

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.80 of 2019**

- State Of Chhattisgarh Through Station House Officer, Police Outpost Chichola, Police Station Churiya, District Rajnandgaon Chhattisgarh.

---- Petitioner**Versus**

- Takeshwar Sahu S/o Ajeetram Sahu Aged About 26 Years R/o Village Kolihapuri, Out Post Chichola Police Station Churiya District Rajnandgaon Chhattisgarh.

---- Respondent

For the Petitioner/State : Shri VB Singh, Panel Lawyer

For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****14.02.2019.**

1. Heard on IA No.01/2019 for condonation of delay in filing the petition.
2. On due consideration, the application is allowed and the delay of 45 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.
4. This petition is preferred against the judgment of acquittal dated 28.7.2018 passed by Additional Judge to the Court of First Additional Sessions Judge, Rajnandgaon at Dongergarh , Distt. Rajnandgaon (CG) in Session Trial No.19/2016 wherein the said Court acquitted the respondent for the charges under Section 306 of the Indian Penal Code.

5. In the present case, name of the deceased is Sangita Bai who was the wife of the respondent who died due to burn injuries on 31.3.2016. Dying declaration of the deceased was recorded as per Ex-P/10 by Executive Magistrate and in the said dying declaration she has stated that on the date of incident, husband of the deceased did not go for his work that is why there was some quarrel between them and thereafter she set herself ablaze. From the dying declaration it is clear that there was some quarrel between the spouses and at the spur of moment, she set her ablaze.

6. Now the point for consideration is whether such quarrel between the spouses is equated by abetment as defined under Section 107 IPC which reads 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.

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.

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 she commits suicide.

8. Other witnesses are not providing incriminating pieces of evidence for commission of abetment. They had no occasion to see what had happened in the village Kohlapuri where the respondent and the deceased were residing. The only evidence is the dying declaration and as per the dying declaration the incident took place because ordinary wear and tear between the spouses which cannot be equated to abetment.

9. The trial Court elaborately discussed entire evidence and recorded a finding of acquittal. 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 matter.

10. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE