

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 904 of 2012**

State Of Chhattisgarh Through : Ps Balco-Nagar, Distt. Korba C.G.

---- Petitioner**Versus**

1. Mewalal Rathore, S/o Late Bhagwat Prasad Rathore Aged About 52 Years R/o Village Mudhali, Police Outpost - Hardi-Bazar, Ps Kusmunda, Distt. Korba C.G. At Present R/o At Balco-Nagar, Sector-5, Qr. No. 449, Ps Balco-Nagar
2. Santosh Kumar Rathore S/o Mewalal Rathore Aged About 29 Years R/o Village Mudhali, Police Outpost - Hardi-Bazar, Ps Kusmunda, Distt. Korba C.G. At Present R/o At Balco-Nagar, Sector-5, Qr. No. 449, Ps Balco-Nagar, Distt. Korba C.G.
3. Rajkumar Rathore S/o Mewalal Rathore Aged About 25 Years R/o Village Mudhali, Police Outpost - Hardi-Bazar, Ps Kusmunda, Distt. Korba C.G. At Present R/o At Balco-Nagar, Sector-5, Qr. No. 449, Ps Balco-Nagar, Distt. Korba C.G.
4. Kumari Ranjita Rathore D/o Mewalal Rathore Aged About 19 Years R/o Village Mudhali, Police Outpost - Hardi-Bazar, Ps Kusmunda, Distt. Korba C.G. At Present R/o At Balco-Nagar, Sector-5, Qr. No. 449, Ps Balco-Nagar, Distt. Korba C.G.
5. Smt. Mandakni Bai W/o Mewalal Rathore Aged About 49 Years R/o Village Mudhali, Police Outpost - Hardi-Bazar, Ps Kusmunda, Distt. Korba C.G. At Present R/o At Balco-Nagar, Sector-5, Qr. No. 449, Ps Balco-Nagar, Distt. Korba C.G.

-----Respondents

For Petitioner/State:

Shri Gopa Kumar, Dy. Advocate General.

For Respondents:

Shri Ashutosh Shukla, Advocate.

Single Bench: **Hon'ble Shri P. Sam Koshy, J**
Order On Board

25.7.2016

1. Heard on IA. No.1/2012 for condonation of delay in filing the Petition.
2. On due consideration, the same is allowed. Delay in filing the Petition is condoned.
3. The present Cr.M.P has been preferred seeking for leave to appeal to

challenge the judgment of acquittal dated 17.10.2011 passed by the Sessions Judge, Korba in Sessions Trial No.16/2011. Vide the said impugned judgment, the Court below has acquitted the Respondents/accused of the offence under Section 306/34 IPC.

4. Facts in brief are that on the intervening night of 25/26.9.2010, deceased Sunita Rathore is said to have committed suicide by hanging herself to the ceiling fan in her room. The matter was reported to the police authorities who in turn, registered a case and finally filed a charge sheet against the Respondents/accused wherein the charge under Section 306/34 IPC was framed against them and the matter was put trial.

5. The Court below, after having gone through the pleadings and evidence, finally vide its judgment dated 17.10.2011, held that the prosecution has not been able to establish the offence under Section 306 IPC against the present Respondents/accused.

6. It is this judgment which has been assailed by the State through the Cr.M.P seeking leave to appeal.

7. Learned State Counsel assailing the said impugned judgment submits that the Court below has failed to properly appreciate the evidence of Ramgopal Rathore (PW-6), Naresh (PW-7) and Durga Bai (PW-9) who are the near relatives of the deceased and who have categorically deposed before the Court below about the ill-treatment, torture and harassment given by the Respondents/accused to the deceased compelling her to take the extreme step of ending her life.

8. However, on perusal of the statements of above said witnesses, it is clearly reflected that all of them have made an ombinus statement of ill-treatment, torture and cruelty met by the Respondents/accused upon the

deceased. None of them have been able to show specific instance of a date on which the Respondents/accused have said to have assaulted the deceased. Further, there is no material to substantiate their contentions so far as ill-treatment, torture or assault made by the Respondents/accused. Further, it is also the case that none of these witnesses have been able to state anything which transpired immediately before the date of incident i.e. 25/26.9.2010 so as to draw an inference that it was that act which compelled the deceased to end her life by committing suicide.

9. The Supreme Court in the case of (2002) 5 SCC 371 (Sanjay Singh Sengar vs. State of M.P) has categorically held that “ingredients of Section 107 are that instigating a person to do a thing and “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite to commit an act which in the instant case is not reflected from the records. The Supreme Court in para-12 of its judgment has held as under:-

“The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation”.

10. Similarly, this Court while deciding Cr. Rev. No.511/2004 in the case of Nihalluddin vs. State of Chhattisgarh dated 3.11.2010 has also relied upon the above referred judgment of Supreme Court and also the earlier judgments referred by the Supreme Court, considering the ingredients required for an offence under Section 306/107 IPC and held that there should be a clear *mens rea* to commit an offence under this Section and there should be a direct or active act by the accused which led the deceased to commit suicide. This Court while deciding the case of Nihalluddin vs. State of Chhattisgarh (supra) further held that there must be some evidence of instigation or cooperation or

initial assistance by the accused persons forcing the victim/deceased to commit suicide to attract the offence under Section 306 IPC.

11. It is also trite at this juncture to mention that for making out a case under Section 306 IPC, the basic ingredient as defined in Section 107 IPC has to be established, but in the instant case, the ingredient required for abetment for the commission of the act of suicide by the deceased Smt Champa Bai is not established by the prosecution by any element of evidence.

12. Hon'ble Supreme Court more recently in a decision made in the case of [2011 (3) SCC 626] (M. Mohan vs. State) held that abetment involves a mental process of instigation or intentionally aiding a person to do a thing. It required commission of direct or active act by the accused which led the victim to commit suicide. Seeing no other option and such act must be intended to push the victim into a position that he or she commits suicide. That is to say, there must be some evidence of instigation, cooperation or initial assistance by the accused to commit suicide by the victim.

These ingredients are not available in the given facts and circumstances of the instant case. Therefore, clearly an offence punishable under Section 306 IPC is not made out.

13. More recently, in (2014) 12 SCC, 595 (Mangat Ram vs. State of Haryana), the Supreme Court, dealing with the provisions of Section 306 IPC, held as under:-

“The scope and ambit of Section 306 IPC has not been properly appreciated by the courts below. Section 306 IPC reads as under:-

“306. Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to

ten years, and shall also be liable to fine”.

Abetment of suicide is confined to the case of persons who aid or abet the commission of the suicide. In the matter of an offence under Section 107 IPC, abetment must attract the definition thereof in Section 107 IPC. Abetment is constituted by instigating a person to commit an offence or engaging in a conspiracy to commit, aid or intentional aiding a person to commit it. It would be evident from a plain reading of Section 306 read with Section 107 IPC that, in order to make out the offence of abetment or suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has intentionally aided by an act or illegal omission in the commission of suicide.”

14. For the aforesaid reasons, since no good case has been made out by the State/Petitioner calling for grant of leave through the present Cr.M.P, the same being devoid of merits, is accordingly rejected. Sd/-

(P. Sam Koshy)

JUDGE