

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No.1348 of 2016

Prakash Dewangan S/o Late Laxmikant Dewangan Aged About 37 Years
R/o Barpali Chowk, Champa, District Janjgir- Champa, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Station House Officer, Police Station- Champa, District Janjgir- Champa, Chhattisgarh
2. Mahendra Kumar Suryavanshi @ Shiva S/o Jeewan Lal Suryawanshi
Aged About 21 Years Occupation- Agriculture/ Labour, R/o Village Kamrid,
Police Station Saragaon, District- Janjgir- Champa, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Sumit Singh, Advocate
For State	:	Mrs. Fouzia Mirza, Additional A.G.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

11/01/2021

Heard on application for grant of leave to appeal.

1. Learned counsel for the petitioner would argue that though there was no eyewitness, the prosecution led clinching circumstantial evidence in the form of recovery of cable wire and cash of Rs.26,130/- from the possession of the accused with the police brought the prosecution case that the respondent accused in order to snatch money from his employer killed him by strangulating. Learned counsel for the petitioner would further argue that out of two seizure witnesses, PW5 (Mohd. Shahid Sheikh) and independent seizure witness has proved recovery of Rs.26,130/- and also seizure of cable wire which is alleged to be used by the accused in climbing up the wall of the shop where the dead body of the deceased was found. He would also submit that he had also confessed before PW5 (Mohd. Shahid Sheikh) that he had killed the deceased.
2. We have gone through the impugned judgment and the evidence of the prosecution witness and given our anxious the submission made by learned counsel for the petitioner but find ourselves unable to agree with the same.

3. The entire case of the prosecution is based on circumstantial evidence. Recovery of cash of amount of Rs.26,130/- cannot be said to be incriminating material either for the reason that the amount is so much so that it could not probably found to be with the accused, he being only an employee in the shop. Further there is no identification of the cash. The other part is recovery of cable wire that does not by itself lead to any conclusion with regard to guilt. The so called extra-judicial confession made before PW5 (Mohd. Shahid Sheikh) is wholly inadmissible because it is said to be given in the presence of the police.

4. Learned Trial Court faced with the aforesaid collective of circumstantial so called circumstantial evidence found the case of the prosecution to be doubtful and has granted benefit of doubt to the accused by acquitting him. The view taken by learned Trial Court appears to be quite possible and plausible. In the absence of there being any patent illegality or perversity in the judgment of acquittal, merely because of another view is also possible, we are not inclined to grant leave to appeal, given the limited scope of interference against the judgment of acquittal, the CRMP is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge