

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 122 of 2010**

- Tarun Kumar S/o Aatmaram Satnami aged about 22 years, Occupation Agriculture R/o Vill. Sinodha Tah. Bhatapara, Police Station Bhatapara (Gramin) District Raipur (CG)

---- Appellant.

Versus

- State of Chhattisgarh through Police Station Bhatapara Gramin, District Raipur (CG).

---- Respondent

CRA No. 135 of 2010

1. Savitri Bai w/o. Late Raju Hiralal Sahu, aged about 22 years, occupation House wife, R/o Village .Basin, Police Station Suhela, District Raipur (CG).
2. Deodhar Satnami S/o Garib Das Satnami aged about 25 years, Occupation Agriculturist R/o Village Basin, Police Station Suhela, District Raipur (CG).

---- Appellants

Versus

- State of Chhattisgarh through Station House Officer, Police Station Bhatapara gram in District Raipur (CG).

---- Respondent

For the Appellants : None

For the State : Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****4-10-2018.**

1) As both the appeals arise out of same incident, they are heard analogously and are being disposed of by this common judgment.

2) Both the appeals are preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 1-2-2010 passed by the Additional Sessions Judge, Bhatapara, Session Division Raipur (C.G.) in Session Trial No. 37 of 2009 wherein the said court convicted the appellants for commission of offence under Section 306 of IPC and sentenced them to undergo S.I. for two years and six months and fine of Rs. 100/- each with default stipulations for abetment of suicide of one Raju @ Heeralal

3) It is alleged by the prosecution that the wife of the deceased namely Savitribai had illicit relation with appellant Tarun Kumar and Deodhar and they harassed the deceased due to which he committed suicide. One suicidal note was seized during course of investigation and the appellants were charge-sheeted. After completion of trial, the trial Court convicted them as mentioned above.

4) To substantiate the charge, prosecution examined as many as ten witnesses. PW/1 Kanhaiyalal has not supported the version of prosecution. As per version of this witness, deceased had not informed him anything regarding his wife and he is not aware of the reason behind the suicide by the deceased. He admitted in his cross examination that no quarrel took place between the deceased and his wife before him. PW/6 Toran Das deposed that the deceased informed him at one point of time that the appellants have made quarrel with him and assaulted him. He further deposed that

deceased informed him that his wife is having relation with her brother-in-law. Version of this witness establishing the fact that something is informed by the deceased to him, but since the deceased has not been examined in support of the version of this witness, version of this witness appears to be hearsay.

5) 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.”

6) This witness further deposed that one diary was seized during investigation but he is not aware of the fact as to what was written in the said diary. He further deposed that he is not aware of the fact as

to by whom diary was written. As per version of Ajay Kumar Verma, Head Constable (PW/10) no expert is examined that the said suicidal note is written by the deceased.

7) In totality of the evidence, there is no direct evidence regarding writing of suicidal note by the deceased and there is no expert opinion in support of version of the prosecution. Therefore, it is not established that any such diary was written by the deceased. The trial Court recorded its finding on the basis of suicidal note (para 25 of the said judgment), but the said suicidal note was not proved and same is not legally admissible evidence. 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 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.

8) 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 of IPC, 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.

9) In the present case, it is not established that any of the appellant has instigated or intentionally aided the commission of suicide and again there is no direct evidence regarding conspiracy. When evidence for abetment is lacking, offence of charge is not established. Conviction and sentence passed by the trial Court is not sustainable looking to the entire evidence on record.

10) Accordingly, both the appeals are allowed. Conviction and sentence passed by the trial court is set aside. All the three appellants are acquitted of the charge under Section 306 of IPC. The appellants are reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A of the Cr.P.C. The fine amount, if paid, shall be refunded to the appellants.

Sd/-

(Ram Prasanna Sharma)
JUDGE