

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2204 of 2018**

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

---- **Petitioner**

Versus

1. Hemant Kumar Dewangan, S/o Ashok Kumar Dewangan, Aged About 19 Years.
2. Ashok Kumar Dewangan, S/o Hagaru Ram Dewangan, Aged About 57 Years.
3. Smt. Tarabai Dewangan, W/o Ashok Kumar Dewangan, Aged About 50 Years.

All are R/o Hatwarapara Belargaon, Police Station Sihawa, District- Dhamtari (C.G.)

---- **Respondents**

 For State/ Petitioner : Mr. Raghvendra Verma, GA.
 For Respondents : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

11/01/2019

1. Heard on I.A. No. 01/2018, 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 332 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 05.08.2017 passed by Special Judge POCSO (FTC), Dhamtari, District-

Dhamtari (C.G.) in Special Criminal Case No. 131/2016, wherein the said court acquitted all the respondents for commission of offence under Section 306/34 of IPC, 1860.

5. In the present case, name of the deceased is Timeshwari Dewangan. It is alleged that the deceased was minor girl and respondent No. 1- Hemant Kumar Dewangan enticed away her by giving allurements of marriage to her after developing love affair and she was kept by the respondent No. 1 in his house during which, she was continuously subjected to sexual assault as a result of which she got conceived and gave birth to a male child. In the course of staying in the house, she was forcibly subjected to harassment physically and mentally that is why she committed suicide after setting her ablaze.
6. Admittedly, physical relation between deceased and respondent No. 1 was developed two years ago from the date of incident i.e. on 01.12.2016. She conceived and gave birth to a male child. She was living with her parents since four months of the date of incident. From the entire evidence, it is not clear as to what was really happened on the date of incident.
7. Smt. Vidya Dewangan (PW-1) is mother of the deceased. She deposed that the deceased was crying at the time of incident while caught fire in her body, but from evidence of this witness, it is not clear as to how she caught fire. No dying declaration is recorded and no suicidal note is seized in the present case.

8. From the evidence, it is not clear whether the burn injuries were suicidal in nature or the same is accidental. Dr. D.K. Bisen (PW-19) is medical expert who conducted autopsy of the deceased and was not able to opine about nature of death, therefore, there is nothing on record to conclude that death of the deceased is suicidal in nature.
9. From evidence of Smt. Vidya Dewangan (PW-1), Smt. Shanti Dewangan (PW-2), Smt. Revti Dewangan (PW-3) & Gendlal Dewangan (PW-4), it is clear that the deceased was living with her parents since four months of the date of incident. It means that she was not in contact with any of the respondent for these four months. Statement of these witnesses are hearsay in nature and their statement is general and bald in nature. They only deposed that the deceased informed them regarding harassment by the respondents, but from their evidence, it is not clear as to what was nature of harassment.
10. Now, the point is whether the hearsay evidence can be acted upon. In the matter of **Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri** reported in **(2011) 2 SCC 532**, Hon'ble the Supreme Court has held as under:

“(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me",

(b) truth is diluted and diminished with each repetition and

(c) if permitted, gives ample scope for playing fraud by saying "someone told me that.....". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible."

11. When hearsay evidence is inadmissible, it cannot be acted upon and the same is insufficient to record any finding. From the evidence, it is not clear as to what was really happened on the date of incident and prior to the date of incident. When she was not in contact with any of the respondent for four months, it is difficult to hold that any of the respondent instigated or intentionally aided her to commit suicide.
12. 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.

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.

13. When there is no evidence regarding abetment and live-link between act of the respondents and death of the deceased, charge under Section 306 of IPC is not established.

14. 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.
15. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge