

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2409 of 1999

1. Parmeshwar Singh Kanwar, S/o Lachhan Singh, Aged about- 25 years, Occupation- Agriculturist,
2. Lachhan Singh, S/o Late Baddhu Singh, Aged about- 65 years, Occupation- Agriculturist, **(Abated)**

Both Appellants are Resident of village- Khodari, P.S.- Kushmunda, District- Bilaspur (C.G.)

---- Appellants

Versus

- State of Madhya Pradesh (Now C.G.)

---- Respondent

For Appellant	: Shri Manoj Kumar Sinha, Advocate.
For State/Respondent	: Smt. Shubha Shrivastava, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

21/10/2019

1. This appeal is preferred against the judgment dated 8th February, 1999 passed by 2nd Additional Sessions Judge, Bilaspur (M.P.) (Now C.G.) in Sessions Trial No. 435 of 1997 wherein the said Court convicted both the appellants for commission of offence under Section 306 read with Section 34 of IPC, 1860 and sentenced to undergo R.I. for five years and fine of Rs. 1000/- with default stipulation.
2. During pending of the appeal appellant No. 2 namely Lachhan Singh died and his appeal is abated. As per case of the prosecution deceased Malti Bai was wife of the appellant No. 1 who committed suicide in the intervening night of 9th and 10th of May, 1996. It is alleged that appellants harassed her for illegal demand that is why she committed suicide and the act of the appellants is equivalent of abetment that is why charge-sheet

was filed against him and after completion of trial he was convicted as mentioned above.

3. Learned counsel for the appellant submits that the case of the prosecution is depend only on the basis of doubts created by mother and father of the deceased. Though there is certain family disputes, but it is not equivalent to abetment of suicide as alleged by prosecution. No legal action was taken for earlier demand which was made from deceased and case of the prosecution is not established by cogent evidence. The trial Court has not evaluated the entire evidence in its right perspective, therefore, same is liable to be set aside.
4. On the other hand, learned counsel for the State/respondent submits that finding of the trial Court is based on proper marshaling of evidence which is not required to be quashed while invoking jurisdiction of appeal.
5. In the present case, the prosecution examined as many as eight witnesses while the defence side examined only one witness. Karan Singh (PW-1) is brother of the deceased, Roop Sai (PW-5) father of the deceased and Mangal Bai (PW-6) is mother of the deceased. The entire case of the prosecution is based on these three witnesses. As per version of the Karan Singh (PW-1) deceased informed him that the appellants demanded money from her and assaulted her. Roop Sai (PW-5) and Mangal Bai (PW-6) deposed on the same line. The statement made by these three witnesses is based on information given by the deceased, but no complaint was made by them during lifetime and no

medical examination was conducted regarding physical violence. In absence of evidence of physical violence it cannot be said violence is committed by the appellants. The incident took place in village- Khodari which is different place from their residence so they have no occasion to see what is going in house of the deceased.

6. The point for consideration is whether hearsay evidence can be acted upon. 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 rumor flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible."

7. As mentioned above, the hearsay evidence is not legally admissible evidence, therefore, it is not safe for this Court to presume against the appellants under Section 113-A of the Indian Evidence Act, 1872. Presumption under the Section is available

when the harassment is established by the prosecution with cogent evidence.

8. For offence under Section 306 of IPC there should be clear mens-rea to commit the abetment and there should be a direct or active act by the appellants which lead the deceased to commit suicide. Intentionally aiding a person to do a thing also includes in abatement, but from the record it cannot be inferred that the respondent instigated or intentionally aided the deceased to commit suicide.
9. For the foregoing reason judgment of conviction and order of sentence passed by the trial Court is set aside. The appeal is allowed. The appellant is acquitted of the charge under Section 306 of the IPC. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of Cr.P.C.
10. Accordingly, the criminal appeal is allowed.

Sd/-
(Ram Prasanna Sharma)
Judge