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Dev Narayan Sahu Vs State Of Chhattisgarh And Ors

Writ Petition (S) No. 6377 Of 2019

Court: Chhattisgarh High Court

Date of Decision: Aug. 26, 2019

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Ghanshyam Kashyap, Jitendra Pali

Final Decision: Disposed Of

Judgement

Prashant Kumar Mishra, J

1. On due consideration delay of 333 days in filing of the instant Cr.M.P. is condoned. Accordingly, I.A. No. 01 of 2019 which is an application for

condonation of delay in filing of instant Cr.M.P. is allowed.

2. The trial Court has acquitted the accused of the charges under Sections 450, 376(1), 506, 323 of I.P.C. and Section 25 (1-)( ) of the Arms Act,

1959.

3. Prosecutrix, a married lady aged about 36 years happens to be the Sister-in-law (Bhabhi) of the accused, her husband Vimal Khalkho (PW-3) being

the cousin of the accused. The prosecutrix alleged commission of forcible sexual intercourse on criminal intimidation and causing injuries by means of

a knife. Although, prosecutrix has supported the case of prosecution but in the statement of the prosecutrix and her husband Vimal Khalkho (PW-3)

there are material contradictions, therefore, the trial Court has minutely and elaborately discussed the evidence to highlight that at the time of incident

sister of the prosecutrix was bathing at a distance of about 20-25 meters ; her mother and brother-in- law (Jija) were also available in the house; the

doors of the house were open; the incident has taken place at about 3 P.M. i.e. in broad day light and despite all these circumstances, the prosecutrix

did not resist or raised alarm at the time of alleged sexual intercourse. It is also highlighted that on the date of incident prosecutrix paid Rs.100/- to the

accused for bringing sleeper for herself. The accused was otherwise working in the house of the prosecutrix in connection with construction of house

under CRMP No. 1920 of 2019 the Pradhan Mantri Awas Yojna. Thus, the accused was frequenting the house of the prosecutrix firstly he being

close relative of the prosecutrix and secondly in connection with the construction work in which he was engaged in the house of the prosecutrix.

There is evidence to the effect that husband of the prosecutrix and father of the accused are not in good terms. Immediately after the incident,

Panchayat meeting was convened in which the villagers opined that the prosecutrix has lodged false FIR and she was suggested not to precipitate the

matter.

4. The reasoning assigned by the trial Judge while acquitting the accused are borne out from the evidence on record and is not found to be perverse in

the sense that no prudent man can reach to such conclusion in the state of evidence on record. Having seen the evidence, we are of the considered

view that present is a case where two views are possible.

5. In view of the settled legal position 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), 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 CRMP No. 1920 of 2019 the same does not appear to be perverse.

6. For the foregoing we do not find any ground to entertain this application for leave to appeal. Accordingly, the prayer for leave to appeal is

dismissed.