

HIGH COURT OF CHHATTISGARH, BILASPUR
(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

CRA No. 197 of 2010

- Chinta Das, age 26 years, S/o Chikan Das R/o village Salouni Police Station Baloda Bazar, Dist. Raipur (CG).

---- Appellant.

Versus

- State of Chhattisgarh through Station House Officer, Tahsil and PS Baloda Bazar, Dist. Raipur (CG).

---- Respondent

 For Appellant : None appears

For Respondent/State : Mr. Sanjiv Pandey, Govt. Advocate

Judgment on Board
(13-09-2018)

1. This appeal is preferred under Section 374 (2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 9-2-2010 passed by 2nd Additional Sessions Judge, Baloda Bazar, Sessions Division Raipur (CG) in Sessions Trial No. 46 of 2009 wherein the said Court convicted the accused/appellant for commission of offence under Sections 306 and 498-A of the IPC 1860 and sentenced him to undergo RI for seven years and fine of Rs.100/- and RI for three years and fine of Rs.100/- with default stipulations.
2. As per prosecution case, name of the deceased is Kulwantin Bai. The appellant is husband of the complainant. As per version of the prosecution the appellant abetted his wife to commit suicide on or before 11-11-2008 and again committed

cruelty on her after marriage. As per record, marriage between the parties took place in the year 2002.

3. The matter was investigated and the appellant was charge-sheeted. After completion of trial, the trial Court convicted the appellant as mentioned above.
4. Learned State counsel supporting the impugned judgment submits that the finding of the trial Court is based on proper marshaling of evidence and the same is not liable to be disturbed.
5. I have heard learned counsel for the State, perused the judgment impugned and record of the trial court.
6. To substantiate the charge, prosecution examined as many as 13 witnesses. The place of incident is village Salouni where the deceased was residing with the appellant. PW/1 Pooran Das is uncle of the deceased. As per version of this witness, the deceased informed him regarding their quarrel and due to quarrel the deceased stayed in her house for two months. From the statement of this witness who is a resident of village Gaadabhata, it is clear that he is not aware as to what really happened in the village Salouni where the incident took place. From the statement of this witness, it is not clear that any sarcastic act was happened to the deceased on the date of incident or prior to the date of incident and same is instigated by the appellant.

7. PW/2 Sant Das is father of the deceased and he deposed that his daughter informed him regarding their quarrel, but from the statement of this witness, it is not clear as to what really happened on the date of incident or prior to the date of incident in the house of the deceased. This witness is also a resident of village Gaadabhata and he is not resident of village Salouni where the incident took place.
8. PW/3 Shakuntala Bai is mother of the deceased and she also deposed that the appellant harassed her daughter and it was informed by her daughter. This witness is unable to tell as to what really happened on the date of incident or prior to the date of incident in the house of the deceased. This witness is also a resident of village Gaadabhata and she is unable to see what is going on in the village Salouni. PW/4 Chiteshwar is also resident of village Gaadabhata and he did not depose as to what really happened at village Salouni. PW/5 Rajni Manikpuri is sister of the deceased who is resident of village Gaadabhata and she deposed that at one point of time deceased escaped from the house of the appellant and appellant threatened her to kill. This witness has further deposed that whatever she has stated is based on the information given by the deceased. This witness is also unable to see as to what really happened at village Salouni as she is resident of village Gaadabhata and she had no occasion to see as to what is going on at village Salouni. In the present case, neither dying declaration of the deceased was

recorded nor any suicidal note of the deceased was seized during investigation. Looking to the entire evidence it appears that case of the prosecution is based on hearsay evidence.

9. Now the point for consideration of this court is whether the finding can be arrived at on the basis of hearsay evidence.

10. In the matter of **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.”

11. As the evidence is adduced by the prosecution is not admissible in evidence, the same cannot be acted upon and the appellant cannot be convicted on the basis of inadmissible evidence. General statements are not sufficient to bring home the guilt, therefore, finding arrived at by the trial Court is not sustainable and the same is liable to be set aside.
12. Accordingly, the appeal is allowed. Conviction and sentence imposed upon the appellant by the trial Court is hereby set aside. The appellant is acquitted of the charge under Sections 306 and 498-A of the IPC. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of the Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
JUDGE

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