

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 730 of 2021***{Arising out of order dated 16.04.2019 passed by learned Sessions Judge,
Balodabazar in Sessions Trial No. 53 of 2018}*

- State of Chhattisgarh, Through : Police Station City Kotwali, District :
Balodabazar-Bhatapara (C.G.)

---- Appellant**Versus**

1. Suraj Nishad, S/o Shatruhan Nishad, aged about 19 years.
2. Deep Kumar Nishad @ Golu, S/o Lakhan Nishad, aged about 20 years.
Both are R/o Village Purena Khapri, Balodabazar, District Balodabazar-
Bhatapara (C.G.)

---- Respondents

For Appellant/State : Shri Ravish Verma, Government Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava, Judge
Hon'ble Smt. Justice Vimla Singh Kapoor, Judge

Judgment on Board**Per Manindra Mohan Shrivastava, Judge****24.09.2021**

1. Heard on I.A. No. 1 of 2021, application for condonation of delay and also application for grant of leave to appeal under Section 378 (3) of Code of Criminal Procedure, 1973.
2. Even if we were inclined to condone delay, we do not find any merit in the application because the prosecution could not succeed in leading any clinching circumstantial evidence and that too, chain of such circumstantial evidence so as to form an opinion that in all probability the accused alone must have killed the deceased.

Though learned counsel for the State / Appellant submits that there is evidence of last seen as stated by Smt. Saraswat Bai (PW-3) and on the basis of the memorandum of the accused supported by Tilakram (PW-1), Jethuram (PW-4) and Hiralal Yadav (PW-5) club allegedly used in giving assault and the clothes of the accused have been seized, such recovery has not led to discovery of any incriminating fact involving the accused in the alleged commission of offence.

Assuming for the argument sake that there is an evidence of last seen, as is well settled, only on that basis, no conviction could be ordered.

3. Therefore, in our opinion, the view taken by the learned trial Court that the prosecution has failed to prove the case beyond reasonable doubt and the accused is entitled to be acquitted by giving benefit of doubt, does not suffer from any patent illegality or perversity so as to call for any interference against the judgment of acquittal, given the limited scope of interference against such order. In the result, this petition is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge