

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 2301 of 2019

- State of Chhattisgarh, through Police Station- Raghunathnagar, District- Balrampur-Ramanunganj (C.G.) ---- **Petitioner**

Versus

- Suresh Kushwaha, S/o Late Devveer Kushwaha, Aged about- 42 years, R/o- Village- Balangi, Police Outpost- Balangi, Police Station- Raghunathnagar, District- Balrampur-Ramanujanj (C.G.) ---- **Respondent**

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

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board03/03/2020

1. Heard on I.A. No. 01/2019, which is an 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 75 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 the judgment dated 12th April, 2019 passed by Additional Sessions Judge, Ramanujanj, District- Balrampur-Ramanunganj (C.G.) in Sessions Trial No. R-14/2013 wherein the said Court acquitted the respondent for charge under Section 306 of the Indian Penal

Code (for short "the IPC"), 1860 for abatement of suicide of his wife namely Smt. Lokmani who committed suicide on 23rd December, 2012 at about 12:30 am at village- Balangi, Police Station- Raghunathnagar.

5. In the present case, Ram Sajeevan (PW-2), Parshuram Kushwaha (PW-4) and Dirpat Ram (PW-5) have thrown some light regarding the incident. As per version of Ram Sajeevan (PW-2), marriage between the respondent and the deceased namely Smt. Lokmani took place on 8th May, 1984 and the incident took place after 28 years of marriage. Ram Sajeevan (PW-2) deposed that when deceased Smt. Lokmani did not deliver male child there was some quarrel between the respondent and the deceased, but from his statement, it is not clear as to when such quarrel took place and there is nothing on his statement that anything is done on the date of incident or prior to the date of incident. This witness is resident of village- Wadrafnagar while the incident took place at village-Balangi, therefore, this witness has no occasion to see as to what is really happened on the date of incident or prior to the date of incident.
6. Parshuram Kushwaha (PW-4) has also deposed on the same line, but this witness also resident of village- Wadrafnagar and he had no occasion to see anything which is happened with the deceased. This witness has also not seen as to what is really happened on the date of incident or prior to the date of incident.
7. Dirpat Ram (PW-5) is resident of village- Rajkheta and this witness also deposed that at one point of time, he has resolved

the dispute between the deceased and the respondent, but from his version, it is not clear as to what is really happened on the date of incident or prior to the date of incident with the deceased.

8. All the statement of the witnesses did not suggest any of the conspiracy or intentionally aided for commission of suicide which is *sine-qua-non* for establishing charge under Section 306 of IPC, 1860.

9. 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.

10. 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."

11. For establishing the charge under Section 306 of IPC, there should be live-link between the death of the deceased and act of the respondent, but there is nothing on record incriminating the respondent with the crime in question.
12. 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 respondent/accused should be called for full consideration of this petition.
13. 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