

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 353 of 2016**

State Of Chhattisgarh Through : The Station House Officer, Police
Station Gurur, District - Balod Chhattisgarh

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

Dinesh @ Dinu S/o Makhanlal Mahar Aged About 34 Years R/o. Village
Amdi, Police Station Arjuni, District - Dhamtari Chhattisgarh

---- **Respondent**

For Petitioner:
For Respondent:

Shri U.K.S. Chandel, Panel Lawyer
None

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

Order On Board**Per Navin Sinha, Chief Justice****06/04/2016**

1. The present application seeks leave to appeal questioning the acquittal of the Respondent on 28.11.2015 by the First Additional Sessions Judge, Balod in Sessions Trial No. 82/2014 from the charges under Sections 302 and 201 I.P.C.
2. Learned Counsel for the Petitioner submits that from the evidence of Humanlal, PW-10, the deceased was last seen with the Respondent but acknowledges that no date has been mentioned. Apart from that, it is submitted that there has been recovery of certain items belonging to the deceased from the house of the Respondent, though it is again admitted that the seizure witnesses have not supported the recoveries.
3. We have considered the submissions. The dead body of the deceased was found on 18.8.2014. The missing person's report was

lodged on 21.08.2014. The postmortem reported that the body was in a highly decomposed condition. It was identified by the family of the deceased on 22.8.2014 by her clothes and ornaments. There was no eye-witness to the occurrence and there is no circumstantial evidence available except mere recovery from the house of the Respondent. In the facts and circumstances of the case, it cannot lead to the only inevitable conclusion of his being the assailant.

4. The Learned Trial Judge has adequately summed up his conclusions that there was no eye-witness, the confession and alleged recoveries have also not been proved in accordance with law. There is no evidence to apply the last seen theory. Exhibit P-34 stated to have been written by the Respondent was not proved in accordance with law as being in his own hand writing. Moreover, it did not mention that the Respondent was the assailant and on the contrary attributed homicidal death to unknown person. There has been no investigation with regard to the latter, to conclude that suspicion could not take the place of proof.

5. We find no reason to interfere.

6. The Application for leave to appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE