

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1862 of 2017**

State Of Chhattisgarh Through Police Station Kanker, Distt. North Bastar, Kanker (CG)

---- **Petitioner**

Versus

Ajay Durge, S/o. Ramadhin Durge, aged about 44 years, R/o. Village Mankeshari, Police Station and Distt. North Bastar Kanker (CG)

---- **Respondent**

For the Petitioner/State : Shri Ramakant Pandey, Panel Lawyer
For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

04.9.2018.

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 34 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 13.6.2017 passed by Additional Sessions Judge (FTC), North Bastar, Kanker (CG) in Session Case No.15/2014 wherein the said Court acquitted the respondent of the charges under Section 306 of the Indian Penal Code, 1860.
5. In the present case the respondent is the husband of deceased Subhadra Durge. As per the evidence she died on

09.01.2014 as a result of burn injuries on her body and it was evident that she poured kerosene on her body and lit match stick that is why she suffered severe burn injuries and succumbed to her injuries.

6. To substantiate the charge, the prosecution has examined as many as 16 witnesses. Jagdish Ram Nag (PW-1) is a ward boy of Komaldev Hospital, Kanker who assisted the investigation. Devcharan Singh (PW-2) is a person who was not present at the time of incident and his statement is general in nature without having any responsibility for the same. Ku. Anjali (PW-3) was also not in a position say as to what really happened to the deceased in the house of the respondent. Babulal (PW-4) also made general statement. Devendra Kumar (PW-5) also made general statement. He deposed that he was not present at village Mankesari on the date of incident. He also deposed that he is not able to tell as to what was the real cause of the incident. Smt. Ambika Sonwani (PW-6), Smt. Kamalleshwari (PW-7), Vinod Kumar (PW-8), Smt. Chandrabhama (PW-9) also made general statement but they were not able to tell as to what had really happened on the date of incident or prior to the date of incident. Santosh Kumar Jain (PW-10) is Patwari who prepared spot map. Nirmala Kujur (PW-11) is a person who reached to the spot after the incident. She was also not in a position to tell what had really happened on the date of incident. Rakesh Kumar Dhruw (PW-13) was the Tahsildar/Executive Magistrate who recorded dying declaration of the deceased in which she clearly stated that act of

pouring kerosene on her body and lighting match stick was her voluntary act and no one is responsible for that act. From the dying declaration also it is not established that the respondent has instigated the deceased for committing suicide. Dr. Pradeep Dewangan (PW-12) conducted autopsy of the deceased. Other witnesses are part of the investigation after registration of the FIR.

7. The trial Court has elaborately discussed the evidence recorded before the said Court and came to a conclusion that the offence of abetment to commit suicide is not established.

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 on overall assessment of the entire evidence, instigation/conspiracy or intentionally aiding towards commission of offence is not established and in absence of basic ingredients offence charged is not established. Some bitter experience during routine married life is natural and that is not sufficient to hold that since there was quarrel between the parties, the deceased took the extreme step. In the present case there is no live link between the act of the deceased and the respondent. It would not be proper for this Court to summon the respondent again who has faced the trial for a long time.

11. No case for grant to appeal is made out. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

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