CHHATTISGARH STATE JUDICIAL ACADEMY, BILASPUR

MEMO

No.595/CSJA/Online Workshop/2022 Bilaspur, dated 6.08.2022

To,

The District & Sessions Judge,
Balod/Baloda-Bazar/Balrampur at Ramanujganj/Bemetara/Bilaspur/
Dantewada/Dhamtari/Durg/ Janjgir Champa/Jagdalpur/Jashpur/
Kanker/Kawardha/ Kondagaon/Korba/Korea at Baikunthpur /
Mahasamund/Mungeli/Raigarh/ Raipur/ Rajnandgaon/Surajpur/Surguja
at Ambikapur.

Sub.: Regarding **Online Workshop** of Judges of Higher Judicial Services on **"Criminal Appeals and Revisions-Law, Practice and Procedure"** scheduled to be held on **07/08/2022.**

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As per Academic Calendar for the year 2022-23, Workshop of Judges of Higher Judicial Services on **"Criminal Appeals and Revisions-Law, Practice and Procedure"** is scheduled to be held on **07/08/2022 (Sunday).**

All the District & Sessions Judges and 1st Additional District & Sessions Judge of the Districts are to participate in the Workshop.

So, CSJA is organizing **Workshop of Judges of Higher Judicial Services** on **"Criminal Appeals and Revisions-Law, Practice and Procedure"** on **07/08/2022 at 10.30 a.m.** through **Online mode**.

It is further to inform you that Digital Platform/link to join the online workshop will be shared with all the participants by CSJA.

You are, therefore, requested to circulate it amongst all the concerned Judicial Officers posted in your District as per the tables below with a request that they shall attend the **Online Workshop from the court premises on 07/08/2022 by 10.00 a.m. positively in the prescribed uniform.** They shall maintain social distancing in case more than one are attending the online workshop in a single room and follow the guidelines and norms issued by the Central Government and the State Government as well as advisories issued by the Hon'ble High Court during the period COVID-19.

The table is as under:

S.NO.	District	HJS
1.	Ambikapur	1. Shri Rakesh Bihari Ghore District & Sessions Judge, Ambikapur 2. Smt. Neelima Singh Baghel I Additional District and Sessions Judge,Ambikapur
2.	Baikunthpur	1. Shri Anand Kumar Dhruw District and Sessions Judge, Baikunthpur 2. Shri Manvendra Singh I Additional District and Sessions Judge, Manendragarh
3.	Balod	1. Dr. Pragya Pachouri District and Sessions Judge, Balod 2. Ku. Saroj Nand Das I Additional District and Sessions Judge, Balod
4.	Baloda-Bazar	1. Shri Vijay Kumar Ekka District and Sessions Judge, Baloda-Bazar 2. Shri Rishi Kumar Burman, I Additional District and Sessions Judge, Balodabazar
5.	Balrampur	1. Shri Sirajuddin Qureshi District and Sessions Judge, Balrampur-R'Ganj 2. Shri Prafull Kumar Sonwani I Additional District and Sessions Judge, Balrampur-R'Ganj.
6.	Bemetara	1. Shri Jaideep Vijay Nimonkar District and Sessions Judge, Bemetara 2. Shri Pankaj Kumar Sinha, I Additional District and Sessions Judge, Bemetara
7.	Bilaspur	1. Shri Sunil Kumar Jaiswal, I Additional District and Sessions Judge, Bilaspur
8.	Dantewada	1. Shri Abdul Zahid Qureshi District and Sessions Judge, Dantewada 2. Shri Pravin Kumar Pradhan Additional District and Sessions Judge, Dantewada
9.	Dhamtari	1. Shri K.L. Charyani, District & Sessions Judge, Dhamtari 2. Shri Vijay Kumar Sahu I Additional District and Sessions Judge, Dhamtari

10.	Durg	1. Shri Sanjay Kumar Jaiswal District and Sessions Judge, Durg 2. Shri Sanjeev Kumar Tamak, I Additional District and Sessions Judge, Durg
11.	Jagdalpur	1. Shri Alok Kumar (Sr.) District and Sessions Judge, Jagdalpur 2. Shri Dukhi Ram Dewangan, I Additional District and Sessions Judge, Jagdalpur
12.	Janjgir-Champa	1. Shri Suresh Kumar Soni District and Sessions Judge, Janjgir-Champa 2. Shri Balaram Sahu, I Additional District and Sessions Judge, Sakti
13.	Jashpur	1. Smt. Anita Dahariya, District and Sessions Judge, Jashpur 2. Shri Ajit Kumar Rajbhanu I Additional District and Sessions Judge, Kunkuri
14.	Kanker	1. Shri Yogesh Pareek District and Sessions Judge, Kanker 2. Smt. Leena Agrawal I Additional District and Sessions Judge, Kanker
15.	Kabirdham	1. Smt. Neeta Yadav District and Sessions Judge, Kabirdham 2. Shri Lavakesh Pratap Singh Baghel Additional District and Sessions Judge, Kabirdham
16.	Kondagaon	1. Shri Uttara Kumar Kashyap, District and Sessions Judge, Kondagaon 2. Smt. Prisilla Paul Horo Additional District and Sessions Judge, Kondagaon
17.	Korba	1. Shri Doctorlal Katakwar District and Sessions Judge, Korba 2. Ku. Sanghpushpa Bhatpahari, I Additional District and Sessions Judge, Korba,
18.	Mahasamund	1. Shri Bhisma Prasad Pandey District and Sessions Judge, Mahasamund 2. Shri Liladhar Sarthi I Additional District and Sessions Judge, Mahasamund

19.	Mungeli	1. Shri Arvind Kumar Sinha, District and Sessions Judge, Mungeli 2. Shri Prabodh Toppo I Additional District and Sessions Judge, Mungeli
20.	Raigarh	1. Shri Rajnish Shrivastava District and Sessions Judge, Raigarh 2. Shri Kiran Kumar Jangade, I Additional District and Sessions Judge, Raigarh
21.	Raipur	1. Shri Santosh Sharma District and Sessions Judge, Raipur 2. Shri Santosh Kumar Tiwari I Additional District and Sessions Judge, Raipur
22.	Rajnandgaon	1. Shri Vinay Kumar Kashyap District and Sessions Judge, Rajnandgaon 2. Smt. Satyabhama Ajay Dubey, I Additional District and Sessions Judge, Rajnandgoan
23.	Surajpur	1. Shri Ashok Kumar Sahu District and Sessions Judge, Surajpur 2. Shri Omprakash Singh Chauhan, I Additional District and Sessions Judge, Surajpur

A further request is made that in case of exigency any of the abovesaid Judicial Officers is not present in his/her headquarter or place of posting and is present in other district within the State, he/she shall attend the on-line Workshop from nearest Civil Court building where he/she is at present with an oral information to the concerned District & Sessions Judge. The said District & Sessions Judge is requested to accommodate him/her.

06/08/2022

(Sushma Sawant)
Director

Endt.No.596../CSJA/Online Workshop/2022 Bilaspur, dated .08.2022

Copy to :

1. S.O. to Registrar General, High Court of C.G. Bilaspur for information.

2. CPC for directing the In-charge, NIC for uploading the memo on the official website of CSJA.

3. All Judicial Officers of Higher Judicial Services as per the tables above with a request that they shall attend the **Online Workshop from the court premises on 07/08/2022 (Sunday) by 10.00 a.m. positively in the prescribed uniform.** They shall maintain social distancing in case more than one are attending the online workshop in a single room and follow the guidelines and norms issued by Central Government and State Government as well as advisories issued by Hon'ble High Court during the period COVID-19.

(Sushma Sawant)
Director

1959 Supp (1) SCR 464 : AIR 1959 SC 436 : 1959 Cri LJ 527

In the Supreme Court of India
(BEFORE P.B. GAJENDRAGADKAR AND A.K. SARKAR, JJ.)

ALAMGIR AND ANOTHER ... Appellant;

Versus

STATE OF BIHAR ... Respondent.

Criminal Appeal No. 187 of 1956*, decided on November 14, 1958

Advocates who appeared in this case :

B.K. Saran and K.L. Mehta, for the Appellant;

R.H. Dhebar and T.M. Sen, for the Respondents.

The Judgment of the Court was delivered by

P.B. GAJENDRAGADKAR, J.— This criminal appeal raises a short question about the construction of the word "detains" occurring in Section 498 of the Indian Penal Code. It arises in this way. The two appellants were charged before the trial Magistrate under Section 498 of the Code in that on or about October 27, 1952, at the Village Mohania they wrongfully detained Mst Rahmatia, the legally married wife of the complainant Saklu Mian, when they knew or had reason to believe that she was the wedded wife of the complainant and was under his protection, with intent to have illicit intercourse with her. The prosecution case was that Mst Rahmatia had disappeared from her husband's house on October 21, 1952; the complainant made search for her for several days but was not able to trace her whereabouts. Ultimately he filed a complaint at the police station after he was informed by Shakoor Mian (PW 4) that he had seen the complainant's wife at the house of the two appellants. The complainant then went to the house of the appellants along with Shakoor Mian (PW 4), Musa Mian (PW 2) and Suleman Mian (PW 3); they saw the woman in the house of the appellants whereupon the complainant asked Appellant 1 Alamgir to let his wife go with him but Appellant 1 told him that he had married her and Appellant 2 warned him to get away and said that, if he persisted, he would be driven out. This story is corroborated by the three companions of the complainant.

2. The appellants denied the charge. They pleaded that the complainant had not validly married the woman and that she had not been detained by them. According to them, the woman was tired of living with the complainant and that she had voluntarily and of her free will come to stay with the appellants.

3. The learned trial Magistrate believed the prosecution evidence, rejected the pleas raised by the defence, convicted the appellants of the charge framed and sentenced them to undergo simple imprisonment for two months each. This order of conviction and sentence was challenged by the appellants by their appeal before the Court of Session. The appellate court confirmed the conviction of the appellants but reduced their sentence from simple imprisonment for two months to a fine of Rs 50 or in default simple imprisonment for one month each. The appellants then moved the High Court at Patna in its revisional jurisdiction. When the revisional application came to be heard before Choudhary, J., the learned Judge thought that the appellate court should not have reduced the sentence imposed on the appellants by the trial Magistrate and so he issued a notice against the appellants calling upon them to show cause why their sentence should not be enhanced. This notice and the main revisional application were ultimately heard by Ramaswamy and Imam, JJ., who confirmed the order of conviction and enhanced the sentence against both the appellants by ordering that

each of them should suffer six months' rigorous imprisonment. An application made by the appellants to the High Court for a certificate to appeal to this Court was rejected. The appellants then applied for and obtained special leave to appeal to this Court. That is how this appeal has come before us for final disposal.

4. On behalf of the appellants, Mr B.K. Saran has urged that the evidence in the case clearly shows that the woman was dissatisfied with her husband and had left his house and protection voluntarily and of her free will. If having thus left the house she came to stay with the appellants and they allowed her to stay with them, it cannot be said that they have detained her within the meaning of Section 498. According to him, the word "detains" used in Section 498 must necessarily imply that the woman detained is unwilling to stay with the accused and has been compelled so to stay with him against her will and desire. It is difficult to imagine that, if a woman is willing to stay with a person, it can be said that the person has detained her. That is not the plain grammatical meaning of the word "detains". It is this argument which calls for our consideration in the present appeal.

5. At the outset it would be relevant to remember that Section 498 occurs in Chapter XX of the Indian Penal Code which deals with offences relating to marriage. The provisions of Section 498, like those of Section 497, are intended to protect the rights of the husband and not those of the wife. The gist of the offence under Section 498 appears to be the deprivation of the husband of his custody and his proper control over his wife with the object of having illicit intercourse with her. In this connection it would be material to compare and contrast the provisions of Section 498 with those of Section 366 of the Code. Section 366 deals with cases where the woman kidnapped or abducted is an unwilling party and does not respond to the criminal intention of the accused. In these cases the accused intends to compel the victim afterwards to marry any person against her will or to force or seduce her to illicit intercourse. In other words Section 366 is intended to protect women from such abduction or kidnapping. If it is shown that the woman who is alleged to have been abducted or kidnapped is a major and gave her free consent to such abduction or kidnapping, it may prima facie be a good defence to a charge under Section 366. On the other hand Section 498 is intended to protect not the rights of the wife but those of her husband; and so prima facie the consent of the wife to deprive her husband of his proper control over her would not be material. It is the infringement of the rights of the husband coupled with the intention of illicit intercourse that is the essential ingredient of the offence under Section 498. Incidentally it may be pointed out that the offence under Section 498 is a minor offence as compared with the offence under Section 366.

6. The policy underlying the provisions of Section 498 may no doubt sound inconsistent with the modern notions of the status of women and of the mutual rights and obligations under marriage. Indeed Mr Saran vehemently argued before us that it was time that Sections 497 and 498 were deleted from the Penal Code. That, however, is a question of policy with which courts are not concerned. It is no doubt true that if the words used in a criminal statute are reasonably capable of two constructions, the construction which is favourable to the accused should be preferred; but in construing the relevant words, it is obviously necessary to have due regard to the context in which they have been used; and, as we will presently point out, it is the context in which the word "detains" has been used in Section 498 that is substantially against the construction for which the appellant contends.

Section 498 provides:

> "Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such

woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

7. It would be noticed that there are three ingredients of the section. The offender must take or entice away or conceal or detain the wife of another person from such person or from any other person having the care of her on behalf of the said person. He must know or has reason to believe that the woman is the wife of another person; and the taking, enticing, concealing or detaining of the woman must be with intent that she may have illicit intercourse with any person. It is clear that if the intention of illicit intercourse is not proved the presence of the first two ingredients would not be enough to sustain the charge under Section 498. It is only if the said intention is proved that it becomes necessary to consider whether the two other ingredients are proved or not.

8. It is plain that four different kinds of cases are contemplated by the section. A woman may be taken away or enticed away or concealed or detained. There is no doubt that when the latter part of the section refers to any such woman, it does not mean any woman who is taken or enticed away as described in the first part, but it refers to any woman who is and whom the offender knows or has reason to believe to be the wife of any other man. It is not seriously disputed that in the first three classes of cases the consent of the woman would not matter if it is shown that the said consent is induced or encouraged by the offender by words or acts or otherwise. Whether or not any influence proceeding from the offender has operated on the mind of the woman or has cooperated with or encouraged her inclinations would always be a question of fact. If, on evidence, the court is satisfied that the act of the woman in leaving her husband was caused either by the influence of allurement or blandishments proceeding from the offender, that may be enough to bring his case within either of the three classes of cases mentioned by Section 498. In this connection, when the consent or the free will of the woman is relied upon in defence, it is necessary to examine whether such alleged consent or free will was not due to allurement or blandishments or encouragement proceeding from the offender.

9. It is, however, urged that, when the latter part of the section speaks of detention, it must prima facie refer to the detention of a woman against her will. It may be conceded that the word "detains" may denote detention of a person against his or her will; but in the context of the section it is impossible to give this meaning to the said word. If the object of the section had been to protect the wife such a construction would obviously have been appropriate; but, since the object of the section is to protect the rights of the husband, it cannot be any defence to the charge to say that, though the husband has been deprived of his rights, the wife is willing to injure the said rights and so the person who is responsible for her willingness has not detained her. Detention in the context must mean keeping back a wife from her husband or any other person having the care of her on behalf of her husband with the requisite intention. Such keeping back may be by force; but it need not be by force. It can be the result of persuasion, allurement or blandishments which may either leave caused the willingness of the woman, or may have encouraged, or cooperated with, her initial inclination, to leave her husband. It seems to us that if the willingness of the wife is immaterial and it cannot be a defence in cases falling under the first three categories mentioned in Section 498, it cannot be treated as material factor in dealing with the last category of case of detention mentioned in the said section. Therefore, we are satisfied that the High Court was right in holding that the charge of detention has been proved against Appellant 1 inasmuch as both the courts of facts have found that he had offered to marry Mst Rahmatia and thereby either persuaded or encouraged her to leave her husband's house. It may be that Rahmatia was dissatisfied with her husband and wanted voluntarily to leave her husband; but, on the evidence, it has been held that she must have been encouraged or induced not to go back to her

husband because she knew that she would find ready shelter and protection with Appellant 1 and she must have looked forward to marry him. In fact Appellant 1 claims to have married her. Thus there can be no doubt that he intended to have illicit sexual intercourse with her. That is the effect of concurrent findings of fact recorded against Appellant 1; and it would not be open to him to challenge their correctness or propriety in the present appeal.

10. This section has been the subject-matter of several judicial decisions and it appears that, except for a few notes of dissent, there is a fair amount of unanimity of judicial opinion in favour of the construction which we feel inclined to place on the word "detains" in Section 498. It is, however, true that the relevant decisions, to some of which we would presently refer disclose a striking difference of approach in dealing with questions of fact. It would appear that though the relevant portion of the section has received the same construction in dealing with same or similar facts, the learned Judges have differed in their conclusion as to whether the accused person had been guilty of conduct which would bring his case within Section 498. This, however, is a difference in the method of approaching evidence and assessing its effects. It would be futile and even improper to consider whether a particular conclusion drawn from the specific evidence adduced in the case was right or not. What is important in such cases is to see how the section has been construed and, as we have just indicated, in the matter of construction there appears a fair amount of unanimity. Let us now refer to some of the decisions cited before us.

11. In 1868, the Madras High Court held in *Sundara Dass Tevan*[1] that depriving the husband of his proper control of his wife for the purpose of illicit intercourse is the gist of the offence just as it is the offence of taking away a wife under the same section; and a detention occasioning such deprivation may be brought about simply by the influence of allurement and blandishment. On the facts of the case, however, the court was not satisfied that the accused had offered any such allurement or blandishment and so the order of conviction passed against the appellant was quashed. It appears that the construction put by the Madras High Court on Section 498 in this case has been generally accepted in the said High Court (Vide: *Ramaswamy Udayar* v. *Raju Udayar*[2]).

12. The Bombay High Court has taken the same view in *Emperor* v. *Jan Mahomed*[3]. It was held by the High Court that the offence contemplated by Section 498 is complete if it appears that the accused went away with the woman in such a manner as to deprive her husband of the control of his wife; the fact that the woman accompanied the accused of her own free will does not diminish the criminality of the act. Even in this case, the Court was unable to discover any evidence, direct or indirect, about the intention of the accused or any allurement or blandishment offered by him and so the order of conviction passed against the accused was set aside. This question came to be considered by the said High Court again in *Emperor* v. *Mahiji Fula*[4]. Mr Justice Broomfield who delivered the main judgment of the Bench has expressed the view that "the word 'detains' means, by deprivation, and according to the ordinary use of the language 'keeps back'"; and he adds that "there may be various ways of keeping back. It need not necessarily be by physical force. It may be by persuasion or, as the Court" (Madras High Court) "has observed in this particular case" (*Sundara Dass Tevan*[1]) "by allurement or blandishment". On the facts, however, it appeared to the trial court that the conduct of the accused did not bring his case within the mischief of Section 498. The wife of the complainant had been taken away by her brother and she was subsequently married by natra marriage to the accused. The complainant learnt about this incident and went to the accused to ask him to allow his wife to go back to him. On seeing the complainant and his friends the accused came out with a dharia and threatened the complainant and his companions who then returned to their village. The conduct of the accused when the complainant

approached him, it was said, cannot necessarily indicate that the accused had detained the woman. This was the view taken by the trial court who acquitted the accused; on appeal the High Court saw no reason to differ and so the order of acquittal was confirmed by it. Divatia, J., who delivered the concurring judgment apparently differed from Broomfield, J., in regard to the construction of the word "detains". He agreed that the scheme of Section 498 showed that though the woman may be perfectly willing to go with the man the offence of taking or enticing away would occur because it simply consists of taking or enticing away a woman without anything more; but according to him, in the latter part of the section, which speaks of concealing or detaining the woman, the woman would be detained only if she is prevented from going in any quarter where she wants to go. In our opinion, this construction is not sound. It is not easy to see how the act of concealing the woman would necessarily import any considerations of the consent of the woman; besides, according to Divatia, J., himself, the woman's consent would be irrelevant in the cases of taking or enticing her away. If that be so, it is difficult to make her consent relevant and decisive in dealing with the cases of detention. Unfortunately the learned Judge does not appear to have appreciated the fact that the primary and the sole object of Section 498 is to protect the husband's rights and not the rights of the wife. If it is shown that the woman's inclination to stay away from her husband was either instigated or encouraged by the offender, she can be said to have been detained or kept away from her husband within the meaning of the Section though at the time of the detention she may be willing to stay with the offender. The same view has been expressed by Broomfield and Sen, JJ., in *Emperor* v. *Ram Narayan Baburao Kapur*[5] and by Beaumont, C.J., and Sen, J., in *Mahadeo Rama* v. *Emperor*[6]. We may point out that in both these cases the court was not satisfied that the accused was in fact shown to have detained the woman.

13. The Calcutta High Court appears to have put a similar construction on the word "detention". In *Prithi Missir* v. *Harak Nath Singh*[7] it has been held by the said High Court that "the word 'detention' is ejusdem generis with enticement and concealment. It does not imply that the woman is being kept against her will but there must be evidence to show that the accused did something which had the effect of preventing the woman from returning to her husband". On the merits, however, the court held that the learned trial Magistrate had not come to any definite finding of fact. In fact it did not appear that the accused was keeping the complainant's wife as his mistress; and on the whole, the court was not satisfied that the accused was responsible for the conduct of the complainant's wife for leaving her husband's house and so detention was held not proved against the accused. In *Mabarak Sheikh* v. *Ahmed Newaz*[8] the same High Court held that there can be no detention of a woman within the meaning of Section 498, second part, if the woman is an absolutely free agent to go away from the person charged whenever she likes. It appears that the learned Judges were inclined to hold that there could be no detention if the woman was an absolutely free agent to go away from the person charged whenever she likes to do so; and in support of this view they have referred to some of the decisions which we have already considered. With respect, it appears that the effect of the earlier decisions has not been properly considered and the findings of fact recorded in the said decisions are assumed to lend colour to, and modify, the construction of the section adopted by them. Besides, the relevant observations appear to be *obiter* because, on the facts, it was found in this case that the woman was not a free agent and so the charge against the accused under Section 498 was held established. In *Bipad Bhanjan Sarkar* v. *Emperor*[9] Henderson and Khundkar, JJ., have considered the word "detains" in the same manner as we have done. However, as in many other cases, in this case also, the court found that there was absolutely nothing to show that the accused had done anything which could bring his case within the mischief of Section 498.

14. The Patna High Court, in *Banarsi Raut* v. *Emperor*[10] has held that providing shelter to a married woman is such an inducement as to amount to detention within the meaning of Section 498. This case shows that where a married woman was found living in the house of the accused for some time and sexual intercourse between them had been established, the court was inclined to draw the inference that there was persuasion or inducement of the woman as would come within the meaning of the word "detention". This is a case on the other side of the line where on facts the inference was drawn against the accused.

15. The Lahore High Court has taken a similar view as early as 1913 in *Bansi Lal* v. *Crown*[11]. The Court has held that where the accused had provided a house for the woman where she stayed after deserting her husband under the protection of the accused as his mistress, it was active conduct on his part which was sufficient to bring him within the terms of Section 498. In 1939, however, a Division Bench of the Lahore High Court has taken a contrary view in *Harnam Singh* v. *Emperor*[12]. In this case the revisional application filed by Harnam Singh against his conviction under Section 498 was first argued before Din Muhammad, J., who referred it to a Division Bench because he thought that the question of law raised was of some importance. In his referring judgment the learned Judge mentioned some of the relevant decisions to which his attention was drawn and indicated his own view that the word "detains" would naturally imply some overt act on the part of the person who detains in relation to the person detained. He thought that mere blandishment would not constitute any relevant factor in the matter of detention. The matter was then placed before a Division Bench consisting of Young, C.J., and Blacker, J. Unfortunately the judgment of the Division Bench does not discuss the question of the construction of Section 498; it merely records the conclusion of the court in these words: "In our opinion, the word 'detains' clearly implies some act on the part of the accused by which the woman's movements are restrained and this again implies unwillingness on her part. Detention cannot include persuasion by means of blandishments or similar inducements which would leave the woman free to go if she wished". The learned Judges also added that they were of the opinion that the word "detains" cannot be reasonably construed as having reference to the husband. In our opinion, these observations do not correctly represent the true purport and effect of the provisions of Section 498.

16. The position, therefore, is that, on the findings of fact made by the lower courts against Appellant 1 it must be held that he has been rightly convicted under Section 498.

17. That takes us to the question of sentence imposed on him by the High Court in its revisional jurisdiction. We are satisfied that the High Court was not justified in directing Appellant 1 to suffer rigorous imprisonment for six months by way of enhancement of the sentence. It is unnecessary to emphasise that the question of sentence is normally in the discretion of the trial Judge. It is for the trial Judge to take into account all relevant circumstances and decide what sentence would meet the ends of justice in a given case. The High Court undoubtedly has jurisdiction to enhance such sentence under Section 439 of the Code of Criminal Procedure; but this jurisdiction can be properly exercised only if the High Court is satisfied that the sentence imposed by the trial Judge is unduly lenient, or, that, in passing the order of sentence, the trial Judge had manifestly failed to consider the relevant facts. It may be that the High Court thought that the appellate order passed by the Sessions Judge modifying the original sentence was wrong, and in that sense, the issue of notice under Section 439 of the Code of Criminal Procedure against Appellant 1 to show cause why his sentence should not be enhanced may have been justified; but, in enhancing the sentence, the High Court should, we think, have restored the sentence passed by the trial Judge himself. It is true that, in enhancing the sentence, the High Court has observed that "women in this country, whether chaste or unchaste, must be

protected and that it is the duty of the court to see that they are given sufficient protection". We are inclined to think that the consideration set out in this observation is really not very helpful and not decisive because, as we have already observed, Section 498 does not purport to protect the rights of women but it safeguards the rights of husbands. Besides, in the present case, it is clear that Mst Rahmatia, who is a woman of loose moral character, was dissatisfied with the complainant, who is her second husband, and was willing to marry Appellant 1. In such a case, though Appellant 1 is guilty under Section 498, it is difficult to accept the view of the High Court that the sentence of two months' simple imprisonment imposed on him by the trial court was so unduly or manifestly lenient as not to meet the ends of justice. It would not be right for the appellate court to interfere with the order of sentence passed by the trial court merely on the ground that if it had tried the case it would have imposed a slightly higher or heavier sentence. We would accordingly modify the order of sentence passed against Appellant 1 by reducing it to that of simple imprisonment for two months.

18. The case of Appellant 2 is clearly different from that of Appellant 1. The findings of fact recorded by the courts below do not implicate Appellant 2 in the act of persuasion or offering blandishments or inducements to Mst Rahmatia. The only evidence against this appellant is that when the complainant went to take away his wife Appellant 2 threatened him. The record shows that Appellant 2 is the brother of Appellant 1; and, if knowing that Rahmatia had married his brother, Appellant 2 told the complainant to walk away, that cannot legally justify the inference that he must have offered any inducement, blandishment or allurement to Rahmatia for leaving the protection of her husband and refusing to return to him. Indeed the courts below have not considered the case of this appellant separately on its own merits at all. In our opinion, the conviction of Appellant 2 is not supported by any evidence on the record. The result is the appeal preferred by Appellant 2 is allowed, the order of conviction and sentence passed against him is set aside and he is ordered to be acquitted and discharged.

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* Appeal by special leave from the judgment and order dated December 7, 1955, of the Patna High Court in Criminal Revision No. 875 of 1954, arising out of the judgment and order dated May 31, 1954, of the Court of the Additional Sessions Judge at Arrah in Criminal Appeal No. 293 of 1953.

[1] (1868) IV Mad HCR 20

[2] AIR (1953) Mad 333

[3] (1902) IV Bom LR 435

[4] (1933) ILR 58 Bom 88, 92

[5] (1937) 39 Bom LR 61

[6] AIR (1943) Bom 179

[7] ILR (1937) 1 Cal 166

[8] (1939) 43 CWN 980

[9] ILR (1940) 2 Cal 93

[10] AIR (1938) pat 432

[11] (1913) XIV Punjab LR 1066

[12] AIR (1939) Lah 295

1962 Supp (1) SCR 933 : AIR 1963 SC 698 : 1961 BP 3606

In the Supreme Court of India

(BEFORE B.P. SINHA, C.J. AND J.L. KAPUR, M. HIDAYATULLAH AND J.C. SHAH, JJ.)

HARI SHANKAR AND OTHERS ... Appellants;

Versus

RAO GIRDHARI LAL CHOWDHURY ... Respondent.

Civil Appeal No. 94 of 1959*, decided on December 5, 1961

Advocates who appeared in this case :

Bishan Narain, Senior Advocate (R. Mahalingier and B.C. Misra, Advocates, with him), for the Appellants;

Gurbachan Singh, Senior Advocate (Harbans Singh, Advocate, with him), for the Respondent.

The Judgment of the Court was delivered by

M. HIDAYATULLAH, J.— The appellants (in this appeal by special leave) are the sons of one Gauri Shankar, who owned a bungalow known as 5, Hailey Road, New Delhi. This bungalow was given to the respondent by Gauri Shankar on a monthly rent of Rs 234-6-0, excluding taxes. The suit, out of which this appeal arises, was brought by the appellants against the respondent, Rao Girdhari Lal Chowdhury, for his eviction on the ground (among others) that he had sub-let a portion of the bungalow after the commencement of the Delhi & Ajmer Rent Control Act, 1952 (38 of 1952) to one, Dr Mohani Jain, without obtaining the consent in writing of the landlord, as required by Section 13(1)(*b*)(*i*) of the Act. The defence was that the original contract of tenancy was entered into sometime in 1940 and a term in the contract gave the tenant a right to sub-let. It was alleged that a letter written by the tenant which embodied the terms of the tenancy, was in the possession of the landlord and a demand was made for its production. The case of the tenant was that the sub-tenancy commenced in the year 1951, that is to say, before the passing of the Act of 1952, and the tenant was not required to obtain the written consent of the landlord to sub-let. Admittedly, in this case, no written consent was proved. We need not mention the other allegations and counter-allegations which are usual in proceedings between landlords and tenants, the most important of them being about the arrears of rent, which the tenant under permission of the Court ultimately deposited in Court.

2. The issue on which the decisions below have differed was framed by the Sub-Judge, First Class, Delhi, in the following terms:

> "Did the plaintiff consent to the sub-letting of parts of the demised premises by the defendant? If so, when and to what effect?"

The trial Judge found that there was no evidence that the landlord was ever consulted before a portion of the bungalow was sub-let to Dr Mohani Jain, and further that the sub-tenancy was created after June 9, 1952, the date on which the Act came into force. In reaching the latter conclusion, the trial Judge made a reference to a dispute between the tenant and Dr Mohani Jain for fixation of standard rent before the Rent Control authorities. In those proceedings, Dr Mohani Jain had alleged that she was living as a sub-tenant from the end of 1951, but the tenant had denied this fact. The proceedings before the Rent Control authorities ended in a compromise, but the admission of the tenant was relied upon to support the conclusion that the sub-tenancy commenced after the Act. The trial Judge decreed the suit. The decision of the trial Judge was continued on appeal by the Additional District Judge, Delhi. Though Dr

Mohani Jain gave oral evidence in this case that her sub-tenancy commenced in December 1951, the Additional District Judge found categorically that the sub-tenancy commenced sometime after the coming into force of the Act. He held that even if Dr Mohani Jain was living there even from before it was as a guest and not as a sub-tenant.

3. Against the order of the Additional District Judge, a revision was filed under Section 35(1) of the Act. That section reads as follows:

> "The High Court may, at any time, call for the record of any case under this Act for the purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit."

Acting in accordance with a decision of the Punjab High Court as to the ambit of this section, the learned Single Judge, who heard the revision application, thought that it was competent for him to reconsider the concurrent findings about the time when the sub-tenancy commenced. He held that Dr Mohani Jain's statement showed that the sub-tenancy commenced prior to the passing of the Act, and that the landlord's consent in writing was not necessary. In reaching this conclusion, the learned Judge was of opinion that all the evidence was not considered by the two Courts below, and that he was entitled, in view of the interpretation placed upon the section above quoted, to go into the matter afresh, and decide the question of fact.

4. It may be pointed out that while the suit was pending before the Subordinate Judge, an application was made for the production of the letter referred to in the written statement of the tenant, to which a passing reference has already been made. A letter was produced, and it is Ex. D-1. That letter does not disclose all the terms of the tenancy, and it would appear, therefore, that the terms of the original tenancy have not been proved in this case, and there is no material on which it can be said either way as to whether a right to sub-let was conferred upon the tenant. The defendant did not insist in the court of first instance that there was yet another letter, and the argument to that effect in this Court cannot be entertained.

