

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 195 of 2016**

The State Of Chhattisgarh Through- District Magistrate, Rajnandgaon,
Chhattisgarh.

---- **Petitioner****Versus**

Ishwar Das @ Bablu S/o Faguwadas Vaishnav Aged About 48 Years
R/o Village Barbaspur, Police Station Gandai, District Rajnandgaon,
Chhattisgarh.

-----**Respondent**

For Petitioner/State:
For Respondent:

Smt. Madhu Nisha Singh, Panel Lawyer.
Shri Abhishek Sharma, Advocate

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy
Order on Board

Per Navin Sinha, Chief Justice**20.4.2016**

1. I.A. No.1 of 2016 has been filed to condone delay of 33 days in filing the Application.
2. After hearing the Learned Counsel for the parties and considering the duration, delay is condoned.
3. The State assails acquittal of the Respondent dated 26.09.2015 under Sections 397, 302 and 201 of I.P.C. by the Additional Sessions Judge, Khairagarh in Sessions Trial No. 07/2013.
4. The deceased is stated to have been assaulted inside the house during the course of dacoity.
5. Learned Counsel for the State submits that certain ornaments of the deceased have been recovered from the bushes on the confession of the

Respondent identified by the son of the deceased. The “Khalbatta” with which the deceased is alleged to have been assaulted has also been recovered on his confession and blood has been found on it the FSL Report.

6. Learned Counsel for the Respondent has opposed the application urging that the acquittal calls for no interference. The alleged recovery was 25-26 days after the incident.

7. We have considered the submissions on behalf of the parties.

8. Evidence available under Section 27 of the Evidence Act based on confession leading to recovery is corroborative evidence only and not substantive evidence on which conviction can be based. It may raise suspicion against the accused but cannot be considered as proof beyond reasonable doubt. There is no evidence that the blood found on the “Khalbatta” was of the same group as that of the deceased. The mere fact that the jewelery of the deceased may have been recovered on the confession of the Respondent does not automatically lead to an irrefutable presumption of his being the assailant.

9. An order of acquittal is not to be lightly interfered with except when there has been serious miscarriage of justice or gross mis-appreciation of evidence, the findings are perverse or the conclusion was such that no reasonable person would arrive at the same on the basis of the same materials. None of the aforesaid principles are applicable in the present case to grant leave to appeal.

10. The Application is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE