

(2019) 11 CHH CK 0023

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 2464 Of 2019

State Of Chhattisgarh Through

APPELLANT

Vs

Manoj Kumar And Anr

RESPONDENT

Date of Decision : 18-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 294, 325, 459, 460, 427, 506

Citation : (2019) 11 CHH CK 0023

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

Bench : Division Bench

Advocate : Chitendra Singh

Final Decision : Dismissed

Judgement

1. On due consideration delay of 127 days in filing of the Cr.M.P. is condoned. Accordingly, I.A. No. 01 of 2019 which is an application for condonation of delay occurred in filing of the instant Cr.M.P. is allowed.

2. The trial Court has acquitted the accused persons of the charges under Sections 459, 460, 294, 506 Part-II, 325, 427/34 of the I.P.C.

3. Accused persons allegedly committed lurking house trespass in the night of 07.09.2009 and assaulted the informant/ injured - Santosh Kumar causing fracture of distal end of radius and ulna bone of left hand. In the FIR lodged at 9:15 am in the morning, he stated that his father has seen the incident and the Kotwar was informed about the incident in the night itself, however, his father PW-5 Ketram has denied to have seen the incident. Kotwar, PW-2 Bedram would state that the complainant did not inform to him before lodging FIR, he also admits that the complainant had not stated the name of the culprit to him.

4. In addition to the above, the wooden raft used for causing the assault has not been recovered. Complainant says that his son Rupesh Kumar has seen the incident, however, Rupesh Kumar has not been examined.

5. Considering the weakness in the prosecution case, the view taken by the trial Court is one possible view in the matter.

6. It is the trite law that when two views are possible in the case and the trial Court has taken one of the views, the judgment of acquittal should not be converted into a judgment of conviction. (See : State of M.P. Vs. Bachhudas alias Balram and others, (2007) 9 SCC 135). Thus, we are of the opinion that the present is not a fit case for grant of leave to appeal, because, the view taken by the trial Judge emanates from the state of evidence on record and the same does not appear to be perverse.

7. Accordingly, the Cr.M.P. deserves to be and is hereby dismissed.