

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 668 of 2018**

- State of Chhattisgarh, Through - Police Station Balod, District Balod (C.G.).

---- Petitioner**Versus**

- Kaushal Sahu S/o Narayan Sahu, R/o Jungera, P.S. & District Balod (C.G.)

---- Respondent

For Petitioner/State : Shri Rahul Tamaskar, P.L.
For Respondent : None

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

Per Pritinker Diwaker, J
25/07/2018

1. Heard on admission.
2. The present petition has been filed by the State seeking leave to appeal under Section 378 (3) of the code of Criminal Procedure, 1973 assailing the judgment and order dated 27.09.2017 passed by 1st Additional Sessions Judge, District Balod (C.G.) in Sessions Trial No.54/2017 acquitting the accused/respondent of the charge under Section 302 IPC.
3. The allegation against the accused/respondent is that on 16.02.2017, he was behaving like mad man and committed murder of his father by axe. Based on this, FIR (Ex.P/24) was registered against the

accused/respondent under Section 302 IPC. After filing of the charge sheet, the trial Judge has framed the charge under Section 302 IPC against the accused/respondent.

4. So as to hold the accused/respondent guilty, the prosecution has examined 12 witnesses. Statement of the accused/respondent was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted the accused/respondent as mentioned in para-1 of this judgment. Hence, this petition for leave to appeal.
6. Counsel for the State submits that the trial Court has erred in law in acquitting the accused/respondent even when there is ample evidence against him.
7. We have heard learned counsel for the State and perused the material available on record.
8. During trial, main witnesses to the incident including eye-witnesses (PW/5, PW/6, PW/7, PW/8 and PW/9), have not supported the prosecution case and declared hostile. Considering the fact that the prosecution has failed to adduce any legally admissible evidence against the accused/respondent, the trial Court has come to the conclusion of acquitting the accused/respondent of the charge levelled against him by extending him benefit of doubt. We find no illegality in the order impugned acquitting the respondent particularly when there is a settled legal position that if on the basis of record two conclusions can be arrived at, the one favouring the accused has to be preferred. Even otherwise, the prosecution thus has utterly failed in proving its case beyond reasonable doubt and the trial Court has been

fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. Furthermore, in case of appeal against the acquittal the scope is very limited and interference can only be made if finding recorded by the trial Court is highly perverse or arrived at by ignoring the relevant material and considering the irrelevant ones. In the present case, no such circumstance is there warranting interference by this Court.

9. Accordingly, the CRMP preferred by the State/applicant is bereft of any substance and, therefore, the same is liable to be and is hereby dismissed at the admission stage itself leading to refusal of leave to appeal as sought for by the State.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Gautam Chourdiya)
JUDGE