

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 264 of 2020**

- State Of Chhattisgarh Through Station House Officer, Police Station Gandhinagar, Ambikapur, District Surguja Chhattisgarh.

----Applicant**Versus**

1. Chaman Harijan S/o Karmen Harijan Aged About 45 Years R/o Village Sukhari, Bazar Para, Police Station Gandhi Nagar, Ambikapur, District Surguja Chhattisgarh.
2. Ramprasad S/o Balsai Aged About 30 Years R/o Village Sundarpur, Lodhima, Police Outpost Manipur, District Surguja Chhattisgarh.
3. Daya Shankar Harijan S/o Sukhan Ram Aged About 30 Years R/o Village Sukhari, Bazar Para, Police Station Gandhi Nagar, Ambikapur, District Surguja Chhattisgarh.
4. Devi Prasad @ Gupta Harijan S/o Not Known Aged About 30 Years R/o Village Sukhari Bazar Para, Police Station Gandhi Nagar, Ambikapur, District Surguja Chhattisgarh.
5. Nandhari S/o Vishun Ram Aged About 19 Years R/o Village Kusu Barpara, Police Station Darima, District Surguja Chhattisgarh.

---- Respondents

For Applicant-State

:- Shri Avinash Choubey, PL

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Gautam Chourdiya
Order On Board

By

Prashant Kumar Mishra, J.

29/01/2020

1. On due consideration delay of 413 days occurred in filing of the Cr.M.P. is condoned. Accordingly, I.A. No.01/2020, for condonation of delay is allowed.
2. The trial Court has acquitted the accused persons of the charges under Sections 302/34, 201/34 of the I.P.C.
3. Dead body of the deceased - Jageshwar was found under the canal on 23.03.2015. Initially, the Police was informed that the deceased was used to consume liquor, therefore, he might have died due to fall. The postmortem was conducted on 23.03.2015 but the report was received by the concerned Police on 21.11.2015. Thereafter the diary statement of the wife of the deceased namely; Tejmani Lakda (PW-4) was recorded on 20.01.2016 i.e., after about 10 months of the incident. The prosecution relied on theory of last seen together and the confession by accused – Ramprasad and Deviprasad under Section 164 of Cr.P.C. However, in this statement they have attributed the act of murder to Chaman

who himself has not made any confessional statement.

4. It is settled by the Supreme Court in **Surinder Kumar Khanna vs. Intelligence officer, Directorate of Revenue Intelligence** {(2018) 8 SCC 271} that statement of one co-accused can be used for other co-accused as witness, if it satisfies the prerequisite of Section 30 of the Indian Evidence Act, 1872 which is clearly missing in the case for the reason that accused Ramprasad and Deviprasad were not involved in the commission of crime but fastened the entire liability on the accused- Chaman. Except for the above evidence there is no conclusive evidence either against accused- Chaman or against other co-accused persons, therefore, no case for grant of leave to appeal is made out.
5. Accordingly, the Cr.M.P. deserves to be and is hereby dismissed.

SD/-
(Prashant Kumar Mishra)
Judge

SD/-
(Gautam Chourdiya)
Judge

Ayushi