

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 125 of 2009**

State of Chhattisgarh

---- Appellant**Versus**

1. Ramavatar, S/o Darshan, aged about 26 years, R/o Avarid Chowky, Navagarh (C.G.)
2. Kunti Bai W/o Mohar Lal, aged about 21 years, R/o Avarid Chowky, Navagarh (C.G.)

Both R/o P.S. Shiverinarayan.

---- Respondents-----
For State/ Appellant : Ms. K. Tripti Rao, Panel Lawyer.For Respondents : Mr. Shalvik Tiwari, Advocate.
-----**Hon'ble Shri Justice Ram Prasanna Sharma****Order On Board****04/09/2018**

1. This appeal is preferred under Section 378(3) of the Code of Criminal Procedure, 1973 against judgment dated 13.07.2004 passed by Chief Judicial Magistrate, Janjgir (C.G.) in Criminal Case No. 1459/2002, wherein the said court acquitted the respondents for commission of offence under Section 498(A) read with Section 34 of IPC for commission of cruelty against one Manmati who was wife of respondent- Ramavatar.
2. As per case of the prosecution, the respondents harassed to said Manmati in relation to unlawful demand of motorcycle and television and she subjected to physical and mental torture.
3. To substantiate the charge, the prosecution examined as many as 7 witnesses. Narottam (PW-2), Ramadhar (PW-3) &

Dhanauram (PW-5) are hearsay witnesses. As per their version, Manmati informed her about incident and some panch also informed about the incident. As these witnesses are hearsay witnesses, their version are not admissible.

4. 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 cornered, 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 rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible.”

5. Though, Manmati deposed that the respondents assaulted her for not bringing motorcycle and television, but no medical evidence is adduced for the same to establish that any injury was found on the body of Manmati. Her statement regarding using obscene words by the respondents is also not clear as to what was the words used against her.

6. In absence of medical evidence, it is not established that any assault was committed against her. Rest of the witnesses are related to investigation part of registration of FIR.
7. After evaluating the evidence adduced by the prosecution, the trial court opined that since respondent No. 1 remarried that is why there is possibility of making allegation against the respondent.
8. After going through the entire record, this Court has no reason to substitute the finding recorded by the trial court.
9. Accordingly, the appeal stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge