

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 885 of 2015

1. State of Chhattisgarh Through Station House Officer, Police Station Kansabel, District Jashpur Chhattisgarh.

---- Applicant

Versus

1. Sunil Kerketta S/o Esmel Kerketta, Age 29 years, Caste Oraon, R/o Chhiropara, Police Station Sanna, District Jashpur Chhattisgarh.

---- Respondent

For Applicant – Ms. Shobha Kashyap, Deputy Govt. Advocate.
For Respondent – None, respondent not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

05/10/2015

1. Heard on I.A.No.1/15 for condonation of delay in filing the instant Cr.M.P. followed by acquittal appeal for grant of leave as the Additional Sessions Judge (FTC) Jashpur, C.G. in Sessions Trial No.09/2015 acquitted the respondent for the offence under Section 306 of the Indian Penal Code (in short 'the IPC') awarding him benefit of doubt as the prosecution failed to prove the offence beyond all probable doubt.

2. The instant Cr.M.P. followed by the acquittal appeal has been filed after 12 days of its limitation. For the reasons mentioned in I.A.No.1/15, the delay of 12 days in filing the instant Cr.M.P. followed by acquittal appeal is hereby condoned and I.A.No.1/15 is hereby allowed.

3. The instant Cr.M.P. is admitted for hearing on motion for determination of the fact whether leave to appeal under Section 378(1) of the Code of Criminal Procedure, 1973 (in short 'the Code') be granted or not.

4. By filing the instant Cr.M.P. the applicant/State has prayed that on the

basis of the grounds taken in the acquittal appeal leave to appeal be granted. The applicant/appellant submitted that the trial Court has wrongfully appreciated the evidence adduced by the prosecution and passed the order in a cryptic and laconic manner without appreciating the material on record. Phooljensiya Kujur (PW-3), Nirmala Lakda (PW-12) clearly stated that the incident committed by the accused/respondent. The trial Court failed to give weight for the same and on the basis of minor contradictions and omissions passed the impugned judgment which is bad in law and is liable to be set aside. It is further prayed that the impugned judgment is bad in law, improper and unjust, therefore deserves to be set aside. The trial Court ought to have convicted the respondent for the offence of abetment for suicide committed.

5. Heard learned counsel for the applicant/appellant/State for leave to appeal.

6. Learned counsel for the applicant/appellant duly supported the grounds taken in the memo of appeal and submitted that on the basis of the grounds mentioned in the appeal, leave be granted and the appeal be heard on its merit and the same be allowed; and impugned judgment passed by the trial Court be set aside and the respondent be suitably convicted.

7. As per facts in brief and the prosecution case, deceased Babali @ Sarita Kujur and the respondent both belongs to the same community, age and area; for 10 to 12 years till the death, both were in love affair and they were in live-in relationship. On 18-08-2014, the respondent went to the house of the deceased, asked her to accompany as he scheduled to go to Bilaspur and both proceeded. Thereafter, on 28-08-2014 some Nowas Kindo intimated Kansabel police that he saw an unknown girl aged about 30 years committed suicide in Lamdand forest on a tree. Thereafter, merg intimation No.49/14 was lodged and Anita Prabha Minj (PW-15), Inspector, after enquiry held that as the respondent refused to marry with the deceased, in

reaction the deceased committed suicide. After completion of the investigation, charge sheet was filed before the Judicial Magistrate First Class, Bagicha, who, in turn, committed the case to the Court of Sessions. The learned Additional Sessions Judge (FTC), Jashpur received the case on transfer and conducted the trial by framing the charge against the respondent/accused under Section 306 of the IPC wherein the respondent denied the charges and prayed for trial.

8. In order to prove guilt of the respondent, the prosecution examined 15 witness in all. After providing opportunity of hearing to the parties, the learned Court below held that the prosecution proved that on 28-08-2014 deceased Babali @ Sarita Kujur committed suicide by hanging; but for the other ingredients, the learned trial Court held that the prosecution failed to prove that the suicide was on account of abetment by the respondent as required under the provision of Section 107 of the IPC. It is proved that both left together on 18-08-2014 but despite this fact abetment of a thing is not proved. No any other external injury but for the ligature mark and connected injuries noticed by Doctor Sunil Kumar Khes (PW- 9) is noticed; also none of the ingredients required to prove the abetment is adduced by the prosecution before the trial Court against the respondent and thereby the prosecution failed to prove the suicide on account of abetment by the respondent, the trial Court acquitted the respondent for offence under Section 306 of the IPC.

9. In order to prove offence under Section 306 of the IPC, all the facts are expected to be proved, one regarding nature of the death as homicidal; for this point as Doctor Sunil Kumar Khes (PW-9) in autopsy not noticed any other external injury except the ligature mark and the connected injuries and also on entire investigation, enquiry in the merged police held the death by hanging and suicidal, even before the trial Court no any evidence for the fact

that she was killed otherwise not proved to the required level and the death of Babali @ Sarita Kujur proved as suicidal. So far as the other requirements are concerned, in the present case, the prosecution has to show any of the ingredients mentioned in Section 107 of the IPC for abetment of a thing. In the present case, there is no eye-witness, no suicidal note, no any evidence regarding any earlier dispute thereby there is no any circumstantial or direct evidence regarding abetment of a thing. If the deceased committed suicide by hanging herself and before the incident she is in company of the respondent, this alone is not sufficient to attract the ingredients of Section 107 of the IPC; to prove the case, the prosecution has to go further and lead evidence regarding any of the ingredients of Section 107 of the IPC. As per the evidence of the prosecution's witnesses, the facts surfaced that the parents of deceased and the respondent proposed and fixed marriage with some other, but no any evidence was adduced that on account of this the deceased was not happy, even otherwise, if this fact that she was not happy for her marriage fixed by her parents with some other boy, then again this fact is in no way helpful for the prosecution because it relates to unwillingness of the deceased and other facts with her parents not to the respondent. Milyanus Kujur (PW-2) admitted that her daughter Babali @ Sarita Kujur used to go along with with the respondent, the same was admitted by Phooljensiya Kujur (PW-3), the mother of the deceased. Phooljensiya Kujur (PW-3) and Nirmala Lakda (PW-12) categorically denied this fact that the deceased committed suicide after refusal of the respondent to marry her, this also helps even otherwise to the respondent that he had not committed any act or denied for the marriage.

10. After due consideration on all the evidence led before the trial Court, charge sheet and the judgment, I do not see any reason to interfere with the findings of the Court below that the prosecution failed to prove the

ingredients of Section 107 of the IPC for abetment of a thing. There is no any evidence that the respondent committed any act which satisfies any of the ingredients provided under Section 107 of the IPC. There is no any material on the basis of which leave to appeal be given for hearing the instant acquittal appeal on its merit. Also the trial Court has not committed any illegality or impropriety while acquitting the respondent from the charge. Consequently, I am not inclined to grant leave to appeal to the applicant/appellant/State.

11. With this, the Cr.M.P. filed by the applicant/State for leave to appeal is hereby dismissed. Also the acquittal appeal filed on behalf of the State is dismissed as not maintainable.

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

Sd/-
(Chandra Bhushan Bajpai)
JUDGE