

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL**

**SPLA No. 189/2015
With
Government Appeal No. 134/2015**

State of Uttarakhand ... Applicant/Appellant

Versus

Smt. Kamla Devi & Others ... Respondents

Mr. D.K. Sharma, Additional Advocate General, assisted by Ms. Farida Siddiqui, Brief Holder for the State/applicant/appellant.

Date of Judgment: 30.09.2015

**Coram: Hon'ble Alok Singh, J.
Hon'ble Servesh Kumar Gupta, J.**

Per : Hon'ble Alok Singh, J. (Oral)

CRMA 1625/2015 (Delay Condonation Application)

Present appeal has been preferred with the delay of 78 days. For the reasons stated in accompanying affidavit, we are satisfied that 78 days' delay in filing the present appeal has been properly explained. Therefore, the same is hereby condoned. Delay condonation application is allowed accordingly.

SPLA No. 189/2015 With Government Appeal No. 134/2015

Present appeal is preferred, along with application seeking leave to appeal, against the judgment and order dated 01.04.2015, passed by the Additional Sessions Judge, Almora in Sessions Trial No. 20 of 2012, whereby accused-respondents have been acquitted from the charge for the offence punishable under Section 302 IPC.

As per the prosecution story, PW1 Parwati Devi has reported the matter to the Patti Patwari that her husband Jeewan Singh Negi (deceased) was being

beaten by the accused-respondents, herein, Kamla Devi W/o Dinesh Chandra, Kamla Mishra W/o Leeladhar and Durga Devi W/o Gusai Dutt Mishra, with the help of other miscreants.

While appearing in the witness box, PW1 Parwati Devi has stated that she was not present on the spot at the time of incident and incident was reported to her by Ganesh and Mahesh.

It is important to point out here that neither Ganesh nor Mahesh, who have witnessed the incident and reported the matter to PW1 Parwati Devi, were produced in the witness box.

It is further important to mention that Ganesh has stated in his statement under Section 161 Cr.P.C. that Jeewan Singh Negi was under the influence of liquor and he was not able to stand on his legs and he was again and again falling on the ground.

PW3 Dr. Puran Singh Kholiya, who has conducted the post-mortem on the dead body of the deceased Jeewan Singh Negi, has stated that injuries found on the body of the deceased were possible by falling on the hilly tracks.

Since, Ganesh has stated in his statement under Section 161 Cr.P.C. that Jeewan Singh Negi was under the influence of liquor and he was not able to stand on his legs and he was again and again falling on the ground, therefore, possibility to sustain injuries by falling under the influence of liquor cannot be ruled out completely.

Moreover, there is no eye-witness of the incident. In such circumstances, we do not find any justification to interfere with the impugned judgment of acquittal.

This is a settled position of law that in an appeal against the judgment of acquittal, order of acquittal can be upset only when judgment of acquittal is found to be totally perverted or the prosecution is able to point out that any important piece of evidence, which could have resulted into conviction of the accused, was not considered by the Trial Court. In the present case, no such evidence has been pointed out. Hence, in our considered opinion, no useful purpose will be served by granting the leave to appeal.

Hence, we refuse to grant the leave to appeal. Accordingly, application seeking leave to appeal is rejected. Consequently, the Government Appeal is also dismissed.

(Servesb Kumar Gupta, J.)

(Alok Singh, J.)