

(2019) 04 CHH CK 0035

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition (CRMP) No. 215 Of 2019

State Of Chhattisgarh

APPELLANT

Vs

Ghanshyam Sahu And Ors

RESPONDENT

Date of Decision : 05-04-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 378(1)
Indian Penal Code, 1860 — Section 34, 107, 306, 498A

Citation : (2019) 04 CHH CK 0035

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Ravish Verma

Final Decision : Dismissed

Judgement

Ram Prasanna Sharma, J

1. Heard on I.A. No. 1 of 2019, application for condonation of delay in filing the instant petition. For the reasons mentioned in the application, delay of 611 days is condoned.

2. Also heard the appeal filed under Section 378(1) of the Code of Criminal Procedure, 1973.

3. This petition is directed against the judgment dated 19.01.2017 passed by the Court of Additional Sessions Judge, Mungeli in Sessions Trial No.29/2015, wherein the said Court acquitted the Respondents from the offence punishable under Section 306/34 and 498-A read with Section 34 of IPC.

4. In the present case, name of the deceased is Narbadiya Bai who was married to Respondent No.1-Ghanshyam Sahu. Respondent No.2-Piha Lal Sahu is father of Ghanshyam Sahu and Respondent No.3-Smt. Rekha Sahu is wife of elder brother of Ghanshyam Sahu, namely Damodar Sahu. It is alleged that Respondents harassed the deceased on account of not bringing a Motorcycle at

the time of marriage and again they questioned character of the deceased, because of which she committed suicide by setting herself ablaze.

5. Case of the prosecution is based on statement of Mewak Ram Sahu (PW-3) who is father of the deceased and Smt. Vimla Bai (PW-4) who is mother of the deceased. The other witnesses did not support the version of prosecution or they assist during investigation after registration of FIR. Mewak Ram Sahu and Smt. Vimla Bai are resident of village Ghoghra while the incident took place in the present case at village Bhathalikurd. The statement given by both the witnesses is based on information given to them by the deceased prior to her death. From their statement the only thing that is established is that deceased informed them regarding harassment by her in-laws. Versions of both the witnesses is not clear regarding time of harassment and again no one specifically deposed as to which of the Respondent did what kind of overt act. Therefore, statement is bald and general in nature and same is hearsay in nature.

6. In order to hold the person guilty under Section 306 of the IPC, it is necessary that the case should fall within the ambit of Section 107 of the 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 instigate 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 U/s. 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.

8. As the witnesses who are father and mother of the deceased were not present to see as to what was really going on in the matrimonial house of the deceased, it would be unsafe to record finding on the basis of statement which is based on information given to them by the deceased. There is neither any dying declaration nor any suicidal note indicating the real cause of death of the deceased.

9. From overall assessment of the evidence, the clinching evidence regarding the

harassment is lacking in the present case.

10. Presumption of 113A of the Indian Evidence Act, 1872 is available only when harassment is proved to the satisfaction of the Court. There is no direct or active act by any of the Respondents, therefore, it cannot be held that cause of death is intentionally aiding or instigating the deceased by any of the Respondent. The trial Court has discussed the entire evidence and recorded finding. After assessing the evidence, there is no reason to arrive at any other finding against the Respondents.

11. Appeal is rejected.