

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 23 of 2019

State of Chhattisgarh, Through- Police Station- Mana Camp, Raipur,
District- Raipur (C.G.)

---- Petitioner

Versus

1. Kishore Vishwas, S/o Keshav Vishwas, Aged About 41 Years.
2. K. Bala, S/o K. Bal Chanaiya, Aged About 37 Years.
3. Pralay Kumar @ P.K., S/o Late Bhaktipad Karmkar, Aged About 45 Years.

All are R/o Vivekanand Nagar, Ward No. 2, Mana Camp,
Police Station- Mana Camp, Raipur, District- Raipur (C.G.)

---- Respondents

For State/ Petitioner : Mr. Dinesh Tiwari, Panel Lawyer.

For Respondents : None.

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 judgment dated 11.09.2018 passed by First Additional Judge to the Court of First Additional Session Judge, Raipur (C.G.) in Session Trial No. 18/2018, wherein the said court acquitted the respondents for charge under Section 306/34 of IPC, 1860.
3. In the present case, name of the deceased is Rahul Roy who committed suicide by hanging himself on 19.10.2017. It is alleged that said Rahul Roy was in love affair with daughter of respondent No. 1- Kishore Vishwas namely Tulika. It is also

alleged that the respondents harassed the deceased and as per the suicidal note of the deceased, the respondents have assaulted him by club and due to their constant harassment, he committed suicide, but for suicidal note, there is no substantive evidence as to what really happened with the deceased on the date of incident or prior to the date of incident.

4. Though, it is mentioned in the suicidal note that the respondent No. 1- Kishore Vishwas, respondent No. 2- K. Bala & respondent No. 3- Pralay Kumar @ P.K. assaulted him by club, but medical evidence is not supported the suicidal note. The medical expert who conducted autopsy of the deceased did not find any injury on body of the deceased, therefore, it cannot be said that the respondents assaulted the deceased by club. The suicidal note is mainly focused in assaulting by club, but that part is not substantiated by medical evidence. The other part of the suicidal note is bald and general statement and the same is not equivalent to abetment.
5. 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.

6. 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.
7. For commission of offence under Section 306 of IPC, there should be live-link between act of any of the respondent and death of the deceased. The deceased had no option but to end his life, it has also to be established by the prosecution, but evidence on this count is lacking. The trial court after elaborately discussed the oral evidence and suicidal note recorded finding that abetment on part of any of the respondent is not established.

8. The trial court elaborately discussed the entire evidence and recorded finding of acquittal. The finding recorded by the trial court is one of the plausible view and it is settled law that if two views are possible, the view which is favourable to the accused/respondent, should be accepted. After going through the record, it is not a case where any interference is required with the judgment of the trial court. It is also 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.
9. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun