his head and his motor cycle was parked in running condition. Her husband was not able to talk, therefore, she informed the matter to the Sarpanch and other villagers. The deceased was taken to Dharamjaigarh Hospital and thereafter he was referred to Raigarh Hospital where he died in the evening.
7. The prosecution case was based on circumstantial evidence of last seen together and recovery of blood stain wooden stick.

8. Except for the statement of PW-1 Roshni Pandey, who says that her husband had gone along with the accused and his wife, there is no other witness who had seen the deceased in the company of the accused. Since the deceased reached back alive, though injured, in the next morning, even the theory of last seen together would not apply in the instant case for the reason that the deceased was not found in the company of the accused between his death and while he was alive. The other witnesses including the witness to the memorandum statement and seizure of burnt wooden stick have turned hostile.
9. Considering the totality of the evidence, the view taken by the trial Court while acquitting the accused does not seem to be perverse. No case for grant of leave to appeal is made out.
10. In view of the above, the present CrMP deserves to be and is hereby dismissed.

SD/-
(Prashant Kumar Mishra)
Judge

SD/-
(Gautam Chourdiya)
Judge

Ayushi