

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1463 of 2017**

- State of Chhattisgarh, through- District Magistrate- Bemetara (C.G.) ----- **Petitioner**

Versus

1. Ramesh Nishad, S/o Indarman Nishad, Aged about 31 years,
2. Indarman Nishad, S/o Vishram Nishad, Aged about 64 years,
3. Rambai, W/o Indarman Nishad, Aged about 61 years,
4. Smt. Bharti Nishad, W/o Ramesh Nishad, Aged about 28 years,
5. Geetabai, D/o Indarman Nishad, Aged about 32 years,

All respondents are R/o- Village Keshdabri, Police Station- Saja,
District- Bemetara (C.G.) ----- **Respondents**

For State/Petitioner : Shri Dinesh R.K. Tiwari, Dy. G.A.

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board**05/03/2020**

1. Heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
2. This petition is preferred against the judgment dated 22nd July, 2017 passed by Sessions Judge, Bemetara, District- Bemetara (C.G.) in Sessions Trial No. 74/2015 wherein the said Court acquitted all the respondents for charge under Section 306 read with Section 34 of the Indian Penal Code (for short "the IPC"), 1860.
3. In the present case, name of the deceased is Smt. Laxmi Nishad who was residing with respondent No. 1 Ramesh Nishad as his wife. Ramesh Nishad was earlier married to one Bharti, but she

again married with Laxmi Nishad on other form of the marriage, than form of Saptpadi.

4. To substantiate the charge, the prosecution examined as many as 19 witnesses. Gopi Yadu (PW-2) who is brother of the deceased. This witness had no knowledge as to what really happened with the deceased on the date of incident or prior to the date of incident.
5. Mannu Das (PW-3) also did not depose as to what really happened with the deceased on the date of incident or prior to the date of incident.
6. Gendlal Yadav (PW-4) who is father of the deceased, who deposed that at one point of time respondents Bharti, Ramesh, Geeta and Ram Bai assaulted the deceased, but from his statement, it is not clear on what date the said incident happened and whether any medical expert has examined her injury. It appears from the evidence, this witness has not lodged report in the said case and no one examined the deceased for ascertaining injury sustained by her, therefore, statement of this witness is not substantiated by sufficient evidence.
7. Sukhmat Bai Yadav (PW-5) who is mother of the deceased and as per version of this witness at one point of time her daughter informed her that respondent No. 1 Ramesh Nishad is demanding money from her. From this witness, it is not clear that on the date of demand was made and what steps she had taken to fulfill the demand, therefore, version of this witness is also not a connecting piece of evidence regarding abatement of suicide.

The other witnesses have also not thrown light in their statement regarding the incident.

8. For commission of offence under Section 306 of IPC ingredients mentioned in Section 107 of IPC has to be established which may be mentioned as under:-

- (i) instigating a person to commit an offence.
- (ii) engaging in a conspiracy to commit an offence.
- (iii) intentionally aiding a person to commit an offences.

9. In the present case, the entire evidence is based on information given by deceased which is hearsay in nature. 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."

10. For establishing the charge under Section 306 of IPC, there should be live-link between the death of the deceased and act of

the respondents, but there is nothing on record incriminating the respondents with the crime in question.

11. The trial Court after evaluating the entire evidence recorded finding of acquittal. After going through the record, this Court is of the opinion that it is not a case where interference of this Court is required in the judgment of the trial Court. It is also not a case where the respondents/accused should be called for full consideration of this petition.
12. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
Judge

Vasant