5. In reaching the conclusion that all the evidence pertinent to the issue was not considered, the learned Judge of the High Court stated that Ex. P-19, which was the petition filed by Dr Mohani Jain under Section 8 of the Act to get the standard rent fixed, was not taken into account by the Additional District Judge. That petition contained an averment that her sub-tenancy commenced on December 1, 1951 with a rent of Rs 100 per month, and that a cheque for Rs 1800 as advance rent for 18 months was given by her in the name of the daughter of the tenant, because the tenant represented that he had no account and therefore a cheque should be given in the name of his daughter. This the learned Judge felt, adequately supported the statement of Dr Mohani Jain to the same effect as a witness in this case. The learned Judge was in error in thinking that Ex. P-19 was not taken into account by the Additional District Judge. The latter had, in fact, considered Ex. P-19, the petition of Dr Mohani Jain, before the Rent Control authorities, Ex. P-20, the reply of the tenant to that petition and Ex. P-21, the petition of compromise; but he cited Exs. P-20 and P-21 only. There is internal evidence to show that Ex. P-19 was, in fact, considered, because after mentioning the two Exhibits, the learned Additional District Judge goes on to say as follows:

> "The first of these is the written statement of the present appellant which he had filed in a case brought by Dr Mohani Jain against him for the fixation of fair rent. There he had completely denied somewhere in the year 1953 that Dr Mohani Jain was his sub-tenant and could not sue for fixation of rent. This was enough to show that right up to the year 1953 the appellant himself did not regard Dr Mohani Jain as a sub-tenant."

This clearly shows that the learned Additional District Judge was weighing Ex. P-19 as

against Ex. P-20 and was acting on Ex. P-20, which contained a material admission by the tenant before the present dispute had begun. The learned Single Judge was, therefore, in error in departing from a concurrent finding of fact on a wrong supposition.

6. But the question that arises in this appeal is one deeper than a mere appraisal of the evidence. It is whether the High Court in the exercise of its revisional power is entitled to reassess the value of the evidence and to substitute its own conclusions of fact in place of those reached by the Court below. This question requires an examination of the powers of revision conferred on the High Court by Section 35 of the Act. That section is one of common occurrence in Acts dealing with some special kinds of rights and remedies to enforce them. Section 35 is undoubtedly worded in general terms, but it does not create a right to have the case reheard as was supposed by the learned Judge. Section 35 follows Section 34, where a right of appeal is conferred; but the second sub-section of that section says that no second appeal shall lie.

7. The distinction between an appeal and a revision is a real one. A right of appeal carries with it a right of rehearing on law as well as fact, unless the statute conferring the right of appeal limits the rehearing in some way as, we find, has been done in second appeals arising under the Code of Civil Procedure. The power to hear a revision is generally given to a superior court so that it may satisfy itself that a particular case has been decided according to law. Under Section 115 of the Code of Civil Procedure, the High Court's powers are limited to see, whether in a case decided, there has been an assumption of jurisdiction where none existed, or a refusal of jurisdiction where it did, or there has been material irregularity or illegality in the exercise of that jurisdiction. The right there is confined to jurisdiction and jurisdiction alone. In other Acts, the power is not so limited, and the High Court is enabled to call for the record of a case to satisfy itself that the decision therein is according to law and to pass such orders in relation to the case, as it thinks fit.

8. The phrase “according to law” refers to the decision as a whole, and is not to be equated to errors of law or of fact *simpliciter*. It refers to the overall decision, which must be according to law which it would not be, if there is a miscarriage of justice due to a mistake of law. The section is thus framed to confer larger powers than the power to correct error of jurisdiction to which Section 115 is limited. But it must not be overlooked that the section — in spite of its apparent width of language where it confers a power on the High Court to pass such order as the High Court might think fit, — is controlled by the opening words, where it says that the High Court may send for the record of the case to satisfy itself that the decision is “according to law”. It stands to reason that if it was considered necessary that there should be a rehearing, a right of appeal would be a more appropriate remedy, but the Act says that there is to be no further appeal.

9. The section we are dealing with, is almost the same as Section 25 of the Provincial Small Cause Courts Act. That section has been considered by the High Courts in numerous cases and diverse interpretations have been given. The powers that it is said to confer would make a broad spectrum commencing, at one end, with the view that only substantial errors of law can be corrected under it, and ending, at the other, with a power of interference a little better than what an appeal gives. It is useless to discuss those cases in some of which the observations were probably made under compulsion of certain unusual facts. It is sufficient to say that we consider that the most accurate exposition of the meaning of such sections is that of Beaumont, C.J. (as he then was) in *Bell & Co. Ltd.* v. *Waman Hemraj*[1] where the learned Chief Justice, dealing with Section 25 of the Provincial Small Cause Courts Act, observed:

> “The object of Section 25 is to enable the High Court to see that there has been no miscarriage of justice, that the decision was given according to law. The section

> does not enumerate the cases in which the Court may interfere in revision, as does Section 115 of the Code of Civil Procedure, and I certainly do not propose to attempt an exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in which the Court which made the order had no jurisdiction, or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at."

This observation has our full concurrence.

10. What the learned Chief Justice has said applies to Section 35 of the Act, with which we are concerned. Judged from this point of view, the learned Single Judge was not justified in interfering with a plain finding of fact and more so, because he himself proceeded on a wrong assumption.

11. The appeal thus succeeds, and is allowed with costs. The order under appeal is set aside, and that of the Additional District Judge restored. As regards eviction, the respondent has given an undertaking that he would vacate the house on or before April 25, 1962, and this has been accepted by the appellants.

J.L. KAPUR, J.— I agree that the appeal should be allowed and that the High Court was in error in interfering with the findings of fact, but in my opinion the power of revision under Section 35(1) of the Delhi & Ajmer Rent Control Act is not so restricted as was held by Beaumont, C.J. in *Bell & Co. Ltd.* v. *Waman Hemraj*[1] a case under Section 25 of the Provincial Small Cause Courts Act. The section provides that the order passed should be in accordance with law and if it does not then the High Court can pass such order as it thinks fit. The language used in Section 35(1) of the Act is almost identical with the words of the proviso to Section 75(1) of the Provincial Insolvency Act. The power under that proviso has been thus commented upon by Mulla in his *Law of Insolvency* at p. 787 of 2nd Edn:

> "The power given to the High Court by this proviso is very wide. In the exercise of this power the High Court may set aside any order if it is not 'according to law'."

The power under the Insolvency Act has not, by the Courts in India, been considered to be so restricted as the observations of Beaumont, C.J. in *Bell & Co. Ltd.* v. *Waman Hemraj*[1] seem to suggest in regard to Section 25 of the Small Cause Courts Act. This power of interference by the High Court is not, in my opinion, restricted to a proper trial according to law or error in regard to onus of proof or proper opportunity of being heard. It is very much wider than that. When, in the opinion of the High Court, the decision is erroneous on a question of law which affects the merits of the case or decision is manifestly unjust the High Court is entitled to interfere. The error may not necessarily be as to the interpretation of a provision of law, it may be in regard to evidence on the record. Thus when material evidence on the record is ignored or a finding is such that on the evidence taken as a whole no tribunal could, as a matter of legitimate inference, arrive at. It is neither possible nor desirable to enumerate all cases which would fall within the jurisdiction of the High Court under Section 35(1) of the Act but it is not to be narrowly interpreted nor to be so widely interpreted as to convert the revision into an appeal on facts.

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* Appeal by Special Leave from the Judgment and Decree dated 7th May, 1957 of the Punjab High Court (Circuit Bench) at Delhi in Civil Revision Application No. 144-D of 1957.

[1] (1938) 40 Bom LR 125

2010 SCC OnLine Chh 181 : (2010) 93 AIC 768 : (2010) 2 CGLJ 297 (DB)

(Chhattisgarh High Court)
(BEFORE RAJEEV GUPTA, C.J. AND SUNIL KUMAR SINHA, J.)

Between

Chhoturam Densil

Versus

State of Chhattisgarh

Cri. Appeal No. 411 of 2008 and Cri. Revision No. 428 of 2008
Decided on February 26, 2010

The Judgment of the Court was delivered by

SUNIL KUMAR SINHA, J.:— Appellant-Chhoturam Densil stands convicted under sections 498-A and 304-B, I.P.C. and sentenced to undergo R.I. for 3 years and fine of Rs. 100/- and R.I. for 7 years and fine of Rs. 200/- with default sentences, respectively, with a further direction to run the sentences concurrently.

2. The conviction and sentences have been awarded by the Additional Sessions Judge, Sakti, District Janjgir-Champa (C.G.) in Sessions Trial No. 43/2008 on 5th of April, 2008. While convicting appellant-Chhoturam (husband of the deceased as aforementioned, the other co-accused persons namely Keshatri Lal (brother-in-law-Jeth), Mohanlal (father-in-law) and Devantin Bai (mother-in-law) have been acquitted of the charge framed under sections 304-B, 498-A read with section 34 of I.P.C.

3. Chhoturam has challenged the conviction and sentences awarded to him, whereas, the revision petitioner (father of the deceased) has challenged the acquittal of the above accused persons and has also prayed for enhancement of the sentence awarded to appellant-Chhoturam.

4. The facts, briefly stated, are as under—

(i) Deceased-Diviya was married to appellant-Chhoturam 2 years prior to the date of incident which took place on 12.4.2007 at about 10.00 a.m. when she received burn injuries. She was admitted to C.I.M.S. Hospital, Bilaspur, where she died during the course of her treatment on 13.4.2007 at about 1.30 p.m. Her death was reported by the C.I.M.S. authorities to the police. During the course of investigation, the police found that the accused persons were demanding colour television and a motorcycle and on account of all these they were treating the deceased with cruelty. According to the prosecution, it was a dowry death. It is on this account, the deceased got herself burnt after pouring kerosene oil on her.

(ii) The learned Sessions Judge convicted the husband on the basis of evidence of Kachra Bai (P.W. 1-mother of the deceased), Pooranlal (P.W. 2-father of the deceased) and Lalit Ram (P.W. 22-uncle of the deceased). The other relations of the husband were acquitted on the ground that from the very beginning they were residing separately and there was hardly any evidence against them.

5. Mr. Awadh Tripati, learned Counsel appearing on behalf of the appellant and respondents/accused persons in revision petition, argued that the finding in relation to treating the deceased with cruelty and dowry death is perverse, therefore, the same cannot be sustained. He relied on the decisions of the Apex Court rendered in *Narayanamurthy* v. *State of Karnataka*[1] and *D. Jayana* v. *State of Karnataka*.[2]

6. Mr. Govind Ram Miri, learned Counsel appearing on behalf of the revision petitioner, argued that the acquittal of the relations of the appellant vitiates on account of misappropriation of the evidence. He also argued that the sentence awarded to appellant-Chhoturam is inadequate and the same should be suitably enhanced.

7. Mr. Sudhir Bajpai, learned Government Advocate appearing on behalf of the State, supported the arguments raised by Mr. Govind Ram Miri.

8. We have heard the learned Counsel for the parties at length and have also perused the records of the sessions case.

9. Kachra Bai (P.W. 1) deposed that after the marriage when Diviya came to their house, she had told them that she was being harassed by her husband, brother-in-law (*jeth*) and in-laws on account of a demand of colour television and a motorcycle and she was being beaten also. However they sent back their daughter to her matrimonial home and they went for earning their livelihood. A male child was hum out of wedlock of the appellant and the deceased. Second time when the deceased came to their place, she again told them that she was being maltreated on account of demand of dowry, she very specifically told that the black and white television and C.D., given by the parents were destroyed by the accused persons. Choturam came their house for taking the deceased and the deceased again went to her in-laws place. After 15 days the deceased again came to village Mudpar along with her small child. She told that she was beaten on account of not giving the colour television and the motorcycle. Again she was sent to her parents place. However they told to the husband of the deceased that later on, they will give colour television but they will not be able to give motorcycle. After the above incidents, they went to Jammu-Kashmir for earning livelihood. On a particular day, they got telephonic message that deceased Diviya has received bum injuries. They immediately rushed to village Mudpar but by that time the deceased had died and her funeral etc. had already taken place. In the cross-examination, she admitted that just after 15 days of the marriage, appellant-Chhoturam and deceased-Diviya were residing separately in a separate house. Though she stated in cross-examination in Para-5 that as soon as her brother-in-law Lalit Ram (P.W. 22) received message about bum injuries sustained by Diviya, he Went to the hospital, where Diviya made oral dying declaration that she was burnt after pouring kerosene oil on her, but Lalit Ram (P.W. 22) does not support the dying declaration made before him.

10. Pooranlal (P.W. 2) is the father of the deceased. He supported the evidence of Kachra Bai (P.W. 1) by deposing that on the above occasions when the deceased visited their house, she always told that she was treated with cruelty by the accused persons on account of demand of colour television and motorcycle.

11. Lalit Ram (P.W., 22) is the uncle of the deceased. He also supported the evidence of the parents of the deceased so far as it relates to constant demand of colour television and motorcycle.

12. Though these witnesses were put to lengthy cross-examinations by the defence, but the defence has not been able to elicit any such circumstances on which, their evidence may be out-rightly discarded. On the basis of evidence of these witnesses, it comes that the deceased was being treated with cruelty and there was constant demand of motorcycle and colour television. It also comes that the deceased was living separately along with her husband just after the marriage. We find that there are no allegations regarding demand of dowry at the time of marriage. Therefore, the learned Sessions Judge has held that when the other relations of the nusband were residing separately they would be hardly getting occasions to treat the deceased with cruelty and also to harass her on account of demand of dowry. Therefore, in the above facts and circumstances of the case, the learned Sessions Judge has acquitted the other accused persons and has held appellant-Chhoturam guilty of the offence punishable under sections 304-B and 498-A of the I.P.C.

13. In *Narayanamurthy's case* (supra), the husband was acquitted of the charges under section 304-B on the ground that there was nothing to show that demand for dowry was soon before death and neighbours were not supporting prosecution case. The said case is factually distinguishable from the present case. In the present case, the things have happened in quick succession. In *Hira Lal* v. *State (Government of N.C.T.), Delhi*,[1] which is also noticed in the judgment of *Narayanamurthy*, the Apex Court observed that "The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. The Apex Court cautioned that if alleged incident of cruelty is remote in time and has become state enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence". In the present case, as stated supra, since the things have happened in quick succession it cannot be said the demand was remote in time and there was no existence of proximate and live link between the effect of cruelty based on dowry demand and the concerned death.

14. In *D. Jayanta's case* (supra), the only evidence relatable to section 304-B was that of a neighbour who was examined after 2 months after the alleged date of occurrence. The Apex Court held that though the evidence appears to be sufficient to bring in application of section 498-A, there is definite inadequacy to attract section 304-B, I.P.C., and in that view of the matter, therefore, the conviction under section 304-B, I.P.C. was set-aside and the conviction under section 498-A, I.P.C. was maintained. In the present case, there is intact evidence of parents and uncle of the deceased. Therefore, the above two judgments are not of much assistant to the appellant/accused.

15. For the foregoing reasons, we do not find any infirmity recording the conviction of the appellant/accused under sections 304-B and 498-A, I.P.C.

16. Now we shall consider about the adequacy of sentences awarded to appellant-Chhoturam.

17. In *Sant Raj* v. *State of Haryana*,[2] in a case punishable under sections 304-B, 306, 498-A and 201, I.P.C., the appellant/husband was sentenced

to undergo imprisonment for life under section 304-B, I.P.C. by the 2 Courts below. In the appeal, the Apex Court while maintaining the conviction of the appellant under section 304-B observed that the sentence of life imprisonment imposed against the appellant under section 304-B, I.P.C. was excessive. The said sentence was reduced to the minimu *i.e.*, 7 years rigorous imprisonment and it was further ordered that sentences on other counts would run concurrently.

18. In *Ashok Kumar* v. *State of Haryana*,[1] the appellant was Convicted under section 304-B, I.P.C. and was sentenced to undergo imprisonment for life. His appeal was dismissed by the High Court. In the appeal to the Supreme Court, so far as penalty is concerned, the point raised was that in any view of the matter, the Trial Court was not justified in awarding extreme penalty of life imprisonment to the appellant. The Supreme Court while maintaining the conviction of the appellant observed that in the facts and circumstances of the case, the ends of justice would be met in case the sentence of imprisonment awarded against the appellant is reduced to 7 years rigorous imprisonment. Accordingly, the criminal appeal was allowed in part and, while upholding the conviction of the appellant, sentence of imprisonment awarded against him was reduced to 7 years rigorous imprisonment.

19. We have carefully considered the argument, advanced by Mr. Govind Ram Miri, in this regard. We are of the view that appropriate sentence to be awarded in a particular case cannot be determined upon a straight-jacket formula. It varies upon the facts and circumstances of the each case. The principle of proportion between crime and punishment is governed by the "Doctrine of just desert". The doctrine is the foundation of a criminal sentence which is ultimately awarded for a punishment to the wrong doer. What one really deserves should be the punishment for having committed a crime is the underlying principle. The punishment must not be disproportionately great is a corollary of "just desert" which is governed by the same principle which says that there cannot be a punishment without guilt and the basic element behind the principle is the proportion between crime and punishment. The lesser is the gravity of the crime, the smaller would be the punishment and the greater is the gravity of the crime, the higher would be the punishment, subject to the ancillary factors for determining the proportion of the same, though all further subject to the statutory obligations specifically provided be law in force.

20. In case on hand, the appellant is a young person as he was aged about 21 years on the date of the incident. He has a male child who was aged about 10 months on the date of the incident. The appellant is in jail since 17.8.2007. He belongs to a poor labour family. Therefore, in our considered view the rigorous imprisonment for 7 years along with concurrent sentence of 3 years and the fine imposed in both the counts are the adequate sentences awarded to the appellant which call far no interference in criminal revision filed by the father of the deceased.

21. So far as the revision against the acquittal of the accused persons is concerned, we have held supra that it comes in the evidence of father and mother of the deceased that the acquitted accused persons were residing separately in their separate houses as appellant-Choturam has separated from his parental house just after the marriage of the deceased with him. It is not the case of the prosecution that the relations of the husband had demanded dowry at the time of the marriage. Since the husband and wife were residing separately, demand of motorcycle and colour television can reasonably be attributed to the husband alone. It

also comes in the evidence of Kachra Bai (P.W. 1) that after the third complaint made by he deceased to them, they had gone to village Sonthi and had a talk with appellant -Choturam that they will give colour television but they will not be able to give motorcycle. It is in these circumstances, the learned Sessions Judge held that the relations of the husband were neither responsible for treating the deceased with cruelty nor for her dowry death.

22. The revisional power of the High Court under section 397 read with section 401 does not create any right in the litigant, but only conserves the power to see that justice is done and the Subordinate Courts do not exceed jurisdiction or abuse their powers. The order of Lower Court ought not to be lightly set aside unless it has entailed miscarriage of justice or where two views are possible merely because the Revisional Court takes the other view. It is only in glaring cases of injustice, resulting from some violation of fundamental principles of law by the Trial Court, that the High Court is empowered to set aside the order of acquittal and direct a re-trial of the acquitted accused. The mere circumstances that a finding of fact recorded by the Trial Court may, in the opinion of the High Court, be wrong, will not justify setting aside the acquittal and directing re-trial. The Revisional Court is entitled to reverse the finding only when it reaches to the conclusion that finding of the Trial Court is perverse and the jurisdiction cannot be invoked lightly. Even in the cases where it is possible to take two views on the same matter then in the ordinary course the view taken by the Court below should not be interfered in the revisional jurisdiction.

23. In the opinion of this Court, the Sessions Court has taken a view and has recorded a finding, which appears to be one of the possible views which could have been taken by a Court in the facts and circumstances of the case. Therefore, we do not find any reasons to interfere with the findings recorded by the Sessions Court relating to the acquittal of the other accused persons. For the foregoing reasons, the appeal filed by the appellant-Chhoturam and the revision petition filed by the father of the deceased, both are liable to be dismissed and are hereby dismissed.

24. *Appeal and Revision both Dismissed*.

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1. (2008) 16 SCC 512 : AIR 2008 SC 2377.

2. (2009) 6 SCC 575.

1. 2003 (9) AIC 117 (SC) : (2003) 8 SCC 80.

2. (1998) 8 SCC 605.

1. 2007 (51) AIC 118 (SC) : (2007) 9 SCC 433.

learned counsel for the respondents. The High Court was in error in so thinking. In *Sindhu Resettlement Corporation Ltd.* v. *Industrial Tribunal of Gujarat*[1], the question really was about the precise scope of the reference made by the Government for adjudication. Throughout it appeared that the only reference that the Government could have made related to the payment of retrenchment compensation which alone was the subject matter of dispute between the parties. The conciliation which failed had also concerned itself with the question of payment of retrenchment compensation and in their claims before the management, the workmen had requested for payment of retrenchment compensation and raised no dispute regarding reinstatement. It was in those circumstances that the Court held that there was no industrial dispute regarding reinstatement. We do not see how *Sindhu Resettlement Corporation Ltd* v. *Industrial Tribunal of Gujarat*[1] can be of any assistance to the respondents.

5. Nor do we think that it was right for the High Court to interfere with the award of a Labour Court under Article 226 on a mere technicality. Article 226 is a device to secure and advance justice and not otherwise. In the result, we allow the appeal, set aside the judgment of the High Court and restore the award of the Presiding Officer, Labour Court.

(1983) 4 Supreme Court Cases 159

(BEFORE D.A. DESAI AND R.B. MISRA, JJ.)

JAWAHAR LAL AND ANOTHER .. Appellants;

Versus

STATE OF PUNJAB .. Respondent.

Criminal Appeal No. 19 of 1983†, decided on January 17, 1983

Penal Code, 1860 — Section 302 or 304 Part II — Single knife blow inflicted on chest causing death — Blow inflicted in dim light in night — Occurrence sequel to a trivial dispute with deceased's friend and no previous enmity with deceased — Accused a young boy at the time of occurrence — Supreme Court can consider these and other undisputed facts and circumstances even if trial court and High Court found defence version to be incorrect — On facts held, conviction under Section 302 improper — Conviction and sentence altered to that under Section 304 Part II — Constitution of India, Article 136 — CrPC, 1973, Sections 374 and 386

The accused (1st appellant) had earlier in the day a trivial dispute with the deceased's friend 'A', whose house was opposite to the accused's shop. In the night at about 10 p.m., when the deceased along with 'A' and

†Appeal by Special leave from the Judgment and Order dated November 27, 1981 of the Punjab & Haryana High Court in Criminal Appeal No. 381 DB of 1981

another person came out of the house, the accused, who was near his shop, gave a knife blow to the deceased which hit on his chest resulting in his death. At the place of occurrence there was dim light coming from a nearby electric lamp post. The doctor who conducted autopsy found one incised stab wound $4^1/_2$ cm x $2^1/_2$ cm on front of left side of chest at 6 o'clock position, $3^1/_2$ cm below left nipple oblique in direction and opined that the injury was sufficient in the ordinary course of nature to cause death. Both the trial court and the High Court rejected the defence version and convicted the 1st appellant under Section 302 and sentenced him to life imprisonment and also imposed a fine of Rs 2000. Allowing the appeal of the 1st appellant the Supreme Court

Held :

Even if the defence version is incorrect, that itself cannot blind the court to the circumstances in which the offence was committed, the background in which it was committed and the ferocity of the attack and the weapon used. (Para 16)

In the facts and circumstances of the case the 1st appellant cannot be said to have intended to cause death of the deceased. Therefore, clause Firstly to Section 300 is not attracted. (Para 14-A)

Merely because the blow landed on a particular spot on the body, divorced from the circumstances in which the blow was given, it would be hazardous to say that the 1st appellant intended to cause that particular injury. The weapon used was the usual handy weapon, a Punjabi generally carries a knife. The 1st appellant was near his shop. In the available dim light upon a trivial quarrel only one blow without any attempt at giving a second blow, was inflicted that fell on the chest. In these circumstances, even if the injury inflicted proved to be fatal, the case would not be covered by para 3 of Section 300. Therefore, the conviction under Section 302 cannot be sustained. (Para 15)

Jagrup Singh v. *State of Haryana*, (1981) 3 SCC 616 : 1981 SCC (Cri) 768 : (1981) 3 SCR 839 : AIR 1981 SC 1552; *Randhir Singh* v. *State of Punjab*, (1981) 4 SCC 484 : 1981 SCC (Cri) 856 : AIR 1982 SC 55 and *Kulwant Rai* v. *State of Punjab*, (1981) 4 SCC 245 : 1981 SCC (Cri) 826 : AIR 1982 SC 126, *relied on*

In the facts and circumstances of the case appellant could be attributed the knowledge that he was likely to cause an injury which was likely to cause death. Accordingly, he is shown to have committed an offence under Section 304 Part II and he must be convicted for the same and sentenced to suffer rigorous imprisonment for five years maintaining the sentence of fine. (Para 20)

R-M/6150/CR

Advocates who appeared in this case :

Mrs. C M. Nayar, Advocate, for the Appellants;
R.C. Kohli and *D. D. Sharma*, Advocates, for the Respondent.

ORDER

1. Special leave granted limited to the nature of offence and sentence.

2 Two appellants, who are brothers, along with their father Sardari Lal were prosecuted for an offence under Section 302 read with Section 34 and under Section 324 of the Indian Penal Code.

3. Prosecution case is that the appellants have a sweetmeat shop in Katra Baghian, Amritsar. PW 6 Amrik Singh is residing in a house opposite to the shop. On April 13, 1980, Sardari Lal, the father of the appellants requested Amrik Singh to permit him to tie a rope of the canopy with the projection of the house of the witness, but he did not allow the same. Sardari Lal was offended. On April 18, 1980, a wet underwear drying-up on the roof flew away which was picked up by the first appellant Jawahar Lal. But when witness Amrik Singh demanded the same, the appellant had declined to return the same saying that he had found the same lying in the bazar and moreover he had not allowed his father to tie the rope. There was an exchange of abuses, but the matter ended there. In the evening on that day when Sardari Lal visited the shop of the appellants, Amrik Singh complained about the conduct of the first appellant Jawahar Lal. However, Sardari Lal persuaded the first appellant to return the underwear of witness Amrik Singh. At about 9.30 p.m. on that day deceased Darshan Singh accompanied by PW Santokh Singh visited the house of witness Amrik Singh for settling the details of the marriage that was to be performed in the near future. At about 10.00 p.m., deceased Darshan Singh and PW Santokh Singh left the house of witness Amrik Singh. Amrik Singh followed them. When they reached the bazar locality, all the three of them saw the two appellants and Sardari Lal standing in front of their shop and on seeing deceased Darshan Singh and his companions, they raised chargers. Sardari Lal raised *lalkaras* and exhorted the appellants to catch hold of witness Amrik Singh and that he should not be allowed to escape. It is alleged that appellants 1 and 2, each of them was armed with a dagger. The first appellant Jawahar Lal gave a blow with dagger on the left side of the chest of deceased Darshan Singh, who fell down on the ground. When PW Santokh Singh rushed to the rescue of deceased Darshan Singh, second appellant Kewal Krishan gave two blows with a dagger and he also fell on the ground. Witness PW 8 Surinder Mohan Singh raised an alarm and the appellants ran away from that place. The injured were removed in two rickshaws to the hospital where on reaching the hospital Darshan Singh was pronounced dead by the Medical Officer who examined him. PW Santokh Singh was admitted in the hospital. PW 6 Amrik Singh lodged the first information report and the offence was registered. After completing the investigation, the appellants were prosecuted and tried for the offences hereinabove mentioned.

4. At the trial PW Amrik Singh and PW Surinder Mohan Singh were examined as witnesses to the occurrence. PW 4 Dr. Amar Singh, who conducted the autopsy on the dead body of deceased Darshan Singh deposed that he found one incised stab wound $4^1/_2$ cm. x $2^1/_2$ cm. on front of left side of chest at 6 O'clock position, $3^1/_2$ cm. below left nipple oblique in direction. He also found two minor abrasions, one on front of left knee and the other on left side of fore-head. In his opinion, death was due to shock and haemorrhage as a result of injury to heart corresponding to injury

No. 1 and in his opinion this injury was sufficient in the ordinary course of nature to cause death.

5. The defence of the accused, the first appellant Jawahar Lal, was that he caused one single injury to deceased Darshan Singh. He has given his own version of the incident to which we would presently refer. Appellant 2 and Sardari Lal denied having committed any offence.

6. The learned Additional Sessions Judge rejected the defence version put forth by the first appellant Jawahar Lal as unworthy of credit and held that the evidence of two witnesses Amrik Singh and Surinder Mohan Singh was reliable and is borne out by a part of the statement made by the first appellant Jawahar Lal under Section 313 of CrPC. He however rejected that the first appellant caused injury to Darshan Singh in furtherance of the common intention of all the accused. Accordingly, the second appellant Kewal Krishan was held responsible for his own act of causing injury to PW Santokh Singh. The Sessions Judge was not satisfied with regard to the participation of the third accused Sardari Lal and he was given benefit of doubt and acquitted. Accordingly, the first appellant Jawahar Lal was convicted for an offence punishable under Section 302, IPC and was sentenced to suffer imprisonment for life and to pay a fine of Rs 2000 in default to suffer further imprisonment for one year. Second appellant Kewal Krishan was held guilty for an offence under Section 324, and as he was aged about 17 years on the date of the occurrence with no previous conviction, he was given benefit of the provision of Section 360 of the CrPC.

7. First and second appellant having been dissatisfied with the order of the Sessions Judge, preferred Criminal Appeal No. 381 of 1981 in the High Court of Punjab and Haryana at Chandigarh. The division Bench of the High Court agreed with the findings recorded by the learned Additional Sessions Judge and confirmed the conviction and sentence of the appellants.

8. When the special leave petition came up for admission, this Court by its order dated October 25, 1982 directed a notice to be issued on the question of the nature of offence and sentence. This has reference to the case of first appellant alone because the second appellant was given benefit of the provision of Section 360, CrPC and nothing is required to be done in that behalf. We are therefore, concerned with the case of the first appellant only, and the inquiry is of a limited nature as to whether the conviction for an offence under Section 302 and the sentence imposed for the same are justified?

9. Narration of facts clearly bring out the background in which the offence was committed. The social order in Punjab is such that trivial disputes lead to fatal consequences. This case aptly illustrates the same. Facts not in dispute are that Sardari Lal, the father of the first appellant wanted to tie a rope of the canopy which had to be fastened to the projected

eaves of the house of witness Amrik Singh. This minor good-neighbourly gesture did not meet with the approval of witness Amrik Singh and he declined an eminently fair request. In turn a few days after when the wet underwear of witness Amrik Singh flew off from his roof, it was picked up by the first appellant, but when demanded by Amrik Singh the first appellant declined to return the same. Sardari Lal, the father being more mature, intervened and returned the underwear. Thereafter this unfortunate event occurred. The prosecution case disclosed in the evidence of eye-witnesses indicate that the appellants and their father were waiting in front of their shop. This part of the prosecution case is rejected by the learned Additional Sessions Judge on a misconception about the location of the scene of offence. Both the appellants were armed with daggers. The use of the expression 'dagger' is unfortunate because it appears each of the appellants had a knife. A Punjabi carrying a knife is not at all an unusual feature nor can it furnish an indication that it was carried by them to facilitate inflicting a fatal injury. Further appellants and their father had some trivial dispute with PW Amrik Singh. He was present. He has gone unharmed. First appellant had no malice against deceased Darshan Singh. He had no quarrel with him. He had no dispute with him. According to prosecution, appellant had no grievance against deceased Darshan Singh, and to this Darshan Singh one blow with a knife was given which unfortunately landed on the chest, and proved fatal.

10. At this stage, it would be advantageous to give the version of the occurrence as narrated by the first appellant in his statement under Section 313 of the CrPC. The whole of it need not be reproduced. But the substantial part which reads as a version of occurrence may be reproduced. According to him deceased Darshan Singh and witness Santokh Singh came to his shop between 9.00 or 10.00 p.m. and both appeared under the influence of drink. Both of them gave abuses to him in filthy language. Darshan Singh complained that the first appellant had insulted Amrik Singh and therefore, they had come to teach him a lesson. Deceased Darshan Singh also told the first appellant that they had come to take their 'Dola' (taking his sister after marriage). Then the first appellant described the incident. It reads as under:

> Darshan Singh then took out dagger type knife from his pant. He aimed blow at me. I had held his arm with which he was holding the weapon. I grappled with him and both of us fell on the ground. His dagger type knife fell on the ground which I lifted. Darshan Singh tried to snatch the dagger type knife from me. Out of fear, I gave the dagger type knife blow to Darshan Singh but I cannot say where it had hit because I had thought in case Darshan Singh snatched the knife from me, he would attack me.

11. The learned Sessions Judge was not impressed by the version of the occurrence as given by the first appellant and the High Court, except reproducing the whole statement of the first appellant in the judgment, has

neither analysed nor evaluated the same. However, as the High Court rejected a specific contention on behalf of the first appellant that even if the first appellant is shown to have inflicted a blow with a knife on Darshan Singh, the offence would not be one under Section 302 of the Indian Penal Code, it can be safely assumed that the version as given by the first appellant did not find favour with the High Court.

12. The only question, we have to examine is whether under these circumstances the offence would be under Section 302 of the Indian Penal Code.

13. According to the learned Sessions Judge, the first appellant was aged 19 years at the time of the occurrence. He has given one blow with a knife. When on receipt of the blow deceased Darshan Singh fell on the ground, there is not the slightest suggestion that the first appellant ever attempted to cause any more harm to deceased Darshan Singh.

14. Section 300 of the IPC provides that culpable homicide is murder firstly if act by which the death is caused is done with the intention of causing death or, thirdly—if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. There are two other paras setting out circumstances in which culpable homicide would amount to murder. But they are not relied upon by the learned counsel Shri Ashwani Kumar and therefore, need not be referred to here. It is, therefore, necessary to confine the examination whether on the facts not now in dispute either para 1 or para 3 of Section 300 is attracted.

15. It was not seriously questioned that para 1 would not be attracted. In the facts and circumstances of this case, as succinctly set out, it is difficult to say that the first appellant intended to cause the death of the deceased. Emphasis was laid on para 3 and it was urged that the case would be covered by para 3 of Section 300. It was urged that the first appellant not only intended to cause a particular injury which is alleged to have been inflicted, but on objective evidence of the Medical Officer the injury inflicted is shown to be sufficient in the ordinary course of nature to cause death, and therefore, para 3 would be attracted. Following a trivial dispute, first appellant, a young immature boy aged about 19 years, gave one blow with a knife. The incident occurred at about 10.00 p.m. The light available was from an electric lamp post in the street. In this light upon a trivial quarrel, only one blow without any attempt at giving a second blow, was inflicted and that fell on the chest. Could it be said that the injury which was inflicted was the particular injury which was intended to be inflicted? If the answer is in negative and it ought to be so, the important requirement in the first part of para 3 would not be satisfied. Merely because the blow landed on a particular spot on the body, divorced from the circumstances in which the blow was given, it would be hazardous

to say that the first appellant intended to cause that particular injury. The weapon used was the usual handy weapon, a Punjabi generally carries a knife. The first appellant was near his shop. He did not attempt to inflict any more harm. In the available dim light, the blow landed on the chest. In our opinion, in these circumstances, it would be difficult to say that the first appellant intended to cause that particular injury. Even if the injury inflicted proved to be fatal, the case would not be covered by para 3 of Section 300.

16. Mr. Ashwani Kumar very seriously contended that the defence version is found to be false by both the Courts and appears to be improbable. As there is concurrent finding on this aspect of both the Courts, we would accept the contention of Mr. Ashwani Kumar. But if the defence version is incorrect, that itself cannot blind us to the circumstances in which the offence was committed, the background in which it was committed and the ferocity of the attack and the weapon used. At this stage, we must point out that the High Court was in error when it said that the incident did not occur near the shop of the first appellant, but near the door of the house of PW 6 Amrik Singh. The High Court overlooked that position that the house of PW Amrik Singh is situated opposite to the shop of the first appellant. Therefore, the High Court was in error attaching importance to the fact that the incident occurred near the door of the house of PW Amrik Singh, because if that spot was described from the direction of the shop of the first appellant, it would refer to the same spot.

17. Unfortunately, for us the High Court did not examine these aspects. But we should also not further dilate on this point in view of the decision of this Court in *Jagrup Singh* v. *State of Haryana*[1]. In that case after referring to the evidence, this Court held that the appellant gave one blow on the head of the deceased with the blunt side of the *gandhala* and this injury proved fatal. The Court then proceeded to examine as to the nature of the offence because the appellant in the case was convicted for an offence under Section 302. Undoubtedly, this Court said that there is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting in death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code. The Court then proceeded to lay down the criteria for judging the nature of the offence. It may be extracted : [SCC para 6, pp. 619-20 : SCC (Cri) p. 771]

> The whole thing depends upon the intention to cause death, and the case may be covered by either clause Firstly or clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death.

1. (1981) 3 SCC 616 : 1981 SCC (Cri) 768 : ('981) 3 SCR 839 : AIR 1981 SC 1552 : 1981 Cri LJ 1136

18. We may point out that decision in *Jagrup Singh's case*[1] was subsequently followed in *Randhir Singh* alias *Dhire* v. *State of Punjab*[2] and in *Kulwant Rai* v. *State of Punjab*.[3]

19. Having kept this criteria under view, we are of the opinion that the offence committed by the first appellant would not be covered by clause Thirdly of Para 3 of Section 300 and therefore, the conviction under Section 302, IPC cannot be sustained.

20. What then is the offence committed by the first appellant? Locking to the age of the first appellant at the time of the occurrence, the nature of the weapon used, the circumstances in which one blow was inflicted, the time of the day when the occurrence took place and the totality of other circumstances, namely, the previous trivial disputes between the parties, we are of the opinion that the first appellant could be attributed the knowledge that he was likely to cause an injury which was likely to cause death. Accordingly, the first appellant is shown to have committed an offence under Section 304, Part II of the Indian Penal Code and he must be convicted for the same and sentenced to suffer rigorous imprisonment for five years maintaining the sentence of fine.

21. We accordingly allow the appeal of the first appellant and set aside his conviction under Section 302, IPC and the sentence of imprisonment for life imposed upon him. The first appellant is convicted for an offence under Section 304 Part II, Indian Penal Code and is sentenced to suffer rigorous imprisonment for five years. The sentence of fine of Rs 2000 in default to suffer further rigorous imprisonment for one year imposed upon him is maintained.

22. Appeal preferred by the second Appellant is dismissed.

(1983) 4 Supreme Court Cases 166

(BEFORE D.A. DESAI, V. BALAKRISHNA ERADI AND R.B. MISRA, JJ.)

Writ Petitions Nos. 1637, 1733, 1933-35, 1952, 1961-64, 2002-03, 2007, 2021, 2085, 2109-12, 2114, 2189, 2837, 3131, 3354, 3643, 4233, 4681, 5723, 7447, 7624 of 1981 and 2628, 2835, 3471, 4310, 4382, 4385, 8513, 2404, 2748, 5507, 5508, 2499, 2748 & 9341 of 1982*

DELHI CLOTH & GENERAL MILLS CO. LTD. .. Petitioners ;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

2. (1981) 4 SCC 484 : 1981 SCC (Cri) 856 : AIR 1982 SC 55
3. (1981) 4 SCC 245 : 1981 SCC (Cri) 826 : AIR 1982 SC 126

*Under Article 32 of the Constitution of India

specifically referred to. Since we are remitting the matter to the respondent for reconsideration, we do not propose to express any opinion which might prejudice either side. The appeal is allowed. The impugned order is vacated and the matter shall go back to respondent 2 for a fresh disposal in accordance with law. There will be no order for costs.

(1987) 2 Supreme Court Cases 623

(BEFORE A. P. SEN AND B. C. RAY, JJ.)

VINOD KUMAR .. Appellant ;

Versus

STATE OF U. P. .. Respondent.

Criminal Appeal No. 287 of 1986†,
decided on April 21, 1987

U. P. Children Act, 1952 — Sections 2(4) and 29 — Whether accused was a 'child' at the time of occurrence so as to be entitled to benefit of Section 29 — Question neither raised in trial court nor in High Court — Accused playing a prominent role in gruesome triple murder — Affidavits and documents produced to prove age of doubtful authenticity — Accused and his counsel forged college attendance register and produced false witness to substantiate his plea of alibi and also made wild and unfounded allegations against High Court judge while making frivolous assertion that he had not been heard by High Court — Having regard to the conduct of the accused and his counsel and in the circumstances, held, accused's case that he was a child cannot be accepted — Conviction under Section 302 read with 149 IPC upheld

Jayendra v. State of U.P., (1981) 4 SCC 149 : 1981 SCC (Cri) 809 ; Umesh Chandra v. State of Rajasthan, (1982) 2 SCC 202 : 1982 SCC (Cri) 396 : (1982) 3 SCR 583 ; Gopinath Ghosh v. State of W.B., 1984 Supp SCC 228 : 1984 SCC (Cri) 478 : (1984) 1 SCR 803 : AIR 1984 SC 237 and Satto v. State of U.P., (1979) 2 SCC 628 : 1979 SCC (Cri) 534 : (1979) 3 SCR 768, referred to

Practice and Procedure — Merely because objection had not been raised at the stage of grant of special leave, does not prohibit Supreme Court to take notice of the impropriety — Constitution of India, Article 136 (Para 10)

Criminal Procedure Code, 1973 — Sections 374 and 395 — Practice of making wild and unfounded allegations against the Judges strongly deprecated (Para 14)

Appeal dismissed R-M/7924/CR

†From the Judgment and Order dated April 26, 1985 of the Allahabad High Court in Criminal Appeal No. 1938 of 1977

Advocates who appeared in this case :

D. P. Singh, Senior Advocate (N. P. Midha and Mrs Rani Chhabra, Advocates, with him), for the Appellant ;

Prithvi Raj, Senior Advocate (D. Bhandari, Advocate, with him), for the Respondent.

The Judgment of the Court was delivered by

SEN, J.—This appeal by special leave directed against the judgment of the Allahabad High Court dated April 26, 1985 upholding the judgment and sentence passed by the learned Additional Sessions Judge, Kanpur dated July 11, 1977 raises the question whether the appellant was a child as defined in Section 2(4) of the U.P. Children Act, 1952 and therefore was entitled to the benefit of Section 29 of the Act. The point was not taken in the High Court nor was there any such plea raised during the trial. This was a case of triple murder. The appellant along with his ten companions was convicted by the learned Additional Sessions Judge under Section 302 read with Section 149 of the Indian Penal Code, 1860 for having committed the murders of the deceased Basdeo, Anant Ram and Mahabir in furtherance of the common object of the unlawful assembly and they were each sentenced to undergo rigorous imprisonment for life. The court has granted special leave to the appellant Vinod Kumar alone and dismissed the special leave petitions filed by the other accused.

2. In this appeal, the appellant sought special leave mainly on two grounds, namely : (1) The High Court was not justified in dismissing the appeals before it without hearing learned counsel appearing for the accused on the ground that the court was satisfied that the appeals ought to be allowed (*sic*). And (2) the trial of the appellant Vinod Kumar and the sentence of imprisonment for life awarded upon his conviction under Section 302 were vitiated in view of the decisions of this Court in *Jayendra* v. *State of U.P.*[1], *Umesh Chandra* v. *State of Rajasthan*[2] and *Gopinath Ghosh* v. *State of W.B.*[3] as the appellant at the time of the incident was not even 14 years of age, his date of birth being April 18, 1959, and was a 'child' as defined in Section 2(4) of the Act and he ought to have been tried by the special court as required under Section 29 and his trial by the Court of Session was bad in law.

3. We have heard Shri Dharam Pal Singh, learned counsel for the appellant at quite some length. It was stated that the only question raised at the stage of grant of special leave, which again was the solitary point urged by him before us, was that the appellant was

1. (1981) 4 SCC 149 : 1981 SCC (Cri) 809
2. (1982) 3 SCR 583 : (1982) 2 SCC 202 : 1982 SCC (Cri) 396 : 1982 Cri LJ 994
3. (1984) 1 SCR 803 : 1984 Supp SCC 228 : 1984 SCC (Cri) 478 : 1984 Cri LJ 168

a child within the meaning of Section 2(4) of the Act at the time of the occurrence and therefore entitled to the benefit of Section 29. The learned counsel made a statement at the bar that the other point was not pressed at the hearing of the special leave petitions, namely, that the High Court did not give a hearing to the appellant and the other accused.

4. Normally, it would seem unnecessary to state the facts of the case in detail as they may not be germane to the issue now sought to be raised, namely, that the High Court was not justified in dismissing the appeal preferred by the accused without giving them a hearing. But in the facts and circumstances of the present case, we think it necessary to do so. The facts brought out in the prosecution case clearly show that the appellant not only led the assault but also played a prominent role which resulted in the gruesome triple murder and it is incredible that he was a child at the time of the incident. The incident which led to the triple murder appears to be calculated, preplanned and ruthlessly executed.

5. Briefly stated, the facts disclosed by the evidence of the prosecution are that there were two rival factions in village Pania Mau, one led by the deceased Basdeo to which the other dead persons Anant Ram and Mahabir belonged, and the other of which the appellant Vinod Kumar and his ten companions were members, and the relations between them were extremely strained. It appears from the prosecution evidence that this ghastly incident took place on the morning of August 20, 1973 on the banks of a tank lying on the western outskirts of the village abadi which is used by the village people for purposes of bathing and washing their clothes. At about 11.30 a.m. the three deceased Basdeo, Anant Ram and Mahabir had gone to the tank for taking bath and washing their clothes. One of the eyewitnesses Kumari Shashi Kala, PW 3, sister of the deceased Basdeo had also gone there for similar purposes. She was at the southern burj of the tank, deceased Basdeo was on the northern burj, deceased Manabir and Anant Ram were on the steps of the ghat on the eastern bank. The appellant Vinod Kumar along with his companions suddenly appeared at the ghat armed with deadly weapons like gun, pistol, sword, kanta, lathi etc. and they opened an assault on the three dead persons. The accused (*sic* Hanuman) almost simultaneously opened fire with his gun at the deceased Basdeo and the appellant Vinod Kumar with his pistol at the deceased Mahabir. Basdeo on receiving gun shot injuries jumped into the tank to swim across and take to safety. The deceased Mahabir was also injured by gun fire and tried to escape but fell down on receiving another gun shot fired by the accused Hanuman. When he fell down, the accused Shiv Prasad and Ranjit

Singh repeatedly hit him with their sword and kanta resulting in his instantaneous death. The deceased Anant Ram was also assaulted by the accused Roop Ram and Gopal with their sword and kanta and he died on the spot as a result of the injuries received by him. The appellant Vinod Kumar and the accused Hanuman then rushed to the western bank of the tank and opened fire at the fleeing Basdeo and on being hit he fell down in the field of Deo Karan. By that time all the accused reached the spot and there he was again assaulted by the appellant and his companions and his head was chopped off the trunk. Thereafter, the appellant and his companions made good their escape and the accused Roop Ram carried the decapitated head of the deceased Basdeo.

6. The appellant abjured his guilt and complained that he had been falsely implicated due to previous animosity. His only plea in defence at the trial as well as in the High Court was one of alibi. It was alleged that he was a student of intermediate class in C.A.V. Inter College. Allahabad and on the date of occurrence i.e. on August 20, 1973 he was actually attending his classes in the college. He tendered in evidence the college attendance register and also examined Virendra Kumar Mehta, DW 1, a lecturer in Physics in the college in support of his plea of alibi.

7. The learned Additional Sessions Judge and the High Court have during the course of their carefully written judgments marshalled the entire evidence and came to the conclusion that the guilt of the appellant and the other accused was proved by the prosecution beyond all reasonable doubt. The High Court on a consideration of the evidence has come to the conclusion that there was no reason to disbelieve the unimpeachable testimony of PW 3 Kumari Shashi Kala, sister of the deceased Basdeo as well as the testimony of the three other eye-witnesses PW 1 Ram Shanker, PW 2 Ram Swarup, brother of the deceased Mahabir and PW 6 Prayag Narain, who were undoubtedly present at the place of the incident, and have given a graphic description of the entire incident. It observed that though these witnesses were subjected to close cross-examination, the defence had failed to impeach their credibility as truthful witnesses. The evidence of these witnesses clearly brings out that it was the appellant who led the assault which resulted in the triple murder of Basdeo. Anant Ram and Mahabir.

8. As to the plea of alibi raised by the appellant, both the learned Additional Sessions Judge and the High Court have recorded a finding that he has failed to substantiate that plea. The crude attempt to establish the plea of alibi by production of the college attendance register and the examination of Virendra Kumar Mehta, DW 1 has failed. The High Court agreeing with the learned Additional Sessions

Judge has come to the conclusion that the entries in the college attendance register were forged and has passed strictures against this witness that he being a person in a responsible position, should have appeared as a witness for the defence and had not cared to uphold the dignity of his position, and by giving suborned evidence has tried to thwart the course of justice not only by his evidence but also by interpolating the college attendance register.

9. From the narration of the facts it is incredible that the appellant was only a child within the meaning of Section 2(4) of the Act i.e. below the age of 16 years at the time of the occurrence, which is nothing but a complete afterthought. Undeterred by the fact that the appellant had failed to establish the false plea of alibi by the production of the forged college attendance register and taking cue from the various decisions of this Court as reported in *Satto* v. *State of U.P.*[4], *Jayendra* v. *State of U.P.*[1], *Umesh Chandra* v. *State of Rajasthan*[2] and *Gopinath Ghosh* v. *State of W.B.*[3] displaying the court's deep concern and solicitude about the treatment of juvenile offenders, the appellant is emboldened to come forward with this belated plea that he was a child within the meaning of Section 2(4) of the Act and therefore the trial was vitiated by reason of Section 29. However, before we deal with the question on merits we would like to advert to unseemly features in this case.

10. The case presents a feature which is rather disturbing. In the first place, there are false averments made in the special leave petition in order to present a distorted picture of the hearing of the appeals in the High Court. Secondly, there are wild and unfounded allegations made against the learned Judges in an attempt to destroy their credibility and create doubt about the correctness of the judgment appealed from. As to the first aspect, the legal advisors of the appellant and the other accused have gone to the extent of making out an entirely false case, namely, that the High Court did not give a hearing to them. Merely because the learned counsel disdained from raising the point at the stage of grant of special leave, does not imply that we should not take notice of the facts alleged. We shall indeed be failing in our duty if we do not comment upon the conduct of the appellant and the other accused and their legal advisors in trying to create prejudice against the High Court. It is averred in paragraph 13 of the special leave petition that the appeals were taken up for hearing on April 1, 1985 at 3.15 p.m. and that day only the names of the accused, weapons, sections and sentences, date and time of the occurrence etc. were given out when the court rose for the day at 3.45 p.m. It is then averred in para 14 that on the next

4. (1979) 3 SCR 768 : (1979) 2 SCC 628 : 1979 SCC (Cri) 534 : 1979 Cri LJ 943

day i.e. on the 2nd, the appeals could not be taken up. They were taken up on the 3rd at 2.10 p.m. when the case was called out when Shri Chandra Shekhar Saran and Shri P. C. Chaturvedi, the two senior counsel along with Sarvashri Dharam Pal Singh, G. S. Chaturvedi and A. K. Sachan appeared. It is alleged that when the case was called out and Shri Chandra Shekhar Saran wanted to argue the appeals, the learned Judges said that they had seen the case and they did not want to hear the appellants but wanted to hear the State counsel. At this point, it is said that Shri P. C. Chaturvedi pointed out the age of the appellant Vinod Kumar and thereupon one of the Judges (Hon'ble Mr Justice *X* who delivered the judgment) observed that since they wanted to allow the appeals, therefore, they did not want to hear the appellants and if need be, they would call upon them later. It is then alleged that the court called upon the State as to how it supported the judgment as two of the four eye-witnesses had been disbelieved by the learned Additional Sessions Judge and the remaining two witnesses were partisan witnesses, one of whom being PW 3 Kumari Shashi Kala, who was a young girl of 15 years and would not go to the tank alone at that time. It is further alleged that after the prosecution had placed the evidence of PW 2 Ram Swarup, the court was not satisfied and reserved the judgment. At this stage, it is said, Shri P. C. Chaturvedi again tried to point out the age of the appellant but Mr Justice *X* observed that when the veracity of the two eye-witnesses was doubtful there remained no need to proceed further. The court rose at 3.45 p.m. The allegations in paras 14 to 17 are that the Judges gave an impression at the conclusion of the hearing on April 3, 1985 that the appeals would result in an acquittal while they pronounced the judgment on the 26th dismissing the appeals and it is then averred in para 17 that this decision came as a shock to the counsel appearing for the accused. There is nothing on record to substantiate these allegations apart from the letter written by Shri Dharam Pal Singh to the counsel in this Court to file the special leave petition to which we shall presently refer. In view of the conduct of the appellant and the other accused and their legal advisors we are not prepared to act on the assertion in the letter written by Shri Dharam Pal Singh. If there was any truth in this assertion, it was expected that the learned Judges would have made a mention of the fact that a contention was advanced on behalf of the appellant that he was a child within the meaning of Section 2(4) of the Act for whatever it was worth.

11. We feel deeply concerned that the appellant and the other accused do not rest themselves by making this false assertion that they were not heard by the High Court but they have gone further and made wholly wild and unfounded allegations against the learned

Judges casting serious aspersions on them. They have brought into existence certain correspondence in an attempt to create prejudice against the learned Judges. We fail to see the propriety of placing copies of these two letters unless it was with a view to create doubts and suspicion about the integrity of the learned Judges. It shows that the appellant and his legal advisors can go to any extent to secure a reversal of the judgment of the High Court upholding the conviction of the appellant for having committed offences of murder punishable under Section 302 read with Section 149 of the Indian Penal Code. First is a letter dated April 23, 1985 i.e. just three days before the delivery of the judgment, said to have been written by Shri K. L. Grover to the accused Ram Gopal Sachan. We understand that Shri Grover is comparatively a senior counsel practising in the High Court at Allahabad. The letter of Shri Grover appears to be written in response to a letter written by the accused dated April 20, 1985 seeking his assistance. Shri Grover naturally expressed his resentment and displeasure that the accused should have written a letter of this nature to him asking that he should try to influence the learned Judges. It is in these terms :

> I was surprised and sorry after reading it. Neither I am a counsel in Criminal Nos. 1937 and 1938 of 1977 Hanuman and others and Vinod and others, nor I know any of them and I have no connection with these cases. You have written about Shri D. P. Singh, advocate. He is a good counsel but your assertions are baseless. I do not take part in any unscrupulous thing. This is correct that Hon'ble *X* is my friend but he is a Judge and I am an advocate. Decisions are not sold in the High Court. Hon'ble *X* is like all other Judges of the High Court very honest Judge. Either you have written false thing or you have been cheated by somebody. Kindly do not correspond with me in this connection.

12. The other is a letter dated May 24, 1985 addressed by Shri Dharam Pal Singh to the counsel in this Court instructing him to file the special leave petition, saying that as a counsel his "conscience was shocked", narrating that at the hearing the learned Judges gave the impression that this was a case which deserved acquittal and they would like to hear the prosecution counsel and thereafter, if necessary, they would hear the accused. In the letter he asserts that on this the senior counsel Shri Chandra Shekhar Saran did not address the court, but Shri P. C. Chaturvedi told the court that the appellant was a child upon which one of the learned Judges observed that since they were allowing the appeal, it was not necessary to go into the question. He then goes on to say that he and the other counsel were shocked by the judgment delivered by the learned Judges

dismissing the appeals. He also adverts to Shri Grover's letter and mentions that he had taken the accused Ram Gopal Sachan to Shri Grover's place and enquired about the letter since the accused denied that he had written any such letter. According to his version Shri Grover declined to give them the letter as he did not want to get involved in any controversy and he then adds :

> As counsel, we owe a duty to our client and all of us appearing on behalf of the accused feel that we have failed therein and our conscience is in distress.

He then concludes by saying :

> We do not know whether all these facts should be placed before the Hon'ble Supreme Court and this decision we leave in your hands. But we do request you to kindly see that the hearing which we could not get for these accused (having a case for acquittal) do get an opportunity of placing their case before the courts.

A perusal of these letters would tend to show that there was an attempt to blackmail the learned Judges. We cannot but deprecate the conduct of the appellant and the other accused in making such wild allegations about the propriety and conduct of the learned Judges. We have no doubt in our mind that the allegations are totally false and untrue. It is pertinent to observe that Shri Dharam Pal Singh has chosen not to file any affidavit in support of the assertions made by him in his letter. The learned counsel who drafted the special leave petitions should have shown greater circumspection before casting such serious aspersions on the High Court. We are not prepared to believe that it was mentioned before the learned Judges at the hearing of the appeals that the appellant was a child within the meaning of Section 2(4) of the Act when this fact is not borne out by the judgment and there is nothing on record to substantiate the allegation.

13. In the facts and circumstances of this particular case, we are not prepared to countenance the argument that the appellant was a child within the meaning of Section 2(4) of the Act. After the grant of special leave, the appellant apart from his own affidavit, filed two affidavits of his father Shri Narain Sachan and an affidavit by Shri Jitendra Prasad Singh, advocate, brother of Dharam Pal Singh. He has also placed on record copies of certain documents, namely (1) extracts of the kutumb register in Form 'A' of Pania Mau Gaon Sabha issued by the Village Panchayat Officer, Nyaya Panchayat, Dev Rahat. (2) Certificate of the High School Examination, 1973 issued by the Secretary of Madhyamik Shiksha Parishad, Uttar Pradesh. (3) Entry from the electoral roll relating to U.P. State Legislative Assembly Constituency No. 275, Allahabad. Mohalla Ruyi Khurd

(4) Statement of the appellant recorded by the learned Additional Sessions Judge under Section 313 of the Code of Criminal Procedure, 1973. We have gone through these affidavits and other documents and we are not prepared to act on them. At the hearing we asked the learned counsel to produce the original documents. We are satisfied that the documents are of doubtful authenticity and it would be unsafe to rely upon such documents. Such documents can always be brought into existence. We would refer to the statement of the appellant recorded by the learned Additional Sessions Judge on June 4, 1975 wherein the appellant stated his age to be 17 years. Beneath the statement, there is an endorsement in ink : "The age of 17 years appears to be correct". We are left to guess who made this endorsement. Even assuming that the endorsement was made by the learned Additional Sessions Judge, that was only an estimate of age and does not necessarily show that the appellant was a child within the meaning of Section 2(4) of the Act at the time of occurrence. In view of the earlier attempt made by the appellant and his legal advisors to substantiate the false plea of alibi by production of forged attendance register and the tendering of evidence of Virendra Kumar Mehta, DW 1 against whom the High Court has passed strictures for suborning himself in an attempt to thwart the course of justice, it is quite evident that the appellant and his legal advisors would go to any extent in creating evidence to support the false plea now taken.

14. In conclusion, we cannot but once again deprecate the growing tendency on the part of unsuccessful litigants to impute unworthy motives to Judges and this has become not uncommon these days. We frown upon the practice of making such baseless imputations against Judges and time has come for this Court to take serious notice of this unhealthy trend before it becomes a growing menace and an unmitigated evil. We feel that the members of the bar equally share this responsibility and should ensure that uncalled for aspersions are not cast on the Judges. Such a course of action on their part would enhance the prestige of the court and the legal profession.

15. For these reasons, the appeal must fail and is dismissed.

(1987) 2 Supreme Court Cases 631

(BEFORE A. P. SEN AND V. BALAKRISHNA ERADI, JJ.)

KAILASH KAUR .. Appellant ;

Versus

STATE OF PUNJAB .. Respondent.

5. Special leave petitions are disposed of accordingly.

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a

1990 (Supp) Supreme Court Cases 65

(BEFORE K.N. SINGH AND KULDIP SINGH, JJ.)

SAYBU MARUTI GHADGE .. Appellant;

Versus

b

STATE OF MAHARASHTRA .. Respondent.

Criminal Appeal No. 85 of 1989, decided on February 6, 1989

Criminal Procedure Code, 1973 — Sections 374 and 386 — Appeal against trial court's judgment awarding life imprisonment — Duty of High Court to
c **consider the matter in detail — Disposal of appeal in one paragraph indicating agreement with findings recorded by trial court improper — Case remitted back to High Court**

Appeal allowed S-MM/9758/SR

ORDER

d

1. Special leave granted.

2. The appellant was convicted by the trial court for an offence under Section 302 of the Indian Penal Code for having murdered his wife. He was awarded punishment of life imprisonment by the trial court.
e Aggrieved the appellant filed appeal before the High Court under the provisions of the Criminal Procedure Code. The High Court disposed of the appeal in one paragraph indicating its agreement with the findings recorded by the trial court.

3. We are shocked and surprised that in a matter where life
f imprisonment was awarded to the appellant the High Court should have dealt with the matter in such a summary manner. The High Court, in our opinion, should have considered the evidence in detail to evaluate the credibility of the testimony of the witnesses and it should have discussed the circumstantial evidence on the basis of which the appellant was con-
g victed. Where no eye-witnesses are available to give ocular testimony of the evidence, the court is under a duty to consider in detail every circumstance pressed into service by the prosecution, to record its findings. In an appeal filed in the High Court against the order of conviction especially where a life sentence is awarded, the High Court is under a duty to
h consider the matter in detail, it is not proper or advisable to dispose of such an appeal in a summary manner.

4. We, accordingly, allow the appeal, set aside the judgment of the High Court and remit the matter back to it to dispose of the appeal in accordance with law at an early date.

i

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some period is not expected; and it does appear that during some period, the situation in the department was out of joint. That is why steps were taken to straighten it out by amending the Act and making the rules and issuing the relevant notifications, circulars and orders. If during this period on account of the exigencies of service, some ad hoc appointments of Group B officers were made to Group A posts, Grade II or Group B officers were required to perform the same functions and discharge the same duties as Group A officers, they can at best claim the emoluments of Group A officers, but certainly not the equalisation of the two posts on that account.

57. Since the alleged equality of posts was the foundation of the other contentions raised in the petitions, the said contentions must also fail and need not be dealt with separately. The contentions which are common to the earlier petition have already been dealt with.

58. In the circumstances, we find no substance in these petitions. The petitions are, therefore, dismissed and the rule granted in each is discharged with no order as to costs.

59. Before parting with these petitions, we cannot help observing that although the issues raised in all these petitions were set at rest by this Court conclusively earlier, the petitioners thought it necessary to tax the precious time of the court by approaching it once again on grounds which were least justified. We hope and trust that this decision puts a final lid on the alleged grievances of the petitioners and no new pretexts are found hereafter to rake up the same contentions under other garbs.

1990 (Supp) Supreme Court Cases 604

(BEFORE A.P. SEN AND L.M. SHARMA, JJ.)

RAM KARAN .. Appellant;

Versus

STATE OF RAJASTHAN .. Respondent.

Criminal Appeal No. 247 of 1988†, decided on April 18, 1988

Criminal Procedure Code, 1973 — Sections 374 and 386 — High Court's order dismissing appeal against conviction without discussing the evidence not sustainable — Case remanded for fresh decision in accordance with law

Appeal allowed S-MM/9774/SR

ORDER

1. Special leave granted.

2. After hearing learned counsel for the parties we find it necessary to remit the appeal to the High Court so far as appellant Ram Karan is

† Arising out of SLP (Crl.) No. 1492 of 1987

concerned for a decision afresh after hearing the parties on merits. The High Court has affirmed his conviction for an offence under Section 302 of the Indian Penal Code observing, "so far as appellant Ram Karan is concerned, there is sufficient evidence oral or otherwise to connect him with the brutal murder committed in this incident". There is no effort to discuss the evidence at all. Accordingly, the appeal succeeds and is allowed, and the judgment and sentence passed by the High Court dismissing the appeal of the appellant Ram Karan are set aside. The case is accordingly remanded to the High Court for a fresh decision in accordance with law.

3. The appeal is disposed of accordingly.

1990 (Supp) Supreme Court Cases 605

(BEFORE M.P. THAKKAR AND K.N. SINGH, JJ.)

MAHADEO PRASAD AND OTHERS .. Appellants;

Versus

STATE OF U.P. AND OTHERS .. Respondents.

Civil Appeal No. 469 of 1988†, decided on February 1, 1988

Constitution of India — Article 136 — Question regarding actual possession of land — Not gone into properly by concerned courts on the basis of evidence adduced by parties — Matter remited to Commissioner for fresh decision — Tenancy and Land Laws

R-M/8905/S

ORDER

1. Special leave granted. Heard both the sides. It appears that attention has been focussed principally on the question as regards the inference arising from the entry made in the revenue records as per the order of the Tehsildar dated February 11, 1957. The concerned courts have not concentrated on the question regarding the actual possession on the basis of the evidence adduced by the parties in an appropriate manner. Under the circumstances, the appeal is allowed. The order passed by the High Court and Board of Revenue as also the order passed by the Commissioner are set aside. The matter is remitted to the Commissioner, Jhansi Division for a fresh decision in accordance with law on the basis of evidence regarding actual possession placed before the court. In doing so the competent authority shall not be influenced one way or the other by the view which has been taken from time to time on this question in the past. The appeal is disposed of accordingly. No costs.

† Arising out of Spl. Leave Petition (C) No. 14349 of 1985

passport he would be able to continue the activities in respect of which he is detained; that such an attempt would be merely speculative based on no material.

9. The stand of the Department is that whether there can be detention on a solitary instance would depend on the facts and circumstances of each case, on the magnitude of the case and other attendant circumstances. In the present case, it is stated that the detenu's passport disclosed that he had made several trips abroad and he was not a man of such affluence as to make so many trips out of the country unless they be in the context of his business activities. Therefore, considering the number of trips he had made out of the country, the volume of goods seized now and the *prima facie* misdeclaration of value, an inference can be drawn that the detenu was part of a bigger network in bringing the goods for commercial distribution inside the country by avoiding the payment of duty. In this background, absence of passport will not be a handicap to the detenu for his activities in the present case in which the fact situation is different from the one available in *Rajesh Gulati case*[7]. Nor can we confine the meaning of the word "*smuggling*" only to going out of the country and coming back with goods which are contraband or to evade duty but may encourage such activities as well by dealing in such goods.

10. Therefore, we do not find any substance in any of the contentions urged on behalf of the detenu and the petition therefore stands dismissed.

(2002) 10 Supreme Court Cases 454

(BEFORE G.B. PATTANAIK AND U.C. BANERJEE, JJ.)

ARUN AHLUWALIA . . Appellant;

Versus

STATE (THROUGH GOVT. OF NCT, DELHI) . . Respondent.

Criminal Appeal No. 758 of 2000†, decided on September 4, 2000

Criminal Procedure Code, 1973 — Ss. 374 and 360 — Conviction under Ss. 279/304-A IPC — Maintainability of appeal against the said conviction if accused released on probation — Held, the Appellate Authority erred in holding that the appeal was not maintainable merely because the Magistrate released the accused on probation

Appeal disposed of W-M/25554/SR

ORDER

1. Leave granted.

2. The appellant stood convicted under Sections 279/304-A IPC for having driven the Maruti Gypsy negligently, but he was released on probation by the learned Magistrate with the direction that he will pay some compensation to the heirs of the victim. Against the said conviction, he preferred an appeal. The learned appellate court was of the view that the

† Arising out of SLP (Crl.) No. 1680 of 2000

appeal itself was not maintainable. Against that order of the Appellate Authority, he referred a revision which was dismissed in limine.

3. Mr Ranjit Kumar, the learned counsel appearing for the appellant contended that the Appellate Authority committed serious error by holding that the appeal itself is not maintainable merely because the Magistrate had released the accused on probation. Having heard Mr Ranjit Kumar and the learned Attorney-General for the respondent, we have no manner of doubt that the Appellate Judge committed serious error in holding the appeal to be not maintainable. We, therefore, set aside the revisional order as well as the appellate order and direct that the appeal of the accused be entertained and disposed of on merits.

4. This criminal appeal stands disposed of accordingly.

(2002) 10 Supreme Court Cases 455

(BEFORE G.B. PATTANAIK AND U.C. BANERJEE, JJ.)

FOOD CORPORATION OF INDIA AND ANOTHER . . Appellants;

Versus

ABHAY RAM . . Respondent.

Civil Appeal No. 7732 of 1997, decided on September 5, 2000

Service Law — Promotion — DPC — Sealed cover procedure — Disciplinary proceedings initiated and respondent (Dy. Manager in FCI) placed under suspension under Regn. 66 of FCI Staff Regulations — DPC which met on the same day to consider promotion from Dy. Manager to Jt. Manager, adopting the sealed cover procedure in relation to the respondent in view of the order of suspension — Held, the appropriate authorities having placed the respondent under suspension, there was no infirmity with adoption of sealed cover procedure by DPC — In the circumstances, High Court erred in directing FCI to open the sealed cover and implement the decision taken by DPC

Union of India v. *K.V. Jankiraman*, (1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322; *Union of India* v. *Kewal Kumar*, (1993) 3 SCC 204 : 1993 SCC (L&S) 744 : (1993) 24 ATC 770, *referred to*

Appeal allowed R-M/25293/SL

Chronological list of cases cited ***on page(s)***

1. (1993) 3 SCC 204 : 1993 SCC (L&S) 744 : (1993) 24 ATC 770, *Union of India* v. *Kewal Kumar* 456*g-h*
2. (1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322, *Union of India* v. *K.V. Jankiraman* 456*g*

ORDER

1. This appeal is directed against the judgment of the Lucknow Bench of the Allahabad High Court dated 29-7-1997.

2. By the impugned judgment the High Court has directed the employer to open the sealed cover and implement the decision in relation to the

22. This is a case in which despite the endorsement by the Returning Officer that application for re-count was filed after results were declared, the election petitioner has tried to make out a point that it was filed prior to the declaration of the results.

23. In election petition, if the parties are found to have made incorrect statements in their pleadings, affidavits or depositions and there is thereby an intention on their part to mislead the court, appropriate deterrent action like dismissal of their cases with costs, prosecution for perjury or initiation of contempt proceedings should be taken by the court lest the judicial process would continue to be polluted and misused by undeserving parties who have no real grievance or cause for seeking aid of judicial forums. Such false cases not only contribute to the workload of the court and kill its precious time but create hurdles in the ways of genuine litigants who sincerely need assistance of the court for obtaining justice.

24. With the aforesaid observation, we dismiss this appeal and impose cost of rupees twenty-five thousand on the appellant. From the cost deposited, a sum of rupees twenty thousand should be paid to the Supreme Court Legal Aid Committee and the remaining sum of rupees five thousand be paid to Respondent 1, the returned candidate.

(2003) 1 Supreme Court Cases 398

(BEFORE Y.K. SABHARWAL AND H.K. SEMA, JJ.)

Criminal Appeal No. 73 of 2002

RAGHUNATH . . Appellant;

Versus

STATE OF HARYANA AND ANOTHER . . Respondents.

With

Criminal Appeal No. 74 of 2002

RAM KISHAN AND OTHERS . . Appellants;

Versus

STATE OF HARYANA AND ANOTHER . . Respondents.

Criminal Appeals No. 73 of 2002† with No. 74 of 2002,
decided on November 13, 2002

A. **Penal Code, 1860 — Ss. 302, 148, 323, 325, 452, 436, 427 r/w S. 149 — Group clash resulting in death of one person — Prosecution case that accused persons entered the house of deceased and one of them inflicted the fatal lathi-blow on the head of deceased and others inflicted injuries on the members of the deceased party — Defence case that one of the members of the accused party was kidnapped and severely beaten by complainant party and in an effort to rescue the injured by the accused party, a mob fight**

† From the Judgment and Order dated 1-3-2001 of the Punjab and Haryana High Court in Crl. A. No. 271-DB of 1999

ensued in which deceased and others had sustained injuries in the melee — No explanation given by prosecution with regard to the injuries suffered by the said member of the accused party — Prosecution evidence consisting of interested or inimical witnesses and defence version also competing in probability — Inconsistencies and contradictions found in respect of material facts found in prosecution evidence which rendered the prosecution case unreliable and unbelievable — Held, prosecution suppressed the material facts and failed to establish its case beyond reasonable doubt — Defence version being equally possible the same must be accepted — Hence accused entitled to acquittal

B. **Criminal Trial — Bloodstains — Bloodstained earth sent to FSL — Certificate obtained that it was human blood not conclusive evidence that it belonged to blood group of the deceased**

C. **Criminal Procedure Code, 1973 — S. 154 — FIR — Delay in lodging — Complainant party proceeding with injured to hospital but not lodging complaint at either of two police stations on the way — Delay therefore fatal**

D. **Criminal Trial — Benefit of doubt — Where two views are possible, one in favour of accused and the other against it, the one favouring the accused should be accepted — Criminal Procedure Code, 1973, Ss. 374, 378 & 386**

E. **Criminal Trial — Failure to explain injuries on accused — Where prosecution evidence consists of interested or inimical witnesses and defence version competes in probability with that of prosecution, held, non-explanation of injuries of grievous nature sustained by accused rendered the prosecution story doubtful**

Held :

The genesis of the prosecution story with regard to the place of occurrence viz. the hall, in which the accused party is stated to have assaulted the complainant party is doubtful. It would be inherently improbable for the accused — nine in number, to have wielded and rained blows at the same time with *lathis* of six-feet long in a hall within the radius of six feet with seven members of the complainant party totalling 16 persons in the room. (Para 6)

Similarly, the bloodstained earth, muffler and *lathis*, said to have been taken in possession by the police in course of investigations were sent to FSL. But in absence of any evidence on record to show that the bloodstain sent to FSL bears a certificate that the blood is human blood and it belongs to a particular group which is the same blood group of the deceased the mere fact that the bloodstain is human blood is not conclusive evidence that it belongs to the blood group of the deceased. (Paras 7 and 8)

It is also unusual that though two police stations fell on the way from the village, in which the occurrence had taken place, to the hospital, but the complainant party did not stop at the two police stations and proceeded straight to General Hospital. In the ordinary circumstances, it is quite imperative that the complainant party could have stopped at the police station, sought necessary help from the police station and also given first-hand information to the police. The injuries suffered by the complainant party were simple in nature except that of the deceased. Therefore, there are no mitigating circumstances for not reporting to the police station at the first hour especially when the police stations are on the way to General Hospital. (Para 11)

There was also substantial contradiction in the FIR lodged by PW 2 and in his deposition before the court as regards the injuries caused by the accused persons on the deceased and the version of PW 2 before the court appeared to be an improvement on the basis of the medical evidence. (Para 15)

Similarly, while in the FIR PW 2 did not mention about the particulars of the injuries suffered by him at the hands of the accused, he made statement in that regard under Section 161 CrPC and in his deposition before the court which were materially contradictory.

Similarly, PW 2 also stated that the complainant party also caused injuries to Accused 1, whereas PW 1 stated categorically in his deposition before the Court that none of the accused had received injuries. This material contradiction between the two injured eyewitnesses PWs 1 and 2 would render their presence doubtful. Normally, the exercise of right of private defence was directed towards the assailants. The accused, who was stated to have dealt the first blow on the head of the deceased did not sustain any injury. The rest of the accused also did not sustain any injuries. It is an utterly unbelievable story of the prosecution that the right of private defence was directed against only Accused 1 who sustained as many as six injuries on his body. At the same time, the nature of the injury sustained by Accused 1 would disclose that the complainant party was armed and had sufficient time to inflict the injuries. This circumstance would lend support to the defence version that Accused 1 was kidnapped and forcibly lifted to the house of the deceased and beaten up mercilessly by the complainant party. (Para 16)

The fact that only Accused 1 received injuries would disclose that he was present at the place of incident. This would also support the theory of defence that Accused 1 was kidnapped by the complainant party to the house of the deceased and beaten up by them mercilessly and not on account of right of private defence as projected by the prosecution story. (Para 20)

The aforesaid discrepancies appearing in the statement of PW 2 would render the prosecution story wholly unreliable, concocted and well an afterthought. (Para 19)

The prosecution is obliged to explain the injuries sustained by the accused in the same occurrence and failure to explain injuries on the accused would construe that the prosecution has suppressed the truth and also the origin and genesis of the occurrence, especially when the prosecution evidence consists of interested or inimical witnesses and there is also the defence version which competes in probability with that of the prosecution, which may assume greater importance. In such case non-explanation of injuries sustained by the accused by the prosecution which are grievous in nature, renders the prosecution story not wholly true. (Paras 23 and 24)

Ram Sunder Yadav v. *State of Bihar*, (1998) 7 SCC 365 : 1998 SCC (Cri) 1630, *relied on*

Vijayee Singh v. *State of U.P.*, (1990) 3 SCC 190 : 1990 SCC (Cri) 378; *Mohar Rai* v. *State of Bihar*, AIR 1968 SC 1281 : 1968 Cri LJ 1479; *Lakshmi Singh* v. *State of Bihar*, (1976) 4 SCC 394 : 1976 SCC (Cri) 671, *cited*

In this case, out of the injured complainant party, only PWs 1 and 2 have been cited as witnesses. The others were not examined. The nature of the injuries sustained by the complainant party would clearly suggest that such injuries could be caused in a melee which is the version of the defence that injuries sustained by the deceased and other members of the complainant party have been caused by a mob consisting of 300-350 people while trying to rescue Accused 1.

Considering the nature of the injuries sustained by the complainant party it is quite probable that they sustained injuries accidentally while being involved in a mob fight. The nature of the injuries sustained by the complainant party would clearly suggest that such injuries could only be caused in a melee wherein the mob of 300-350 people gathered at the place as projected by the defence. Such injuries sustained by the complainant party could not be attributed to the accused in the circumstances as explained above. (Para 32)

In the above facts and circumstances, the prosecution has not come up with the true story. It has suppressed the facts. If that be the case, the whole prosecution story would stand on quicksand. The prosecution has failed to establish its case beyond reasonable doubts. It is now a well-settled principle of law that if two views are possible, the one in favour of the accused and the other adversely against it, the view favouring the accused must be accepted. (Para 33)

The convictions and sentences passed on the appellants are set aside and all the appellants are acquitted of the charges framed against them. The appellants are in jail. They are directed to be set at liberty forthwith, if not required in connection with any other case. (Para 34)

F. **Constitution of India — Arts. 134 and 136 — Interference with concurrent findings — When justified — Though Supreme Court does not normally interfere with the concurrent findings of fact but where High Court merely affirmed the findings of trial court without reappraisal of its own which resulted in substantial or grave injustice, it would interfere — Criminal Procedure Code, 1973, Ss. 374 and 386**

While it is true that normally the Supreme Court would not interfere with the concurrent findings of fact save in exceptional circumstances, where legal process is disregarded or principles of natural justice are violated or substantial and grave injustice has otherwise resulted. The High Court is a final court of appeal and normally this Court would not interfere, if the High Court on the reappraisal of evidence confirms the trial court judgment. But in the present case, going through the judgment of the High Court, it appears that the High Court merely affirmed the findings of the trial court without reappraisal of the evidence on its own. (Para 21)

Balak Ram v. *State of U.P.*, (1975) 3 SCC 219 : 1974 SCC (Cri) 837, *relied on*

Appeals allowed R-M/ATZ/26987/Corr-192/CR

Advocates who appeared in this case :

K.T.S. Tulsi, Sushil Kumar and S.B. Sanyal, Senior Advocates (Suresh C. Gupta, A. Guneshwar Sharma, Sanjay Pal, Kamal Mohan Gupta, Bhupender Yadav, S.S. Shamshery, R.C. Kohli, Ms Babita Yadav, Sarvesh Bisaria, Ms Nidhi, K.R. Nagaraja, J.P. Dhanda, Ms Raj Rani Dhanda and Sunder Khatri, Advocates, with them) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (1998) 7 SCC 365 : 1998 SCC (Cri) 1630, *Ram Sunder Yadav* v. *State of Bihar* 409*c*
2. (1990) 3 SCC 190 : 1990 SCC (Cri) 378, *Vijayee Singh* v. *State of U.P.* 409*c-d*
3. (1976) 4 SCC 394 : 1976 SCC (Cri) 671, *Lakshmi Singh* v. *State of Bihar* 409*d-e*
4. (1975) 3 SCC 219 : 1974 SCC (Cri) 837, *Balak Ram* v. *State of U.P.* 408*g-h*
5. AIR 1968 SC 1281 : 1968 Cri LJ 1479, *Mohar Rai* v. *State of Bihar* 409*d*

The Judgment of the Court was delivered by

SEMA, J.— These two appeals arise out of a common judgment and order passed by the learned Additional Sessions Judge, Gurgaon, convicting the appellants in Sessions Case No. 32 of 1995 and sentencing them to suffer rigorous imprisonment on the following sections of law as under:

Offence under Sections	*Sentence awarded*	*Amount of fine imposed*	*Sentence in default of payment*
148 IPC	Two years	Nil	—
302 IPC read with 149 IPC	Imprisonment for life	Rs 1000	Six months' RI
325 IPC read with 149 IPC	Three years' RI	Rs 300	Two months' RI
323 IPC read with 149 IPC	Six months' RI	Nil	—
452 IPC read with 149 IPC	Three years' RI	Rs 300	Two months' RI
436 IPC read with 149 IPC	Seven years' RI	Rs 700	Five months' RI

The substantive sentences were ordered to run concurrently. By the aforesaid judgment all the nine accused have been convicted. The convictions and sentences have been confirmed by the High Court. Criminal Appeal No. 73 of 2002 is preferred by accused Raghunath and Criminal Appeal No. 74 of 2002 is preferred by the remaining eight accused, namely, Ram Kishan, S/o Ram Pat, Anil @ Ajay Kumar, S/o Ram Kishan, Manohar Lal, S/o Bohru, Desh Raj, S/o Ram Pat, Siri Chand, S/o Bohru, Satish, S/o Siri Chand, Sunil, S/o Ram Kishan and Jagmal, S/o Ram Pat.

2. The complainant parties are close relatives of deceased Kundan Lal. The accused are also interrelated (Accused 2 and 6 being the sons of Accused 1 Ram Kishan, Accused 3 and 7 brothers of Accused 1, Accused 4 and 9 inter se brothers, Accused 5 being the son of Accused 4), except Accused 8.

3. Before adverting to the points urged by counsel for the appellants we may, at this stage, notice that there is a rift between the two groups. While considering the evidence of witnesses, particularly of PWs 1 and 2, one could not lose sight that it is in the evidence of the prosecution that the deceased Kundan Lal had contested the election of Sarpanch against accused Manohar Lal earlier. It is also in the evidence of the prosecution that just a day after the date of incident Panchayat elections were to be held. The fight for the post of Sarpanch was between Raj Singh and one Satbir. The complainant party was supporting Raj Singh and the accused were the supporters of Satbir. It is also in the evidence on record that both criminal and civil litigation was pending between the complainant and the accused groups. Therefore, the rift between the complainant and the accused groups was writ large prior to the date of the incident. In such a situation, one should be cautious while appreciating the evidence of the prosecution witnesses.

4. The prosecution case, as revealed in the FIR, was set in motion on receipt of information received from Badshahpur Police Station through wireless that there was a fight in Village Teekli and the injured were admitted in the hospital. On the basis of the said information, ASI Bhup Singh had noted the fardbeyan. After recording the statement of the complainant party, a prima facie case was found and a case under Sections 148, 323/302/325/452/436/427 read with Section 149 of the Indian Penal Code was registered.

5*. PW 2 complainant Sumer Singh lodged the FIR stating that on 18-12-1994, at about 9.30 p.m., his wife Smt Indirawati, father Kundan Lal, mother Smt Parmeshwari, brothers Sher Singh and Sunder Lal and Smt Munni, wife of Sher Singh were present in their house. Accused Ram Kishan, Sunil, Anil, Desh Raj, Jagmal, Raghunath, Siri Chand, Satish, Manohar Lal, armed with *lathis* and stones entered the house of the deceased Kundan Lal by breaking the door open and on entering accused Anil Kumar inflicted a lathi-blow which fell on the head of Kundan Lal (deceased), father of the complainant, as a result of which he fell on the ground. Thereafter, accused Ram Kishan, Sunil, Desh Raj, Jagmal, Raghunath, Siri Chand, Satish and Manohar Lal caused injuries indiscriminately with *lathis* and stones to the complainant, his mother Smt Parmeshwari, his wife Smt Indira, his brothers Sunder Lal and Sher Singh and brother's wife Smt Munni Bai. On hearing a noise from the members of the complainant party, Sube Singh, son of Makhan Lal, Karan Singh, son of Pyare Lal, Ram Khilari, son of Ami Chand and Satbir Singh, son of Chhatter Singh, all residents of the same village, came to the spot when the accused set on fire a heap of cowdung cakes (*bitoras*) lying on the roof of the house and also the bundles of fodder lying near the chaff-cutting machine. It is further stated that accused Ram Kishan gave a *lalkara* exhorting that members of the complainant party be burnt alive. Karan Singh and Sube Singh when tried to intervene also sustained injuries from the accused. It is further stated that the complainant party also caused injuries to Ram Kishan in self-defence. In course of the investigation, the IO found prima facie case against the accused-appellants under the aforesaid sections and submitted the challan. The prosecution mainly relied on the evidence of two injured witnesses, PW 1 Karan Singh, son of Pyare Lal and PW 2 Sumer Singh, son of deceased Kundan Lal. Injured Smt Parmeshwari, Smt Indira, Sunder Lal, Sher Singh and Smt Munni Bai were not examined.

6*. Counsel for the appellants seriously doubted the genesis of the prosecution story with regard to the place of occurrence as revealed from the sketch map (Ext. P-5). It is contended by Mr K.T.S. Tulsi, learned Senior Counsel appearing for the appellant in Crl. Appeal No. 73 of 2002 and Mr Sushil Kumar, learned Senior Counsel appearing for the appellants in Crl. A. No. 74 of 2002 that it is quite unusual that the complainant party namely Karan Singh, Satbir Singh, Ram Khilari and Sube Singh, sitting in a *poli* and smoking *hukka*, allowed the accused party to break the main gate of the *poli* and saw them going into the house of Kundan Lal. But the complainant party remained mute spectators without any resistance. Similarly, it is argued that the hall, in which the accused party is stated to have assaulted the

* **Ed.**: Paras 5, 6, 8 and 16 corrected as per Official Corrigendum No. 192 of 2002.

complainant party marked Points *A*, *B*, *C*, *D*, *F* and *G*, within a radius of six feet is inherently improbable. It is their contention that the complainant party numbering seven and the accused party numbering nine totalling 16, armed with *lathis* of six-feet long, it will be inherently improbable to accommodate the complainant party and the accused party in a hall within a radius of six feet and wielding the *lathis* and raining blows at the same time. The hall of deceased Kundan Lal in which the accused party is said to have assaulted the complainant party with the *lathis* and bricks is within the radius of six feet. According to the prosecution story, the complainant party consisting of seven family members and the accused party consisting of 9 in number, were assembled in the hall of Kundan Lal. Having considered the submission with the ground reality and after application of our mind, we are of the view that it would be inherently improbable for the accused — nine in number, to have wielded and rained blows at the same time with *lathis* of six-feet long in a hall within the radius of six feet with seven members of the complainant party totalling 16 persons in the room.

7. Similarly, the bloodstained earth, muffler and *lathis*, said to have been taken in possession by the police in course of investigations were sent to FSL. The result of FSL is marked Ext. 8. It is reproduced as under:

"FORENSIC SCIENCE LABORATORY, HARYANA,
MADHUBAN (KARNAL)

Report No. FSL(H) 94/B-3801 Dated 14-2-1996
Case FIR No. 972 Dated 19-12-1994
Under Sections 148/149/436/302/201 IPC PS Sadar, Gurgaon

RESULTS OF SEROLOGICAL ANALYSIS OF BLOOD

Ext. No.	*Name of exhibit*	*Origin*	*Group*
1.	Bloodstained cotton	Human	Inconclusive
2.	Muffler	Human	'O'
3*a*.	Pyjama	Human	Inconclusive
3*b*.	Underwear	Human	Inconclusive
4.	Sample blood	Human	Inconclusive
5.	Lathi	Human	Inconclusive
6.	Lathi	Human	Inconclusive
7.	Lathi	Human	Inconclusive
8.	Lathi	Human	Inconclusive
		Material disintegrated	

sd/-
Dr M.K. Goyal,
Asstt. Director (Biology),
Forensic Science Laboratory (H),
Madhuban (Karnal)"

8*. There is no evidence on record to show that the bloodstain sent to FSL bears a certificate that the blood is human blood and it belongs to a particular group which is the same blood group of the deceased Kundan Lal. Therefore, the bloodstain is of a human blood is not conclusive evidence that it belongs to the blood group of deceased Kundan Lal. This also can be examined in the background of the defence version that accused Ram Kishan was kidnapped and taken inside the house of Kundan Lal forcibly, wherein he was beaten up by the complainant party and received several bodily injuries. PW 4 Dr B.B. Sharma had examined accused Ram Kishan on 18-12-1994 at 11.10 p.m. and found the following six injuries:

> "*1*. Abrasion on right eyebrow outer and 2 cm x 1/2 cm surrounding area was swollen. Fresh clotted blood was present. X-ray was advised.
>
> *2*. 1 cm x 1/2 cm lacerated wound. It was skin-deep on left maxillary prominence.
>
> *3*. There was swelling below left elbow on forearm. It was 6 cm x 4 cm. X-ray left elbow and forearm was advised.
>
> *4*. Abrasions 6 cm horizontal x 4 cm on back of the left-side chest. Lower ribs outer part. X-ray chest was advised.
>
> *5*. 4 cm x 1 cm x bone-deep lacerated vertical wound on middle-part left leg was present. Fresh clotted blood was present. X-ray left leg was advised.
>
> *6*. Lacerated wound 1/2 cm x 1 cm x muscle-deep 2 cm away. There was 1 cm x 3/4 cm x muscle-deep on the front of the right leg middle-part; surrounding area was swollen. X-ray right leg was advised."

9. PW 5 Dr B.B. Aggarwal, who conducted X-ray examination of accused Ram Kishan stated as under:

> "On 20-12-1994, I conducted X-ray examination of Ram Kishan, son of Ram Pat, 42 years, male, R/o Teekli, vide MLR No. BBS/126/94 Ext. DB and found fracture olecranon process of left upper limb (elbow) and fractures 8th, 9th and 10th ribs of left-side chest."

10. It is pertinent to notice that the bloodstained earth was removed from Point *A*, which is the hall of Kundan Lal. In the absence of certifying a particular group of blood by FSL, the blood so collected from Point *A* inside the hall of Kundan Lal could be the blood of accused Ram Kishan from which place he is reported to have been beaten up mercilessly by the complainant party.

11. As already noticed, the FIR was lodged on 19-12-1994 at 2.30 a.m. for the incident said to have taken place on 18-12-1994 at about 9.30 p.m. An accident is stated to have taken place in Village Teekli, which is stated to be at a distance of about 14 km from Gurgaon. It is in the evidence on record that Sadar Police Station, Gurgaon, and Police Post Badshahpur fall on the way from Village Teekli to General Hospital, Gurgaon. The complainant party did not stop at the two police stations and proceeded straight to General Hospital, Gurgaon. It is urged that the conduct of the complainant party is

unusual and this has created doubt about the genesis of the prosecution story. This contention has been rejected by the learned trial court that the complainant party was busy in getting the first and immediate aid to the injured persons of the family. We are of the view that in the ordinary circumstances, it is quite imperative that the complainant party could have stopped at the police station, sought necessary help from the police station and also given first-hand information to the police. From the evidence of PW 4 Dr B.B. Sharma, it appears that the injuries suffered by the complainant party are simple in nature except that of Kundan Lal (deceased). In our view, therefore, there are no mitigating circumstances for not reporting to the police station at the first hour especially when the police stations are on the way to General Hospital.

12. Similarly, as noticed earlier, FIR was lodged on 19-12-1994 at 2.30 a.m. PW 4 examined the injured at 10.30 p.m. on 18-12-1994. In the FIR, PW 2 has stated that

> "on entering our house, Anil Kumar gave a lathi-blow on the head of my father which he was holding in his hand, and my father fell on the ground and Ram Kishan, Sunil, Desh Raj, Jagmal, Raghunath, Siri Chand, Satish, Manohar Lal caused injuries with their respective *lathis*, brickbats to me, my wife Indira, *bhabhi* Munni Bai, my mother Parmeshwari, brother Sunder Lal and elder brother Sher Singh continuously".

13. PW 6 Dr Vineeta Bhatnagar conducted the post-mortem examination on the dead body of Kundan Lal on 19-12-1994 at 1.30 p.m. and found the following injuries on his body:

> *1*. A bone-deep lacerated wound of 5 x 2 cm size on scalp 1.5 cm from the bridge of the nose in the midline. Subcutaneous tissues showed haemorrhage and haematoma formation and underlying bone was found fractured. Meninges and brain matter found lacerated.
>
> *2*. A bone-deep lacerated wound of 2.5 x 2.5 cm size on the scalp, 6 cm above and behind the tip of left ear. Subcutaneous tissue shows haemorrhage and haematoma, underlying bone found fractured. Meninges and brain matter was found lacerated.
>
> *3*. A bone-deep lacerated wound of size 4.5 x 1.5 cm on right side, 7 cm above the tip of right ear. Subcutaneous tissue shows haemorrhage, meninges and brain matter was found lacerated.
>
> *4*. An abrasion of 15 cm x 4 cm on the left upper arm just below the shoulder on the lateral side. Subcutaneous tissues showed haemorrhage. Bones were intact.

The doctor opined that

> "the death was due to haemorrhage and shock resulting from ante-mortem injuries (1 to 3) to brain, which were, cumulatively as well as individually, sufficient to cause death in the ordinary course of nature".

14. PW 2 Sumer Singh has deposed before the Court as under:

"Accused Anil inflicted a lathi-blow on head of his father Kundan, followed by a lathi-blow each by accused Ram Kishan and Manohar Lal on his father's head and another lathi-blow by accused Raghunath on his (Kundan Lal's) shoulder."

15. Counsel for the appellants would argue that the version of PW 2 before the Court is an improvement on the basis of medical evidence inasmuch as in the FIR he has stated that it was the accused Anil who on entering the house gave a lathi-blow on the head of his father and the rest of the accused started beating him and the members of the family continuously. In our view, the particular part played by lathi-blow each by accused Ram Kishan and Manohar Lal on his father's head and another lathi-blow by accused Raghunath on his father's shoulder stated by PW 2 in his deposition before the Court appears to be well an afterthought after seeing the medical evidence. This substantial contradiction in the FIR and in his deposition before the Court makes a serious doubt of the presence of complainant PW 2 Sumer Singh at the place of occurrence, where deceased Kundan Lal was assaulted.

16*. Similarly, PW 2 also stated that the complainant party also caused injuries to accused Ram Kishan in self-defence. PW 1 Karan Singh, however, stated categorically in his deposition before the Court that none of the accused had received injuries. This material contradiction between the two injured eyewitnesses PWs 1 and 2 would render their presence doubtful. This apart, there is also evidence on record that except Accused 1 Ram Kishan, the rest of the accused did not sustain any injuries on their bodies. If the eyewitness account of PWs 1 and 2 is to be believed, it is their specific statement that accused Anil caused the first blow on the head of deceased Kundan Lal. Normally, the exercise of right of private defence is directed towards the assailants. Accused Anil, who is stated to have dealt the first blow on the head of the deceased Kundan Lal, did not sustain any injury. The rest of the accused also did not sustain any injuries. It is an utterly unbelievable story of the prosecution that the right of private defence is directed against only accused Ram Kishan who has sustained as many as six injuries on his body, as described above. At the same time, the nature of the injury sustained by accused Ram Kishan would disclose that the complainant party was armed and had sufficient time to inflict the injuries. This circumstance would lend support to the defence version that Ram Kishan was kidnapped and forcibly lifted to the house of Kundan Lal and beaten up mercilessly by the complainant party.

17. Similarly, in the FIR PW 2 Sumer Singh did not mention about the particulars of the injuries suffered by him at the hands of the accused. He has, however, stated in his statement recorded under Section 161 on 19-12-1994 that Desh Raj caused injury on his left shoulder by stone, accused Sunil caused injury on his left ankle and left foot by *lathi*, accused Satish caused

injury on his right ankle and below right knee by stone. This witness deposed before the Court that accused Desh Raj caused him injury on his right shoulder and accused Sunil on the right ankle and accused Satish on left knee respectively. This, in our view, is a substantial contradiction which is fatal to the prosecution story. No reliance can be placed on such a contrary statement with regard to the injuries sustained by him caused by each of the accused.

18. The defence raised serious contentions on the discrepancy of the injuries described by PW 2, said to have been sustained by him from each of the accused but the same has been rejected by the learned trial court on tenuous grounds. The aforesaid contention has been rejected by the learned trial Judge in para 91 of his order as under:

> "In the totality of circumstances it is to be mentioned that it is not a case of non-existence of injuries but while appearing as PW 2 Sumer Singh instead of Injuries 1 and 2 being mentioned on left shoulder and left ankle, he mentioned the same on the right side. Similarly Injury 5 though is present on the right knee but was mentioned to be on the left side. This slip, though exists, would not be a circumstance to discredit the prosecution version. It may be a slip of tongue or a bona fide mistake."

19. In our view, the aforesaid discrepancies appearing in the statement of PW 2 would render the prosecution story wholly unreliable, concocted and well an afterthought.

20. As already noticed, accused Ram Kishan sustained as many as six injuries. The rest of the accused did not suffer any injury. There is no explanation by the prosecution how the accused Ram Kishan received injuries except in the statement of PW 2 that injuries caused to Ram Kishan were in self-defence, which has already been discussed. The fact that only accused Ram Kishan received injuries would disclose that accused Ram Kishan alone was present at the place of incident. This would also support the theory of defence that accused Ram Kishan was kidnapped by the complainant party to the house of deceased Kundan Lal and beaten up by them mercilessly and not on account of right of private defence as projected by the prosecution story.

21. Mr J.P. Dhanda, learned counsel appearing for the respondents urged that this Court would not interfere with the concurrent findings of fact recorded by the learned trial court Judge and affirmed by the High Court. While it is true that normally this Court would not interfere with the concurrent findings of fact save in exceptional circumstances, where legal process is disregarded or principles of natural justice are violated or substantial and grave injustice has otherwise resulted (see *Balak Ram* v. *State of U.P.*[1]). The High Court is a final court of appeal and normally this Court would not interfere, if the High Court on the reappraisal of evidence confirms the trial court judgment. But in the present case, going through the judgment

1 (1975) 3 SCC 219 : 1974 SCC (Cri) 837

of the High Court, with respect we may point out that the High Court merely affirmed the findings of the trial court without reappraisal of the evidence on its own.

22. As already pointed out, accused Ram Kishan sustained as many as six injuries on his body, Injuries 3 and 4 stated to be grievous in nature. Both the trial court and the High Court accepted the version of PW 2 that the injuries were caused in self-defence. We have already disbelieved the version of PW 2. No explanation whatsoever has been afforded by the prosecution with regard to the injuries on the person of the accused Ram Kishan.

23. The question whether the prosecution is obliged to explain the injuries sustained by the accused in the same occurrence and failure to explain injuries on the accused would construe that the prosecution has suppressed the truth and also the origin and genesis of the occurrence, has been in controversy before this Court in a catena of decisions. A three-Judge Bench of this Court in *Ram Sunder Yadav* v. *State of Bihar*[2] (at SCC p. 366, para 3) referred to another three-Judge Bench decision of this Court in *Vijayee Singh* v. *State of U.P.*[3], SCC at p. 202, para 10, which held as under:

> "In *Mohar Rai case*[4] it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true or at any rate *not wholly true*. Likewise in *Lakshmi Singh case*[5] also it is observed that any non-explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non-explanation may assume greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently the whole case."

24. In the present case, as noticed earlier, the prosecution evidence consists of interested or inimical witnesses. Therefore, non-explanation of the injuries sustained by Ram Kishan may assume greater importance. There is also the defence version which competes in probability with that of the prosecution. In our view, therefore, non-explanation of the injuries sustained by the accused Ram Kishan, which are grievous in nature, renders the prosecution story not wholly true.

25. Regarding the injuries sustained by the complainant party, it is in the evidence of PW 4 Dr B.B. Sharma, Medical Officer, General Hospital,

2 (1998) 7 SCC 365 : 1998 SCC (Cri) 1630
3 (1990) 3 SCC 190 : 1990 SCC (Cri) 378
4 *Mohar Rai* v. *State of Bihar*, AIR 1968 SC 1281 : 1968 Cri LJ 1479
5 *Lakshmi Singh* v. *State of Bihar*, (1976) 4 SCC 394 : 1976 SCC (Cri) 671

Gurgaon that he examined PW 1 Karan Singh, S/o Pyare Lal on 18-12-1994 at about 10.30 p.m. and found the following injuries on his person:

"*1*. Lacerated wound horizontally placed 12 cm x 2 cm muscle-deep. It was on right parietal region, 8 cm from right ear. Fresh blood was coming. Surrounding area was swollen. X-ray skull was advised.

2. 5 cm x 2 cm muscle-deep lacerated wound on right side of forearm near midline. It was 4 cm from Injury 1. It was horizontal. X-ray skull was advised.

3. Oblique lacerated wound on right occipital region. It was 6 cm x 1 cm muscle-deep. Fresh bleeding was present. Surrounding area was swollen. X-ray skull was advised.

4. Left leg was swollen lower 1/3rd. Angulation of the bone was present. It was 12 cm from the ankle joint. Lacerated wound on anterior size 2 cm x 1 cm. It was bone-deep, 10 cm above ankle joint. Underlying bone was present. X-ray left leg was advised.

5. Left index and middle fingers were swollen. Advised X-ray index and middle fingers.

6. Right forearm was swollen in the middle-part. X-ray right forearm was advised.

Injury 4 was declared grievous and Injuries 1, 2, 3, 5 and 6 were kept under observation. After seeing X-ray Report No. MLX 1284 dated 19-12-1994 Injury 1 was dangerous to life. Injuries 4 and 5 grievous. Rest were simple in nature.

The weapon used was blunt and (*sic*) Injury 4, it was penetrating weapon. It was within 24 hours. The duration between the injuries and the MLR within 24 hours."

26. On the same day, Dr B.B. Sharma examined Sunder Lal, S/o Kundan Lal and found the following injuries on his person:

"*1*. Horizontal lacerated wound 6 cm x 1/2 cm x muscle-deep. It was 8 cm from left ear on parietal region. Fresh clotted blood was present. X-ray skull was advised.

2. Lacerated wound on left-side forehead. Oblique from midline to left side. It was 4 cm x 1 cm. It was muscle-deep. Fresh clotted blood was present. X-ray skull was advised.

3. Lacerated wound 3 cm x 1 cm x muscle-deep right side of parietal region near midline. It was vertically placed. It was 2 cm posterior to Injury 2. X-ray skull was advised.

4. On front of right leg anterior side there were 4 lacerated wounds: (*a*) 10 cm below knee — 1 1/2 cm x 1 cm x muscle-deep, (*b*) 3 cm below Injury A — 2 cm x 1 cm x muscle-deep, (*c*) 6 cm below Injury B — 4 cm x 1 cm x muscle-deep, it was vertically placed, (*d*) 7 cm below Injury C — 2 cm x 1/2 cm x skin-deep. X-ray right leg was advised.

5. Lacerated wounds on front left leg. Fresh clotted blood was present. Injury 5-A (1 cm x 1/2 cm x muscle-deep. It was vertical and 8

cm below Injury 5-B) 1 1/2 cm x 1/2 cm x muscle-deep it was 8 cm below Injury 5-A. (Injury 5-C) 1 1/2 cm x 1/2 cm x skin-deep. It was 8 cm from Injury 5-B. X-ray left leg was advised.

6. On the left forearm there was abrasion. On the posterior side middle-part 2 cm x 3/4 cm was vertically placed. Adjoining area was swollen. X-ray left forearm was advised.

7. Right forearm was swollen in middle and upper 1/3rd. Advised X-ray right forearm. Abrasion on posterior aspect 3 cm below elbow. It was 2 cm x 1/2 cm.

8. Abrasions on the back of right index finger first phalanx posterior size 1 cm x 3/4 cm. X-ray right index finger was advised.

9. Swelling on angle of left jaw 5 cm x 4 cm. It was red in colour. X-ray left jaw advised.

10. Pattern contusion elongated in shape on middle-part of abdomen 3 cm above umbilicus the margins were ecchymosed. It was oblique, rounded and was towards left and upper.

11. Pattern oblique contusion on back of the left side of chest extending from midline towards outer and lower side up to costal margins. It was 16 cm x 2 cm. The margin was ecchymosed. X-ray chest was advised.

12. Diffused red swelling on anterior and outer aspect of left shoulder. It was 12 cm x 8 to 10 cm in size. X-ray left shoulder was advised.

Injuries 1 to 12 were kept under observation. The duration between the injuries and examination was within 24 hours. The injuries were caused by blunt weapon.

After seeing X-ray Report No. MLX 1285 dated 19-12-1994, Injuries 1, 2, 3 were kept under observation and the opinion of treating doctor is required. Injury 4 was simple in nature, Injuries 5, 6, 7, 8, 9, 10 and 12 were simple in nature. Injury 11 repeated X-ray was advised, so definite opinion can be given after seeing the X-ray report repeated."

27. On the same day at about 11.40 p.m., Dr B.B. Sharma examined Indira, W/o Sumer Singh and found the following injuries on her person:

"*1*. There was oblique lacerated wound on right parietal occipital region 13 cm x 1 1/2 cm x muscle-deep extending from midline towards right side. Occipital region. Surrounding area was swollen. Fresh clotted blood was present. X-ray skull was advised.

2. Right thumb was swollen. More in proximal part, movement were painful. X-ray right thumb was advised.

3. Slight swelling on palmer side of left hand near thumb.

The nature of injuries are as follows:

Injury 3 is simple in nature, however, Injuries 1 and 2 were kept under observation.

The injuries were caused within 24 hours of the examination. All the injuries were caused by blunt weapon.

I have seen X-ray Report No. MLX 1287 dated 19-12-1994, I declare Injury 2 grievous in nature and opinion about Injury 1 can be given after treating the record of the doctor."

28. On 19-12-1994, at 12.15 a.m. Dr B.B. Sharma examined Smt Munni, W/o Sher Singh and found the following injuries on her person:

"*1*. Vertical lacerated wound in front of parietal region near midline right side. It was 8 cm x 1 cm. It was muscle-deep. Fresh clotted blood was present. Surrounding area was swollen. X-ray skull was advised.

2. Complained of pain on back of left side of the chest. No apparent injury was seen. X-ray chest was advised.

Injuries 1 and 2 were kept under observation. The duration of the injuries was within 24 hours of the examination. The injuries were caused by blunt weapon."

29. On 19-12-1994, at 12.35 a.m., Dr B.B. Sharma examined Sube Singh, S/o Makhan Lal and found the following injuries on his person:

1. Contusion on the back of left forearm below elbow. 8 cm x 6 cm in the centre of the contusion. There was abrasion with fresh clotted blood 1 cm x 3/4 cm. X-ray left forearm was advised.

2. Diffused contusion on the outer side of right shoulder upper part 10 cm x 6 cm.

3. Abrasion on front of left knee joint 2 cm x 2 cm. Fresh clotted blood was present.

Injury 1 was kept under observation, however, Injuries 2 and 3 were declared simple in nature. The probable duration of the injuries is within 24 hours. The injuries were caused by blunt weapon.

30. On the same day, at about 1.00 a.m., Dr B.B. Sharma examined Sumer Singh, S/o Kundan Lal and found the following injuries on his person:

1. 2 adjacent abrasions on outer aspect of left shoulder 1 cm x 3/4 cm, 1 cm x 3/4 cm, 8 cm from upper border of shoulder joint. Fresh clotted blood was present.

2. On inner malleolus of left ankle 1/2 cm x 1 cm abrasion was present. Fresh clotted blood was present. Surrounding area was swollen.

3. Right big toe was swollen more on the dorsal side. Advised X-ray right big toe.

4. 3 abrasions on inner aspect of right ankle joint.

4-A. 1 cm x 3/4 cm on centre of malleolus for Injury 4-B.

4-B. 1 cm x 1/2 cm on ankle joint. It is 4 cm from Injury 4-A towards heel.

4-C. 1/2 cm x 1.2 cm abrasion. It was 3 cm above Injury 4-A.

5. Abrasion on front of middle-part of right leg 1 cm x 3/4 cm fresh clotted blood was present.

Injuries 1, 2, 4, 5 were simple in nature however, Injury 3 was kept under observation for X-ray. The probable duration of all the injuries was within 24 hours of examination. The injuries were caused by blunt weapon.

31. The doctor opined that

"Injury 5 of Sumer Singh (PW 2) having been caused by a fall on a hard surface cannot be ruled out. Similarly, Injury 3 on the person of Sube Singh having been caused by a fall on a hard surface cannot be ruled out. Injury 2 on Munni Devi is only a complaint of pain and I cannot give its duration and the weapon used. Injury 3 on the person of Indira, having been caused by a fall on a hard surface cannot be ruled out. Injuries 6 and 8 on the person of Sunder Lal having been caused by a fall on a hard surface cannot be ruled out".

32. As already noticed, out of the injured complainant party, only Karan Singh, PW 1 and Sumer Singh, PW 2 have been cited as witnesses. The others were not examined. The nature of the injuries sustained by the complainant party would clearly suggest that such injuries could be caused in a melee which is the version of the defence that injuries sustained by deceased Kundan Lal and other members of the complainant party have been caused by a mob consisting of 300-350 while trying to rescue the accused Ram Kishan. Considering the nature of the injuries sustained by the complainant party it is quite probable that they sustained injuries accidentally while being involved in a mob fight. We are clearly of the view that the nature of the injuries sustained by the complainant party would clearly suggest that such injuries could only be caused in a melee wherein the mob of 300-350 gathered at the place as projected by the defence. Such injuries sustained by the complainant party could not be attributed to the accused in the circumstances as explained above.

33. In the facts and circumstances recited above, we are clearly of the view, that the prosecution has not come up with the true story. It has suppressed the facts. If that be the case, the whole prosecution story would stand on quicksand. The prosecution has failed to establish its case beyond reasonable doubts. It is now a well-settled principle of law that if two views are possible, the one in favour of the accused and the other adversely against it, the view favouring the accused must be accepted.

34. In the result, these appeals are allowed, the convictions and sentences passed on the appellants are set aside and all the appellants are acquitted of the charges framed against them. The appellants are in jail. They are directed to be set at liberty forthwith, if not required in connection with any other case.

35. The impleadment application is dismissed.

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sentence awarded to the appellant is quashed and the appeal is allowed to this extent. Resultantly, the appellant is directed to be released forthwith if not required in any other case.

(2005) 3 Supreme Court Cases 594

(BEFORE ARIJIT PASAYAT AND S.H. KAPADIA, JJ.)

STATE OF U.P. . . Appellant;

Versus

PAPPU ALIAS YUNUS AND ANOTHER . . Respondents.

Criminal Appeal No. 1382 of 2004†, decided on December 1, 2004

A. **Penal Code, 1860 — S. 376 — Rape — Conviction — Character of the victim — Relevance of — Prosecutrix alleged to be a girl of easy virtue, habituated to sexual intercourse — Even assuming that she was previously accustomed to sexual intercourse, held, that cannot be a ground to absolve the accused from the charge of rape — Further held, consent must be for that particular act/occasion**

Even assuming that the victim was previously accustomed to sexual intercourse, that is not a determinative question. On the contrary, the question which was required to be adjudicated was did the accused commit rape on the victim on the occasion complained of. Even if it is hypothetically accepted that the victim had lost her virginity earlier, it did not and cannot in law give licence to any person to rape her. Even if the mother of the prosecutrix has accepted that character of her daughter was not good, that does not dilute the offence. It is the accused who was on trial and not the victim. Even if the victim in a given case has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. In this case the High Court's view that the girl being of loose morals and easy virtue the accused were entitled to acquittal is indefensible.

(Paras 11, 10 and 13)

B. **Penal Code, 1860 — S. 375 — Rape — Absence of injury — Victim habituated to sexual intercourse — High Court's acquittal of the accused based inter alia on the absence of injury on the prosecutrix, disapproved — Matter remanded to be heard afresh**

The medical evidence showed that she was habituated to sexual intercourse and there was no injury on her body. The High Court held the prosecution case highly doubtful and acquitted the accused. The trial court had noticed as to how even in the absence of any external injury an offence could have been committed after analysing the doctor's evidence. The High Court's judgment is practically unreasoned and its approach in dealing with the appeal is rather casual, disclosing non-application of mind. (Paras 8 to 10)

C. **Penal Code, 1860 — S. 376 — Rape — Testimony of prosecutrix — Conviction on the basis of — Held, conviction can be based on the testimony**

† Arising out of SLP (Crl.) No. 134 of 2004. From the Judgment and Order dated 3-3-2003 of the High Court of Judicature at Allahabad, Lucknow Bench in Crl. A. No. 342 of 1995

of prosecutrix — If court is not satisfied with her version, it can seek other evidence, direct or circumstantial, by way of assurance

A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do. (Para 12)

D. **Criminal Procedure Code, 1973 — Ss. 374 & 386 — Appeal against conviction — Appellate court should not interfere with the findings of lower court without indicating reasons — Incumbent upon the appellate court, if it takes a contrary view, to analyse the evidence and to record its own conclusions — High Court's view that the prosecutrix being of easy virtue the accused were entitled to acquittal, indefensible — Matter remitted to High Court for rehearing (Para 13)**

R-P-M/ATZ/30876/CR

Advocates who appeared in this case :
Ms Alka Agarwal and Ravi Prakash Mehrotra, Advocates, for the Appellant;
Goodwill Indeevar, Advocate, for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J.— Leave granted.

2. The State of U.P. has questioned in this appeal correctness of the judgment rendered by a learned Single Judge of the Allahabad High Court at Lucknow directing acquittal of the respondents (hereafter referred to as "the accused"). The respondents were charged for alleged commission of offence punishable under Section 376 of the Indian Penal Code, 1860 (in short "IPC"). The Vth Additional District and Sessions Judge, Sitapur found them guilty and sentenced each to undergo RI for five years and to pay a fine of Rs 2000.

3. The factual position in a nutshell is that while the prosecutrix was alone in her house, at about 11.00 a.m. on 21-5-1987 since her mother had gone out to market for purchasing vegetables, the respondents who belonged to her locality came to her house and knocked the door. The prosecutrix asked them as to who they were and they disclosed their identity. The prosecutrix refused to open the door as her mother was not at home. But both the accused persons went to the neighbouring house and came to the roof of her house and jumped into the courtyard and showed her a *tamancha*. She was first raped by accused-respondent Mannoo and thereafter by accused-respondent Pappu. After some time her mother came home and knocked the door and hearing the sound of knocking, the accused persons ran away and climbed over the roof. While they were climbing, the mother had seen them and she started shouting and hearing it one Vimalesh Kumar Verma of the locality came there and he also saw both the accused persons

running away. Written report of the incident was lodged at the police station at 3.10 p.m. Investigation was undertaken. The prosecutrix was sent to the district hospital for medical check-up. The accused persons were also sent for medical examination and their clothings were sent for chemical examination. After completion of investigation, charge-sheet was filed and the accused persons were sent up for trial. The accused persons pleaded innocence. In the additional statements submitted during examination under Section 313 of the Code of Criminal Procedure, 1973 (in short "the Code") respondent Pappu stated that the prosecutrix was not having a good character and since her house was in front of his house, he and his family members asked them to leave that place and hence the false case was foisted. To similar effect was the plea of accused Mannoo.

4. Placing reliance on the evidence of the prosecutrix and her mother, who were examined as PWs 1 and 2 respectively, learned trial Judge found the accused persons guilty, convicted and sentenced them as aforenoted.

5. The plea that she was a girl of easy morals was found to be of no consequence. There was some dispute as regards the age of the victim. The trial court on consideration of the evidence came to hold that she was a minor at the time of commission of the offence and the question of any consent being there was really of no consequence.

6. The conviction and the sentence were questioned by the accused persons by filing an appeal before the High Court and as noted above the High Court directed their acquittal.

7. Learned counsel for the appellant State submitted that the High Court has disposed of the appeal in the most laconic and casual manner. There is not even any discussion on the evidence adduced, and practically on the sole ground that the mother of the prosecutrix accepted that the victim was of easy virtue, the acquittal has been directed.

8. Learned counsel for the accused-respondent on the other hand submitted that the High Court noticed that the prosecutrix was not having a good character and she was a girl of easy virtue. The medical evidence showed that she was habitual to sexual intercourse and there was no injury on her body. Accordingly, prosecution case was wholly doubtful. That being so, the order of acquittal does not suffer from any infirmity to warrant interference.

9. We find that the High Court's judgment is practically unreasoned and its approach in dealing with the appeal is rather casual, disclosing non-application of mind.

10. There appears to be some misreading of the evidence of PW 2, the mother of the prosecutrix. The trial court had noticed as to how even in the absence of any external injury an offence could have been committed after analysing the doctor's evidence. The evidence of PW 2 has been read out of context by the High Court. As noticed by the trial court, she had categorically denied that the character of her daughter was not good and had also denied suggestion that her character being not good, they have been forcibly

extricated from the *mohalla*. But at another place, she has accepted that character of her daughter was not good. Even if that be so, that does not dilute the offence.

11. Even assuming that the victim was previously accustomed to sexual intercourse, that is not a determinative question. On the contrary, the question which was required to be adjudicated was did the accused commit rape on the victim on the occasion complained of. Even if it is hypothetically accepted that the victim had lost her virginity earlier, it did not and cannot in law give licence to any person to rape her. It is the accused who was on trial and not the victim. Even if the victim in a given case has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone.

12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.

13. Above being the position, the High Court's view that the girl being of loose morals and easy virtue the accused were entitled to acquittal is indefensible. Without indicating reasons or basis the appellate court should not interfere with the findings recorded by the trial court. It is incumbent upon the appellate court, if it takes a contrary view, to analyse the evidence and to record its own conclusions. That has not been done in the instant case. This is a fit case where the matter needs to be reheard by the High Court. Accordingly, the judgment of the High Court is set aside. The matter is remitted to the High Court for fresh hearing. We make it clear that we have not expressed any opinion on the merits of the case except indicating as to how the character of the victim is really of no consequence while adjudicating the question as to whether any rape was committed on her or not. Learned counsel for the respondents submitted that since the respondents were acquitted by the High Court, the bail which was originally granted to them should be continued. It shall be open to the respondents to move the High Court for bail which shall be considered on its own perspective.

14. The appeal is disposed of accordingly.

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months' time to deposit the amount of fine. The order does not state as to what was the period which the respondent had already undergone. On 3-12-2004 a statement was made by the learned counsel, on instructions, that the respondent had undergone more than 4 years' and not just 36 days' sentence at the time of the impugned judgment of the High Court. In view of the said statement, we have directed the summoning of the record. A perusal of the record shows that the respondent had undergone only 89 days' and not 4 years' sentence as was submitted. There is no reason whatever in the impugned order for reducing the sentence for a serious offence in respect of which the respondent was convicted and his conviction was maintained by the High Court. Since the learned counsel for the respondent states that the appeal was not pressed for the reason that the sentence was reduced to the period already undergone, as prayed, we grant, while setting aside the order reducing the sentence, to the respondent an opportunity to argue the appeal in the High Court on merits.

3. The appeal is more than 20 years old being criminal appeal of 1985. We are told that the respondent is in jail for not having deposited the fine. Be that as it may, we direct the appeal to be decided within one month of the receipt of the copy of this order.

4. The appeal is disposed of accordingly.

(2006) 6 Supreme Court Cases 9

(BEFORE S.B. SINHA AND P.P. NAOLEKAR, JJ.)

STATE OF RAJASTHAN . . Appellant;

Versus

BHANWAR SINGH AND ANOTHER . . Respondents.

Criminal Appeal No. 1314 of 1998, decided on May 2, 2006

A. **Criminal Trial — Acquittal — Grounds for recording acquittal — Only because a lesser sentence is imposed by trial court (two years' RI in case of rape), held, the same would not be a ground for acquitting the accused — Matter remanded to High Court for fresh consideration — Criminal Procedure Code, 1973, Ss. 374 and 386 — Penal Code, 1860, S. 376 (Para 5)**

B. **Penal Code, 1860 — Ss. 375 and 376 — Rape —Testimony of prosecutrix — Alleged relationship between prosecutrix and accused — Reliability of testimony of prosecutrix in case of — High Court holding that on evidence showing that there were relations between accused and prosecutrix, it was very difficult to rely upon testimony of prosecutrix and therefor acquitting accused — Unsustainability — Held, the High Court's approach is improper — Trial court has held that alleged relationship between prosecutrix and accused was of no consequence, particularly having regard to manner in which entire incident took place — Matter remanded for fresh consideration to High Court (Paras 3 and 4)**

D-M/34625/CR

ORDER

1. The respondents herein were charged with commission of an offence under Section 342 and under Section 376 IPC. They were sentenced to undergo three months' rigorous imprisonment and to pay a fine of Rs 500 for the offence under Section 342 and two years' rigorous imprisonment and fine of Rs 500 for the offence under Section 376 IPC.

2. The prosecution case briefly put was: On 13-8-1979, in the evening, Bhanwar Singh, Respondent 1 herein (since deceased) had sent a boy named Gopia to the prosecutrix herein. She was asked to visit Respondent 1 on the pretence that he was having fever and injection was required to be given. Respondent 1 was himself a physician. From the prosecution case, it appears that both the respondents committed the alleged offence. Having regard to the order proposed to be passed by us, we need not deal with the matter in detail. Suffice it to say that the trial court opined:

1. That Trishiamma had narrated the incident to Ramsingh while going on foot from Anapur to Dantrail.

2. That Trishiamma had gone to Dr. R.C. Gupta, PW 4 in Revdar along with Sosamma. She had narrated the incident to him also and submitted report Exhibit P-4.

3. That Trishiamma, PW 11 had gone to the Chief Medical Officer, Sirohi and submitted the report Exhibit P-4 to him. Trishiamma had submitted the report Exhibit P-4 to SHO, PS Sirohi on the advice of the Chief Medical Officer, Sirohi.

4. That the underwear, Article 2 of Trishiamma was recovered from the room which was in possession of the accused.

5. That the petticoat, Article 1 was handed over to the police by Trishiamma and on chemical examination, human semen stains were found on it.

6. That during the medical examination of Trishiamma injuries were found on her cheek and genital organ which show that she was raped.

7. That at the time of the alleged incident, Rangubai had gone to the house of the accused and she had found his room closed from inside and the accused had asked her to go away from there at that time.

3. The learned trial Judge believed the prosecution case and in particular the evidence of the prosecutrix. The learned trial Judge also opined that the statement of the prosecutrix has been corroborated in material particulars by other materials brought on record. The High Court, however, by reason of the impugned judgment did not meet any of the reasonings of the learned trial Judge. It held:

"… The prosecutrix was a nurse. Her evidence is not reliable…."

It further opined:

"… In fact, it has come in evidence that there were relations between the accused and the prosecutrix. Therefore, it is very difficult to rely upon the testimony of the prosecutrix…."

We do not subscribe to the said approach of the High Court.

4. The question which arose for consideration before the High Court was as to whether the prosecution has proved its case or not. The trial court held that the alleged relationship between the prosecutrix and Respondent 1 herein was of no consequence, particularly, having regard to the manner in which the entire incident had taken place.

5. It is one thing to say that what sentence should be imposed, but it is another thing to say that only because a lesser sentence was imposed by the trial court, the same itself would be a ground for acquitting the respondent-accused.

6. We are, therefore, of the opinion that the matter should be considered afresh by the High Court.

7. For the reasons aforementioned, the impugned judgment is set aside. The appeal is allowed and the matter is remitted back to the High Court for consideration of the matter afresh.

8. Respondent 1 herein is said to be dead. The appeal against him abates. The High Court shall thus proceed only against Respondent 2. The High Court upon fixing a date of hearing shall issue notice to Respondent 2 herein.

(2006) 6 Supreme Court Cases 11

(BEFORE ARIJIT PASAYAT AND S.H. KAPADIA, JJ.)

JAYANT ACHYUT SATHE . . Appellant;

Versus

JOSEPH BAIN D'SOUZA AND OTHERS . . Respondents.

Civil Appeals No. 2970 of 2006† with Nos. 2971 of 2006‡, 2972 of 2006††, 2973 of 2006†‡, 2974 of 2006‡‡, 2975 of 2006††† 2976 of 2006†††, 2977 of 2006†‡‡, 2978 of 2006‡‡‡, 2979 of 2006†‡†,
decided on July 14, 2006

A. **Town Planning — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — S. 159 — Development Control Regulations, 1991 framed under — Regn. 33(7) [as amended in 1999] — Challenge to validity**

† Arising out of SLP (C) No. 1376 of 2006. From the Judgment and Order dated 17-10-2005 of the High Court of Judicature at Bombay in WP No. 3189 of 2004

‡ Arising out of SLP (C) No. 1375 of 2006

†† Arising out of SLP (C) No. 1377 of 2006

†‡ Arising out of IA No. 1 in and SLP (C) No. 11489 of 2006 (CC No. 1776 of 2006)

‡‡ Arising out of IA No. 1 in and SLP (C) No. 11490 of 2006 (CC No. 2095 of 2006)

††† Arising out of IA No. 1 in and SLP (C) No. 11491 of 2006 (CC No. 2531 of 2006)

††‡ Arising out of SLP (C) No. 2704 of 2006

†‡‡ Arising out of SLP (C) No. 4747 of 2006

‡‡‡ Arising out of SLP (C) No. 71 of 2006

†‡† Arising out of SLP (C) No. 9490 of 2006

(2012) 9 Supreme Court Cases 460

(BEFORE A.K. PATNAIK AND SWATANTER KUMAR, JJ.)

AMIT KAPOOR .. Appellant;

Versus

RAMESH CHANDER AND ANOTHER .. Respondents.

Criminal Appeal No. 1407 of 2012†, decided on September 13, 2012

A. **Criminal Procedure Code, 1973 — S. 228 — Framing of charge — Considerations for — "Presumption that accused has committed offence" under S. 228 CrPC — Nature and scope of, and when arises — Held, court after considering "record of case", documents submitted therewith, and hearing parties shall frame charge if there are grounds for presuming that accused has committed offence — Said presumption is not presumption of law as such — Satisfaction of court in relation to existence of constituents of offence and facts leading to that offence is sine qua non for exercise of such jurisdiction — Court at S. 228 CrPC stage is not concerned with proof but merely strong suspicion that accused has committed offence — Final test of guilt is not to be applied at stage of framing of charge — Grabbing of property of deceased lady driven to commit suicide, as alleged in suicide note and statement made by son of deceased as well as getting of blank papers signed by accused and not giving monies due to them, etc. were stated to be circumstances leading to commission of suicide — Presumption under S. 228 CrPC, held, could hence have been invoked — High Court erred in quashing charge framed under S. 306 IPC — Hence, charge restored — Penal Code, 1860, Ss. 306 and 448**

B. **Criminal Procedure Code, 1973 — Ss. 227 and 228 — Discharge of accused and framing of charge against accused — Relative scope — Distinction between Ss. 227 and 228 — Explained in detail**

C. **Criminal Procedure Code, 1973 — Ss. 397, 401 and 482 — Revisional and inherent jurisdiction of High Court — Comparative scope — Explained — Interlocutory and final orders — Scope of interference under either jurisdiction, explained — Maxims — *Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* — Practice and Procedure — Revision**

D. **Criminal Procedure Code, 1973 — Ss. 397 and 401 — Revisional jurisdiction — Nature, scope and object of — Explained in detail — Finality of order passed in revisional jurisdiction — Subject only to jurisdiction of Supreme Court under Art. 136 of Constitution — Practice and Procedure — Revision — Constitution of India, Art. 136**

E. **Criminal Procedure Code, 1973 — Ss. 482, 397, 401, 227 and 228 — Quashment of proceedings or discharge of accused — Case law surveyed in detail — Principles summarised**

† Arising out of SLP (Crl.) No. 1516 of 2010. From the Judgment and Order dated 13-8-2009 of the High Court of Delhi at New Delhi in Crl. Revision Petition No. 277 of 2009

F. **Criminal Procedure Code, 1973 — Ss. 482, 401, 397 and 228 — Quashment of criminal proceedings — Civil dispute involved as well — Effect of — Criminal proceedings if abuse of process, issue really being only a civil dispute — Determination of — When a ground for quashment of criminal proceedings — Reiterated, mere existence of civil dispute would not by itself alter status of allegations constituting criminal offence — For quashment of criminal proceedings, allegations have to be so predominantly of a civil nature that they would eliminate criminal intent and liability — Penal Code, 1860 — Ss. 306 and 448 — Grabbing another's property, and causing them to commit suicide — Liability for**

Held :

Framing of charge or discharge—Relative scope of Sections 227 and 228 CrPC

Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 CrPC, unless the accused is discharged under Section 227 CrPC. Under both Sections 227 and 228 CrPC, the court is required to consider the "record of the case" and the documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for *presuming that the accused has committed an offence*, it shall frame the charge. Once the facts and ingredients of the section concerned exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. (Para 17)

At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. (Para 19)

There is a fine distinction between the language of Sections 227 and 228 CrPC. Section 227 is the expression of a definite opinion and judgment of the court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 CrPC. (Para 17)

Framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of CrPC

or any other law for the time being in force and there is a bar and there exists no ground to proceed against the accused, the court may discharge the accused. (Para 25)

Framing of charge is a kind of tentative view that the trial court forms in terms of Section 228 which is subject to final culmination of the proceedings. The legislature in its wisdom has used the expression "there is ground for presuming that the accused has committed an offence". This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. The meaning of the word "presume" means "to believe or accept upon probable evidence"; "to take as proved until evidence to the contrary is forthcoming". In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 CrPC and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgment. Merely because there was a civil transaction between the parties would not by itself alter the status of the allegations constituting the criminal offence. (Paras 29 and 30)

State of Bihar v. *Ramesh Singh*, (1977) 4 SCC 39 : 1977 SCC (Cri) 533; *State of Maharashtra* v. *Som Nath Thapa*, (1996) 4 SCC 659 : 1996 SCC (Cri) 820, *applied*

Black's Law Dictionary, *relied on*

Revisional and Inherent Jurisdiction and quashment

Section 397 CrPC vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits. (Para 12)

Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC. (Para 13)

Revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of the Supreme Court under Article 136 of the Constitution of India.

Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases. (Para 18)

The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though Section 397 CrPC does not specifically use the expression "prevent abuse of process of any court or otherwise to secure the ends of justice", the jurisdiction under Section 397 CrPC is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 CrPC but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. (Para 20)

On the other hand, Section 482 CrPC is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. Section 482 CrPC confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused. (Para 20)

There may be some overlapping between these two powers under Section 397 and Section 482 CrPC because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 CrPC being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of CrPC. To put it simply, normally the Court may not invoke its power under Section 482 CrPC where a party could have availed of the remedy available under Section 397 CrPC itself. The inherent powers under Section 482 CrPC are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Inherent power under Section 482 may not be exercised if the bar under Sections 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the process of the court. There is no total ban on the exercise of inherent powers where abuse of the process of the court or any other extraordinary situation invites the Court's jurisdiction under S. 482 CrPC. The limitation is self-restraint, nothing more. The distinction between a final and interlocutory order is well known in law. The orders which will be free from the bar of Section 397(2) would be the orders which are not purely interlocutory but, at the same time, are less than a final disposal. They should be the orders which do determine some right and still are not finally rendering the court *functus officio* of the *lis*. The provisions of Section 482 CrPC are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction. (Para 21)

Whether an offence has been disclosed or not, must necessarily depend on the facts and circumstances of each case. If on consideration of the relevant

materials, the court is satisfied that an offence is disclosed, it will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed in order to collect materials for proving the offence. Inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 CrPC in relation to quashing of an FIR is circumscribed by the factum and caution aforenoticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. (Paras 14 and 16)

State of W.B. v. *Swapan Kumar Guha*, (1982) 1 SCC 561 : 1982 SCC (Cri) 283; *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426; *Raj Kapoor* v. *State*, (1980) 1 SCC 43 : 1980 SCC (Cri) 72; *Dinesh Dutt Joshi* v. *State of Rajasthan*, (2001) 8 SCC 570 : 2002 SCC (Cri) 24; *Janata Dal* v. *H.S. Chowdhary*, (1992) 4 SCC 305 : 1993 SCC (Cri) 36, *followed*

Llewelyn Evans, In re, AIR 1926 Bom 551, *approved*

The principles to be considered for proper exercise of jurisdiction, particularly with regard to quashing of a charge either in exercise of jurisdiction under Section 397 or Section 482 CrPC or together, as the case may be, can be summarised as follows:

1. Though there are no limits of the powers of the Court under Section 482 CrPC but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 CrPC should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

2. The court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the court may interfere.

3. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

4. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

5. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

6. Where there is an express legal bar enacted in any of the provisions of CrPC or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

7. The court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

8. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

9. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained. It may be purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence constituting both on the same set of facts. But if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the court will not either dismiss a complaint or quash such proceedings in exercise of its inherent or original jurisdiction.

10. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a civil wrong with no element of criminality and do not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

Indian Oil Corpn. v. *NEPC India Ltd.*, (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188; *State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192; *M.N. Damani* v. *S.K. Sinha*, (2001) 5 SCC 156 : 2001 SCC (Cri) 823, *followed*

Madhavrao Jiwajirao Scindia v. *Sambhajirao Chandrojirao Angre*, (1988) 1 SCC 692 : 1988 SCC (Cri) 234, *held, clarified*

11. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

12. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

13. In exercise of its jurisdiction under Section 228 and/or under Section 482, the court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The court has to consider the record and documents annexed with by the prosecution.

14. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

15. Where the charge-sheet, report under Section 173(2) CrPC, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

16. Coupled with any or all of the above, where the court finds that it would amount to abuse of process of CrPC or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex*

debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

17. These are the principles which individually and preferably cumulatively (one or more) are to be taken into consideration.

(Paras 25 to 27)

State of W.B. v. *Swapan Kumar Guha*, (1982) 1 SCC 561 : 1982 SCC (Cri) 283; *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre*, (1988) 1 SCC 692 : 1988 SCC (Cri) 234; *Janata Dal* v. *H.S. Chowdhary*, (1992) 4 SCC 305 : 1993 SCC (Cri) 36; *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*, (1995) 6 SCC 194 : 1995 SCC (Cri) 1059; *G. Sagar Suri* v. *State of U.P.*, (2000) 2 SCC 636 : 2000 SCC (Cri) 513; *Ajay Mitra* v. *State of M.P.*, (2003) 3 SCC 11 : 2003 SCC (Cri) 703; *Pepsi Foods Ltd.* v. *Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400; *State of U.P.* v. *O.P. Sharma*, (1996) 7 SCC 705 : 1996 SCC (Cri) 497; *Ganesh Narayan Hegde* v. *S. Bangarappa*, (1995) 4 SCC 41 : 1995 SCC (Cri) 634; *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque*, (2005) 1 SCC 122 : 2005 SCC (Cri) 283; *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.*, (2000) 3 SCC 269 : 2000 SCC (Cri) 615; *Shakson Belthissor* v. *State of Kerala*, (2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412; *V.V.S. Rama Sharma* v. *State of U.P.*, (2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356; *Chunduru Siva Ram Krishna* v. *Peddi Ravindra Babu*, (2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297; *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288 : 1987 SCC (Cri) 82; *State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192; *Lalmuni Devi* v. *State of Bihar*, (2001) 2 SCC 17 : 2001 SCC (Cri) 275; *M. Krishnan* v. *Vijay Singh*, (2001) 8 SCC 645 : 2002 SCC (Cri) 19; *Savita* v. *State of Rajasthan*, (2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571; *S.M. Datta* v. *State of Gujarat*, (2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201, *followed*

G. **Penal Code, 1860 — S. 306 r/w Ss. 107 & 108 and S. 448 — Abetment — Instigation — What amounts to — Abettor — Who is — Held, abettor is person who abets either commission of an offence or commission of an act which would be an offence — Wilful misrepresentation or wilful concealment of material fact and such person voluntarily causing or procuring or attempting to cause or procure a thing to be done is said to instigate doing of that thing**

— Instigation should be gathered from circumstances of case since all cases may not be of direct evidence in regard to instigation having a direct nexus to the suicide

— Accused had made a wrong statement that he had paid Rs 24 lakhs for purchasing victim's property and that said property belonged to him — Whether it was misrepresentation of facts by accused and was an attempt to harass deceased and her family which ultimately led to her suicide is a question to be examined by court at trial — Further held, where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that deceased was left with no other option except to commit suicide, an instigation may have to be inferred — In instant case, husband of deceased was paralysed, family was in financial crisis, they had reposed great faith in the accused and were heavily relying on him as their property transactions were transacted through accused himself — Grabbing of the property, as alleged in suicide note and statement made by son of deceased as well as getting blank papers signed and not giving monies due to them can lead to inference of abetment — Ingredients of abetment, thus being satisfied, High Court erred in quashing charge framed under S. 306 — High Court erred in revaluating and reappreciating evidence which was

beyond its jurisdiction, either revisional or inherent, and quashing charge framed under S. 306 while permitting trial court to continue trial in relation to offence under S. 448 — Criminal Procedure Code, 1973, Ss. 482, 401, 397 and 228 (Paras 33 to 37)

H. **Penal Code, 1860 — Ss. 107 to 109, 306, 406 and 420 — Instigation — What is — Wilful misrepresentation or concealment of facts — Held, wilful misrepresentation or wilful concealment of material fact by a person followed by such person voluntarily causing or procuring or attempting to cause or procure a thing to be done is said to instigate doing of that thing**

Held :

The High Court had quashed the charge framed under Section 306 IPC while permitting the trial court to continue the trial in respect of the offence under Section 448 IPC on the ground that firstly it was an abuse of the process of court and, secondly, it was a case of civil nature and that the facts, as stated, would not constitute an offence under Section 306 read with Section 107 IPC. The present case was not such where the allegations were so predominately of a civil nature that it would have eliminated criminal intent and liability. On the contrary, it was an undisputed fact that the deceased had committed suicide and left a suicide note wherein she had implicated the accused. Thus, abetment by the accused cannot be ruled out at this stage, but is obviously subject to the final view that the court may take upon trial. Moreover, if the charge under Section 306 IPC is to be quashed then there is no question of trying the accused for an offence of criminal trespass in terms of Section 448 IPC based on some facts. Moreover, grabbing of the property, as alleged in the suicide note and the statement made by the son of the deceased as well as getting blank papers signed by the deceased and not giving monies due to them were stated to be circumstances leading to commission of suicide. Presumption under Section 228 CrPC could hence, be invoked. The High Court erred in revaluating and reappreciating evidence which was beyond the jurisdiction, either revisional or inherent. Charges against the accused under Section 306 read with Section 107 and Section 448 IPC are found to be in order, and are restored. (Paras 28 to 37)

Goura Venkata Reddy v. *State of A.P.*, (2003) 12 SCC 469 : 2004 SCC (Cri) Supp 473; *Ramesh Kumar* v. *State of Chhattisgarh*, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088, *relied on*

Ramesh Chander Sibbal v. *State (Govt. of NCT of Delhi)*, (2009) 111 DRJ 694, *reversed*

Chitresh Kumar Chopra v. *State (Govt. of NCT of Delhi)*, (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367, *referred to*

Sanju v. *State of M.P.*, (2002) 5 SCC 371 : 2002 SCC (Cri) 1141; *Mahendra Singh* v. *State of M.P.*, 1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157, *cited*

I. **Words and Phrases — "Presume" — Meaning — Held, means "to believe or accept upon probable evidence"; "to take as proved until evidence to the contrary is forthcoming" — Evidence Act, 1872, Ss. 4 and 114 (Para 30)**

State of Maharashtra v. *Som Nath Thapa*, (1996) 4 SCC 659 : 1996 SCC (Cri) 820, *relied on*

Black's Law Dictionary, *relied on*

J. **Criminal Procedure Code, 1973 — S. 482 — Inherent powers of High Court — Development of law, regarding — Traced — Criminal Procedure Code, 1898, S. 561-A (Para 24)**

Llewelyn Evans, In re, AIR 1926 Bom 551, *considered*

Appeal allowed P-D/50644/CRV

Advocates who appeared in this case :

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34. AIR 1926 Bom 551, *Llewelyn Evans. In re* 480*f-g*

The Judgment of the Court was delivered by

SWATANTER KUMAR, J.— Leave granted.

2. A question of law that arises more often than not in criminal cases is that of the extent and scope of the powers exercisable by the High Court under Section 397 independently or read with Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code").

3. The facts as they emerge from the record fall within a very narrow compass. On 4-12-2007, Rajouri Garden Police Station received information that a woman had committed suicide at C-224, Tagore Garden Extension, Delhi. Upon making entry under DD No. 16A of that date, Sub-Inspector O.P. Mandal commenced investigation and reached the place of occurrence. The deceased was identified as Komal Kapoor. Her body was sent for post-mortem. The investigating officer recorded the statement of her son Amit Kapoor and on 5-12-2007 at about 12.15 p.m. an FIR was registered on the complaint filed by him. This FIR was registered against Ramesh Chander Sibbal (the accused) and another, on the basis of the statement of Amit Kapoor and the suicide note.

4. According to Amit Kapoor, he knew Ramesh Chander Sibbal for the last 10 years. The father of Amit Kapoor was running a paint brush business and had purchased Property No. C-225, Tagore Garden, Delhi through the said Ramesh Chander Sibbal. Since the father of Amit Kapoor had fallen ill, his mother was also looking after the business. However, the family business suffered acute losses. The family discussed the possibility of selling their movable and immovable property situated at Rohini. The accused persons are stated to have fraudulently obtained signatures of the deceased in this connection. In order to get over the financial crises and to meet their liabilities, the deceased had also discussed the possibility of selling another plot owned by the family situated in Bawana Industrial Area. At that time also, the accused told the deceased that certain documents have to be executed before the plot is sold. On this pretext, he again got some papers signed by them. The accused paid a sum of Rs 5,00,000 to the deceased at the first instance and thereafter a sum of Rs 3,00,000 for the plot situated in Bawana as against the market value of Rs 28,00,000, with an assurance that the rest of the amount will be paid after execution of the sale deed.

5. Around the time of Dussehra in 2007, the accused approached the deceased claiming that he be given accommodation on a temporary basis for a period of ten to twelve days on the ground floor of her house situated at C-224, Tagore Garden, Delhi on the pretext that his own house was under renovation. The deceased believing him and keeping the relationship in mind, agreed and allowed him to occupy two rooms on the ground floor. It is alleged that while the deceased was away at Haridwar, just before the festival of Diwali, the accused encroached upon one more room in the said house. When the deceased asked the accused to vacate the said premises, he refused and, on the contrary, stated that he had paid a sum of Rs 24,00,000 and that it was his house. Not only this, the accused as well as his son threatened the deceased and her family to vacate the house or else they would ruin them. It is also alleged that when the deceased asked the accused as to when she will get rid of this problem, he is said to have replied that she could get rid of this only after her death. This was followed by the accused sending a legal notice dated 1-12-2007 to the deceased which was received on 3-12-2007 in which similar claim was made by the accused against the deceased. The trust that she had placed upon the accused was totally betrayed by him. This led to the deceased slipping into depression. In the face of all these circumstances, coupled with the threats extended by the accused persons, the deceased committed suicide on 4-12-2007 at about 7.30 a.m. by hanging herself from a ceiling fan, using a scarf (chunni).

6. It may be noticed at this stage, that the deceased had left a suicide note which can appropriately be reproduced at this stage as under:

> "This Ramesh Sibbal, his wife Suman and his son Gaurav.
>
> I am committing suicide for the reason that the aforesaid persons who are residing in our house forcefully, used to say that he was to do whitewash so please allow him to keep some of his articles. But after some time, when I came, I saw that the aforesaid person has completely occupied my house as his own house. When my children objected to his aforesaid act, he said that he was to stay there only for a period of 4 days and that he would perform Diwali worship pooja ceremony at his own house but he did not vacate the house. When I had gone to Haridwar, he occupied front room of my house as well after giving beatings to my children. I know this person since that day when he had got my plot of Rohini disposed of. As we both (husband and wife) had not read those papers (relating to disposal of our Rohini plot) so this person kept on obtaining our signatures on the stamp papers relating to our House No. C-224 on the pretext that these papers were required to execute the lease. My husband was ill and I used to remain busy in looking after him. Whenever, he came to us he used to show urgency in taking our signature by stating that the sale proceed of our plot would be given to us that day itself. He kept on giving payment time to time to us and we kept on receiving the same.

Written on the top of p. 411

This man gave me only a sum of Rs 5 lakhs of my plot situated in Bawana, but he obtained my signature on Rs 15 lakhs as I did not read the contents thereof.

When this man got our Bawana plot sold, he took the file from us but I do not know as to what he had done with that amount. He used to say that he had given us the entire amount. Whatever amount he gave to us he used to take in writing on a paper. After giving his amount, when I asked for the file, he demanded Rs 5 lakhs otherwise, he would reveal it to my daughter that the file was lying with him. He also threatened me to sign the paper without raising any objection otherwise, he would get our children, grandson and granddaughter kidnapped. On this, I used to scare and this man used to succeed in getting the stamp papers signed by me. When he got our plot of Rohini sold, he started obtaining my signatures. But at the time when the plot of Rohini was sold, he told me that the plot situated in Bawana has been sold and he asked us to accompany him to sign the papers. Thereafter, he said that the person with whom he has kept the file was saying to him that he could take away the file from that person but only in lieu of keeping papers of some other house with that person. When this man (suggested) me to keep other file (of property) in lieu of taking the said file from that person and this man (also assured me) that he would return those papers of property to me as and when the plot of Bawana would be sold. On this, I handed over the file of Property No. C-225 to this man. After that, he told that the plot was not getting higher price and so he offered us to take some amount, if required by us urgently whereupon, this man gave us a sum of Rs 3 lakhs but he kept on taking an interest @ 10%. This man gave us Rs 5 lakhs earlier and Rs 3 lakhs later so he kept on taking an interest on Rs 8 lakhs. Before Diwali, I gave him a cheque of Rs 2,50,000 and also gave a sum of Rs 3 lakhs in cash to his son. Thereafter, I gave a sum of Rs 2 lakhs in cash and his son knows the account of it whose name is Gaurav. When I gave money, I asked him to give me the written paper as I have returned the money whereupon, he (Gaurav) said that since he had no paper with him that time so the same would be returned to her by his father. This man's son Gaurav and wife Suman are together involved (in this conspiracy). His son also used to do my fake signatures. Whenever, I demanded my file back from him, he used to ask me to return Rs 15 lakhs first. On this, when I asked him as to how the amount of Rs 5 lakhs became to Rs 15 lakhs? He replied that it had become Rs 15 lakhs including interest thereon. I kept on giving him interest because of the fear of my family. He has also grabbed my entire money which I had taken on loan basis from somewhere. I kept on giving him interest only for the reason that since he used to promise me to return the papers that day itself or on the next day.

Written on top of p. 415

He said that the money of Bawana's (plot) has been sent by his father and he asked me to write down a receipt of Rs 4 lakhs and when I wrote a receipt of it, he said that the money was kept in the motorcycle and he was first giving me the cash but this man's son did not give me the said cash. He asked me to sign the papers related to Bawana's (plot) first and then he would return the paper as well as the money to me. On reaching the house, I demanded the money and paper from him whereupon he said that he had the paper written by me and that he would show that paper to my son and when my son asked him to return the paper, he replied that he would not return the paper as his mother had taken a sum of Rs 15 lakhs from him. Kindly take it guaranteed that out of the aforesaid Rs 15 lakhs I have returned a sum of rupees seven-and-a-half lakhs to him. After that, this man's son came to me and said that his father was saying to give papers of Property No. C-225 to you and in lieu thereof he asked me to show him the file of lease. On this, when I started to show him the said file to him then, this man's son Gaurav said that he was just giving me the said paper and saying this he took away the lease file from me and since then, he had not returned me the said paper. Kindly save my house. Please save my children from this person. I have not visited any court to sign. One day these persons crossed all the limits when his wife said that she was agreed to return all the papers in lieu of giving a receipt of the same in writing. After that, they gave me the amount of sale proceeds of Rohini and Bawana's properties. She brought fake papers which were related to some other person's property, to me. I saw that those papers were fake papers and were in English language and when I showed those papers to someone, it was found that those papers were not related to my plot. When I went to this man's house to show him that those papers were not related to my plot, his wife said that since there was no electricity in her house that time so they had given some others property paper to her mistakenly and that they were just sending their son Gaurav to give me the correct papers but Gaurav did not come to me till today. Thereafter, we started receiving threats from gunda elements that they would harm us in different ways. I have no proof of the money returned by me. This man used to say to my female friends that he would show them after purchasing my house by hook and crook. He used to spread rumour in the street that I, Komal have sold out my house to him and that there were several cases pending related to that house.

I pray, with folded hands, that keeping in view the illness of my husband, my house and the papers related thereto may please be restored to me. This man's wife Suman and their son Gaurav are most dishonest persons. His wife Suman used to talk in such an artificial way as she was telling a truth. One of my sons had died due to cancer and if I am dishonest to anyone, my rest of both children may also die from cancer. You can verify these facts from the residents of the street as to how many houses (families) have been ruined by this person. This man is supported

by some reputed persons who used to give him money but he did not return their money. He kept on keeping papers of our property with him and used to lend our money on interest to other persons. This man intends to grab my house. My matter may please be decided. This man Ramesh Sibbal, his wife Suman and son Gaurav may be punished so that they may not commit such an act with anyone in future. He kept on threatening me while involving my daughter-in-law that he would do this and that. Since the day this man entered my house, everything has been ruined by him. I may please be imparted justice.

sd/-
Komal Kapur
(In English)"

7. The investigating officer prepared the site plan, effected recoveries of the articles from the place of occurrence and thereafter recorded the statements of the witnesses. Upon completion of the investigation, a charge-sheet was filed in terms of Section 173(2) of the Code wherein Ramesh Chander Sibbal was stated as the accused and names of his wife, Suman Sibbal and son Gaurav Sibbal were shown in Column 2. Upon committal, the learned Additional Sessions Judge framed charges against the accused under Sections 306 and 448 of the Penal Code, 1860 (IPC).

8. The accused filed a criminal revision being Criminal Revision No. 277 of 2009 in the High Court of Delhi at New Delhi challenging the order of the trial court dated 2-4-2009, framing the charge. The High Court vide its judgment dated 13-8-2009[1] quashed the charge framed under Section 306 IPC, while permitting the trial court to continue the trial in relation to the offence under Section 448 IPC.

9. It will be useful to refer to certain findings recorded by the High Court in its judgment dated 13-8-2009[1]: (*Ramesh Chander case*[1], DRJ pp. 698-99 & 704-07, paras 3-3.1, 9 & 12)

"*3.* In the background of the aforesaid case set up by the prosecution the learned counsel for the petitioner submitted that the ingredients of an offence under Section 306 IPC were not present in the instant case. As a matter of fact the learned counsel for the petitioner went further to say that this is not a case of suicide, rather is, a case of homicide. For this purpose he took me through the post-mortem report, and also the literature (*Pathology of Neck Injury* by Peter Vanezis). On being told that since the trial was on and hence … the learned counsel decided to give up the arguments initially advanced on this aspect of the matter.

3.1. As regards whether a charge could be framed under Section 306 IPC, the upshot of his submissions was that even if the entire material/evidence placed on record by the prosecution is fully accepted to be correct, no offence under Section 306 IPC is made out against the

1 *Ramesh Chander Sibbal* v. *State (Govt. of NCT of Delhi)*, (2009) 111 DRJ 694

petitioner-accused. For this purpose the learned counsel for the petitioner took me through the suicide note dated 4-12-2007, the statement of the sons of the deceased Amit Kapoor (the complainant) and Sumit Kapoor, as well as, the report of the forensic science laboratory. It was his submission that merely because the petitioner-accused is named in the suicide note and has been referred to as the reason which propelled the deceased to take the extreme step of suicide, it would still not fall within the realm of Section 306 IPC. …

* * *

9. A perusal of the suicide note brings to fore the fact that the petitioner-accused is not only named but his illegal occupation of the house of the deceased is stated to be the one of the primary reasons for Komal Kapoor, to have committed suicide. The statement of the sons of the deceased, Amit Kapoor and Sumit Kapoor, is primarily on the same lines. The issue for consideration is that, even if it is assumed at this stage, that the suicide note was written in the handwriting of the deceased and the statement of Amit Kapoor is believed to be true in its entirety would it be sufficient to charge the petitioner-accused with the offence of abetment of suicide by Komal Kapoor. In my view the answer is in the negative. The mere fact that the actions of the petitioner-accused, that is, forcible occupation of the portion of the house of the deceased, led her to take the extreme step of committing suicide would not bring his act within the definition of abetment as there is no material or evidence placed by the prosecution on record to show that he intended or had the necessary mens rea that Komal Kapoor should take the extreme step of committing suicide. As long as there is absence of material and/or evidence on record to show that the abettor had intended to aid or encourage the commission of the principal offence, the accused cannot be charged with the offence of abetment and, therefore, in the present case, abetment to commit suicide. Nor am I persuaded by the submission that because the name of the petitioner-accused appears in the suicide note it would be sufficient to charge him with an offence under Section 306 IPC. In this context see observation in *Sanju*[2] and *Mahendra Singh*[3]. In both the cases not only was the accused named in the suicide note but they were also cited as the reason for committing suicide by the deceased. The learned APP may perhaps be correct in his submission that the agreement to sell dated 30-6-2007 was executed by the petitioner-accused, only to grab the property of the deceased after a receipt had been executed by the deceased acknowledging that she had taken a loan from the petitioner-accused in the first instance in the sum of Rs 15 lakhs and thereafter, another sum of Rs 1 lakh, but then, this aspect of the matter will get unravelled only after a full-fledged trial. I do not wish to comment any further on this aspect of the matter as it could impact both,

2 *Sanju* v. *State of M.P.*, (2002) 5 SCC 371 : 2002 SCC (Cri) 1141

3 *Mahendra Singh* v. *State of M.P.*, 1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157

the case of the prosecution as well as that of the defence, and perhaps wisely, therefore, even the learned counsel for the petitioner-accused has not assailed the charge framed under Section 448 IPC.

* * *

12. For the aforementioned reasons, I am of the opinion that it is a fit case in which this Court should exercise its revisional and inherent powers to quash the charge framed against the petitioner-accused under Section 306 IPC. The revision petition is thus partially allowed. The charge framed against the petitioner-accused under Section 306 IPC shall be dropped. The trial court will continue with the trial of the petitioner-accused in respect of the remaining charge framed against him."

10. Aggrieved by the judgment of the High Court, in the present appeal, the appellant impugns the same primarily on the ground that the High Court had exceeded and not appropriately exercised its jurisdiction under Sections 397 and 482 of the Code in quashing the charge framed against the respondent under Section 306 IPC.

11. Before examining the merits of the present case, we must advert to the discussion as to the ambit and scope of the power which the courts including the High Court can exercise under Section 397 and Section 482 of the Code.

12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC.

14. Right from *State of W.B.* v. *Swapan Kumar Guha*[4] which was reiterated with approval in *State of Haryana* v. *Bhajan Lal*[5], the Courts have stated the principle that: (*Swapan Kumar case*[4], SCC p. 577, para 21)

> "*21.* … if the FIR does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received."

It is further stated that: (*Swapan Kumar case*[4], SCC p. 597, para 65)

> "*65.* … The legal position appears to be that if an offence is disclosed, the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to [have been committed]; if, however, the materials do not disclose an offence, no investigation should normally be permitted."

Whether an offence has been disclosed or not, must necessarily depend on the facts and circumstances of each case. If on consideration of the relevant materials, the Court is satisfied that an offence is disclosed, it will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed in order to collect materials for proving the offence.

15. In *Bhajan Lal case*[5], the Court also stated that though it may not be possible to lay down any precise, clearly defined, sufficiently channelised and inflexible guidelines or rigid formulae or to give an exhaustive list of myriad kinds of cases wherein power under Section 482 of the Code for quashing of an FIR should be exercised, there are circumstances where the Court may be justified in exercising such jurisdiction. These are, where the FIR does not prima facie constitute any offence, does not disclose a cognizable offence justifying investigation by the police; where the allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused; where there is an expressed legal bar engrafted in any of the provisions of the Code; and where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. Despite stating these grounds, the Court unambiguously uttered a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too, in the rarest of rare cases; the Court also warned that the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

16. The abovestated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction

4 (1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949
5 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426

under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution aforenoticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited.

17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for *presuming that the accused has committed an offence*, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this Court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in *State of Bihar* v. *Ramesh Singh*[6]: (SCC pp. 41-42, para 4)

> "*4*. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to

6 (1977) 4 SCC 39 : 1977 SCC (Cri) 533

consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If 'the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 227. If, on the other hand, 'the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— ... (*b*) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a

situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression "prevent abuse of process of any court or otherwise to secure the ends of justice", the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.

21. It may be somewhat necessary to have a comparative examination of the powers exercisable by the court under these two provisions. There may be some overlapping between these two powers because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. To put it simply, normally the court may not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code itself. The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to *Raj Kapoor* v. *State*[7]. In that very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Sections 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions. In that very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where

7 (1980) 1 SCC 43 : 1980 SCC (Cri) 72 : AIR 1980 SC 258

abuse of the process of the court or any other extraordinary situation invites the court's jurisdiction. The limitation is self-restraint, nothing more. The distinction between a final and interlocutory order is well known in law. The orders which will be free from the bar of Section 397(2) would be the orders which are not purely interlocutory but, at the same time, are less than a final disposal. They should be the orders which do determine some right and still are not finally rendering the court *functus officio* of the *lis*. The provisions of Section 482 are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction.

22. In *Dinesh Dutt Joshi* v. *State of Rajasthan*[8] the Court held that: (SCC p. 573, para 6)

> "*6.* ... [Section 482] does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

23. In *Janata Dal* v. *H.S. Chowdhary*[9] the Court, while referring to the inherent powers to make orders as may be necessary for the ends of justice, clarified that such power has to be exercised in appropriate cases *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the powers requires a great caution in its exercise. The High Court, as the highest court exercising criminal jurisdiction in a State, has inherent powers to make any order for the purposes of securing the ends of justice. Being an extraordinary power, it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers.

24. If one looks at the development of law in relation to exercise of inherent powers under the Code, it will be useful to refer to the following details: as far back as in 1926, a Division Bench of the Bombay High Court in *Llewelyn Evans, In re*[10], took the view that the provisions of Section 561-A (equivalent to present Section 482) extend to cases not only of a person accused of an offence in a criminal court, but to the cases of any person against whom proceedings are instituted under the Code in any court. Explaining the word "process", the Court said that it was a general word, meaning in effect anything done by the court. Explaining the limitations and scope of Section 561-A, the Court referred to "inherent jurisdiction", "to prevent abuse of process" and "to secure the ends of justice" which are terms incapable of having a precise definition or enumeration, and capable, at the

8 (2001) 8 SCC 570 : 2002 SCC (Cri) 24
9 (1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892
10 AIR 1926 Bom 551

most, of test, according to well-established principles of criminal jurisprudence. The ends of justice are to be understood by ascertainment of the truth as to the facts on balance of evidence on each side. With reference to the facts of the case, the Court held that in the absence of any other method, it has no choice left in the application of the section except, such tests subject to the caution to be exercised in the use of inherent jurisdiction and the avoidance of interference in details and directed providing of a legal practitioner.

25. Having examined the interrelationship of these two very significant provisions of the Code, let us now examine the scope of interference under any of these provisions in relation to quashing the charge. We have already indicated above that framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there is a bar and there exists no ground to proceed against the accused, the court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the court may discharge him or quash the proceedings in exercise of its powers under these two provisions.

26. This further raises a question as to the wrongs which become actionable in accordance with law. It may be purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence constituting both on the same set of facts. But if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the court will not either dismiss a complaint or quash such proceedings in exercise of its inherent or original jurisdiction. In *Indian Oil Corpn.* v. *NEPC India Ltd.*[11] this Court took the similar view and upheld the order of the High Court declining to quash the criminal proceedings because a civil contract between the parties was pending.

11 (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188

27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. *State of W.B.* v. *Swapan Kumar Guha*[4]; *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre*[12]; *Janata Dal* v. *H.S. Chowdhary*[9]; *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*[13]; *G. Sagar Suri* v. *State of U.P.*[14]; *Ajay Mitra* v. *State of M.P.*[15]; *Pepsi Foods Ltd.* v. *Special Judicial Magistrate*[16]; *State of U.P.* v. *O.P. Sharma*[17];

4 (1982) 1 SCC 561 : 1982 SCC (Cri) 283
12 (1988) 1 SCC 692 : 1988 SCC (Cri) 234
9 (1992) 4 SCC 305 : 1993 SCC (Cri) 36
13 (1995) 6 SCC 194 : 1995 SCC (Cri) 1059
14 (2000) 2 SCC 636 : 2000 SCC (Cri) 513
15 (2003) 3 SCC 11 : 2003 SCC (Cri) 703
16 (1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128
17 (1996) 7 SCC 705 : 1996 SCC (Cri) 497

Ganesh Narayan Hegde v. *S. Bangarappa*[18]; *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque*[19]; *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.*[20]; *Shakson Belthissor* v. *State of Kerala*[21]; *V.V.S. Rama Sharma* v. *State of U.P.*[22]; *Chunduru Siva Ram Krishna* v. *Peddi Ravindra Babu*[23]; *Sheonandan Paswan* v. *State of Bihar*[24]; *State of Bihar* v. *P.P. Sharma*[25]; *Lalmuni Devi* v. *State of Bihar*[26]; *M. Krishnan* v. *Vijay Singh*[27]; *Savita* v. *State of Rajasthan*[28] and *S.M. Datta* v. *State of Gujarat*[29].]

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

28. At this stage, we may also notice that the principle stated by this Court in *Madhavrao Jiwajirao Scindia*[12] was reconsidered and explained in two subsequent judgments of this Court in *State of Bihar* v. *P.P. Sharma*[25] and *M.N. Damani* v. *S.K. Sinha*[30]. In the subsequent judgment, the Court held that, that judgment did not declare a law of universal application and what was the principle relating to disputes involving cases of a predominantly civil nature with or without criminal intent.

29. In the light of the above principles, now if we examine the findings recorded by the High Court, then it is evident that what weighed with the High Court was that firstly it was an abuse of the process of court and, secondly, it was a case of civil nature and that the facts, as stated, would not constitute an offence under Section 306 read with Section 107 IPC. Interestingly and as is evident from the findings recorded by the High Court reproduced supra that "this aspect of the matter will get unravelled only after a full-fledged trial", once the High Court itself was of the opinion that clear

18 (1995) 4 SCC 41 : 1995 SCC (Cri) 634
19 (2005) 1 SCC 122 : 2005 SCC (Cri) 283
20 (2000) 3 SCC 269 : 2000 SCC (Cri) 615 : AIR 2000 SC 1869
21 (2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412
22 (2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356
23 (2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297
24 (1987) 1 SCC 288 : 1987 SCC (Cri) 82
25 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260
26 (2001) 2 SCC 17 : 2001 SCC (Cri) 275
27 (2001) 8 SCC 645 : 2002 SCC (Cri) 19
28 (2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571
29 (2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201
12 *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre*, (1988) 1 SCC 692 : 1988 SCC (Cri) 234
30 (2001) 5 SCC 156 : 2001 SCC (Cri) 823 : AIR 2001 SC 2037

facts and correctness of the allegations made can be examined only upon full trial, where was the need for the Court to quash the charge under Section 306 at that stage. Framing of charge is a kind of tentative view that the trial court forms in terms of Section 228 which is subject to final culmination of the proceedings.

