

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1751 of 2017**

- State Of Chhattisgarh Through P. S. City Kotwali, District Raigarh, Chhattisgarh.

---- Petitioner**Versus**

1. Ravilal Koshariya S/o Chintaram Koshariya, Aged About 23 Years R/o Bade Sajapali, Police Station Basna, District Mahasamund, Chhattisgarh.
2. Bal Govind Koshariya, S/o Chitaram Koshariya, Aged About 28 Years R/o Bade Sajapali, Police Station Basna, District Mahasamund, Chhattisgarh.

---- Respondents

 For the Petitioner/State : Shri Lav Sharma, Panel Lawyer
 For the respondents : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****29.11.2018.**

1. Heard on IA No.01/17 for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and the law laid down by Hon'ble Supreme Court in the matter of **State of Haryana Vs. Chandra Mani & Ors.** reported in **1996 3 SCC 132**, the delay of 357 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.
4. This petition has been preferred against judgment dated 31.8.2016 passed by Fifth Additional Sessions Judge, Raigarh (CG) in Session Trial No.665/2014 wherein the said Court

acquitted both the respondents for the charges under Sections 306 read with Section 34 of the Indian Penal Code.

5. As per the case of the prosecution name of the deceased is Ku. Bharti Chouhan who died on 26.02.2014 due to consumption of poisonous substance. As per the case of the prosecution, respondent No.1 Ravilal Koshrariya and the deceased were working in the Jindal Regency Hotel and during that period their relation developed. Respondent No.1 after giving assurance to marry made physical relation with the deceased due to which she conceived pregnancy. Respondent No.1 went to his home saying that he will discuss the matter with his parents, but did not come back. Thereafter on 23.02.2014 the deceased along with her relatives Ramlal and Umashankar went to the house of Ravilal at village Sajapali and discussed the matter with respondent No.2, who is the brother of respondent No.1. Both the respondents told the deceased that marriage is not possible thereafter the deceased committed suicide.

6. Learned counsel for the petitioner submits as under:

(i) The learned trial Court committed error in acquitting the respondents from the charges of offence punishable under Section 306 IPC because the evidence adduced by the prosecution goes to show that cause of death is denial of marriage by both the respondents, therefore, the trial Court ought to have convicted both the respondents.

(ii) The trial Court had given very much weightage on minor omissions and contradictions which did not go to the root of

the case. Therefore, the finding of the trial Court is unwarranted and the same is liable to be set aside.

7. From the evidence on the record, it is clear that the deceased was in physical relation with respondent No.1 on her own will. She was aged about 23 years and major and she was aware of the consequences of the physical relation with respondent No.1.

8. In order to hold the person guilty under Section 306 of the IPC, it is necessary that the case should fall within the ambit of Section 107 of the IPC, which should comprise :

- (i) instigating a person to commit an offence.
- (ii) engaging in a conspiracy to commit an offence
- (iii) intentionally aiding a person to commit an offence.

Therefore, a person said to have abetted, doing of a thing when he or she instigate any person to do so with any other means of abetment besides instigating are conspiracy and intentionally aid the commission and it is sometime more than co-operation.

9. The total evidence collected by the prosecution is that the deceased committed suicide due to refusal of marriage. From the evidence it is clear that respondent No.1 was not able to take a decision on the marriage without consent of his family members. Decision of marriage is totally discretion of the person to whom the marriage is to be performed and elder members of the family. Refusal of any proposal is not equated with instigation or

intentionally aiding to commit suicide. It is settled law that *mens rea* on the part of the respondents has to be established for abatement. There should be live link between the act and the death of the deceased. But looking to the facts and circumstances of the case, the said link is not established. The trial Court has elaborately discussed the issue and came to a conclusion that charges levelled against the respondents are not established. After going through the evidence, this Court has no reason to substitute a contrary finding. It is not a case where the respondent should be called for full consideration of the petition.

10. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**