

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2065 of 2019

- Applicant

1. Chandan Utkel S/o Kanhaiya Utkel, Aged About 24 Years, R/o Station Para, Ward No. 13, Police Station Kotwali, District Rajnandgaon, Chhattisgarh.
2. Sagar Vahne S/o Yashwant Vahne Aged About 23 Years, R/o Chikhli, Ward No. 06, Near Government Press, Police Station Chikhli, District Rajnandgaon, Chhattisgarh.

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For Applicant-State :- Shri Ashish Gupta, PL

Hon'ble Shri Prashant Kumar Mishra

Hon'ble Shri Gautam Chourdiya, JJ.

Order on Board

By

Prashant Kumar Mishra, J

11/09/2019

1. Heard.
2. On due consideration, delay of 54 days in filing the present Cr.M.P. is condoned. Accordingly, I.A. No.1 is allowed.

3. As per the prosecution case victim, PW-6, Ganpat Ratre, was returning from his duty at about 4:00 am on 11.06.2018. He was traveling in his motorcycle with one Roopdas. When they reached near Indawani Square two accused persons intercepted them and demanded the mobile and keys of the motorcycle. On refusal one of them inflicted injuries over his abdomen by means of knife. Neither in the FIR nor in the *Dehati Nalisi* or in his case diary statement he would mention any description of the faces of the miscreants, though he says that he can identify them. In these statements he has stated that all the miscreants had muffled their faces. Two of the accused were sent for Test Identification Parade in which the victim identified them, however, identification happened in the presence of police and the accused were shown to the victim prior to identification. In his Court statement the victim stated that during the incident he and Roopdas were successful in removing the towel from the faces of the accused and thus they had occasioned to see their faces.
4. In the FIR, *Dehati Nalasi* or in the diary statement neither victim nor his friend Roopdas has stated that they had removed the towel from the faces of the accused persons. Thus Statement to this effect in their deposition is clear contradiction and omission. In absence of such statement

there was no occasion for them to see the faces of the accused, therefore, the identity of the accused is in doubt.

5. In our considered view the finding recorded by the Trial Court that identity of the accused is not established is borne out from the evidence available in the record.
6. No case for grant of leave to appeal against the acquittal is made out. Accordingly, Cr.M.P. deserves to be and is hereby dismissed.

Sd/-

Prashant Kumar Mishra)
Judge

Ankit

Sd/-

(Gautam Chourdiya)
Judge