

(2019) 07 CHH CK 0063

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition (CRMP) No. 624 Of 2019

State Of Chhattisgarh

APPELLANT

Vs

Ajay Deep Shende And Ors

RESPONDENT

Date of Decision : 10-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304A

Citation : (2019) 07 CHH CK 0063

Hon'ble Judges : Prashant Kumar Mishra, J;Gautam Chourdiya, J

Bench : Division Bench

Advocate : Rajesh Singh

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J

1. Heard on IA No.1, an application for condonation of delay of 103 days in filing the CRMP.
2. On due consideration, IA No.1 is allowed and the delay is condoned.
3. Also heard on admission.
4. The trial Court has acquitted the accused of the charges under Section 304-B read Section 34 of IPC in alternative under Section 302/34 of IPC.
5. Accused No.1 Ajay Deep Shende was married with the prosecutrix (deceased) on 6.10.2015. She was admitted in the Apollo BSR Hospital on 29.10.2016, where she eventually died in the course of treatment on 22.11.2016.
6. The prosecution has alleged that the respondents were demanding Rs. 5 lakhs in dowry and respondent No.1 had also prepared one obscene video of the deceased to blackmail her for demand of Rs.5 lakhs, failing which, she was threatened that the video would be uploaded in the internet. The postmortem report would indicate that the Autopsy Surgeon did find any external injury over

her body although in the treatment slip of the Apollo BSR Hospital she was found to have sustained some abrasions and bruises over her body at the time of admission. The death had taken place due to cardio respiratory failure as a result of multiple organ pathology but there is no opinion of the Autopsy Surgeon that the death was homicidal in nature.

7. Occurrence of cardio respiratory failure as a result of multiple organ pathology may not amount to mechanically driven asphyxia. Even otherwise, the statement of the deceased's mother PW-1 Bimla Ben would clearly indicate that there was no demand of dowry from the accused side at the time of marriage. She also admits that her husband is a labourer earning CRMP No. 624 of 2019 about Rs.6000-7000/- per month and that her son-in-law i.e. accused No.1 earns monthly salary of Rs.41,000/- through his job in private capacity. According to this witness, her son-in-law (accused No.1) used to spend well on her daughter and even she was gifted with a mobile set by him. She also admits that accused No.1 had purchased one Scooty (two wheeler) and golden earrings for her daughter She would further admit that her daughter had no restrictions on her movement and she used to visit her relatives.

8. In so far as preparation of obscene video is concerned, there is no proof on record by showing the obscene video to the Court as to the contents of that video. From the statements of PW-15 Ravindra Upadhyaya, IO, it appears, he had not seized any document of ownership of the laptop nor has produced the original video clippings in the Court. According to this witness, the video which he saw in the Police Station contains faces of the deceased and accused No.1 i.e. the husband and wife. Thus, it would appear that the husband and wife had prepared their own video which was never seen by any individual outside the family and further, the video of the deceased, if at all was obscene, was not with any third person. Moreover, a complete reading of the FIR would discern that the allegations of demand of Rs.5 lakhs was not interlinked with preparation and threatened uploading of the video, they two being separate demands and events.

9. Other witnesses namely PW-4 Kumari Damini Ben and PW-5 CRMP No. 624 of 2019 Suresh Ben have also not made any direct allegation of demand of dowry nor have spoken anything about ill-treatment concerning demand of dowry.

10. In view of the medical evidence , it does not appear that the death occurred in an unusual manner or under abnormal circumstances. Therefore, the trial Court's finding to the effect that the offence under Section 304-B/34 of IPC in alternative under Section 302/34 of IPC is made out, appears to be one probable view in the matter.

11. It is the settled law that if the trial Court has taken one view, which is possible on the basis of evidence available on record, the same cannot be unsettled in Acquittal Appeal.

12. Therefore, no case for grant of leave to appeal is made out.

13. The CRMP is dismissed.