

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 709 of 2018**

- State Of Chhattisgarh Through The Incharge Police Station Lalbag, District Rajnandgaon Chhattisgarh

---- Petitioner**Versus**

- Khuman Sahu S/o Sudama Sahu Aged About 30 Years R/o Village Joratarai, Police Station Lalbag, District Rajnandgaon Chhattisgarh

---- Respondent

For Petitioner/State : Shri S.K. Mishra, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

13/9/2018

1. Heard on I.A.No.1/2018, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and the law laid down by the Hon'ble Apex Court in the matter of State of Haryana Vs. Chandra Mani & Ors., (1996) 3 SCC 132, delay of 116 days in filing the petition is condoned.
3. Also heard on the application for grant of leave to appeal filed under Section 378 (3) Cr.P.C.
4. The instant Cr.M.P. has been filed seeking leave to appeal against the judgment dated 24.7.2017 passed by the Sessions Judge, Rajnandgaon(CG) in ST No.71/2016, wherein the said Court has acquitted

the respondent of the charges under Section 306 and 498-A of the I.P.C.

5. In the present case, name of the deceased is Soniya Bai, who was married to the respondent 10 years ago as per Hindu rituals. As per the case of prosecution, the respondent harassed Soniya Bai on account of demand of dowry and she was subjected to assault by the respondent. It is alleged that due to abetment by the respondent, the deceased committed suicide on 25.3.2016.

6. To substantiate the charge, prosecution has examined as many as 15 witnesses.

7. Dwarka Ram (PW1) is father of the deceased and he is resident of village Bhathagaon, while the incident had taken place at village Joratarai. As per version of this witness, the respondent harassed his daughter after marriage and also made allegations that she was not carrying (pregnancy) his child. Chhabilal (PW2) is hearsay witness and deposed before the Court as informed to him by the deceased Soniya Bai regarding assault by the respondent. Champa Bai (PW3) is mother of the deceased and she also deposed as informed by the deceased that the respondent assaulted her. Umeshwari Sahu (PW4) and Lokeshwari (PW5) have deposed as informed to them by the deceased. Sukhdev (PW7) is a person who deposed regarding compromise between the parties. Priti Larokar (PW11) is Naib Tehsildar/Executive Magistrate who recorded dying declaration of the deceased Soniya Bai. As per dying declaration, the deceased made declaration that pouring kerosene on body and lit match stick is her independent act and she committed suicide as the respondent was beating her child. From the dying declaration it is not established that she

committed suicide on account of any instigation or intentionally aiding for the same by the respondent.

8. From the overall evidence, it is not established as to what was really happened prior to the date of incident and the respondent took active part in instigation for commission of offence under Section 306 I.P.C. For commission of offence under Section 306 I.P.C., it is necessary that the case should fall within the ambit of Section 107 of the IPC, which should comprise of :

- (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. Looking to the dying declaration, it is not a case where the deceased committed suicide on account of abetment by the respondent. Again, there is no evidence to the effect that what was the willful conduct of the respondent to drive the deceased to commit suicide and harassment on the part of the respondent is also not established. In absence of any cogent and reliable evidence, the trial Court was not in a position to convict the respondent for commission of offence under Section 306 and 498-A of the I.P.C. The matter was investigated only after commission of suicide by the deceased and it was not investigated upon any complaint filed under Section 498-A I.P.C. There is limitation for taking cognizance under Section

498-A I.P.C. as per Section 468 Cr.P.C. cognizance for offence under Section 498-A I.P.C. cannot be taken after 3 years of the date of commission of offence. In the present case date of commission of offence under Section 498-A I.P.C. is not clear, therefore, the trial Court opined that the offences are not established. Considering the facts and circumstances of the case, this Court is of the view that the trial Court has evaluated the evidence in its entirety and this Court has no reason to interfere with the finding recorded by the trial Court. Accordingly, the prayer for leave to appeal is rejected.

10. Consequently, Cr.M.P. stands dismissed.

Sd/

(Ram Prasanna Sharma)

Judge