

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1215 of 2018**

The State of Chhattisgarh Through- District Magistrate, District-
Janjgir-Champa (C.G.)

---- **Petitioner**

Versus

Nageshwar @ Sonu Daharia S/o Tikaram Daharia Aged About 25
Years R/o- Amartal, P.S. Akaltara, District- Janjgir-Champa (C.G.)

---- **Respondent**

For State/ Petitioner : Mr. Suryakant Mishra, Panel Lawyer.
For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

21/08/2018

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition which is supported with an affidavit of Umesh Mishra.
2. For the reasons mentioned in the application, the same is allowed and delay of 14 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of the Code of Criminal Procedure, 1973. As per the application, judgment dated 01.03.2018 passed by Sessions Judge, Janjgir-Champa (C.G.) in Sessions Trial No. 54/2017 is improper, unjust and uncalled for, wherein, the said court acquitted the accused for commission of offence under Section 306 read with Section 34 of IPC.
4. As per the case of prosecution, deceased Reenadevi was married to one Virendra Kumar Mahadeva in February, 2010. After marriage, she was living with her husband at village- Amartal. During her stay in the said village, she entangled to one Sandeep

Singh @ Manoj Roy which is known to the appellant. The appellant thereafter made physical relation with the deceased by threatening her that he will make public the relation between deceased and Sandeep Singh @ Manoj Roy. On 10/11.06.2017 Sandeep Singh entered in the house of the deceased and at the same time, appellant entered into his house, thereafter, the appellant again threatened her that he will make public the illicit relation between the deceased and Sandeep Singh. Due to this threatening, the deceased committed suicide by pouring kerosene on her body and lit fire. The matter was reported and investigated and after completion of trial, the trial court acquitted the respondent as mentioned above.

5. Learned counsel for the State/petitioner submits that the deceased died due to manhandling by the appellant therefore, finding arrived at by the trial court is improper and leave to appeal be granted in the facts and circumstances of the case.
6. To substantiate the charge, the prosecution examined as many as 7 witnesses. Virendra Kumar (PW-1) is hear say evidence to whom it is informed by the respondent that Sandeep Singh is having relation with the deceased. Virendra Kumar (PW-1) deposed that the appellant beaten the deceased at about 2.00 a.m. in the night. Other witnesses are related to incident of suicide committed by the deceased.
7. In order to substantiate the charge under Section 306 of IPC, it is compulsory that the case should fall within the ambit of Section 107 of 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.
8. The only evidence adduced by the prosecution is one beating to the deceased by the appellant. No medical evidence is adduced by the prosecution in support of the version of the witnesses that any injury was found on the body of the deceased therefore, beating itself is under cloud in absence of medical evidence.
9. Apart from that no other evidence is there on record to show that any positive act is done by the respondent to instigate or aid in committing suicide. The abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. There has to be a clear mensrea to commit offence. But in the present case, evidence of instigation is lacking. Evidence of any conspiracy and intentionally aiding is also lacking. Evidence of Virendra Kumar (PW-1) is hear say evidence and the same is not admissible as per the law laid down in the matter of **Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri** reported in **(2011) 2 SCC 532**, the law commands of evidence to be given under personal responsibility.
10. As the basic ingredients are lacking, it is not a fit case to grant leave to appeal. Accordingly, application is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge