

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 972 of 2020**

- State of Chhattisgarh, through- Police Station Dhamdha, District- Durg (C.G.).

---- appellant

Versus

- Bhim Yadav @ Rajesh Yadav, S/o Rupkaran Yadav, aged about 25 years, Occupation Farmer, Resident of Village Khilorakala, Police Station Dhamdha, District- Durg (C.G.).

---- Respondent

For Appellant : Shri K. K. Singh, Govt. Advocate

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

25/08/2020

The matter is heard through Video Conferencing.

2. Heard on IA No. 01, application, for condonation of delay of 216 days in filing the CRMP.
3. Upon due consideration, delay of 216 days in filing the CRMP is condoned. Accordingly, the application (IA No. 01) is allowed.
4. Also heard on application for grant of leave to appeal under Section 378(3) of Code of Criminal Procedure, 1973.
5. By the Judgment dated 18.09.2019, passed by Second Additional Sessions Judge, Durg, C.G. in S.T. No. 71/2019 the respondent/accused has been acquitted of the charge under Section 302 of IPC.

6. One Poshan Yadav lodged FIR on 17.06.2018 alleging that at about 09.45pm on 16.06.2018 some unknown person has committed murder of his brother- Jait Ram Yadav, assaulting him by means of club. In the FIR he informed the Police that hearing the noise of the assault Kumari Maheshwari Yadav, Shesh Narayan Yadav and Kanhaiya Yadav reached the spot but at that time the accused had already run away. Thus, FIR was lodged against the unknown person. Diary statements of Kumari Maheshwari, Neelkanth Yadav and Poshan Yadav were recorded on 18.06.2018 itself, however, that of Kanhaiya and Shesh Narayan were recorded after one month and one week i.e. 23.07.2018. Both these witnesses were projected as eyewitnesses by the prosecution. In his Court statement Shesh Narayan Yadav (PW04) would admit that he did not inform about the Police about witnessing the accused assaulting the deceased immediately after the incident as he was fearing the accused. He also admits that when the villagers assembled on the spot he did not inform about the name of the assailant to the villagers also.
7. The trial Court has rightly found that non-disclosure of the name of assailant for one month and one week is fatal for the prosecution and further that such non-disclosure for enormous length of time weakens the creditability of the witnesses.
8. The view taken by the trial Judge while acquitting the accused appears to be one probable view in the matter, therefore, no case for grant of leave to appeal is made out. The Cr.M.P. deserves to be and is hereby dismissed.

Sd/-

Prashant Kumar Mishra
Judge

Sd/-

Gautam Chourdiya
Judge

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