

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.117 of 2018**

- State Of Chhattisgarh, Through Incharge Outpost Outpost Morga, Police Station Bango, District : Korba, Chhattisgarh

---- Petitioner**Versus**

1. Devi Dayal Late Shri Somar Sai, Aged About 55 Years Caste Yadav, R/o Arsiya, Chowki Morga, Police Station Bango, District Korba, Chhattisgarh.
2. Jai Prakash, Shri Devi Dayal, Aged About 27 Years Caste Yadav, R/o Arsiya Chowki, Morga, Police Station Bango, District Korba, Chhattisgarh.

---- Respondents

For the Petitioner/State : Shri Suryakant Mishra, Panel Lawyer
 For the respondents : Shri AL Singroul, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

05.9.2018.

1. Heard on IA No.01/18 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 56 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 appeal has been preferred against judgment of acquittal dated 26.7.2017 passed by Additional Judge to the Court of Additional Sessions Judge Katghora, Distt. Korba (CG) in Session Case No.96/2016 wherein the said Court acquitted the

respondents of the charges under Section 306 read with Section 34 of the Indian Penal Code, 1860.

5. In the present case name of the deceased is Santosh. As per the version of the prosecution, on 20.8.2016 one Peetambar was in the state of intoxication and deceased Santosh was pouring water on his body in order to reduce the intoxication. At that time, respondent Devi Dayal prevented him from pouring water and deceased Santosh pushed Devi Dayal causing injury on his left leg. After hearing about the incident, respondent Jai Prakash who is the son of respondent Devi Dayal reached to the spot and pushed Santosh who sustained injuries on his back. After the incident deceased Santosh reached to his house and told his mother Dhanmat Bai that the respondents have assaulted him and he will not return to home. On the next day body of Santosh was found hanging in a tree near school, the matter was reported and investigated.

6. Learned counsel for the petitioner/State submits that from the evidence of Dular Singh (PW-1) Dhanmat Bai (PW-2), Sundar Sai (PW-3), Smt. Santara Bai (PW-5), Ashok Kumar (PW-6) story of prosecution is established but the trial Court has not evaluated the evidence in its true perspective and came to a wrong conclusion.

7. From the evidence of all the above witnesses, only fact established is that Peethambar was in a state of intoxication and the deceased poured water on his body in order to reduce the

intoxication and at that time there was some altercation between the deceased and the respondents.

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. As has been held by **Hon'ble the Supreme Court in 2010 (1) SCC 750 – Gangula Mohan Reddy Vs. State of Andhra Pradesh** the abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of accused to instigate or aid in committing suicide, conviction can not be sustained. The Hon'ble Supreme Court has further held that in order to convict a person U/s.306, there has to be a clear *mens-rea* to commit offence. It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide.

10. In the present case no such act is established against the respondents which compelled the deceased to end his life *mens rea* on the part of the respondents is lacking. All the ingredients which are mentioned under Section 107 of IPC which is a definition of abetment are also lacking. Though it may be a case of bitter experience of the deceased with the respondents, but there is no live link between altercation between the parties and the act of the deceased. Therefore, it would not be proper for this Court to grant leave to appeal.

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

Sd/-

(Ram Prasanna Sharma)
JUDGE