

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.243 of 2011**

1. Sanjeev Joshi, aged about 32 years, S/o. Sumer Chand Joshi, Police Station Lal Bag Rajnandgaon Tah & Distt. Rajnandgaon (CG)
2. Smt. Bhuneshwari, W/o. Sanjeev Joshi, aged about 24 years, Police Station Lal Bag Rajnandgaon Tah & Distt. Rajnandgaon (CG)

---- Appellants**Versus**

- State Of Chhattisgarh Through Police Station City Kotwali Rajnandgaon Distt. Rajnandgaon (CG).

---- Respondent

 For the appellant :Shri VG Tamaskar, Advocate
 For the Respondent/State:Shri Dinesh Tiwari, Dy. Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****03.02.2020**

1. The appeal is preferred against judgment dated 15.3.2011 passed by Additional Sessions Judge, Rajnandgaon (FTC) (CG) in Session Trial No.70/2009 wherein the said Court convicted both the appellants for the commission of offence under Section 201 read with Section 34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for 03 years and to pay fine of Rs.500/- each with default stipulation.

2. As per the version of the prosecution, one Yogendra Lahare committed murder of Rajesh Jain, who was warden of Devanand Jain School, on 17.12.2008 at about 8.30 pm. Allegation against the appellants is that they washed blood on the hands of said Yogendra Lahare by cotton and again they set fire on the clothes of said

Yogendra Lahare to disappear the evidence of commission of offence with intention of screening him from legal punishment. The matter was reported, investigated and the appellants were charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellants submits as under:

(i) There is no evidence to connect the appellants that they were aware of the fact regarding commission of murder of Rajesh Jain by said Yogendra Lahare.

(ii) Recovery of clothes is not a connecting piece of evidence because the same is not identified to be the clothes Yogendra Lahare.

(iii) The trial Court has not evaluated the evidence properly, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the judgment impugned.

6. First question for consideration before this Court is whether the appellants were knowing or having reason to believe that Yogendra Lahare committed murder of Rajesh Jain. To substantiate the charges the prosecution has examined as many as 15 witnesses. No one deposed before the trial Court that Yogendra Lahare committed murder of Rajesh Jain. All the witnesses were unable to state the author of crime against said Rajesh Jain. No

one deposed before the trial Court that any of the appellants was having knowledge regarding murder of Rajesh Jain or having reason to believe that the said offence is committed.

7. Mahendra Kumar Jain (PW-3), Shyam Sunder Sharma, Incharge of Police Station City Kotwali, Rajnandgaon, deposed before the trial Court that on discovery statement of the appellant Bhuneshwari, he seized burnt clothes and ashes from the garbage of village Kankthera but there is no evidence that said clothes and ashes were identified to be of Yogendra Lahare, therefore, seizure of the burnt clothes and ashes from the garbage are not connecting piece of evidence against the appellant to establish that they caused any evidence of commission of that offence to disappear with intention of screening said Yogendra Lahare .

8. Taking into consideration the totality of the facts, the finding of the trial Court is not sustainable and the same is hereby set aside.

9. Accordingly, the appeal is allowed. Conviction of the appellants for the offence under Section 201 read with 34 of the IPC is hereby set aside. They are acquitted of the said charges. The appellants are reported to be on bail. Their bail bonds shall continue for further period of six months from today as per the terms of Section 437A of the CrPC.

Sd/-
(Ram Prasanna Sharma)
JUDGE