

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2150 of 2018**

The State of Chhattisgarh, through- Station House, Janjgir District-
Janjgir-Champa (C.G.)

---- Petitioner**Versus**

1. Ravi @ Khagendra, S/o Trilochan Shrivastava, Aged About 20 Years.
2. Girdhar Gopal @ Chhotu, S/o Akti Ram Shrivastava, Aged About 19 Years.

Both R/o- Village Pithampur, P.S. Janjgir, District- Janjgir-Champa
(C.G.)

---- Respondents

For State/ petitioner : Mr. Raghvendra Verma, Govt. Advocate.

For Respondents : None.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****13/02/2019**

1. Heard on I.A. No. 01/2019, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and as per the law laid down by Hon'ble the Apex Court in the matter of **State of Haryana Vs. Chandra Mani & others** reported in (1996) 3 **SCC 132**, the delay of 37 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against judgment dated 18th May, 2018 passed by Additional Sessions Judge (FTC), Janjgir

District- Janjgir- Champa (C.G.). in Session Trial No. 26/2017 wherein, the said court acquitted respondent No.1 - Ravi @ Khagendra for commission of offence under Sections 363 & 306/34 of I.P.C., 1860 and acquitted respondent No.2- Girdhar Gopal @ Chhotu for commission of offence under Section 306/34 of IPC, 1860 for kidnapping minor prosecutrix namely Ku. Anjani Sahu and for abetting her to commit suicide.

5. Gouri Shankar Sahu (PW-1) & Jai Kumar (PW-6) deposed before the trial court that when the deceased did not return to the house on 23rd January, 2017, they enquired from her friends and they informed that the deceased went to the house of one Ravi Shrivastava, but from their evidence, it is not clear that they have ever met with Ravi Shrivastava and the deceased. Sangeeta (PW-4) & Chandani (PW-5) deposed before the trial court that they were returning after lunch break in the school and deceased stayed near a house and asked them not to inform anyone about her staying in that house. From their evidence, it is not clear as to whether the house in question is house of any of the respondent, therefore, version of these witnesses is not incriminated piece of evidence against any of the respondent because these witnesses have never met with any of the respondent and it is not clear whether the deceased met with any of the respondent or not.
6. Rajkumar Kewat (PW-8) deposed before the trial court that the deceased herself went to the house of respondent No. 2- Girdhar where the deceased told them that unless respondent

No. 1- Ravi Shrivastava will come there, she will not move from that place. From evidence of this witness, it is not established that any of the respondent enticed or taken her from her lawful guardianship. As per version of this witness, the deceased herself went to the house of one Girdhar and it is not clear whether Girdhar was having any criminal intention.

7. From the entire evidence, it is not clear that respondent No.1- Ravi Shrivastava ever enticed or taken the deceased, therefore, there is absolutely no evidence to connect respondent No.1- Ravi Shrivastava in crime in question. Again, there is nothing on record that respondent No. 2- Girdhar had any conversation with the deceased. Again, there is no iota of evidence that the deceased met with respondent No. 1- Ravi Shrivastava and had any conversation with said person. There is no evidence of any kind of conversation between the deceased and the respondents.
8. In order to substantiate the charge under Section 306 of IPC, 1860, 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.

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 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 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 she commits suicide.
10. The trial court has elaborately discussed the entire evidence and came to conclusion that the charge leveled against the respondents is not established. After reassessing the entire evidence, this Court has no reason to record contrary finding. It is not a case where respondents should be called for hearing again for full consideration of this petition. Accordingly, application for grant of leave to appeal is rejected.
11. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge