

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1365 of 2018**

- State Of Chhattisgarh Through Police Station Dongargaon, District Rajnandgaon Chhattisgarh

---- Petitioner**Versus**

Premkumar S/o Aghanu Ram Aged About 26 Years R/o Village Bodhitola,
Ward No. 11, Police Station Dongargaon, District Rajnandgaon
Chhattisgarh

---- Respondent

For Petitioner/State : Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

23/10/2018

1. Heard on I.A.No.1/2018, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and the law laid down by the Hon'ble Apex Court in the matter of State of Haryana Vs. Chandra Mani & Ors., (1996) 3 SCC 132, the same is allowed and delay of 8 days in filing the petition is condoned.
3. Also heard on the application for grant of leave to appeal filed under Section 378 (3) Cr.P.C.
4. The instant Cr.M.P. has been filed seeking leave to appeal against the judgment dated 24th March, 2018, passed by the Sessions Judge, Rajnandgaon(CG) in ST No.32/2017, wherein the said Court has acquitted

the respondent of the charge under Section 306 of the I.P.C.

5. In the present case, name of the deceased is Anita Bai, who was wife of the respondent. The case of the prosecution is based on the statement of Hemuram Yadav (PW3) who is father, Smt. Janki Bai (PW4), mother and Tameshwari Yadav (PW8), sister of the deceased. Date of incident is 10.10.2016 at village Bodhitola, Ward No. 11, Police Station, Dongargaon. No report was lodged against the respondent up to 15.3.2017 i.e. after 5 months of the incident. Hemuram Yadav (PW3) is father of the deceased and resident of village Salikzitiya and statement of this witness is based on information given to him by his daughter, the deceased. As per version of this witness, the deceased informed her sister Tameshwari Yadav (PW8) regarding beating her by the respondent. Smt. Janki Bai (PW4), mother of the deceased has stated before the trial Court what is informed to her by the deceased. Tameshwari Yadav (PW8) also deposed what is informed to her by the deceased. No legal action was taken against the respondent during lifetime of the deceased and the evidence adduced by the prosecution is hearsay in nature which is inadmissible in evidence.

6. 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 concerned, 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."

7. 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. There is nothing on record to conclude that any instigation or intentionally aiding is established against the respondent. In absence of evidence of abetment, charge under Section 306 IPC is not established. This Court has no reason to interfere with the finding recorded by the trial Court. It is not a case where the respondent should be called for full consideration of the case. Accordingly, the prayer for leave to appeal is rejected.

8. Consequently, Cr.M.P. stands dismissed. Sd/

(Ram Prasanna Sharma)

Judge