

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 688 of 2016**

State Of Chhattisgarh Through The District Magistrate, North
Bastar, Kanker Chhattisgarh

---- Applicant**Versus**

1. Premsingh Koudo S/o Shri Lalturam Koudo Aged About 42
Years R/o Village Tuagahan, Pathrapara, Police Station Korar,
District - North Bastar, Kanker Chhattisgarh

2. Premlal Koudo S/o Lalturam Koudo Aged About 35 Years
R/o Village Tuagahan, Pathrapara, Police Station Korar, District -
North Bastar, Kanker Chhattisgarh

---- Respondents

For Applicant/State	:	Shri Adhiraj Surana, Deputy Government Advocate
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**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Chandra Bhushan Bajpai**
ORDER

Per Prashant Kumar Mishra, J**28/07/2016**

1. Heard on I.A.No.1/2016 for condonation of delay in filing the petition.
2. This petition seeking leave to appeal is barred by 100 days.
3. After hearing learned counsel for the applicant, we are satisfied that the delay has been properly explained.
4. Accordingly, I.A.No.1/2016 is allowed. Delay condoned.
5. The applicant/State has preferred this Cr.M.P. against the

judgment of acquittal dated 7th December, 2015 passed by the Additional Sessions Judge, North Baster Kanker (CG) in S.T.No. 51/2015 under Section 302 read with Section 34 IPC.

6. The non-applicants were tried for committing murder of deceased-Pardhuran. First Information Report (FIR) was lodged by Johtarin Bai (PW-1), widow of the deceased. In the FIR, four other eye-witnesses namely- Vimlabai (PW-4), Pachon Bai (PW-5), Shyam Kumar Yadav (PW-7) and Birajo Bai (PW-8) were also named. The other named eye-witnesses have not supported the case of prosecution. PW-1, Johtarin Bai has deposed in her examination-in-chief that she has witnessed the incident, however, in cross-examination, she would say that at the time of occurrence she was in the house. Her son aged about 4 years informed that someone is assaulting Pardhuran (since deceased), on which, she went to the place of occurrence. She would further say that when she reached the place of occurrence, Pardhuran was lying on the floor and many villagers had assembled there. On reading the statement as a whole, the trial Judge has concluded that it is doubtful that Johtarin Bai (PW-1) has witnessed the present non-applicants/accused while they were assaulting the deceased. Although, recovery of blood stained Bamboo stick has been made from one of the accused on the basis of his memorandum statement, but the case of the prosecution was not based on circumstantial evidence.

7. Considering the evidence in its entirety, it does not appear that the judgment of acquittal can be converted into a judgment of conviction

because marshalling of evidence is neither faulty nor it can be said that the view taken by the judge could not have been taken on the basis of available evidence. In view of the settled legal position that when two views are possible and the prosecution has taken one plausible view, the judgment of acquittal cannot be converted into a judgment of conviction, this Court does not find any ground for entertaining the application for grant of leave to appeal.

8. Accordingly, the Cr.M.P. is dismissed.

Sd/

(Prashant Kumar Mishra)
Judge

Sd/

(Chandra Bhushan Bajpai)
Judge