

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 339 of 2015**

The State of Chhattisgarh, Through District Magistrate, Kanker,
Chhattisgarh.

---- Appellant**Versus**

1. Ramsai Dhurwa S/o Shatruram Dhurwa, aged about 20 years, By
Occupation Agriculturist, R/o village Khadgaon, P.S. Antagarh, District
Kanker, Chhattisgarh.
2. Samsai Dhurwa S/o Shatruram Dhurwa, aged about 25 years, By
Occupation Agriculturist, R/o village Khadgaon, P.S. Antagarh, District
Kanker, Chhattisgarh.

---- Respondents

For Appellant	:	Shri B. Gopa Kumar, Deputy Advocate General.
For Respondents	:	None.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****28/07/2015**

1. IA No. 1 of 2015 has been filed to the delay of 26 days in filing the application for leave to appeal.
2. The present application for leave to appeal has been filed assailing the order of acquittal dated 13.12.2014 of the Respondents under Section 302/34 IPC ordered by Sessions Judge, Uttar Bastar, Kanker in Sessions Trial No. 3 of 2014.

3. Learned Counsel for the State submits that the shop of the deceased had been burgled twice earlier for which he had expressed suspicion against the Respondents. Two persons had been seen near the shop prior to the occurrence by PW-5, Bhavesh Anchala. The Respondents were taken into custody on suspicion and on their confession, two pieces of wood suspected to have been used for the assault as also a Tangiya were recovered, marked Exhibit P-4 and P-7. The clothes of the Respondents were also seized, marked Exhibit P-5 and P-8. The doctor had opined that nature of the injuries on the person of the deceased could have been caused by the wooden pieces and Tangiya. The recovery were crucial links in the chain of circumstances even if there was no eye-witness to the occurrence. Suspicion had been expressed against the Respondents because of their past conduct. Blood had been found under the bridge where the body of the deceased was lying according to the spot map, Exhibit P-2. Acquittal in the circumstances was not justified.

4. We have considered the submissions on behalf of the Appellant/State.

5. An order of acquittal is required to be interfered with only if there has been miscarriage of justice by complete mis-appreciation of evidence or failure to look into relevant evidence. In a case of circumstantial evidence, greater scrutiny is called for. All links in the chain of circumstances must be interconnected leading to the only conclusion for possibility of the Respondents being the assailants excluding any possibility compatible with their innocence.

6. In the facts of the present case, there is no eye-witness to the occurrence. A mere suspicion had been expressed earlier by the deceased against the Respondents. PW-5, who allegedly saw two persons near the shop of the deceased has stated that he could not identify them. There is no other incriminating circumstances against the Respondents except their confession

and the recovery pursuant thereto. The confession is admissible in evidence only to the extent permissible under Section 27 of the Evidence Act with regard to their clothes and the alleged weapons of assault. In the FSL report, no blood has been found on the alleged weapons of assault or clothes of the Respondents.

7. We therefore are not satisfied that the prosecution has been able to conclusively establish that the Respondents were the assailants based on circumstances completely incompatible with their innocence.

8. The delay is condoned. Leave to appeal application is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge