

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2369 of 2018

State Of Chhattisgarh Through- Station House Officer, Police Station Balrampur, District- Balrampur Ramanujganj, Chhattisgarh., District : Balrampur, Chhattisgarh

---- Petitioner

Versus

1. Devkumar Yadav @ Nan Bau S/o Late Hari Yadav Aged About 37 Years Occupation Farmer Resident Of Village Masapara, Tarkadand, Police Station Balrampur, District- Balrampur, Ramanujganj, Chhattisgarh., District : Balrampur, Chhattisgarh
2. Madhusudan Yadav S/o Ramgahan Yadav Occupation Agriculture, R/o- Village Tarkakhand Matapara, Police Station Balrampur, District- Balrampur Ramanujganj, Chhattisgarh., District : Balrampur, Chhattisgarh

---- Respondents

For Appellant/State : Smt. Fouzia Mirza, Addl. Advocate General

D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava & Hon'ble Mrs. Justice Rajani Dubey

Order On Board

07/01/2019

1. Heard on IA No.1, application for condonation of delay in filing the appeal.
2. Upon due consideration of the grounds urged in the application, we are inclined to allow the same. Accordingly, the application is allowed. Delay in filing the appeal is condoned.
3. Heard on prayer for grant of leave to appeal.
4. Learned State counsel would submit that present is a case where the respondents were accused of having committed murder of Lakhpati Bai (wife of respondent No.1). She would submit that the evidence of Lalmohan Yadav (PW5), son of appellant No.1 and the deceased is that before the dead body of the deceased was found in the village pond, the husband and

wife were seen at home. On the strength of this evidence, learned State counsel would argue that before the dead body was found in the village pond, the deceased was in her house along with her husband, therefore, on the basis of last seen theory, the prosecution case is made out.

5. We have heard learned counsel for the State- appellant and gone through the evidence on record.
6. It is not in dispute that dead body of the deceased Lakhpatiya Bai was found in the village pond. The said pond has not been proved to be in exclusive possession of the accused. According to the prosecution evidence, the deceased died of strangulation but there is no circumstantial evidence led by the prosecution to connect the respondents with the deceased that it is the accused who strangled her, by leading any evidence of forensic nature. The son of the deceased though says that he had seen his mother with his father in the resident, there is no evidence of any quarrel immediately before the dead body was found in the village pond. There is no evidence of any serious dispute between the respondent accused and the deceased. In these circumstances, when the prosecution sought to prove the case only on the basis of circumstantial evidence of last seen, which, strictly speaking, does not apply in the factual context of present case, the Court below does not seem to have committed any patent illegality or perversity so as to warrant interference by this Court.
7. Accordingly, no case for grant of leave to appeal is made out. The Petition is therefore dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge