

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 646 of 2016**

- The State Of Chhattisgarh Through District Magistrate Surguja (Ambikapur) Chhattisgarh.

---- Appellant**Versus**

- Faguram Gond S/o Duhanram Gond Aged About 36 Years By Occupation Agriculturist, R/o Village Rakeli, Gangjhariya, Police Station Darima, District Surguja, Chhattisgarh.

---- Respondent

For Applicant : Shri Adhiraj Surana, Dy. GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board**30/06/2016**

1. Learned counsel for the applicant would submit that the default has already been removed.
2. With the consent of learned State counsel, the matter is heard on admission.
3. This application seeking leave to appeal has been preferred against the judgment of acquittal passed by the Sessions Judge, Surguja, acquitting the accused of the charge under Section 302 IPC.
4. The accused is the son of deceased Duhanram Gond. The deceased was found murdered in his house at about 6 am on 27-4-15. At that time, the mother of the accused i.e. the widow of the deceased had gone to attend

nature's call. When she came back she found the door of the house closed from inside. Her effort to open the door being unsuccessful, she shouted, on which the neighbors assembled and they also tried to open the door, but it could not be opened. After some time, the appellant opened the door and when Somari Bai (PW-1) and other villagers entered the house, they found deceased Duhanram Gond lying on the cot with head injuries and blood was spreading over the floor.

5. The above facts have been stated in the FIR with further information that the deceased was in the habit of abusing his son and on the previous night also he raised quarrel with the accused, therefore, he committed murder by assaulting the deceased over his head by means of axe.
6. When examined in the Court, Somari Bai (PW-1) improved her statement to state that she had witnessed the accused inflicting three axe blows on the head of the deceased, however, thereafter she was declared hostile and when cross-examined, she refused to have seen the accused assaulting the deceased. There is no other ocular version of the incident and the other witnesses including Ram Gond (PW-3), have stated about the presence of the accused in the house but have not stated anything regarding witnessing the incident or the accused having made extra judicial confession.
7. We have perused the entire judgment, copy of the charge-sheet and the deposition of the witnesses.
8. Having carefully examined the evidence, it would appear that the trial Court has found that there being no eyewitness, the circumstantial evidence is not of such nature which only points out towards the guilt of the accused to the exclusion of all other hypothesis. The above finding is one of the plausible finding which can be culled out from the nature of evidence available on

record.

9. It is settled law that a judgment of acquittal cannot be converted into a judgment of conviction if two views are possible on the given set of evidence and the trial Court has taken one of the views.

10. For the foregoing, this Court does not find any substance in the application filed by the State seeking leave to appeal. Accordingly, the leave to appeal is declined and the CRMP is dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Chandra Bhushan Bajpai

ashu