

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Acquittal Appeal No. 216 of 2015**

Shiv Kumar Dubey S/o Late Babu Lal Dubey Aged About 60 Years R/o  
Village - Ratanpur, P.S. Ratanpur, District - Bilaspur Chhattisgarh

---- Appellant

**Versus**

1. State Of Chhattisgarh Through, Police Station Ratanpur, District Bilaspur Chhattisgarh
2. Dharamraj Maravi S/o Rambharosh Maravi Aged About 24 Years R/o Village Pali, P.S. Pali, District Korba Chhattisgarh
3. Aakash Singh Thakur S/o Shivshankar Aged About 21 Years R/o Village Pali, P.S. Pali, District - Korba Chhattisgarh
4. Deepak Vaishnav S/o Umadhankar Vaishnav Aged About 20 Years R/o Village Pali, Near High School, P.S. Pali, District - Korba Chhattisgarh
5. Mayank Singh Thakur S/o Harendra Singh Thakur Aged About 20 Years R/o Village Pali, P.S. Pali, District - Korba Chhattisgarh
6. Satish Sharma @ Shibbu S/o Murli Manohar Sharma Aged About 20 Years R/o Village Pali, Patel Mohalla, P.S. Pali, District - Korba Chhattisgarh

---- Respondents

---

|                    |                                |
|--------------------|--------------------------------|
| Petitioner:        | Shri Arvind Sinha, Advocate.   |
| Respondents/State: | Smt. Smita Ghai, Panel Lawyer. |

---

**Hon'ble The Chief Justice**  
**Hon'ble Shri Justice P. Sam Koshy**

**Order On Board****Per Navin Sinha, Chief Justice****11/12/2015**

1. The present appeal assails acquittal of Respondents No.2 to 6 from the charge under Sections 398/34 and 458 IPC dated 30.11.2015 ordered by the 5th Additional Sessions Judge, Bilaspur in Sessions Trial No.21/2015.
2. Learned Counsel for the Appellant submits that the Additional Sessions Judge has not adequately considered the evidence of Deepak Dubey, PW-16 who stated having recognized Respondent No.5. The others

were accompanying him. Merely because investigation has been defective and the ownership of the motorcycle recovered has not been confirmed, was not sufficient to acquit when there has been recovery of motorcycle and "gupti", Exhibit P-14 from the place of occurrence.

3. We have heard Learned Counsel for the State also.

4. Respondent No.5 is the grand son of the Appellant. According to the allegations in the First Information Report and the police statement recorded under Section 161 Cr.P.C, the persons who allegedly entered the house to commit dacoity, had their faces covered. The Appellant therefore acknowledges that he could not identify any one of them. The Trial Court therefore in our opinion has rightly disbelieved the dock identification especially when there was no test identification parade even held. The Trial Judge has adequately noticed the inconsistencies in the evidence of the informant when he acknowledges in his Court deposition that the intruders had their faces covered and that he did not recognize any one of them.

5. In our opinion, merely because a motorcycle may have been found outside and may have been belonging to one of the persons as alleged by the Appellant cannot be sufficient to conclude that the owner of the motorcycle was necessarily the person who committed the present offence in absence of any evidence with regard to the same and the 'gupti' has not been recovered from the conscious possession of any of the Respondents. The evidence of Deepak Dubey, PW-16 is considered wholly unreliable when he states that he saw Respondent No.5 from behind and recognized him. The Trial Judge has adequately summed up his conclusion in paragraph-28 with regard to the contradictions in the evidence of the prosecution making the alleged identification claimed by the Respondents highly doubtful and suspicious.

6. In the entirety of the facts and circumstances of the case, we find no

reason to interfere with the acquittal.

7. The appeal is dismissed.

Sd/-  
(Navin Sinha)  
**CHIEF JUSTICE**

Sd/-  
(P. Sam Koshy)  
**JUDGE**

Priya