30. We have already noticed that the legislature in its wisdom has used the expression "there is ground for presuming that the accused has committed an offence". This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. A Bench of this Court in *State of Maharashtra* v. *Som Nath Thapa*[31] referred to the meaning of the word "presume" while relying upon *Black's Law Dictionary*. It was defined to mean "to believe or accept upon probable evidence"; "to take as proved until evidence to the contrary is forthcoming". In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgment. Merely because there was a civil transaction between the parties would not by itself alter the status of the allegations constituting the criminal offence.

31. This present case is not a case where the allegations were so predominately of a civil nature that it would have eliminated criminal intent and liability. On the contrary, it is a fact and, in fact, is not even disputed that the deceased committed suicide and left a suicide note. May be, the accused are able to prove their non-involvement in inducing or creating circumstances which compelled the deceased to commit suicide but that again is a matter of trial. The ingredients of Section 306 are that a person commits suicide and somebody alone abets commission of such suicide which renders him liable for punishment. Both these ingredients appear to exist in the present case in terms of the language of Section 228 of the Code, subject to trial. The deceased committed suicide and as per the suicide note left by her and the statement of her son, the abetment by the accused cannot be ruled out at this stage, but is obviously subject to the final view that the court may take upon trial. One very serious averment that was made in the suicide note was that the deceased was totally frustrated when the accused persons took possession of the ground floor of her property, C-224, Tagore Garden, Delhi and refused to vacate the same. It is possible and if the Court believes the version given by the prosecution and finds that there was actual sale of property in favour of the accused, as alleged by him, in that event, the Court may acquit them of not only the offence under Section 306 IPC but under Section 107 IPC also. There appears to be some contradiction in the judgment of the High Court

31 (1996) 4 SCC 659 : 1996 SCC (Cri) 820

primarily for the reason that if charge under Section 306 is to be quashed and the accused is not to be put to trial for this offence, then where would be the question of trying them for an offence of criminal trespass in terms of Section 448 IPC based on some facts, which has been permitted by the High Court.

32. The High Court could not have appreciated or evaluated the record and documents filed with it. It was not the stage. The Court ought to have examined if the case falls in any of the abovestated categories.

33. The High Court has also noticed that perusal of the suicide note brings to fore the fact that the petitioner-accused is not only named but his illegal occupation of the house of the deceased is stated to be one of the primary reasons for Komal Kapoor in committing the suicide. The statement of the son of the deceased is also on the same line. Then the High Court proceeds further to notice that even if it is assumed at this stage that the suicide note and statement were correct, the action of the petitioner-accused in forcibly occupying the portion of the house of the deceased and the deceased taking the extreme step would not bring his act within the definition of abetment, as there is no material or evidence placed by the prosecution on record. This finding could hardly be recorded without travelling into the merits of the case and appreciating the evidence. The Court could pronounce whether the offence falls within the ambit and scope of Section 306 IPC or not. These documents clearly show that the accused persons had brought in existence the circumstances which, as claimed by the prosecution, led to the extreme step of suicide being taken by the deceased. It cannot be equated to inflictment of cruelty as discussed by the High Court in its judgment. Once Sections 107 and 306 IPC are read together, then the Court has to merely examine as to whether apparently the person could be termed as causing abetment of a thing. An abetter under Section 108 is a person who abets an offence. It includes both the person who abets either the commission of an offence or the commission of an act which would be an offence. In terms of Section 107 IPC, Explanation (1) to Section 107 has been worded very widely. We may refer to the judgment of this Court in *Goura Venkata Reddy* v. *State of A.P.*[32] wherein this Court held as under: (SCC pp. 473-74, para 8)

> "*8.* Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in the Act as an offence. A person abets the doing of a thing when (*1*) he instigates any person to do that thing; or (*2*) engages with one or more other persons in any conspiracy for the doing of that thing; or (*3*) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word 'instigate' literally means to provoke, incite, urge on or bring about by persuasion to do anything. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no

32 (2003) 12 SCC 469 : 2004 SCC (Cri) Supp 473

provision for the punishment of such abetment then the offender is to be punished with the punishment provided for the original offence. 'Act abetted' in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence. In the instant case, the abetted persons have been convicted for commission of offence punishable under Section 304. So in the case of A-1 it is Section 304 read with Section 109 IPC, that is attracted."

34. A wilful misrepresentation or wilful concealment of material fact and such person voluntarily causing or procuring or attempting to cause or procure a thing to be done is said to instigate the doing of that thing. According to the record, the accused had made a wrong statement that he had paid a sum of Rs 24,00,000 for purchase of the property C-224, Tagore Garden, Delhi and the property belonged to him. Whether it was a misrepresentation of the accused and was an attempt to harass the deceased and her family which ultimately led to her suicide is a question to be examined by the Court. The allegations as made in the aforestated documents clearly reflect that blank documents were got signed, but the purpose, the consideration and complete facts relating to the transaction were not disclosed to the deceased or the family. This would, at least at this stage, not be a case for examining the correctness or otherwise of these statements as these allegations cannot be said to be ex facie perverse, untenable or malicious. It would have been more appropriate exercise of jurisdiction by the High Court, if it would have left the matter to be determined by the Court upon complete trial. May be the accused would be entitled to get some benefits, but this is not the stage. These are matters, though of some civil nature, but are so intricately connected with criminal nature and have elements of criminality that they cannot fall in the kind of cases which have been stated by us above. There, the case has to be entirely of a civil nature involving no element of criminality.

35. The learned counsel appearing for the appellant has relied upon the judgment of this Court in *Chitresh Kumar Chopra* v. *State (Govt. of NCT of Delhi)*[33] to contend that the offence under Section 306 read with Section 107 IPC is completely made out against the accused. It is not the stage for us to consider or evaluate or marshal the records for the purposes of determining whether the offence under these provisions has been committed or not. It is a tentative view that the Court forms on the basis of record and documents annexed therewith. No doubt that the word "instigate" used in Section 107 IPC has been explained by this Court in *Ramesh Kumar* v. *State of Chhattisgarh*[34] to say that where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, an instigation may have to be inferred. In other words, instigation has to be gathered from the circumstances of the case. All cases may not be of direct

33 (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367
34 (2001) 9 SCC 618 : 2002 SCC (Cri) 1088

evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence. The husband of the deceased was a paralysed person. They were in financial crises. They had sold their property. They had great faith in the accused and were heavily relying on him as their property transactions were transacted through the accused itself. Grabbing of the property, as alleged in the suicide note and the statement made by the son of the deceased as well as getting blank papers signed and not giving monies due to them are the circumstances stated to have led to the suicide of the deceased. The Court is not expected to form even a firm opinion at this stage but a tentative view that would evoke the presumption referred to under Section 228 of the Code.

36. Thus, we are of the considered view that the finding returned by the High Court suffers from an error of law. It has delved into the field of appreciation and evaluation of the evidence which is beyond the jurisdiction, either revisional or inherent, of the High Court under Sections 397 and 482 of the Code.

37. For the reasons aforerecorded, this appeal is allowed. The order of the High Court is set aside. The trial court shall proceed with the trial in accordance with law, uninfluenced in any way whatsoever from what has been recorded in this judgment. Charges against the accused under Section 306 read with Section 107 and Section 448 IPC are found to be in order.

(2012) 9 Supreme Court Cases 488

(BEFORE H.L. DATTU AND C.K. PRASAD, JJ.)

PAPPU ALIAS RAM NARAYAN . . Appellant;

Versus

STATE OF UTTAR PRADESH . . Respondent.

Criminal Appeal No. 1965 of 2008, decided on October 4, 2012

Penal Code, 1860 — S. 302 — Conviction confirmed — Courts below apart from other evidence relied upon evidence of PW 1, who was informant and also eyewitness to entire incident — Trial court also took into consideration post-mortem report — Trial court, after analysing entire evidence on record, concluded that it was appellant-accused and accused alone who was responsible for causing death of deceased by shooting at him with country-made pistol — High Court confirmed judgment of trial court — Held, reasoning and conclusion reached by courts below does not suffer from any legal infirmity — Hence, no interference is called for — Arms Act, 1959 — S. 25 — Criminal Procedure Code, 1973 — Ss. 374 and 386 — Appeal against conviction

Pappu v. *State of U.P.*, Criminal Appeal No. 428 of 2006, decided on 23-8-2007 (All), *affirmed*

Appeal dismissed J-D/50858/CR

(2019) 13 Supreme Court Cases 691

(BEFORE DR A.K. SIKRI AND ASHOK BHUSHAN, JJ.)

JITENDRA ALIAS KALLA .. Appellant;

Versus

STATE (GOVERNMENT OF NCT OF DELHI) .. Respondent.

Criminal Appeals No. 2133 of 2017† with
Nos. 2134-39 of 2017, decided on October 25, 2018

A. **Criminal Procedure Code, 1973 — Ss. 362, 386 and 427 — Power of review under S. 362 to the extent of correcting "clerical or arithmetical error" — Correcting of an error as to sentence(s) awarded by High Court, held, cannot be termed as "clerical or arithmetical error" — Remedy against error in sentencing lies only by way of appeal — Thus, in present case, High Court, held, could not have suo motu corrected the error in sentencing made in its judgment**

— Further held, in a case involving conviction for a double murder, though High Court was right in holding that two sentences of life imprisonment cannot run consecutively in light of S. 427 CrPC, but erred in commuting the same to the "period already undergone" (of almost 17 yrs), as it considered sentence imposed by trial court of minimum non-remittable sentence of 30 yrs' RI in one case and non-remittable sentence of RI till remainder of convict's natural life, to be excessive — In a case involving murder, the minimum sentence imposable is life imprisonment — Given the facts and circumstances, award of sentences by trial court modified by Supreme Court to two sentences of life imprisonment to run concurrently, but with minimum non-remittable period of 30 yrs' RI

— Appellant-accused killed one person and thereafter killed father of eyewitness while trying to kill eyewitness — Trial court convicted appellant for abovementioned two incidents under Ss. 302/307/34 and 302/120-B IPC — For first incident, appellant was, inter alia, sentenced to RI for life with a direction that he shall not be considered for grant of remission till he undergoes actual sentence of 30 years — Insofar as conviction under second incident is concerned, appellant was sentenced to undergo RI for life by making it clear that it is till the rest of his life — That, it would start only after completion of sentence in the first offence — In other words, it awarded consecutive sentences and not concurrent sentences — High Court upheld the convictions — However, High Court concluded that punishments awarded to appellant were excessive in nature and modified the same by removing the cap of 30 years and sentencing appellant to the period already undergone i.e. 16 years and 10 months — Direction was given to release appellant forthwith if not required in any other case — Aforesaid judgment was delivered on 24-12-2016 — Thereafter, High Court listed the matter of its own for directions on 14-2-2017, as according to it, a typographical error was noticed in the said judgment — It then deleted the sentence "to the period already undergone i.e. 16 years and 10 months" and "appellant be released forthwith, if not required in any other case" — Such modification by High Court — If proper

† Arising from the Judgment and Order in *Jitender* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 6463 : (2017) 236 DLT 307 (Delhi High Court, Crl. A. No. 966 of 2013, dt. 24-12-2016)

— Held, High Court correctly concluded that life sentences cannot be directed to run consecutively, and had to run concurrently, in light of S. 427(2) CrPC — Order dt. 14-2-2017 deleting two lines from main judgment dt. 24-12-2016 does not stand judicial scrutiny, inasmuch as, by no stretch of imagination can it be treated as typographical error — In both FIRs there was a charge of murder under S. 302 IPC — Conviction was recorded on both charges by trial court which was affirmed by High Court as well — For offence of murder, minimum sentence is "life imprisonment" — For that reason, obviously, High Court could not have modified the sentence to the one already undergone — Therefore, modification in aforesaid manner as done by High Court was clearly erroneous — In fact, High Court realised the mistake and, therefore, made amends by correcting the mistake vide orders dt. 14-2-2017 — However, that step taken by High Court was beyond its jurisdiction — It could have been done only in appeal — Order dt. 14-2-2017, therefore, cannot hold ground and is hereby set aside — Again, order of High Court removing the cap of 30 years is not correct and that portion has to be set aside — Insofar as judgment dt. 24-12-2016 is concerned, modification of sentence as carried out by High Court is set aside meaning thereby the life sentence with 30 years' cap without remission as awarded by trial court is upheld — Further, direction of High Court in modifying sentence to the one already undergone is also set aside — Rest of judgment dt. 24-12-2016 of High Court is upheld — Effect thereof is that conviction of appellant is sustained — However, sentences in both cases shall run concurrently — Net effect thereof would be that appellant is given life imprisonment in both cases with condition that he will have no right to seek remission till completion of 30 years of RI — Penal Code, 1860, Ss. 302/307/34 and 302/120-B (Paras 21 to 31)

Union of India v. *V. Sriharan*, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695; *Muthuramalingam* v. *State*, (2016) 8 SCC 313 : (2016) 3 SCC (Cri) 259, *relied on*

Jitender v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 6463 : (2017) 236 DLT 307, *partly affirmed and partly reversed*

Jitender v. *State (NCT of Delhi)*, 2017 SCC OnLine Del 12761, *reversed*

State of M.P. v. *Babulal*, (2008) 1 SCC 234 : (2008) 1 SCC (Cri) 188; *Jameel* v. *State of U.P.*, (2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582; *Gopal Singh* v. *State of Uttarakhand*, (2013) 7 SCC 545 : (2013) 3 SCC (Cri) 608; *Dulla* v. *State*, 1957 SCC OnLine All 322 : AIR 1958 All 198; *Jitendra* v. *State (NCT of Delhi)*, 2017 SCC OnLine SC 1704, *referred to*

B. **Criminal Procedure Code, 1973 — Ss. 427 and 433 — Multiple sentences of life imprisonment, held, cannot be made to run consecutively — They can only run concurrently — However, a minimum non-remittable term of imprisonment can be imposed even in case of multiple sentences of life imprisonment running concurrently**

— Criminal Trial — Sentence — Concurrent or consecutive running of sentences — Imprisonment for minimum non-remittable specified term — Penal Code, 1860, S. 302 (Paras 26 to 31)

Muthuramalingam v. *State*, (2016) 8 SCC 313 : (2016) 3 SCC (Cri) 259; *Ranjit Singh* v. *State (UT of Chandigarh)*, (1991) 4 SCC 304 : 1991 SCC (Cri) 965; *Swamy Shraddananda (1)* v. *State of Karnataka*, (2007) 12 SCC 288 : (2008) 2 SCC (Cri) 322; *Swamy Shraddananda (2)* v. *State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113; *Shri Bhagwan* v. *State of Rajasthan*, (2001) 6 SCC 296 : 2001 SCC (Cri) 1095; *Union of India* v. *V. Sriharan*, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695; *Birju* v. *State of M.P.*, (2014) 3 SCC 421 : (2014)

2 SCC (Cri) 78; *Sumer Singh* v. *Surajbhan Singh*, (2014) 7 SCC 323 : (2014) 3 SCC (Cri) 184, *relied on*

Jitender v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 6463 : (2017) 236 DLT 307, *partly reversed*

C. **Criminal Procedure Code, 1973 — Ss. 433 and 427 — Power of trial court to award life imprisonment with a minimum non-remittable term**

— In present case, two consecutive sentences of life imprisonment awarded by trial court for a double murder, with minimum non-remittable sentence of 30 yrs' RI in one case and non-remittable sentence of RI till remainder of convict's natural life in the other case, modified, holding that the two sentences of life imprisonment could only run concurrently, but with minimum non-remittable sentence of 30 yrs' RI — Criminal Trial — Sentence Concurrent or consecutive running of sentences — Imprisonment for minimum non-remittable specified term — Penal Code, 1860, S. 302 (Paras 26 to 31)

Union of India v. *V. Sriharan*, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695; *Muthuramalingam* v. *State*, (2016) 8 SCC 313 : (2016) 3 SCC (Cri) 259; *Swamy Shraddananda (2)* v. *State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113, *followed*

D. **Penal Code, 1860 — S. 302 — Murder — Sentence for, held, cannot be below life imprisonment, and certainly cannot be reduced to "period already undergone" — Criminal Trial — Life sentence (Paras 26 to 31)**

Union of India v. *V. Sriharan*, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695; *Swamy Shraddananda (2)* v. *State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113; *Muthuramalingam* v. *State*, (2016) 8 SCC 313 : (2016) 3 SCC (Cri) 259, *relied on*

Jitender v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 6463 : (2017) 236 DLT 307, *reversed on this point*

E. **Practice and Procedure — Record of Court/Proceedings/Case — Primacy of court record — Remedy against error in court record is to take objection against it and approach court concerned to correct that order**

— In appeal against conviction before High Court, appellant-accused claiming that he did not instruct his counsel to give up challenge to conviction and confine challenge only to sentences imposed on him by trial court

— Held, High Court judgment records that "counsel for the appellant on instructions has submitted that the appellant does not press the appeals on merits with respect to the judgment on conviction but has laid challenge to the order on sentence passed in both the appeals" — Hence, it is clear from High Court records, that counsel for appellant had received instructions not to press the case on merits — After judgment was pronounced, at no stage, appellant took the objection that aforesaid statement was made without instructions — Court record has to be believed — If according to aggrieved party there is some error, the only option with aggrieved party is to approach that very court, seeking correction of that order — Herein, it was not done — Therefore, counsel for appellant did make aforesaid statement on instructions from appellant — Hence, contention of appellant herein stands rejected (Paras 17 to 20)

Jeetu v. *State of Chhattisgarh*, (2013) 11 SCC 489 : (2012) 4 SCC (Cri) 29, *relied on*

Jitender v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 6463 : (2017) 236 DLT 307, *affirmed on this point*

F. **Criminal Procedure Code, 1973 — Ss. 386, 374 and 378 — Duty of appellate court — Duty to examine correctness of conviction, even if appellant-accused gives up challenge to conviction and confines his challenge only to sentence(s) imposed on him by trial court (Paras 17 to 21)**

Jeetu v. *State of Chhattisgarh*, (2013) 11 SCC 489 : (2012) 4 SCC (Cri) 29; *State of Maharashtra* v. *Ramdas Shrinivas Nayak*, (1982) 2 SCC 463 : 1982 SCC (Cri) 478; *Muthuramalingam* v. *State*, (2016) 8 SCC 313 : (2016) 3 SCC (Cri) 259, *followed*

Y-D/61517/SR

Advocates who appeared in this case :

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7. (2014) 3 SCC 421 : (2014) 2 SCC (Cri) 78, *Birju* v. *State of M.P.* 696*d*
8. (2013) 11 SCC 489 : (2012) 4 SCC (Cri) 29, *Jeetu* v. *State of Chhattisgarh* 699*f-g*
9. (2013) 7 SCC 545 : (2013) 3 SCC (Cri) 608, *Gopal Singh* v. *State of Uttarakhand* 697*c*
10. (2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582, *Jameel* v. *State of U.P.* 697*c*
11. (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113, *Swamy Shraddananda (2)* v. *State of Karnataka* 696*d*, 697*a*, 704*f*, 704*g*
12. (2008) 1 SCC 234 : (2008) 1 SCC (Cri) 188, *State of M.P.* v. *Babulal* 697*c*
13. (2007) 12 SCC 288 : (2008) 2 SCC (Cri) 322, *Swamy Shraddananda (1)* v. *State of Karnataka* 696*d*, 696*f-g*
14. (2001) 6 SCC 296 : 2001 SCC (Cri) 1095, *Shri Bhagwan* v. *State of Rajasthan* 696*d*
15. (1991) 4 SCC 304 : 1991 SCC (Cri) 965, *Ranjit Singh* v. *State (UT of Chandigarh)* 705*a-b*
16. (1982) 2 SCC 463 : 1982 SCC (Cri) 478, *State of Maharashtra* v. *Ramdas Shrinivas Nayak* 701*c*
17. 1957 SCC OnLine All 322 : AIR 1958 All 198, *Dulla* v. *State* 697*c*

The Judgment of the Court was delivered by

DR A.K. SIKRI, J.— Criminal Appeals Nos. 2133 and 2134 of 2017 are filed by Jitendra alias Kalla (hereinafter referred to as "the appellant") against whom two FIRs, namely, FIR No. 67 of 1999 under Sections 302/307/34

of the Penal Code, 1860 (for short "IPC") and FIR No. 68 of 1999 under Sections 120-B/302 IPC were registered. After investigation and filing of charge-sheets in both the incidents, the charges under aforesaid provisions were framed and trial took place. The trial court convicted the appellant by a common judgment dated 1-7-2013. Though we would take note of the facts, which are relevant for these appeals, in some detail hereinafter, it would be pertinent to mention at this stage that as per the case of the prosecution the appellant murdered one Anil Badana on 10-3-1999 in the marriage reception of one, Vijay, within the area of Police Station Keshav Puram. Apart from other persons, one, Sumit Nayyar, son of Kimti Lal Nayyar was eyewitness to the said incident and had immediately informed the police about the murder of Anil Badana by making PCR calls wherein he had specifically named the appellant as a person who had committed the crime. As per the prosecution, in order to liquidate this eyewitness also, on the same night, intervening 10-3-1999 and 11-3-1999, at around 12:30 a.m., the appellant went to the house of Sumit Nayyar in Mukherjee Nagar, Delhi and rang the doorbell. Sumit's father, Kimti Lal Nayyar came out to check as to who had rung doorbell of his house, someone fired upon with a gun and three bullets hit his body. The investigation revealed that it is the appellant who had shot dead Kimti Lal Nayyar as well. The two FIRs mentioned above pertain to these two incidents.*

2. After recording the finding of guilt in both the cases and convicting the appellant for the charges framed against him in FIR No. 67 of 1999, the appellant was sentenced to rigorous imprisonment for life with a direction that he shall not be considered for grant of remission till he undergoes the actual sentence of 30 years plus fine in the sum of Rs 3 lakhs. In default of payment of fine, further simple imprisonment for a period of three years was awarded. Out of the aforesaid fine of Rs 3 lakhs, a sum of Rs 1 lakh was to be paid to the State and balance of Rs 2 lakhs was directed to be paid to the family of deceased Anil Badana as compensation under Section 357 of the Code of Criminal Procedure, 1973 (for short, "CrPC"). For offences under Section 307 IPC, the appellant was sentenced to rigorous imprisonment for 10 years and a fine of Rs 1 lakh, in default of payment of fine further simple imprisonment for a period of one year. These sentences are to run concurrently. Insofar as conviction under FIR No. 68 of 1999 are concerned, the appellant was sentenced to undergo rigorous imprisonment for life by making it clear that it is till the rest of his life and he was also directed to pay a fine of Rs 3 lakhs in this case also which was to be shared in the same manner, namely, Rs 1 lakh to the State and Rs 2 lakhs to the family of deceased Kimti Lal Nayyar. The trial court also directed that sentence in this case would start running consequent to and only after the conclusion of sentence imposed in FIR No. 67 of 1999.

3. Against these convictions, the appellant filed two appeals before the High Court which were decided by a common judgment dated 24-12-2016[1]. During the arguments, the counsel for the appellant made a statement at the Bar to the effect that the appellant did not intend to press the challenge to the findings of conviction recorded by the trial court and confined his submissions only to

* **Ed.**: Para 1 corrected vide Official Corrigendum No. F.3/Ed.B.J./67/2018 dated 12-12-2018.

1 *Jitender* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 6463 : (2017) 236 DLT 307

the sentencing part. Still, the High Court discussed the evidence which was produced by the prosecution in both the cases and remarked that the appellant was rightly convicted.

4. Thereafter, the High Court went into the question of respective sentences which are given in each of the cases by the trial court. The argument of the counsel for the appellant challenging the sentence of life imprisonment, with the condition that the appellant would have to undergo the actual sentence of 30 years without any remission and life imprisonment in the second case to mean that it would be for the rest of his life, was challenged by the learned counsel for the respondent.

5. After taking note of reasons which were given by the trial court in awarding specific sentences in the two cases, the High Court found that two broad issues arise for consideration which are as follows:

5.1.(*i*) The first issue which arose for consideration was whether the order of the trial court that both the sentences are to run consecutively requires interference or not?

5.2.(*ii*) If the sentences are not to run consecutively, whether the order on sentence in both the appeals requires interference?

6. Insofar as Issue (*i*) is concerned, the High Court referred to the provisions of Section 427(2) CrPC on the basis of which it concluded that it was not to run consecutively. Thereafter, the High Court adverted to Issue (*ii*) and in the process took note of various judgments[2], on the basis of which it concluded that the trial court exceeded its jurisdiction in awarding the sentences in the aforesaid manner. The discussion in this behalf is contained in para 53 of the judgment of the High Court which reads as under: (*Jitender case*[1], SCC OnLine Del)

> "*53*. In view of the decision rendered by the five-Judge Bench of the Supreme Court in *Union of India* v. *V. Sriharan*[3], more particularly as held in paras 103 and 104, we are of the view that the trial court exceeded its jurisdiction. Even otherwise, we are of the view that the trial court in this case has acted in utter haste by passing the order on sentence on the same day with a pre-determined mind. Having regard to the gravity of the matter, the trial court should have allowed reasonable opportunity to the counsel for the accused to address arguments on sentence. The trial court has shown utter impatience and also incorrectly applied the law. We may notice that the Full Bench of the Supreme Court in *Union of India* v. *V. Sriharan*[3] held that the ratio laid down in *Swamy Shraddananda*[4] with a very special category of sentence instead of death for a term exceeding 14 years and

2 *Swamy Shraddananda (1)* v. *State of Karnataka*, (2007) 12 SCC 288 : (2008) 2 SCC (Cri) 322; *Swamy Shraddananda (2)* v. *State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113; *Shri Bhagwan* v. *State of Rajasthan*, (2001) 6 SCC 296 : 2001 SCC (Cri) 1095; *Union of India* v. *V. Sriharan*, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695; *Birju* v. *State of M.P.*, (2014) 3 SCC 421 : (2014) 2 SCC (Cri) 78; *Sumer Singh* v. *Surajbhan Singh*, (2014) 7 SCC 323 : (2014) 3 SCC (Cri) 184 : (2014) 3 JCC 2282

1 *Jitender* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 6463 : (2017) 236 DLT 307

3 (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695

4 *Swamy Shraddananda (1)* v. *State of Karnataka*, (2007) 12 SCC 288 : (2008) 2 SCC (Cri) 322

put that category beyond application of remission is well founded. We have extracted above the aforegoing para 92 in *Swamy Shraddananda (2)* v. *State of Karnataka*[5] wherein the Hon'ble Supreme Court discussed a situation where a sentence may be excessive and unduly harsh or may be highly disproportionately inadequate. The Court may find that a case falls short of the rarest of the rare category. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment that subject to remission which normally works out to a term of 14 years may be grossly disproportionate and inadequate. Faced with this quandary with two alternates i.e. either death or life of not more than 14 years, the Court may be led to passing a death sentence. The Court cautioned of such a prejudice and viewed such a condition to be disastrous and held that the Court would take recourse to the expanded option."

7. Thereafter, the Court discussed the adequacy of sentence in the circumstances of the two cases in which the appellant had been convicted and went through various judgments[6] of this Court. After taking note of the principles laid down in the judgments taken note of by the High Court, the Court summed up the position as under: (*Jitender case*[1], SCC OnLine para 62)

"*62*. We believe that being a civilised society—a tooth for a tooth and an eye for an eye ought not to be the criterion and as such the question of there being acting under any haste in regard to the life imprisonment would not arise; rather our jurisprudence speaks of the factum of the law courts being slow in that direction and it is in that perspective a reasonable proportion has to be maintained between the heinousness of the crime and the punishment. While it is true, punishment disproportionately severe ought not to be passed but that does not even clothe the law courts, however, with an opinion to award the sentence which would be manifestly inadequate having due regard to the nature of offence since an inadequate sentence would not subserve the cause of justice to the society. The Courts would draw a balance sheet of aggravating and mitigating circumstances. Both aspects have to be given their respective weightage. The Court has to strike a balance between the two and see towards which side the scale/ balance of justice tilts. The principle of proportion between the crime and the punishment is the principle of "just deserts" that serves as the foundation of every criminal sentence that is justifiable. In other words, the "doctrine of proportionality" has a valuable application to the sentencing policy under the Indian criminal jurisprudence. Thus, the court will not only have to examine what is just but also as to what the accused deserves keeping in view the impact on the society at large."

8. On the application of the aforesaid principles, the High Court concluded that the punishments awarded to the appellant were excessive in nature and modified the same by removing the cap of 30 years and sentencing the appellant

5 (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113

6 *State of M.P.* v. *Babulal*, (2008) 1 SCC 234 : (2008) 1 SCC (Cri) 188; *Jameel* v. *State of U.P.*, (2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582; *Gopal Singh* v. *State of Uttarakhand*, (2013) 7 SCC 545 : (2013) 3 SCC (Cri) 608; *Dulla* v. *State*, 1957 SCC OnLine All 322 : AIR 1958 All 198

1 *Jitender* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 6463 : (2017) 236 DLT 307

to the period already undergone i.e. 16 years and 10 months. The direction was given to release the appellant forthwith if not required in any other case. The aforesaid judgment was delivered on 24-12-2016[1]. Thereafter, the High Court listed the matter of its own for directions on 14-2-2017[7] as according to it, a typographical error was noticed in the said judgment. On this day, the following order was passed: (*Jitender case*, SCC OnLine Del paras 1-3)

> "*1*. This matter has been listed today for directions. A typographical error was noticed post delivery of this judgment dated 24-12-2016[1] in the concluding portion. The error is rectified and the extraneous sentence, which crept in, is deleted.
>
> '*63*. … to the period already undergone by the appellant i.e. 16 years and 10 months.
>
> *64*. … The appellant be released forthwith, if not required in any other case.' (*Jitender case*[1], SCC OnLine Del paras 63-64)
>
> *2*. Mr Sharma, learned counsel for the appellant, submits that he has no contact with the appellant.
>
> *3*. Let a copy of this order be sent to Superintendent Central Jail for appropriate action and DASTI be also given to the counsel for the parties, under the signatures of the Court Master."

9. In these appeals, both the aforesaid orders have been challenged. The appellant has challenged his conviction insofar as the trial in two cases is concerned. It may be noted that the appellant was satisfied with the orders dated 24-12-2016[1] as per which he was released on serving the sentence already undergone. However, after the correction in the said order dated 14-2-2017[7], he chose to challenge the conviction as well and filed the instant appeals. Other two appeals are filed by the families of the victims in two cases questioning the modification of sentence by the High Court vide judgment dated 24-12-2016[1]. Even the State has filed the appeal against the modification order.

10. We may record that in the special leave petitions filed by the appellant though the notice was issued on 7-4-2017[8], this Court refused to stay the orders dated 14-2-2017[7] and directed the appellant to surrender. He was permitted to make an application for bail with the observation that the same would be considered on its own merits. The appellant, accordingly, surrendered and, at present, he is in jail. The appellant did move the application for bail. However, instead of hearing the argument in the said application, the Court decided to hear these appeals finally. This is how the matters were heard on merits.

11. In the aforesaid context, three questions have arisen for consideration, which are as follows:

11.1.(*i*) Whether the appellant has been rightly convicted for the offences mentioned in the two charge-sheets? Here, the incidental question is as to whether the appellant can raise such a plea when it was not pressed before the High Court.

1 *Jitender* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 6463 : (2017) 236 DLT 307
7 *Jitender* v. *State (NCT of Delhi)*, 2017 SCC OnLine Del 12761
8 *Jitendra* v. *State (NCT of Delhi)*, 2017 SCC OnLine SC 1704

11.2.(*ii*) Whether the order of the High Court modifying the sentences as awarded by the trial court is proper and justified?

11.3.(*iii*) Whether the High Court could pass the 'correction' orders on 14-2-2017[7] on the ground that typographical error had been noticed in the main judgment dated 24-12-2016[1]?

12*. Ms Vibha Makhija, learned Senior Counsel appearing for the appellant made a fervent plea to the effect that the manner in which this case has progressed from the stage of trial till the High Court would reflect that the appellant has been given a raw deal and his case has not been properly dealt with either by the trial court or the High Court, insofar as conviction of the appellant in the two cases is concerned. From the events that took place in the trial court, she laboured to demonstrate that it depicted biased investigation and there was even judicial bias which resulted in denial of fair trial. According to her, conviction was illegal and even the sentences passed by the trial court were contrary to law. According to her, the same mistake occurred at the High Court level as the High Court took a shortcut by recording the concession of the counsel for the appellant that insofar as conviction is concerned it was not pressed. She also submitted that though the High Court, in the first instance, gave a partial relief by reducing the sentence to the period already undergone but thereafter committed a grave error in rectifying the said order which was beyond its powers. Her submission was that the order of sentence already undergone could, by no imagination, be termed as "typographical error" and on that pretext "corrected" by the High Court in such a manner, unknown to the law. She also argued that even if the order dated 24-12-2016[1] releasing the appellant after surrendering the sentence already undergone was not correct in law, such an error could be rectified only by a higher forum as the High Court had become functus officio after delivering its judgment of 24-12-2016[1]. On the basis of the aforesaid submissions, plea of the learned Senior Counsel was that the matter should be remitted back to the High Court for fresh consideration on merits i.e. on the issue of conviction as well as on the sentence, if the conviction is sustained by the High Court on fresh consideration.

