
(2015) 03 UK CK 0064

In the Uttarakhand High Court

Case No : SPLA No. 12/2015 and Government Appeal No. 8 of 2015

State of Uttarakhand

APPELLANT

Vs

Chandra Shekhar Joshi and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304B, 34

Citation : (2015) 2 NCC 207

Hon'ble Judges : Alok Singh, J;S.K. Gupta, J

Bench : Division Bench

Advocate : A.S. Gill, Dy. Advocate General (Criminal) assisted by Milind Raj, Brief Holder, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Alok Singh, J.

CRMA 90/2015 (Delay Condonation Application)

1. There is delay of 208 days in filing this Government Appeal. Accordingly, application seeking condonation of delay (CRMA 90/2015) has been moved. For the reasons stated in the accompanying affidavit, we allow the delay condonation application and condone the delay in filing this appeal.

SPLA No. 12/2015 With Government Appeal No. 8/2015

Heard Mr. A.S. Gill, learned Deputy Advocate General, assisted by Mr. Milind Raj, Brief Holder for the State/applicant.

Present appeal is preferred along with application seeking leave to appeal assailing the judgment and order dated 24.3.2014, passed by the Additional Sessions Judge, Khatima, District Udham Singh Nagar in Sessions Trial No. 307/2011 acquitting the accused respondents from the charge of offences punishable under Section 304B and Section 302 read with Section 34 IPC.

2. Dying declaration (Ex. Ka-4) of the deceased Smt. Pinki Joshi was recorded by PW6 Bhuwan Chandra Pandey, Nayab Tehsildar, on 22.8.2011. PW6 Bhuwan Chandra Pandey, while deposing in the witness box, has stated that Smt. Pinki Joshi was conscious and she had made her statement willingly and without being under any coercion or pressure PW4 Dr. Vibhuti Bhushan, while deposing in the witness box, has stated that Smt. Pinki Joshi was fully conscious and was able to give her statement, and this PW4 has certified fitness of the mental condition of Smt. Pinki Joshi at the time of recording her dying declaration.

3. As per the dying declaration Ex. Ka-4 of Smt. Pinki Joshi, she was not set on fire by any of the accused persons and she caught the fire accidentally while preparing the food.

4. Since in her dying declaration, Smt. Pinki Joshi has not stated anything against the accused persons, therefore, we fail to understand as to how the chargesheet was submitted against the accused persons and why this application seeking leave to appeal has, now, been filed. In view of the dying declaration of the deceased Smt. Pinki Joshi, the impugned judgment and order of acquittal seems to be totally correct and justified. Therefore, no useful purpose will be served by granting the leave to appeal. Therefore, we refuse to grant the leave to appeal. Accordingly, application seeking leave to appeal is rejected. Consequently, the Government Appeal also stands dismissed.