

(2018) 09 CHH CK 0069

Chhattisgarh High Court

Case No: Criminal Misc. Petition No. 117 Of 2018

State Of Chhattisgarh

APPELLANT

Vs

Devi Dayal And Ors

RESPONDENT

Date of Decision: Sept. 5, 2018

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 378(3)
- Indian Penal Code, 1860 - Section 34, 107, 306

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Suryakant Mishra, AL Singroul

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. Heard on IA No.01/18 for condonation of delay in filing the petition.

2. For the reasons mentioned in the application and the law laid down by Hon'ble Supreme Court in the matter of State of Haryana Vs. Chandra Mani

& Ors. reported in 1996 3 SCC 132, the delay of 56 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 appeal has been preferred against judgment of acquittal dated 26.7.2017 passed by Additional Judge to the Court of Additional Sessions Judge

Katghora, Distt. Korba (CG) in Session Case No.96/2016 wherein the said Court acquitted the respondents of the charges under Section 306 read

with Section 34 of the Indian Penal Code, 1860.

5. In the present case name of the deceased is Santosh. As per the version of the prosecution, on 20.8.2016 one Peetambar was in the state of intoxication and deceased Santosh was pouring water on his body in order to reduce the intoxication. At that time, respondent Devi Dayal prevented him from pouring water and deceased Santosh pushed Devi Dayal causing injury on his left leg. After hearing about the incident, respondent Jai Prakash who is the son of respondent Devi Dayal reached to the spot and pushed Santosh who sustained injuries on his back. After the incident deceased Santosh reached to his house and told his mother Dhanmat Bai that the respondents have assaulted him and he will not return to home. On the next day body of Santosh was found hanging in a tree near school, the matter was reported and investigated.

6. Learned counsel for the petitioner/State submits that from the evidence of Dular Singh (PW-1) Dhanmat Bai (PW-2), Sundar Sai (PW-3), Smt. Santara Bai (PW-5), Ashok Kumar (PW-6) story of prosecution is established but the trial Court has not evaluated the evidence in its true perspective and came to a wrong conclusion.

7. From the evidence of all the above witnesses, only fact established is that Peethambar was in a state of intoxication and the deceased poured water on his body in order to reduce the intoxication and at that time there was some altercation between the deceased and the respondents.

8. 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.

9. 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.

10. In the present case no such act is established against the respondents which compelled the deceased to end his life mens rea on the part of the

respondents is lacking. All the ingredients which are mentioned under Section 107 of IPC which is a definition of abetment are also lacking. Though it

may be a case of bitter experience of the deceased with the respondents, but there is no live link between altercation between the parties and the act

of the deceased. Therefore, it would not be proper for this Court to grant leave to appeal.

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