

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No.811 of 2020

State Of Chhattisgarh Through Station House Officer, Police Station
Nawagarh, District Janjgir Champa Chhattisgarh ---- **Petitioner**

Versus

1. Melaram S/o Tiharu Ram Sahu Aged About 35 Years Resident Of Village Loharsi, Police Station Shivarinarayan, District Janjgir Champa Chhattisgarh
2. Sitaram S/o Niranjana Sahu Aged About 32 Years Resident Of Village Amoda, Police Station Nawagarh, District Janjgir Champa Chhattisgarh
3. Yaadram S/o Niranjana Sahu Aged About 34 Years Resident Of Village Amoda, Police Station Nawagarh, District Janjgir Champa Chhattisgarh

--- **Respondents**

For State/Petitioner : Mr. K.K. Singh, Government Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

01/04/2021

Heard on prayer for condonation of delay in filing appeal as well as prayer for grant of leave to appeal.

1. Even if we were inclined to condone the delay in filing the instant appeal, we do not find present to be a fit case for grant of leave to appeal against acquittal of two accused Sitaram and Yaadram.

2. Learned State counsel would argue that though the Trial Court has convicted Melaram for the assault and murder, Sitaram and Yaadram have been acquitted by the Trial Court by giving benefit of doubt though Saraswati (PW8) has clearly deposed that at the time when Melaram was inflicting injury on victim, these two accused were also present and they were loudly speaking that all should be murdered and no one should be spared. He would argue that even though these two accused did not commit any overt act, the utterances made by them at the spot telling Melaram to kill all and not to spare anyone is clear proof of all of them sharing common intention to cause death.

3. We have gone through the impugned judgment and the evidence, particularly evidence of Saraswati (PW8). At the first place, though there are other eyewitnesses of the incident which have been believed to convict one of the co-accused Melaram, learned Trial Court had taken note of evidence of these witnesses that other eyewitness have not involved the accused Sitaram and Yaadram in the alleged incident of assault. The prosecution evidence against Yaadram and Sitaram is mainly based on the evidence of Saraswati (PW8) another eyewitness only and that too because she has deposed in the Court that at the time when Melaram was assaulted, these two accused stated that everyone should be murdered and no one should be spared. However, the learned Trial Court had disbelieved this part of the Court statement of Saraswati (PW8) on the ground that this is an improvement in the Court statement over her case diary statement Ex.P/2 wherein, she has not stated that at the time of incident Yaadram and Sitaram were telling Melaram to kill all and spare none.

4. Except the aforesaid statement which also suffers from improvement, no other evidence has been led by the prosecution to involve Sitaram and Yaadram in the alleged incident. Taking into consideration the aforesaid aspect and that other witnesses have not supported, the trial Court has recorded a finding that the involvement of these two accused Sitaram and Yaadram becomes doubtful that they shared any common intention with co-accused Melaram to kill the deceased.

5. In the absence of any patent illegality or perversity in the finding of learned trial Court, merely because of possibility of another view, we are not inclined to interfere with the judgment of acquittal of Yaadram and Sitaram. The CRMP has no merit and is therefore dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Narendra Kumar Vyas)
Judge