NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 275 of 2012

State Of Chhattisgarh Through - The P.S. Balco , Distt. Korba C.G.

---- Petitioner

Versus

1. Rajkumar Kerketta, S/o Budh Sai, aged about 30 years, R/o Sangam Nagar, Bhelakachhar, Balco, P.S. Balco Nagar, Korba presently resided at Balmiki, Avash No.89, Manikpur
2. Alma @ Elma W/o Jhangur, R/o Sangam Nagar , Balco Nagar , Korba Presently R/o At Q- Bahar , P.S. Katghora , Distt. Korba C.G.

----Respondents

For Petitioner/State:	Shri Vinod Deshmukh, Deputy Government Advocate.
For Respondent:	Shri Vimlesh Bajpai, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per **Navin Sinha, Chief Justice**

3/12/2015

1. The present application has been filed for leave to appeal assailing acquittal of the Respondents of the charge under Sections 302 and 201/34 IPC in Sessions Trial No.33/2010 dated 19.10.2010 by the 2nd Additional Sessions Judge (FTC), Korba. The appeal is barred by 436 days delay and I.A. No.1/2012 has been filed to condone the same.

2. Learned Counsel for the Respondents has opposed the condonation of delay submitting that it contains no sufficient cause except to take the defence of bureaucratic procedures by movement of files from one table to another.

3. In normal circumstances, we would have rejected the application for condonation of delay on the aforesaid grounds. But since it concerns a serious matter of a criminal offence regarding killing of human being, we

consider it appropriate to condone the delay and take up the application for consideration on merits.

4. The deceased was the brother of Respondent No.1 and the husband of Respondent No.2. His body was found in a well which had been covered.

5. Learned Counsel for the State submitted that the dead body was identified by the mother of the deceased Tiharu Bai. The recovery was on basis of the confession of Respondent No.1. Pick-axe and the spade were recovered on the confession of the Respondents. A towel was found tied around the neck of the deceased suggesting strangulation. The memorandum and seizure witnesses had not denied their signatures and therefore acquittal on basis of the fact that the seizures witnesses had gone hostile considering the evidence unreliable, was not justified.

6. Learned Counsel for the Respondents opposing the application submitted that the mother of the deceased who is alleged to have identified the body in the inquest report, has not been examined as a witness. This becomes very crucial because of the medical evidence of Dr. RK. Divya, PW-1 that he could not state with certainty whether death was by strangulation or in any other manner. More importantly, the Doctor deposed that from the skeletal frame, he could not even say whether it was a male or a female corpse.

7. We have considered the submissions on behalf of the parties.

8. Recovery of a dead body hidden, not visible to others except for a person who may be aware of, can certainly be a very strong incriminating factor and conviction in particular cases may be possible upon the same if other corroborative evidence was available. But in the present case, the alleged recovery on the confession of the Respondents becomes suspicious

and doubtful for conviction for more than one reason. The body was alleged to be identified by the mother of the deceased who was not examined as a witness by the prosecution. Her evidence was very crucial in view of the evidence of the Doctor that it could not be said with certainty whether skeletal remains were of a male or a female. Moreover, the Doctor was unable to give any conclusive opinion with regard to the manner in which death may have occurred or had been caused. In such a situation all myriad possibilities remain open and the benefit of doubt has to be given to the Respondents.

9. We are not satisfied that the present is a fit case for granting leave to appeal.

10. The application is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Priya