

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 62 of 2019**

State of Chhattisgarh, Through Fastarpur Chowki, Police Station-
City Kotwali, Mungeli (C.G.)

---- Petitioner**Versus**

1. Tarachand Khande, S/o Babudas Khande, Aged About 28 Years.
 2. Dharmendra Khande, S/o Babudas Khande, Aged About 30 Years.
- Both are R/o Village- Tedadhoura, Chowki Fastarpur, Thana City Kotwali, District- Mungeli (C.G.)

---- Respondents

For State/ Petitioner : Mr. Afroj Khan, Panel Lawyer.

For Respondents : None.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****14/02/2019**

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 60 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 07.07.2018 passed by Sessions Judge, Mungeli, District- Mungeli (C.G.) in

Sessions Trial No. 55/2017, wherein the said court acquitted all the respondents for commission of offence under Section 306/34 of IPC, 1860 for committing abetment of suicide to deceased Pramila Khande, who was wife of respondent No. 1-Tarachand. Respondent No. 2- Dharmendra is elder brother of Tarachand. Suruj Bai (PW-2) is mother of the deceased. She deposed before the trial court that was informed to her by the deceased. According to this witness, the deceased informed her at CIMS Hospital that the respondents harassed her because she gave birth to a female child.

5. Ramji (PW-3) is brother of the deceased and he deposed before the trial court that the deceased informed him that both the respondents caused burn injury on her body. Aanjor Das (PW-5) is also brother of the deceased and he also deposed before the trial court the respondent No. 1- Tarachand poured kerosene on body of the deceased and lit matchstick.
6. Santram Anand (PW-6) deposed before the trial court that the deceased informed him that respondent No. 1- Tarachand is using abusive language against her. He has seen scratch on throat and head of the deceased and the deceased informed him that respondent No. 1- Tarachand assaulted her by sickle.
7. Version of these witnesses is rebutted by dying declaration (Ex.P/4) of the deceased. In the dying declaration, the deceased stated that there was some dispute regarding payment of bricks. As per version of Suruj Bai (PW-2) who is mother of the deceased, Government has provided some money to respondent No. 1- Tarachand for constructing house. For

construction of the house, they provided 4000 bricks, but Tarachand did not pay for the said bricks to them.

8. Looking to the dying declaration, the story put-forth by the witnesses regarding harassment to the deceased for some other reason is rebutted. If there is any dispute regarding payment of bricks, the same is not instigation to commit suicide.
9. 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.

10. As has been held by Hon'ble the Supreme Court in the matter of **Gangula Mohan Reddy Vs. State of Andhra Pradesh** reported in **2010 (1) SCC 750**, 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.

11. If here was any dispute regarding payment of bricks, the same is not abetment to commit suicide as defined under Section 107 of IPC. Ordinary wear and tear between the spouses is not abetment to end her life by anyone.
12. The trial court discussed the entire evidence and recorded finding that the evidence of the witnesses and the dying declaration are contradictory in nature and looking to the entire evidence, abetment on the part of the respondents is not established.
13. After reassessing the entire evidence, this Court has no reason to substitute 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.
14. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge