

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 702 of 2020**

- State Of Chhattisgarh Through- Police Station Kumhari, District- Durg, Chhattisgarh.

---- Applicant**Versus**

1. Smt. Tikeshwari Sahu @ Jyoti W/o Shri Yashwant Sahu Aged About 21 Years Occupation- Labourer, R/o- Choraha Rampur, Police Station- Kumhari, District- Durg, Chhattisgarh
2. Smt. Rajim Sahu W/o- Sevaram Sahu Aged About 45 Years Occupation- Labourer, R/o- Choraha Rampur, Police Station- Kumhari, District- Durg, Chhattisgarh

---- Respondents

For Applicant-State :- Ms. Fouzia Mirza, Addl.A.G.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Gautam Chourdiya
Order On Board

By**Prashant Kumar Mishra, J.****20/05/2020**

1. On due consideration delay of 23 days in filing of the Cr.M.P. is condoned. Accordingly, I.A. No.01/2020, application for condonation of delay is allowed.
2. The trial Court has acquitted the accused – Smt. Tikeshwari Sahu of the charge under Section 302 of the I.P.C. read with

Section 34 of the I.P.C. while acquitted the accused – Smt. Rajim Sahu of the charge under Section 302 of the I.P.C.

3. Respondent No.1 Tikeshwari Sahu @ Jyoti, wife of Yashwant Sahu was living separately from her husband. During this separation she became pregnant and gave birth to a child in her parental house where she resided together with her mother respondent No.2 Smt. Rajim Sahu. On 31.03.2019, respondent No.1 allegedly carried the child in a bucket and thereafter burnt the child in an agricultural field of one - Motilal.
4. According to the prosecution, the respondent No.1 feared being defamed in the village as she has given birth to a baby while she was not living with her husband, therefore, to get rid of the child so that the villagers may not become aware of the incident, she burned the baby. In such case where the basic prosecution case revolves around the fact of giving birth to the deceased baby by the respondent No.1, it was necessary for the prosecution to have prove by DNA profiling that the respondent No.1 was the biological mother of the child. It is also to be seen that there being no eye-witness to the crime, the prosecution should have brought forth evidence in the nature of circumstantial evidence of last seen together or extra judicial confession, however, all the prosecution witnesses have turned hostile and there is no iota of evidence that it was respondent No.1 who committed

the murder with the help of respondent No.2. Merely because PW-8 Dr. Chhaya Tiwari and PW-13 Dr. Isha Arvind have found that the respondent No.1 had given birth to a child probably when the murder has taken place, it cannot be presumed, firstly, that the murdered child was given birth to by the respondent No.1 or secondly, that the child was murdered by the respondent No.1.

5. In the absence of favorable evidence, the trial Court has rightly found that the prosecution has not been able to establish the guilt of the respondents.
6. No case for grant of leave to appeal is made out. Accordingly, the Cr.M.P. deserves to be and is hereby dismissed.

SD/-

(Prashant Kumar Mishra)
Judge

SD/-

(Gautam Chourdiya)
Judge

Ayushi