

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 724 of 2021**

- State Of Chhattisgarh Through Station House Officer, Police Station Malkharauda District Janjgir Champa Chhattisgarh

---- Petitioner**Versus**

- Niranjana Prasad Rathore S/o Late Kaliram Rathore Aged About 62 Years R/o Bhagat Chowk, Purani, Basti, P.S. Jajgir, District- Janjgir-Champa, Chhattisgarh

--- Respondent

For Petitioner/State : Mr. Lalit Jangde, G.A.

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava****17.09.2021**

Heard on application for condonation of delay in filing the application as also on grant of leave to appeal.

1. Even if we were inclined to condone the delay, we do not find any merit in the application because the involvement of the accused/Niranjana Prasad Rathore in so far as murder of Vishnu Prasad Nirmalkar is concerned, the evidence of all the prosecution witnesses mainly PW-2, PW-4, PW-5 and PW-6 which includes injured eye-witness PW-4 is only to the effect that initially co-accused Pramod Rathore entered the house of the deceased and started assaulting the deceased with hands and fists and dashed his head against the staircase. According to the witnesses, by that time, accused Niranjana Prasad Rathore had not come. These witnesses further state that some of these witnesses went to accused/Niranjana to inform that his son Pramod Rathore was assaulting deceased Vishnu and at that stage, this accused Niranjana came there stating that if rent/interest is not paid the deceased is liable to be beaten up. Accused/Niranjana Prasad Rathore is not stated to have assaulted the deceased or having said anything or having done any other criminal overt act to prove that he shared commission intention with co-accused Pramod Rathore to kill the

deceased/Vishnu Prasad Nirmalkar. The evidence of the witnesses not even show that after arrival of Niranjana Prasad Rathore, Pramod continued the assault. That means after arrival of Niranjana, no further assault was given by Pramod Rathore.

2. In the conspectus of the aforesaid evidence the trial Court has rightly concluded that accused Niranjana Prasad Rathore could not be convicted under Section 302 IPC with the aid of Section 34 IPC as sharing common intention with co-accused Pramod to kill the deceased Vishnu Prasad Nirmalkar.

3. Therefore, we do not consider present to be a fit case for granting leave to appeal as against acquittal of accused Niranjana Prasad Rathore from charges of commission of offence under Section 302 IPC.

4. The application is therefore, rejected.

5. Before parting with the case we must hasten to add and make it clear that this order is only confined to the aspect whether accused Niranjana Prasad Rathore was liable to be convicted under Section 302 IPC along with co-accused Pramod Rathore. The findings recorded here in shall not have any impact or effect on merits of the appeal, if any, filed by Pramod Rathore and/or Niranjana Prasad Rathore, against their respective conviction.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge