

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 438 of 2013**

- State of Chhattisgarh, through- Police Chowki- Urga, PS- Kotwali, Korba, District- Korba (C.G.) ----- **Petitioner**

Versus

1. Mohanlal Kaiwart @ Manoharlal Kaiwart, S/o- Vishram Prasad Kaiwart, Aged about- 38 years, R/o- Village Tilkeja Urga, Presently R/o L.I.G., Shivajinagar Korba (C.G.)
2. Bhagwati Devi Kaiwart @ Meera, W/o Mohanlal Kaiwart, Aged about- 38 years, Presently R/o L.I.G. Shivajinagar, Korba (C.G.)
3. Sukhwati @ Bendri, W/o Chattram Kaiwart, Aged about 35 years, R/o Salora, Katghora, District- Korba (C.G.) ---- **Respondents**

 For State/Petitioner : Shri Dinesh R.K. Tiwari, Dy. G.A.

For Respondents : Shri Anumeh Shrivastava, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****05/03/2020**

1. Heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
2. This petition is preferred against the judgment dated 21st January, 2013 passed by Additional Sessions Judge, Korba, District- Korba (C.G.) in Sessions Trial No. 79/2011 wherein the said Court acquitted all the three respondents for charge under Section 306 read with Section 34 of the Indian Penal Code (for short "the IPC"), 1860 for abating one Kartik Ram Kenwat to commit suicide, who committed suicide on 5th March, 2011 at

about 07:30 p.m. near Mandawa Rani Mandir by consuming poisonous substance.

3. To substantiate the charge, the prosecution examined as many as 15 witnesses. No one deposed regarding harassment on the part of the respondents, except Smt. Parwati (PW-6) who is wife of the deceased. As per version of this witness, the respondents borrowed money from her husband and when they asked about return the money back, they call him and threatened him. Due to harassment by the respondents, he committed suicide. From the evidence of this witness, it is not clear that as to what really happened on the date of incident or prior to the date of incident. Version of this witness is bald and general in nature. Having no specific date of calling the respondents or harassing him.
4. After assessing the entire evidence the trial Court recorded finding that version of this witness is not sufficient to establish instigation conspiracy or intentionally aiding on the part of the respondents, which is grave man of the charge. As per version of this witness, suicidal note was seized, but no one appeared before the trial Court to state that handwriting in the said note was that of the deceased. No handwriting expert examined in this regard.
5. For commission of offence under Section 306 of IPC ingredients mentioned in Section 107 of IPC has to be established which may be mentioned 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 offences.

6. In the present case, the entire evidence is based on information given by deceased which is hearsay in nature. In **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 concerned, 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 rumor flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible."

7. For establishing the charge under Section 306 of IPC, there should be live-link between the death of the deceased and act of the respondents, but there is nothing on record incriminating the respondents with the crime in question.
8. The trial Court after evaluating the entire evidence recorded finding of acquittal. After going through the record, this Court is of the opinion that it is not a case where interference of this Court is required in the judgment of the trial Court. It is also not a case where the respondents/accused should be called for full consideration of this petition.

9. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
Judge

Vasant