
(2019) 08 CHH CK 0077

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition (CRMP) No. 1870 Of 2019

State Of Chhattisgarh

APPELLANT

Vs

Sanat Kosle And Ors

RESPONDENT

Date of Decision : 13-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302

Citation : (2019) 08 CHH CK 0077

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

Bench : Division Bench

Advocate : Avinash Choubey

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J

1. This is an application for condonation of delay in filing the application.
2. For the reasons mentioned in the application, the delay of 32 days in filing the application is condoned.
3. Accordingly, I.A.No.1 stands disposed of.
4. Trial Court has acquitted the accused from the charge under Section 302 in alternative Section 302 read with Section 34 of the Indian Penal Code.
5. Chameli Bai (since deceased) was married to Ranjit Koshley prior to three years back from the date of incident. Out of the said wedlock two children were born. Ranjit Koshley died of AIDS (Acquired Immune Deficiency Syndrome) disease and thereafter, the deceased started demanding her share of family holdings. The deceased died of burn injuries on 15-8-2017. In the dying declaration she made allegation that all the accused persons poured kerosene oil and set her ablaze.
6. In course of trial, the father & mother of the deceased namely;

Dhaniram Chelak (PW-1) & Bhuri Bai (PW-2), respectively would admit that the deceased was mentally imbalanced after death of her husband and on an earlier occasion also she had tried to immolate herself. They would also admit that after the present incident the accused persons tried to save the deceased and have also born the expense of her treatment.

7. Albeit Subhash Kumar Shukla (PW-15), Naib Tahsildar, who has recorded the dying declaration, has supported the Cr.M.P.No.1870 of 2019 prosecution, yet considering the clear admission of the parents of the deceased regarding the mental imbalance of the deceased it is unsafe to convict the accused persons only on the basis of dying declaration, which always needs corroboration from other evidence and more so when there is evidence that the deceased was not mentally balanced.

8. From the evidence available on record two views may be possible but it is also settled that when two views are possible and the view taken by the trial Court is one such possible view, the High Court in exercise of its jurisdiction under acquittal appeal is not entitled to unsettle the view of the trial Court.

9. Considering the entire evidence available on record, the benefit of doubt must go to the accused and has rightly been extended by the trial Court. There is no substance in this application seeking leave to appeal.

10. In the result, the appeal, sans merit, is liable to be and is hereby dismissed.