

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2374 of 2019

State of Chhattisgarh, Through: Station House Officer, Police
Station Newra, District- Raipur (C.G.)

---- Petitioner

Versus

Bhupendra Kumar Sahu @ Golu, S/o- Shri Mohan Lal Sahu,
Aged about- 22 years, R/o- Village Majitha, Police Station
Kharora, District- Raipur (C.G.)

---- Respondent

For State/ Petitioner : Mr. Raghvendra Verma, G.A.

For Respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

25/11/2019

1. Heard on I.A. No. 01/2019, application for condonation of delay in filing of instant petition.
2. For the reasons mentioned in the application and as per the law laid down by Hon'ble the Apex Court in the matter of **State of Haryana Vs. Chandra Mani & others** reported in (1996) 3 **SCC 132**, the delay of 310 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against judgment dated 30th August, 2018, passed by Third Additional Sessions Judge, Raipur (C.G.), in Sessions Trial No. 92/2018, wherein the said court

acquitted the respondent for charge under Section 306 of IPC, 1860 for abatement of suicide of one Umeshwari Manikpur who committed suicide.

5. The case of the prosecution is based on death of the deceased namely Kumari Umeshwari Manikpuri. The respondent and said Umeshwari was in love and due to some altercation respondent challenged her through mobile phone that if she loves him then she should die and thereafter said Umeshwari committed suicide by setting her ablaze.
6. To substantiate the charge, the prosecution examined as many as 17 witnesses. All witnesses are hearsay in nature and they deposed before the Trial Court on the basis of information received by family members of deceased that Umeshwari died because respondent has challenged her to end her life if she loves him. The entire version of these witnesses is hearsay in nature and same is not admissible.
7. 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." 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.

8. Other piece of evidence is one dying declaration recorded as per Ex.P.-26 at about 4:50 PM in Community Health Centre, Tilda on 31st December, 2017. Where no medical expert opined that said Umeshwari was in a position to give statement. Therefore, the Trial Court opined that said dying declaration is not dependable.
9. View taken by the Trial Court is one of the plausible view and it is settled law that if two views are possible, the view which is in favour of the respondent, should be preferred.
10. The trial court has elaborately discussed the entire evidence and came to conclusion that the charge leveled against the respondent is not established. After reassessing the entire evidence, this Court has no reason to record contrary finding. It is not a case where respondent should be called for hearing again for full consideration of this petition.

11. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle