

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Misc. Petition No.405 of 2015**

- The State of Chhattisgarh, Through District Magistrate Bilaspur (CG)

---- Appellant/applicant

**Versus**

1. Gopal Patel S/o. Vedprasad Patel, Aged 55 years, Village Okhar
2. Chamaruram Yadav, S/o. Yadu Yadav, Aged 55 years, Village Okhar, OP pachpedi, PS Masturi District Bilaspur (CG)

---- Respondents

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For applicant : Shri CS Patel, Govt. Advocate.

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**Hon'ble Shri Justice Chandra Bhushan Bajpai****Order****20/07/2015**

Heard the instant Cr.M.P. for grant of leave to appeal under Section 378(3) of the Code of Criminal Procedure, 1973 (for short 'the Code').

2. In Sessions Case No.106/2014 (State vs. Gopal Patel & Anr.), the trial Court i.e. Second Additional Sessions Judge, Bilaspur vide judgment dated 23.12.2014 acquitted the respondents of the charges under Section 306 read with Section 34 of the IPC as the prosecution has failed to prove the factum of abettment against the respondents, for instigating Antram to commit suicide, in consequence, he hanged himself on 02.8.2014 morning at his house at village Okhar, Outpost Pachpedi, Police Station Masturi, Distt. Bilaspur. The acquittal appeal along with the Cr.M.P. has been preferred after 38 days of its limitation.

3. Heard on IA No.01, application for condonation of delay in filing the appeal.

4. Learned counsel for the State submits that since the State is a multi-functioning body, for filing the appeal it requires formalities that takes unexpected long time. Even after taking all the efforts, the Cr.M.P. followed by the acquittal appeal could be filed after 38 days of its limitation. Hence, the delay may be condoned and leave to appeal may be granted and the appeal may be admitted.

5. Learned counsel for the applicant/State submits that the trial Court has wrongly appreciated the evidence adduced by the prosecution and wrongly held that there is no abettment and instigation for attempt to commit suicide, the trial Court ought to have convicted the respondents for the offence of abettment.

6. Heard learned counsel for the State and perused the judgment impugned and records of the Court below.

7. As per the facts of the case, on 02.8.2014 Rajesh Patel (PW-7), son of deceased Antram lodged merg intimation (Ex-P/10) that on 01.8.2014 at about 5.00 pm, both the respondents assaulted his father. When the witnesses objected for the same, respondent Gopal Chamru also assaulted him by hand. On 02.8.14, early morning his mother informed him that his father hanged himself. After recording the merg intimation, the police conducted inquest of the dead body, and thereafter sent the body for autopsy. Dr. Sheela Saha (PW-10) after postmortem examination gave her report (Ex-P/1). As per the report, death was suicidal in nature by hanging and cause of death was obstruction in respiratory system and further complications. During investigation, statement of the witnesses were recorded. After necessary investigation, charge sheet was filed before the concerned Judicial Magistrate, who in turn committed the case to the Court of

Sessions. The learned trial Court conducted the trial. During the trial the prosecution has examined 11 witnesses to prove the guilt of the respondents. After the trial the Court held that no any abettment is proved against the respondents/accused, hence, the trial Court acquitted the accused for the offence charged against them.

8. Learned counsel appearing on behalf of the applicant/appellant duly supported the Cr.M.P. followed by acquittal appeal and submitted that as the trial Court erred in holding that no offence under Section 306/34 is made out, leave to appeal may be granted and appeal may be heard.

9. To convict the respondents/accused under Section 306 of the IPC in the instant case, ingredients mentioned under Section 107 of the IPC are to be proved. Looking to the entire evidence adduced by the prosecution it appears that as per statement of Mangalin Bai (PW-8), wife of the deceased, during evening her husband informed that accused persons assaulted him thereafter her husband along with son Rajesh went to lodge report at out post Pachpadi. Apart from this fact, no any other facts was stated by Manglin Bai (PW-8) during trial. Rajesh (PW-7) who witnessed the alleged dispute and marpeet deposed that the respondents assaulted once by hand to his father. Thereafter both of them went to lodge report at Out post Pachpadi. Investigating Officer SR Dubey, (PW-9) has not said anything regarding any report lodged by the deceased or Rajesh Patel (PW-7). No such report or material adduced by the prosecution in the charge sheet. One more reason deposed by Rajesh Patel (PW-7) that some Guljar earlier tress passed in his house for this a panchayat was convened and in the panchayat after hearing, the said Guljar was directed to pay fine of

Rs.700/-. His father was annoyed with the decision of the panchayat for lesser penalty. Father of respondent No.1 Gopal Patel was the Sarpanch at the time, therefore, his father was not agreed with the fine imposed to Guljar. When we appreciate other evidence adduced by the prosecution, it appears that as per Lakhmi Prasad (PW-5), the deceased was in the habit of consuming liquor. As per Vijay Kumar Patel (PW-6), he saw the deceased under the intoxication and at the time he was not able to walk properly and he was also abusing. This witness also admitted that prior to this incident, once the deceased attempted to commit suicide by hanging and in another occasion he attempted for suicide by consuming some poison. Mangalin Bai (PW-8), wife of the deceased, also admitted that prior to the incident, once her husband had consumed poison. Despite of these evidence, no any incriminating evidence was adduced and surfaced during the trial.

**10.** From close scrutiny, it appears that the respondents assaulted the deceased once by hands and also prior to this incident, as Guljar was sentenced by lesser penalty by the village Panchayat, the deceased was angry with the Panchayat. After considering both these facts, for the sake of argument, if it is held to be as it is, even then, assault once to the deceased on account of some dispute not even second time by both the respondents, may not lead the fact of the ingredients of Section 107 of the IPC. Unless any of the ingredients, as required under Section 107 of the IPC, is proved by the prosecution, no offence under Section 306 IPC can be made out. If any decision for which the deceased was not agreed with the decision of the panchayat then the respondents may not be held guilty only because one of the respondent was son of the Sarpanch who headed the same meeting for

the facts and findings regarding alleged tress pass of some Guljar in the house of the deceased. If we consider the other facts, it also find support from the wife of the deceased that earlier deceased once attempted for suicide. As per other witnesses, on two occasions the deceased attempted for suicide, and also he was in the habit of consuming liquor. While appreciating the totality of the evidence adduced, the prosecution has failed to demonstrate any attending circumstances which lead the entire prosecution story for abettment by the respondents to commit suicide. I do not see any reason to grant leave to appeal and for further hearing on entire facts. In the considered view of this Court, the judgment passed by the trial Court is based on appropriate appreciation and, hence, warrant no interference so far as leave to appeal is concerned.

**11.** Consequently, IA No.1, application for condonation of delay, is not liable to be allowed. Looking to the facts that the applicant failed to demonstrate regarding leave to appeal for further proceedings, I am not inclined to leave to appeal. Consequently, application for condonation of delay is dismissed as delay is not properly explained. Also the Cr.M.P. filed by the applicant for grant of leave is also hereby dismissed, consequently, the acquittal appeal also stands dismissed.

**12.** The Cr.M.P. is dismissed as indicated above.

Sd/-  
**(Chandra Bhushan Bajpai)**  
**JUDGE**