

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 1426 of 2016**

State of Chhattisgarh through the Station House Officer, Police Station
Kusmunda, District- Korba, Chhattisgarh.

---- **Petitioner****Versus**

Vinod Kumar Prajapati S/o Bholaram Prajapati, aged about 23 years, R/o
Village Bhairotal, Police Station Kusmunda, District- Korba, Chhattisgarh.

---- **Respondent**

For Petitioner/State : Shri Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board**09.01.2017**

The present CrMP has been preferred seeking for grant of leave to appeal against the judgment of acquittal dated 30.08.2016 passed by the Additional Sessions Judge, Katghora, District Korba in Sessions Trial No. 47 of 2014.

2. The prosecution case in brief is that the wife of the present respondent namely Sangita Bai (hereinafter referred as 'the deceased') committed suicide on 11.09.2013 by hanging herself at her matrimonial house within 4-6 months from the date of marriage. An FIR in this regard was lodged for the offence under Section 306 of IPC against the respondent and after investigation, the matter was put to trial before the ASJ, Katghora where the case was registered as Sessions Trial No. 47/2014.

3. In the course of trial the prosecution examined as many as 10 witnesses and on behalf of the defence one witnesses was examined.

4. After conclusion of trial, the Court below vide its judgment dated 30.08.2016 found that the prosecution has failed to prove its case beyond reasonable doubt in respect of the offence under Section 306 of IPC. The Court finding the prosecution not being able to produce the necessary ingredients as are required under Section 107 of IPC for making out a case under Section 306 of IPC passed the judgment of acquittal in favour of the respondent.

5. It is this judgment dated 30.08.2016 which has been sought to be assailed by the State seeking for grant of leave to appeal.

6. According to the State counsel, the only piece of evidence against the respondent is that of PW-1 Ashok Kumar, the brother of the deceased. According to the State counsel, the statement of PW-1 clearly shows that there was a demand of rupees 10-15 thousand made by the respondent from the parents of the deceased which perhaps could be the reason for committing suicide. PW-1 has also stated that the respondent used to subject the deceased to cruelty from the time of her marriage and therefore ultimately on 11.09.2013 she took the extreme step of suicide by hanging herself at her matrimonial home. According to the State counsel, the Court below has not properly appreciated the evidence of PW-1 while granting acquittal to the respondent and therefore, sought for leave to appeal against the impugned order of acquittal.

7. Having considered the State counsel and on perusal of the evidence which has come on record it clearly reflects that since the parents of the deceased were not alive, it was only PW-1 Ashok Kumar, the brother of the deceased who was examined on the parental side of the deceased. PW-1 is thus the most vital witness who has categorically stated that the husband of the deceased i.e. the respondent herein had sought for financial assistance of rupees 10-15 thousand in connection with his treatment in

respect of a wound that he had in the stomach. However, from the evidence which has come on record it also reflects that the neighbours from the matrimonial home of the deceased have deposed before the Court stating the relationship between the deceased and the respondent being very cordial and there was no rumour or allegation against the respondent subjecting the deceased to cruelty. Further it appears from the record that the date of incident was at the time of Tees festival where it is the dream of every married woman in the state of Chhattisgarh to go to her parental home but there was nobody from the parental side of the deceased to take her which also could have been led to the frustration of the deceased forcing her to take the extreme step of committing suicide.

8. It is settled position of law that in an appeal against an order of acquittal only in exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse can the Appellate Court interfere with the order of acquittal. Recently, Hon'ble the Supreme Court in the case of **Phula Singh Vs. State of Himachal Pradesh**, AIR 2014 SC 1256, in Para-10, has in very categorical term held that: "The appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

9. Once there is an order of acquittal in favour of the alleged accused person, the same should not be interfered with very lightly unless there is a prima facie strong case with cogent, sufficient and substantial proof in favour of the prosecution brought before the Court below and which has not been considered or has been overlooked by the Court below, only then can the order of acquittal have a scope of interference.

10. The law in this regard is by now well settled in a series of judgments of the Hon'ble Supreme Court wherein the Supreme Court has in very categorical terms held that whenever there is an order of acquittal, the higher Courts not to upset the holding without there being very convincing reasons and comprehensive considerations. That while re-appreciating and reconsidering the evidence upon which the order of acquittal is based, certain other principles pertaining to other facets are to be borne in mind.

11. According to the Supreme Court what the appellate Court must bear in mind is that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

12. If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court. The high Court is also required to see that unless there are substantial and compelling circumstances, the order of acquittal is not required to be reversed in appeal.

13. It is trite here to refer to a few decisions in this regard by the Hon'ble Supreme Court:

- 2007 (4) SCC 415 – Chandrappa v. State of Karnataka.
- 2012 (1) SCC 602 – State of Rajasthan v. Shera Ram.
- 2013 (5) SCC 705 – Shivasharanappa v. State of Karnataka.
- AIR 2009 SC 1542 (Para 12) – State of Punjab v. Sukhchain Singh & Anr.
- 2012 (6) SCC 589 (Para-27) – Rohtash v. State of Haryana.

It is also relevant at this juncture to highlight the recent view of the Supreme Court in the case of Dilawar Singh (Supra), paragraph-36 relied upon by the respondent which is reproduced hereunder:

“The court of appeal would not ordinarily interfere with the order of acquittal unless the approach is vitiated by manifest illegality. In an appeal against acquittal, this Court will not interfere with an order of acquittal merely because on the evaluation of the evidence, a different plausible view may arise and views taken by the courts below is not correct. In other words, this Court must come to the conclusion that the views taken by the learned courts below, while acquitting, cannot be the views of a reasonable person on the material on record.”

14. In view of the aforesaid authoritative decisions of the Supreme Court what is relevant at this juncture to note for constituting the offence under Section 306 of IPC is the necessary ingredient i.e. 'abetment' as defined under Section 107 of IPC. In this case, the prosecution has miserably failed to prove the abetment as is required under Section 107 of IPC by way of leading cogent evidence. In the absence of which this Court is of the opinion that the Court below has not committed any error on law or on fact in reaching to the said conclusion of acquitting the respondent of the charge leveled against him.

15. Thus, no strong case is made out by the petitioner for grant of leave to appeal against the judgment of acquittal dated 30.08.2016. Accordingly, the present CrMP stands dismissed.

Sd/-

P. Sam Koshy
Judge