

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 282 of 2018**

State of Chhattisgarh, Through: Station House Officer, Police
Station- Dadhi, District – Bemetara (C.G.) ---- **Petitioner**

Versus

1. Tekchand Banjare, S/o - Jagjivan Banjare, Aged about - 28 Years,
R/o- Village - Khapri, Police Station - Nawagarh, District-
Bemetara, (C.G.), Presently R/o - Village - Jhajhadih, Police
Station – Dadhi, District - Bemetara (C.G.)
2. Manmohan Patre, S/o - Poondas Patre, Aged about - 25 Years,
R/o - Village - Narayanpur, Police Station and District - Mungeli
(C.G.)
3. Poondas Patre, S/o - Kalyan Das Patre, Aged about - 46 Years,
R/o - Village - Narayanpur, Police Station and District - Mungeli
(C.G.) ---- **Respondents**

For State/Petitioner : Shri Ravish Verma, Government Advocate.
For Respondents : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board**27/06/2019**

1. Heard on application for grant of leave to appeal filed under
Section 378(3) of the Code of Criminal Procedure, 1973.
2. This petition is directed against the judgment dated 31st October,
2017 passed by Sessions Judge, Bemetara, District – Bemetara
(C.G.) in Sessions Trial No. 48/2015 wherein the said Court
acquitted all the respondents for charge under Section 306 read
with Section 34 of IPC, 1860.
3. In the present case, name of the deceased is Ganesh Banjare.
As per autopsy report conducted by Dr. R.K. Markam (PW-19),
the deceased died due to complication of electric burn injury and
septicemia. As it is alleged that the respondents have beaten the
deceased on account of suspicion over his character which is

sarcastic for him that is why he committed suicide by touching electric wire near transformer. No witness of the prosecution was present when deceased sustained electric burn injury.

4. The trial Court opined that in absence of direct evidence, it may be accidental case. Dying declaration of the deceased recorded in which he deceased that due to beaten of respondents, he sustained injuries. He did not say in any of the dying declaration that beating of any of the respondent was sarcastic for him that is why he ended his life, therefore, dying declaration presented before the trial Court is not sufficient to establish that any of the respondents instigated him or intentionally added him to commit suicide. The trial Court after evaluating the dying declaration recorded finding that for beating, name of different persons is stated by the deceased in different dying declarations.
5. For establishing the charge under Section 306 of IPC, the ingredient of Section 107 of IPC has to be established which may be mentioned as under:-
 - (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.
6. Therefore, a person said to have abetted, doing of a thing when he or she instigates any person to do so with any other means of abetment besides instigating or conspiracy and intentionally aid the commission.

7. 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 under Section 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.
8. The prosecution is under obligation to establish that commission of suicide is direct act of the any of the respondent, but that is not established by evidence adduced before the trial Court and dying declarations submitted before the said Court. If anyone assaulted the deceased, the deceased would have lodged the FIR against them for the said act, but that is not done in the present case. In absence of evidence of abatement the trial Court recorded finding of acquittal against the respondents. It is not a case where order of the trial Court requires any interference of this Court and it is not a case where the respondents should be called for hearing again for full consideration of this petition. Accordingly, application for grant of leave to appeal is rejected.
9. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
 Judge