

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2615 of 2018**

- State Of Chhattisgarh Through Police Station Charama District Uttar Bastar Kanker Chhattisgarh., District : Kanker, Chhattisgarh

---- Petitioner**Versus**

- Mahendra Ghodapatiya S/o Mangiram Ghodapatiya Aged About 27 Years R/o Village Lilejhar ,police Station Charama District Uttar Bastar Kanker Chhattisgarh., District : Kanker, Chhattisgarh

---- Respondent

For Petitioner/State : Shri Ravish Verma, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

01/02/2019

1. Heard on I.A.No.1/2018, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, same is allowed and delay of 6 days in filing the petition is condoned.
3. Also heard on the application for grant of leave to appeal filed under Section 378 (3) Cr.P.C.
4. The instant Cr.M.P. has been filed seeking leave to appeal against the judgment dated 2.8.2018, passed by the Additional Sessions Judge(FTC), North Bastar Kanker (CG) in ST No.36/2017, wherein the said Court has acquitted the respondent of the charge under Section 306 of the I.P.C.

5. In the present case, name of the deceased is Dineshwari, who was wife of the respondent. As per version of the prosecution, the trial Court has not evaluated the evidence of Surjoram (PW1) who is father of the deceased and dying declaration of the deceased recorded by Executive Magistrate, Gita Rayast (PW8). In the present case, the incident took place on 16.9.2017 at village Lilejhar which is matrimonial house of the deceased. As per report of autopsy she died due to burn injuries. Surjoram (PW1) who is father of the deceased is resident of village Kewantin Tola who had no occasion to see as to what is really going on in the house of the deceased at village Lilejhar. His statement is based on information given to him by the deceased before the incident. But from his evidence it is not clear as to what was really happened on the date of incident or prior to the date of incident which was sarcastic for the deceased to end her life.

6. The Executive Magistrate deposed before the trial Court that the deceased made declaration that due to quarrel with husband, she poured kerosene on her body and set her ablaze. From the dying declaration itself it is not clear as to what was really happened on the date of incident.

7. The point for consideration of this Court is whether quarrel between the husband and wife is an abetment to suicide. For commission of offence under Section 306 I.P.C., it is necessary that the case should fall within the ambit of Section 107 of the IPC, which should comprise of :

- (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.

8. Wears and teas of the life between the spouse cannot be termed as abetment because it is hazard of married life which has to be borne by each of the spouse. Therefore, quarrel cannot be equated with abetment. As per dying declaration of the deceased, marriage between her and the respondent took place 7 to 8 years ago and again from the statement of Surjaram (PW1) it is not established that the deceased died within 7 years of marriage. Therefore, presumption under Section 113-A of the Evidence Act, 1872 is not available in the present case.

9. The trial Court has elaborately discussed the entire evidence came to conclusion that abetment on the part of the respondent is not established. After re-assessing the evidence this Court has no reason to record a contrary finding. It is not a case where the respondent should be called for full consideration of the petition. Accordingly, the prayer for leave to appeal is rejected.

10. Consequently, Cr.M.P. stands dismissed.

Sd/

(Ram Prasanna Sharma)

Judge