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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.41 of 2018**

State Of Chhattisgarh Through Chalgali District Balrampur
Ramanujganj Chhattisgarh

---- Petitioner**Versus**

1. Bal Govind S/o Anand Ram Cherwa, Aged About 27 Years
R/o Village Chalgali Baigapara, Police Station Chalgali,
District Balrampur Ramanujganj Chhattisgarh
2. Smt. Poonam Bai, W/o Late Anand Ram Cherwa, Aged
About 45 Years R/o Village Chalgali Baigapara, Police
Station Chalgali, District Balrampur Ramanujganj
Chhattisgarh

---- Respondents

For the Petitioner/State : Shri Lav Sharma, Panel Lawyer
For the respondents : Shri AN Pandey, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

10.10.2018.

1. Heard on IA No.01/18 for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and the law laid down by Hon'ble Supreme Court in the matter of **State of Haryana Vs. Chandra Mani & Ors.** reported in **1996 3 SCC 132**, the delay of 56 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.
4. This appeal has been preferred against judgment of acquittal dated 17.5.2017 passed by Second Additional Judge to the Court of Additional Sessions Judge Ramanujganu, Distt. Surguja (CG) in Session Case No.R.56/2016 wherein the said

Court acquitted the respondents of the charge under Section 306 of the Indian Penal Code, 1860 for abetment to commit suicide to Urmila who was wife of respondent No.1 on 22.3.2016 at village Chalgali.

5. As per the version of the Police Inspector Umendra Kumar Tandon (PW-4) report was lodged by respondent No.1. In the report it is mentioned that deceased Urmila was suffering from disease epilepsy (mirgi) and due to that she committed suicide by setting her ablaze.

6. Place of incident is village Chalgali. Raju Ram Gupta (PW-1) did not depose anything in his examination-in-chief, but when leading questions were put to him by the prosecution, he deposed that at one point of time, the deceased informed him that both the respondents made comments on her complexion and also informed him that they used to harass her on account of her inability to cook food. In his cross-examination, he deposed that the deceased was suffering from epilepsy and no quarrel took place between the deceased and the respondents on any matter. Version of this witness is based on what is told to him by the deceased, which is hearsay in nature.

7. Smt. Mainamati (PW-6) is the mother of the deceased. As per the version of this witness, at one point of time, the deceased informed her that the respondents used to harass her for her inability to cook food. This witness is the resident of village Kulhadi which is at a distance from village Chalgali. This witness has no occasion to visit the place of the deceased, therefore, she

was unable to state as to what really happened with the deceased on the date of incident or prior to the date of incident. This witness has made imaginary statement that the deceased has been killed, but that is not the prosecution case. This witness had no opportunity to see what is happening with the deceased at village Chalgali, her evidence is not a connecting piece of evidence for abatement of suicide. Baldev (PW-7) is the father of the deceased and he deposed on the same line as deposed by his wife Smt. Mainamati (PW-6). This witness is also the resident of village Kulhadi and had not occasion to visit the village Chalgali to see what really happened with the deceased, therefore evidence of this witness is also not a connecting piece of evidence regarding instigation, intentionally aiding or conspiracy as defined under Section 107 of IPC which defined abatement. Pappu Ram (PW-9) is also the resident of village Kulhadi and he stated that at a point of time, the deceased informed him that the respondents used to quarrel with the deceased. Version of this witness is also hearsay in nature.

8. 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.”

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.

9. On overall assessment of the evidence, abatement on the part of the respondents is not established. That is why the trial Court recorded the judgment of acquittal. This Court has no reason to record a contrary finding . Therefore, it would not be proper for this Court to grant leave to appeal.

10. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE