

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1323 of 2020**

- The State Of Chhattisgarh Through District Magistrate, Rajnandgaon Chhattisgarh

---- Petitioner**Versus**

- Heeru Sori S/o Jagdesh Sori Aged About 40 Years R/o Village Handitola, Police Station Chilhati, District Rajnandgaon Chhattisgarh

---- Respondent

For Petitioner : Shri Ashish Tiwari, Govt. Adv.

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board**05/11/2020**

The application for grant of leave to appeal along with application for condonation of delay has been filed by the State.

1. Firstly, the application for condonation of delay hardly constitutes any ground warranting condonation of delay. The appeal is barred by 382 days and the only ground urged in the application is that the State being multi-functional body, time is taken for fulfillment of departmental formalities which resulted in consuming unexpected long time. In view of recent judicial pronouncement of the Supreme Court, this hardly constitutes any ground to condone the delay. There is no sufficient cause to condone the delay of 382 days.

Even if we were inclined to condone the delay and examine the matter on merits as to whether present is a fit case for grant of leave to appeal, considering that present is a case of acquittal against charge of murder, after going through the impugned judgment of the learned Trial Court, we are more than satisfied that the view taken by the learned Trial Court is plausible and possible rather appropriate view which could be taken on the basis of evidence led by the prosecution.

2. Present is a case where charge of murder is based on only circumstantial evidence. The two circumstantial evidence on the basis of which State sought grant of leave to appeal

were firstly motive and secondly, extra judicial confession.

3. As far as motive part is concerned, even according to the prosecution, there was a case of enmity which had arisen two years before the alleged commission of offence and there is no evidence led that after the first incident of two years before, there were repeated incidents of any quarrel or dispute so as to say that the accused was having a strong motive to commit murder.

4. Second circumstantial evidence of extra judicial confession, if we may say so, has not at all been established during trial. The prosecution itself came out with the case that the accused confessed the guilt while he was in police custody in the presence of villagers. Firstly, the so called confession, while in the custody of the police, is not at all admissible in evidence. Secondly, the learned Trial Court in para 36, 37 and 38 of its judgment has rightly analysed the evidence of memorandum witnesses namely Ramkhilawan (PW6) and Suresh Netam (PW10). These witnesses in the cross-examination have stated and it has been clearly elicited that they were not present in the meeting of the villagers where so called confession was made by the accused.

5. Thus, viewed from any angle, the entire case of the prosecution rests only on an old incident of enmity. In that view of the matter, the Trial Court's conclusion that the prosecution has failed to lead clinching evidence to bring home the guilt of the accused is a plausible and possible view and it does not warrant any interference by grant of leave to appeal, given limited scope of interference against judgment of acquittal as stated in plethora of decisions of the Supreme Court and this Court.

This petition is, therefore, devoid of merit and all the applications are, therefore, rejected.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge