

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.196 of 2010**

1. Rajo Bai Sahu S/o Heeralal Sahu, aged about 60 years, R/o Vill. Arod, PS Magarlod, Dhamtari (CG)
2. Hem Kumar Sahu S/o Heeralal Sahu, Aged about 32 years, R/o Vill. Arod, PS Magarlod, Dhamtari (CG)
3. Giresh Kumar Sahu S/o Heeralal Sahu, aged about 21 years, R/o Vill. Arod, PS Magarlod, Dhamtari (CG)

---- Appellants

Versus

State Of Chhattisgarh through the District Magistrate, Dhamtari
(CG)

---- Respondent

 For the appellants : Shri Sachin Singh Rajput and Shri
 Sharad Mishra, Advocates
 For the respondent/State : Shri Sanjeev Pandey, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****04.9.2018.**

1. This appeal has been directed against the judgment of conviction and order of sentence dated 11.3.2010 passed by Additional Sessions Judge (FTC) Dhamtari, Distt. Dhamtari in Session Case No.24/2009, wherein the said Court convicted all the appellants for commission of offence under Section 306 of the Indian Penal Code, 1860 and sentenced them to undergo Rigorous imprisonment for five years each and to pay fine of Rs.500/- each with default stipulation.

2. As per the prosecution case, deceased Prabha Bai was married to appellant Hem Kumar Sahu about 10 years ago from the date of incident. Hem Kumar Sahu and the deceased are blessed with two children. After one year of the marriage, the appellants used to ill treat the deceased and used to quarrel with her. On 31.3.2009 when nephew of the deceased Yuvraj Kumar Sahu (PW-

2) went to the house of the deceased to give invitation card of his marriage, the appellants committed quarrel and assaulted the deceased. On 01.4.2009, the deceased committed suicide by consuming poison.

3. Learned counsel for the appellants submits as under:

(i) Ingredients of abetment as defined under Section 107 IPC is not established as per the evidence laid down by the prosecution and the trial Court has decided the issue in an arbitrary manner.

(ii) Without there being any clinching evidence the trial Court held that instigation has been committed by the appellants.

(iii) Finding of the trial Court regarding torture by the appellants is not based on evidence and it is based on conjunctures.

(iv) The trial Court has not evaluated the evidence on its right perspective and the same is liable to be reversed.

4. On the other hand, learned counsel for the State while supporting the judgment submits that since the appellants assaulted the deceased prior to the date of incident, the offence of instigating to commit suicide is established and finding of the trial Court is not liable to be interfered with.

5. I have heard learned counsel for the parties and perused the material available on record.

6. To substantiate the charge, the prosecution has examined as many as 25 witnesses. To nullify the charge, the defence has examined two witnesses.

7. Santram Sahu (PW-1) is the resident of Sivni Khurd whereas the place of incident is village Arod. This witness deposed before

the trial Court on the basis of what is told to him by deceased Prabha Bai. Dev Singh Sahu (PW-3) is also resident of village Sivni Khurd and his statement is also based on what is informed to him by deceased Prabha Bai. Firthu Ram Sahu (PW-8) is also the resident of village Sivni Khurd and his version is also hearsay version based on the information received from deceased Prabha Bai. Goverdhan Sahu (PW-10) is also the resident of village Sivni Khurd and he also deposed before the trial Court what is stated to him by the deceased. Pushpa Sahu (PW-12) is also the resident of village Sivni Khrud. She deposed on the basis of what is informed to her by the deceased. Roshni Bai Sahu (PW-13) and Purnima Bai Gond (PW-14) are also the residents of village Sivni and they deposed before the trial Court what is stated to them by the deceased.

8. The point for consideration before this Court is whether the hearsay evidence is legally admissible evidence and whether it can be acted upon.

9. 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.”

10. In view of the above, hearsay evidence is second hand evidence and is inadmissible in evidence, therefore, second hand evidence cannot be acted upon to record any findings.

11. Yuvraj Kumar Sahu (PW-2) deposed that on 31.3.2009 , i.e. one day prior to the date of incident, he went to the house of the deceased and in his presence, the appellants assaulted the deceased. Version of this witness is unshaken during cross-examination and on the basis of his evidence the trial Court opined that since all of them have harassed the deceased, they have abetted the deceased to commit suicide.

12. The next point for consideration before this Court is whether the findings arrived at by the trial Court is sustainable or not.

13. In the matter of **Amalendu Pal Alias Jhantu vs. State of West Bengal** reported in **(2010) 1 SCC 707**, the Hon'ble Supreme Court held that the perpetration of physical torture on the deceased on the day prior to the date of the incident which led the deceased to commit suicide is the prosecution case all throughout. It is nowhere the case of the prosecution that the appellant had played any active role either in instigating or aiding the commission of suicide. It is further held that there must be an active role of instigation to facilitate the commission of suicide. It is further held that mere assault is not sufficient to bring home the guilt under Section 306 IPC. It is further held that if it is transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a

given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

14. Looking to the entire evidence adduced by the prosecution, though assault by the appellants may be proved but the same is not sufficient to hold that it is abetment of commission of suicide. In the present case instigation or conspiracy or intentionally aiding for commission of abetment as defined under Section 107 IPC is not established and it is difficult to hold that the offence of abetment of suicide is established. The finding arrived at by the trial Court is not sustainable.

15. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellants are acquitted of the charge framed under Section 306 IPC. The appellants are reported to be on bail. Their bail bonds shall remain operative for a further period of six months from today in terms of Section 437A of the CrPC.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**