13. In an attempt to commend this Court to accept the aforesaid approach, Ms Makhija made submissions at two levels. In the first instance, it was argued that even if the counsel for the appellant had made a statement that she was not pressing the case insofar as conviction is concerned, such concessions should not have been accepted by the court and it was the bounden duty of the court to decide the case on merits. In support of this submission, she referred to the judgment of this Court in *Jeetu* v. *State of Chhattisgarh*[9], relevant portion thereof is reproduced hereunder: (SCC p. 496, para 23)

> "*23*. At this juncture, we are obliged to state that when a convicted person prefers an appeal, he has the legitimate expectation to be dealt with by the courts in accordance with law. That apart, he has intrinsic faith in the criminal justice dispensation system and it is the sacred duty of the adjudicatory system to remain alive to the said faith. He has embedded

7 *Jitender* v. *State (NCT of Delhi)*, 2017 SCC OnLine Del 12761

* **Ed.**: Para 12 corrected vide Official Corrigendum No. F.3/Ed.B.J./67/2018 dated 12-12-2018.

1 *Jitender* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 6463 : (2017) 236 DLT 307

9 (2013) 11 SCC 489 : (2012) 4 SCC (Cri) 29

trust in his counsel that he shall put forth his case to the best of his ability assailing the conviction and to do full justice to the case. That apart, a counsel is expected to assist the courts in reaching a correct conclusion. Therefore, it is the obligation of the court to decide the appeal on merits and not accept the concession and proceed to deal with the sentence, for the said mode and method defeats the fundamental purpose of the justice-delivery system. We are compelled to note here that we have come across many cases where the High Courts, after recording the non-challenge to the conviction, have proceeded to dwell upon the proportionality of the quantum of sentence. We may clearly state that the same being impermissible in law should not be taken resort to. It should be borne in mind that a convict who has been imposed substantive sentence is deprived of his liberty, the stem of life that should not ordinarily be stenosed, and hence, it is the duty of the Court to see that the cause of justice is subserved with serenity in accordance with the established principles of law."

She submitted that apart from the above legal position, insofar as present case is concerned no such instructions were given to the lawyer by the appellant to give such a concession.

14. At second level, the learned Senior Advocate tried to submit that there were various circumstances in the case which would reflect that it was an arguable case on merits and, therefore, there was no question of giving up the issue of conviction. In this behalf, she flagged the aspects of improper motive, inimical eyewitnesses, contradiction in the testimony of those witnesses, non-examination of independent witnesses even when the murder of Anil Badana took place in a marriage function where so many persons were present, father of the groom had turned hostile, recoveries which were made were illegal, forensic examination was conducted after much delay and circumstances of second murder were also suspicious. Her passionate plea was that had chance been given to the appellant, there could have been detailed arguments on these aspects, with a possibility of favourable verdict for the appellant.

15. Mr A.N.S. Nadkarni, learned Additional Solicitor General, as well as Ms Kiran Suri, learned Senior Advocate appearing for the State, strongly refuted the aforesaid submissions. They submitted that during the arguments before the High Court when it was found that the appellant had no case on merits, his counsel pleaded only on sentencing. It was also argued that statement of the counsel is specifically recorded in para 6 of the High Court judgment and the sanctity of the court record has to be maintained which cannot be questioned by approaching the higher forum. It was emphasised that in spite of this statement, the High Court had, in fact, gone into the evidence and satisfied its conscience to the effect that the trial court had come to a right conclusion about the conviction of the appellant. In this backdrop, the judgment cited by the appellant was not applicable. They also briefly touched the merits of the case in the context of replying to the arguments of the learned counsel for the appellant and submitted that the issues flagged now on which the learned Senior Counsel for the appellant wanted to argue, do not even arise from the record. It was contended that nothing of the nature was even

put to the prosecution witnesses and an attempt to find the alleged loopholes in the prosecution case was made for the first time before this Court. Insofar as sentence given by the trial court is concerned, it was argued that the trial court was perfectly justified in putting a cap of 30 years' rigorous imprisonment before the request for remission can be granted referring to the Constitution Bench judgment of this Court in *Sriharan*[3].

16. Mr Sanjay R. Hegde, learned Senior Counsel who appeared for the complainant in one case and Mr Prashant Bhushan, Advocate who appeared for complainant in other case, supported the aforesaid submissions of the State. It was additionally argued that even if the "correction" order dated 14-2-2017[7] was wrong, since the appeals were preferred against the main judgment dated 24-12-2016[1], this Court could always go into the issue as to whether modification of sentence carried out by the High Court was proper or not. On the aspect that the statement contained in para 6 of the judgment of the High Court could not be questioned by the appellant, Mr Hegde referred to the judgment of this Court in *State of Maharashtra* v. *Ramdas Shrinivas Nayak*[10]. He also relied upon the judgment in *Muthuramalingam* v. *State*[11].

17. Having noted the submissions of the counsel for the parties, we proceed to discuss three questions formulated above. Insofar as Question (*i*) is concerned, the contention of Ms Makhija that counsel for the appellant had made a statement before the High Court without instructions from the appellant cannot be accepted. We may reproduce para 6 of the High Court judgment which states to the contrary. It reads as under: (*Jitender case*[1], SCC OnLine Del)

> "*6*. At the outset, the learned counsel for the appellant on instructions has submitted that the appellant does not press the appeals on merits with respect to the judgment on conviction but has laid challenge to the order on sentence passed in both the appeals."

It records "that the appellant does not press the appeal on merits with respect to the judgment of conviction" and specifically states that the statement is made "on instructions" in this behalf.

18. It is clear from the above that the counsel for the appellant had received the instructions not to press the case on merits. After the judgment was pronounced, at no stage, the appellant took the objection that the aforesaid statement was made without instructions. It is stated for the first time in these appeals and the special leave petitions were filed in March 2017, only after the High Court had passed orders dated 14-2-2017[7] "correcting" earlier order dated 24-12-2016[1] by terming it as typographical error. It is argued by the appellant that since the order of sentence passed in the judgment dated 24-12-2016[1] went in his favour, he was not bothered about the aforesaid statement of his counsel. However, the fact remains that even thereafter he

3 *Union of India* v. *V. Sriharan*, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695
7 *Jitender* v. *State (NCT of Delhi)*, 2017 SCC OnLine Del 12761
1 *Jitender* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 6463 : (2017) 236 DLT 307
10 (1982) 2 SCC 463 : 1982 SCC (Cri) 478
11 (2016) 8 SCC 313 : (2016) 3 SCC (Cri) 259

did not approach the High Court with the plea that he had not authorised his advocate to make such a statement. Law on this subject is well settled in the judgments cited by Mr Hegde. The Court record has to be believed. If according to the aggrieved party there is some error, the only option with the aggrieved party is to approach that very court, seeking correction of that order. It was not done. Therefore, we have to proceed on the premise that the counsel for the appellant had made the aforesaid statement on instructions from the appellant.

19. Notwithstanding, the said statement, it was necessary for the High Court to still go through the record to satisfy as to whether the conviction is properly recorded. We find that this exercise has in fact been duly undertaken by the High Court. After recording the statement in para 6, discussion ensued on merits from para 7 onwards. The High Court has taken note of the witnesses who were examined by the prosecution to prove its charges in both the cases. It has mentioned that the prosecution based on the testimony of eyewitnesses thereafter brief description of the depositions of these witnesses have been recorded by the High Court. The High Court has also taken note of MLC report which was duly proved by the prosecution. It has also gone through the testimony of FSL expert (ballistic expert). Deposition of the police officials who played their part at different stages including investigation has also been taken note of. The testimony of certain other official witnesses is also kept in mind by the High Court with specific reference thereto. On the basis of such discussions, the High Court has made the following observations qua each of these cases: (*Jitender case*[1], SCC OnLine Del paras 23 & 30)

> "*23*. Based on the testimonies of these witnesses, the trial court held the appellant to be guilty. Although the counsel for the appellant had submitted that he does not challenge the judgment on conviction yet we have carefully examined the testimonies of these witnesses and, in our view, the trial court has correctly held the appellant to be guilty.
>
> * * *
>
> *30*. In our view, the trial court based on the testimonies of various witnesses including eyewitness and based on the scientific evidence rightly convicted the appellant under Section 302 of the Penal Code."

20. We, therefore, do not find any force in this argument and decide this issue against the appellant.

21. Before dealing with Question (*ii*), it would be apt to first discuss Question (*iii*). We are of the view that the order dated 14-2-2017[7] deleting two lines from the main judgment dated 24-12-2016[1] does not stand judicial scrutiny, inasmuch as, by no stretch of imagination can it be treated as typographical error. When the judgment dated 24-12-2016[1] is read in its entirety on the issue of sentencing, a brief narration whereof has already been given above, it becomes apparent that the High Court, in its wisdom, thought it proper to modify the order of sentence to the period already undergone. As pointed out above, the High Court took note of various judgments including of the Supreme Court. Thereafter in para 61, it made categorical averments

1 *Jitender* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 6463 : (2017) 236 DLT 307
7 *Jitender* v. *State (NCT of Delhi)*, 2017 SCC OnLine Del 12761

that in a civilised society, a tooth for a tooth and an eye for an eye ought not to be the criterion in awarding the sentence. It also observed that the Court was required to pass a sentence which is neither dispassionately severe nor manifestly inadequate. For this purpose, it is required to give due regard to the nature of offence and draw a balance sheet of aggravating and mitigating circumstances. After this discussion, the Court modified the order of sentence in the following manner: (*Jitender case*[1], SCC OnLine Del para 63)

> "*63*. In the contextual facts, on considering the aforesaid principles and having regard to the nature of the offence and the methodology adopted, we are convinced that the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised depending on the facts of the case. Further, the punishment awarded to the appellant herein is in excess of the requirement of the situation and as such the mitigating factors put forth by the learned counsel for the appellant are meant to invite mercy on the appellant. We are of the considered view that to meet the ends of justice, the cap of 30 years must be removed. *Hence, we modify the order on sentence to the period already* undergone by the appellant *i.e. 16 years and 10 months*." (emphasis supplied)

22. It does not need further elaboration to hold that the last sentence in the aforesaid paragraph by which the Court modified the punishment to the period already undergone i.e. 16 years and 10 months was not a typographical error.

23. One thing is absolutely clear. In both the FIRs there was a charge of murder under Section 302 IPC. Conviction was recorded on both the charges by the trial court which was affirmed by the High Court as well. For the offence of murder, minimum sentence is "life imprisonment". For that reason, obviously, the High Court could not have modified the sentence to the one already undergone. Therefore, modification in the aforesaid manner as done by the High Court was clearly erroneous. In fact, it appears that the High Court realised this mistake and, therefore, made amends by correcting this mistake vide orders dated 14-2-2017[7]. However, that step taken by the High Court was beyond its jurisdiction. It could have been done only in appeal. That exercise is precisely done by this Court by setting aside that part of the order.

24. Order dated 14-2-2017[7], therefore, cannot hold the ground and is hereby set aside.

25. We now take up the second issue. This question arises for consideration because of the reason that main judgment dated 24-12-2016[1] is challenged by the two complainants as well as the State.

26*. To answer this issue, we are called upon to decide related question viz. whether the manner of imposition of sentences by the trial court was justified? To recapitulate, in the first charge-sheet in respect of first offence the trial court, while imposing sentence of life imprisonment, put a cap of 30 years thereby clearly stating that no remission would be permissible before that. Again, while

1 *Jitender* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 6463 : (2017) 236 DLT 307
7 *Jitender* v. *State (NCT of Delhi)*, 2017 SCC OnLine Del 12761
* **Ed.**: Para 26 corrected vide Official Corrigendum No. F.3/Ed.B.J./67/2018 dated 12-12-2018.

inflicting life imprisonment in the second case, it stated that the sentence would be for whole life and would start only after completion of the sentence in the first offence. In other words, it awarded consecutive sentences and not concurrent sentences.

27. Both the cases were tried together. Conviction was recorded by one common judgment. Likewise sentences were also recorded by one common order. In this backdrop, the High Court has correctly come to conclusion that there was no question of giving consecutive sentences and sentences had to be concurrent. For coming to this conclusion various judgments on the point were noted. The High Court also specifically referred to Section 427 CrPC, relevant portion whereof reads as under:

> "**427.** ***Sentence on offender already sentenced for another offence***.—(1) * * *
>
> (2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

28. We now advert to the issue of 30 years' cap while awarding life conviction. This aspect is now conclusively determined by a Constitution Bench judgment of this Court in *Sriharan*[3] wherein this Court held as under: (SCC pp. 70-71, paras 62-63)

> "*62*. As far as remissions are concerned, it consists of two types. One type of remission is what is earned by a prisoner under the Prison Rules or other relevant rules based on his/her good behaviour or such other stipulations prescribed therein. The other remission is the grant of it by the appropriate Government in exercise of its power under Section 432 of the Criminal Procedure Code. Therefore, in the latter case when a remission of the substantive sentence is granted under Section 432, then and then only giving credit to the earned remission can take place and not otherwise. Similarly, in the case of a life imprisonment, meaning thereby the entirety of one's life, unless there is a commutation of such sentence for any specific period, there would be no scope to count the earned remission. In either case, it will again depend upon an answer to the second part of the first question based on the principles laid down in *Swamy Shraddananda (2)*[5].
>
> *63*. With that when we come to the second part of the first question which pertains to the special category of sentence to be considered in substitute of death penalty by imposing a life sentence i.e. the entirety of the life or a term of imprisonment which can be less than full life term but more than 14 years and put that category beyond application of remission which has been propounded in paras 91 and 92 of *Swamy Shraddananda (2)*[5] and has come to stay as on this date."

29. The judgment by the Constitution Bench in *Muthuramalingam*[11] deals with this aspect very clearly, in the following words: (SCC pp. 325-26, para 23)

3 *Union of India* v. *V. Sriharan*, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695
5 *Swamy Shraddananda (2)* v. *State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113
11 *Muthuramalingam* v. *State*, (2016) 8 SCC 313 : (2016) 3 SCC (Cri) 259

"*23*. Parliament, it manifests from the provisions of Section 427(2) CrPC, was fully cognizant of the anomaly that would arise if a prisoner condemned to undergo life imprisonment is directed to do so twice over. It has, therefore, carved out an exception to the general rule to clearly recognise that in the case of life sentences for two distinct offences separately tried and held proved the sentences cannot be directed to run consecutively. The provisions of Section 427(2) CrPC apart, in *Ranjit Singh case*[12], this Court has in terms held that since life sentence implies imprisonment for the remainder of the life of the convict, consecutive life sentences cannot be awarded as humans have only one life. That logic, in our view, must extend to Section 31 CrPC also no matter Section 31 does not in terms make a provision analogous to Section 427(2) of the Code. The provision must, in our opinion, be so interpreted as to prevent any anomaly or irrationality. So interpreted Section 31(1) CrPC must mean that sentences awarded by the court for several offences committed by the prisoner shall run consecutively (unless the court directs otherwise) except where such sentences include imprisonment for life which can and must run concurrently. We are also inclined to hold that if more than one life sentences are awarded to the prisoner, the same would get superimposed over each other. This will imply that in case the prisoner is granted the benefit of any remission or commutation qua one such sentence, the benefit of such remission would not ipso facto extend to the other."

30. As a consequence, the order of the High Court removing the cap of 30 years is not correct and that portion has to be set aside.

31. The upshot of the aforesaid discussion would be to conclude as under:

31.1. Order dated 14-2-2017[7] is set aside.

31.2. Insofar as judgment dated 24-12-2016[1] is concerned, the modification of sentence as carried out by the High Court is set aside meaning thereby the life sentence with 30 years' cap without remission was awarded by the trial court is upheld. Further, direction of the High Court in modifying the sentence to the one already undergone is also set aside.

31.3. Rest of the judgment dated 24-12-2016[1] of the High Court is upheld. Effect thereof is that the conviction of the appellant is sustained. However, sentences in both the cases shall run concurrently. The net effect thereof would be that the appellant is given life imprisonment in both the cases with the condition that he will have no right to seek remission till the completion of 30 years of rigorous imprisonment.

32. Resultantly, the appeals of the appellant are dismissed and that of complainants and the State are partially allowed to the aforesaid extent and disposed of in the aforesaid manner.

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12 *Ranjit Singh* v. *State (UT of Chandigarh)*, (1991) 4 SCC 304 : 1991 SCC (Cri) 965
7 *Jitender* v. *State (NCT of Delhi)*, 2017 SCC OnLine Del 12761
1 *Jitender* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 6463 : (2017) 236 DLT 307

2-Judge Bench
2019
March 7

(2020) 14 Supreme Court Cases 469

(BEFORE ABHAY MANOHAR SAPRE AND DINESH MAHESHWARI, JJ.)

MANIK KUTUM .. Appellant;

Versus

JULIE KUTUM .. Respondent.

Criminal Appeal No. 448 of 2019†, decided on March 7, 2019

Criminal Procedure Code, 1973 — Ss. 397, 399, 401 and 386 — Remand of matter at appellate/revisional stage — When permissible — Held, such remand is permissible: (i) when adjudication of factual issue requiring factual inquiry which cannot be undertaken at appellate or revisional stage is required; (ii) when it was noticed that no finding on particular factual issues has been recorded; and (iii) when additional evidence is brought on record for first time before appellate or revisional court and it requires examination by trial court for its finding in light of additional evidence — Remand is not permissible when there is adequate material on record for revisional or appellate court to dispose of the matter

— Respondent wife filed petition seeking maintenance for herself and her minor daughter — Trial court fixed maintenance of Rs 2000 to minor daughter — Grant of any maintenance to respondent wife was declined on ground that she was not legally wedded wife of appellant — In revision before High Court, matter was remanded to trial court for fixation of maintenance — Untenability of

— On facts held, circumstances requiring remand not made out in present case — Once High Court recorded finding of fact that respondent wife is legally wedded wife of appellant, it should have fixed quantum of maintenance instead of remanding matter to trial court — As salary of appellant husband was between 30,000 to 35,000 p.m., quantum of maintenance to respondent wife fixed at Rs 8000 p.m. — Total sum of maintenance to respondent wife and minor daughter fixed at Rs 10,000, payable by appellant husband on 1st of every month from 1-3-2019 — Family Courts Act, 1984 — S. 19 — Criminal Procedure Code, 1973 — S. 125 — Crimes Against Women and Children — Protection of Women from Domestic Violence Act, 2005, S. 20 (Paras 9 to 14)

Julie Kutum v. *Manik Kutum*, 2017 SCC OnLine Gau 1025 : (2017) 6 Gau LR 188, *partly reversed in law*

G-D/61890/SVR

Chronological list of cases cited ***on page(s)***

1. 2017 SCC OnLine Gau 1025 : (2017) 6 Gau LR 188, *Julie Kutum* v. *Manik Kutum* **(partly reversed in law)** 470*a*, 470*d*, 470*d-e*, 470*g-h*, 471*a-b*, 471*f-g*

† Arising out of SLP (Crl.) No. 3652 of 2018. Arising from the Judgment and Order in *Julie Kutum* v. *Manik Kutum*, 2017 SCC OnLine Gau 1025 : (2017) 6 Gau LR 188 (Gauhati High Court, Criminal Revision No. 102 of 2012, dt. 1-8-2017)

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J.— Leave granted. This appeal is directed against the final judgment and order dated 1-8-2017 passed by the Gauhati High Court at Guwahati in *Julie Kutum* v. *Manik Kutum*[1] whereby the High Court while disposing of the criminal revision petition filed by the respondent herein, set aside the order dated 21-11-2011 of the Sub-Divisional Judicial Magistrate ("SDJM"), Gossaigaon, Assam in Misc. Case No. 28 of 2009 and remanded the case to SDJM to decide the application filed by the respondent herein afresh.

2. A few facts need mention for the disposal of this appeal.

3. The appellant is the husband and the respondent is the wife. The respondent (wife) filed an application under Section 125 of the Code of Criminal Procedure, 1973 claiming maintenance from the appellant (husband) for herself and for her minor daughter.

4. By order dated 21-11-2011, SDJM partly allowed the application and awarded Rs 2000 per month towards maintenance for her minor daughter but rejected the application insofar as it relates to award of maintenance to the respondent wife on the ground that she is not the legally married wife of the appellant herein. It is against this order, the respondent wife felt aggrieved and filed revision in the Gauhati High Court.

5. By the impugned order[1], the High Court remanded the case to SDJM to decide the application afresh. The concluding part of the impugned order[1] remanding the case to SDJM reads as under: (*Julie Kutum case*[1], SCC OnLine Gau para 26)

> "*26*. In view of … the impugned order passed by the learned court is hereby set aside. The matter is remanded to the learned trial court to declare the respondent (petitioner in the miscellaneous case) to be the legally married wife of the present petitioner and to decide the quantum of maintenance by recording proper evidence only on the point of income and to award proper maintenance to the petitioner as well as the minor child afresh within a period of three months of receiving the order of this Court. In the meantime the petitioner is directed to clear all the arrear maintenance towards the child that was granted earlier by the learned trial court till the court decides the matter afresh."

It is against this order, the appellant (husband) has filed this appeal by way of special leave in this Court.

6. Heard Ms Seema Sharma, learned counsel for the appellant and Mr Sahil Tagotra, learned counsel for the respondent.

7. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to modify the impugned order[1] and fix the maintenance payable by the appellant (husband) to the respondent (wife) in addition to what has already been awarded by SDJM payable for the minor daughter.

1 2017 SCC OnLine Gau 1025 : (2017) 6 Gau LR 188

8. In our considered opinion, the High Court erred in remanding the case to SDJM for fresh inquiry and for fixing the maintenance for the respondent (wife).

9. The High Court having recorded a finding of fact in para 22 of the impugned order[1] that the respondent wife is the legally wedded wife of the appellant, it should not have then remanded the case to SDJM for any inquiry and instead should have fixed the maintenance payable by the appellant (husband) to the respondent (wife) in the revision itself. It is more so because we find that the respondent is not earning and has no independent source of any income to maintain herself.

10. In our view, the need to remand the case to SDJM is called for only when some factual inquiry is required to be held to decide any factual issue involved in the case which cannot be undertaken at the revision stage or when it is noticed that there is no finding on any particular factual issue(s) recorded by SDJM or when additional evidence is filed for the first time at the appellate/revision stage which requires examination by SDJM in the first instance and to record a finding in the light of such additional evidence. Such is not the case here because all the material for fixing the maintenance was on record. It is for these reasons, we are of the view that there was no need to remand the case to SDJM as it would only prolong the litigation causing harm to the respondent (wife).

11. We, however, find from the record that the appellant is working as Constable in RPF. His monthly salary is between Rs 30,000 to Rs 35,000 per month.

12. Having regard to all the facts and circumstances of the case, we consider it just and proper to fix Rs 8000 (Rupees eight thousand) as monthly maintenance payable by the appellant (husband) to the respondent (wife).

13. In other words, the appellant (husband) will pay a total sum of Rs 10,000 (Rupees ten thousand) every month to the respondent (wife) i.e. Rs 8000 towards maintenance for the respondent (wife) and Rs 2000 towards maintenance for minor daughter which is already fixed by SDJM and which we uphold as being just and proper.

14. The appellant will pay the amount of Rs 10,000 to the respondent (wife) on 1st of every month from 1-3-2019 regularly.

15. With the aforesaid modification in the impugned order[1] in favour of the respondent (wife), the appeal thus stands disposed of.

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1 *Julie Kutum* v. *Manik Kutum*, 2017 SCC OnLine Gau 1025 : (2017) 6 Gau LR 188

ORDER

1. Delay condoned. Leave granted. The appellant was convicted by the Additional Sessions Judge, Fast Track Court, Rourkela, Camp. Bonai, District Sundergarh vide judgment and order dated 25-8-2012 passed in Sessions Trial Case No. 118/62 of 2009 for the offence punishable under Section 302 of the Penal Code, 1860 and was sentenced to suffer life imprisonment.

2. The appeal preferred by the appellant was dismissed[1] by the High Court on the ground that there was delay of 1192 days in preferring the appeal. The matter was thus not considered on merits by the High Court.

3. In our view, since the matter arose out of conviction under Section 302 of the Penal Code, 1860, the High Court ought to have condoned the delay and heard the matter on merit. We, therefore, set aside the view[1] taken by the High Court and remit the matter back to the High Court for fresh consideration on merits.

4. Criminal Appeal No. 62 of 2016 therefore, stands restored to the file of the High Court. We request the High Court to list the matter immediately for consideration. In case the appellant is unable to engage the services of any advocate of his choice, let services of an Amicus Curiae be ensured so that the cause of the appellant is well represented before the High Court. Since the order of conviction was passed in the year 2016, we request the High Court to dispose of the appeal as early as possible and preferably within six months from today.

5. We have not expressed any opinion on the merits of the matter which will be gone into independently by the trial court at the appropriate stage.

6. The appeal is allowed.

[CONNECTED ORDER]

(2020) 16 Supreme Court Cases 443

(BEFORE UDAY U. LALIT AND INDU MALHOTRA, JJ.)

2J

STATE OF ODISHA .. Petitioner;

Versus

SURENDRA MUNDA .. Respondent.

Review Petition (Crl.) No. 313 of 2020† in Criminal Appeal No. 726 of 2019‡, Order dated September 8, 2020

Criminal Procedure Code, 1973 — S. 374 — Appeal against conviction — Delay in preferring appeal — Not to negate right of appeal inhering in accused — Dismissal of appeal on ground of delay, set aside, and matter remitted to High Court, for considering appeal on merits in *Surendra Munda*, (2020)

1 *Surendra Munda* v. *State of Orissa*, 2016 SCC OnLine Ori 1037

† Arising out of Diary No. 4235 of 2020. Arising from the Judgment and Order in *Surendra Munda* v. *State of Odisha*, (2020) 16 SCC 442 (Supreme Court, Crl. Appeal No. 726 of 2019, dt. 22-4-2019)

‡ Arising from the Judgment and Order in *Surendra Munda* v. *State of Orissa*, 2016 SCC OnLine Ori 1037 (Orissa High Court, Criminal Appeal No. 62 of 2016, dt. 1-8-2016)

16 SCC 442 — Review thereagainst — No merit in — Order under review, affirmed

— Appeal against conviction under S. 302 IPC and award of life imprisonment — Dismissed by High Court on ground of delay of 1192 days in preferring appeal by accused, and not on merits — Supreme Court remitted matter to High Court, for considering appeal on merits — Review by petitioner thereagainst on ground, that view taken by Supreme Court in impugned judgment will have far-reaching consequences on outcome of other cases

— Held, in criminal matters, where life and liberty of person is in question, one's right of appeal has always been accepted and appropriate steps must be taken to effectuate that right — Considerations on account of delay and limitation, ought not to negate right of appeal inhering in accused

— Herein, there is no merit in aforesaid submission so advanced in review — Therefore, order under review, stands affirmed — Constitution of India — Art. 21 — Penal Code, 1860, S. 302 (Paras 4 to 6)

Surendra Munda v. *State of Odisha*, (2020) 16 SCC 442, *affirmed*

Surendra Munda v. *State of Orissa*, 2016 SCC OnLine Ori 1037, *held, reversed*

Review petition dismissed Y-D/65777/SR

Chronological list of cases cited ***on page(s)***

1. (2020) 16 SCC 442, *Surendra Munda* v. *State of Odisha* 445*a-b*
2. 2016 SCC OnLine Ori 1037, *Surendra Munda* v. *State of Orissa* **(held, reversed)** 444*f*, 444*f-g*, 445*a*

ORDER

1. Application for permission to advance oral submissions is rejected.

2. There is delay of 255 days in preferring the review petition. In view of the explanation offered in the application seeking condonation, we condone the delay.

3. The original appellant before this Court was convicted for the offence punishable under Section 302 of the Penal Code, 1860 and was sentenced to suffer life imprisonment. The appeal preferred by him was dismissed[1] by the High Court on the ground of delay of 1192 days in preferring the appeal. The matter was thus, not considered on merits. That order[1] was set aside by this Court and the matter was remitted to the High Court to consider the appeal on merits.

4. In a criminal matter, where the life and liberty of a person is in question, one's right of appeal has always been accepted and appropriate steps must be taken to effectuate that right. The considerations on account of delay and limitation ought not to negate the right of appeal inhering in an accused.

1 *Surendra Munda* v. *State of Orissa*, 2016 SCC OnLine Ori 1037

5. In the circumstances, the order[1] passed by the High Court was set aside and the matter was remitted. In the present review petition, the ground taken is as under:

> "4. That the State petitioner believes that the view taken by this Hon'ble Court in the impugned judgment[2] will have far-reaching consequences on the outcome of other cases, and thus petitioner intends to review of the order[2] passed by this Hon'ble Court."

6. We do not find any merit in the submission so advanced. We, therefore, dismiss this review petition and affirm the order[2] under review.

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1 *Surendra Munda* v. *State of Orissa*, 2016 SCC OnLine Ori 1037
2 *Surendra Munda* v. *State of Odisha*, (2020) 16 SCC 442

(2020) 17 Supreme Court Cases 765

3J

(BEFORE UDAY U. LALIT, VINEET SARAN AND S. RAVINDRA BHAT, JJ.)

SUBEDAR . . Appellant;

Versus

STATE OF UTTAR PRADESH . . Respondent.

Criminal Appeal No. 886 of 2020†, decided on December 18, 2020

Criminal Procedure Code, 1973 — S. 374 — Appeal against conviction — Right of being represented through counsel — Same, held, is part of the due process clause and the right guaranteed under Art. 21 of the Constitution — Thus, disposal of the appeal in absence of any representation on behalf of the appellant, held, impermissible — Appeal restored to file of High Court for disposal afresh in accordance with law

— None appeared on behalf of the appellant to press the appeal and, resultantly, the High Court went into the matter and affirmed the view taken by the trial court — Legality of

— Held, if the advocate representing the cause of the accused, for one reason or the other was not available, it was open to the Court to appoint an Amicus Curiae to assist the Court but the cause in any case could not have been permitted to go unrepresented — Penal Code, 1860 — Ss. 302 and 34 — Constitution of India, Art. 21 (Paras 5 to 8)

Subedar v. *State of U.P.*, 2017 SCC OnLine All 2980, *reversed*

SK-D/67351/SR

Advocates who appeared in this case :
Ms Qurratulain (Advocate-on-Record), Brij Kishore Sah and Anil Kr. Sharma, Advocates, for the Appellant;
Sanjay Kr. Tyagi (Advocate-on-Record), Advocate, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. 2017 SCC OnLine All 2980, *Subedar* v. *State of U.P.* **(reversed)** 765*f-g*, 766*a*, 766*a-b*

ORDER

1. Leave granted. This appeal challenges the order dated 6-4-2017[1] passed by the High Court of Judicature at Allahabad dismissing Criminal Appeal No. 2798 of 1988.

2. The appellant and one Buddhu were convicted under Section 302 read with Section 34 of the Penal Code, 1860 and were sentenced to suffer life imprisonment by the trial court. Criminal Appeals Nos. 2798 and 2882 of 1988 were preferred by the said convicted accused, respectively challenging their

† Arising out of SLP (Crl.) No. 6684 of 2020 (Diary No. 20424 of 2020). Arising from the Judgment and Order in *Subedar* v. *State of U.P.*, 2017 SCC OnLine All 2980 (Allahabad High Court, Criminal Appeal No. 2798 of 1988, dt. 6-4-2017)

1 *Subedar* v. *State of U.P.*, 2017 SCC OnLine All 2980

conviction and sentence. Accused Buddhu expired during the pendency of the appeal and the proceedings in relation to him stood abated.

3. The appeal preferred by the appellant came up before the High Court and opening sentences in the judgment[1] passed by the High Court were as under: (*Subedar case*[1], SCC OnLine All para 1)

> "*1.* List has been revised. None appears on behalf of the appellant to press this appeal, although, name of Shri Malik Sayeed Uddin and Shri C.K. Jha are printed in the cause list, as counsel for the appellant."

Thereafter, the High Court went into the matter and affirmed the view taken by the trial court.

4. One of the submissions urged on behalf of the appellant is that the appeal was disposed of in the absence of any representation on behalf of the appellant.

5. It is well accepted that right of being represented through a counsel is part of due process clause and is referable to the right guaranteed under Article 21 of the Constitution of India.

6. In case the advocate representing the cause of the accused, for one reason or the other was not available, it was open to the Court to appoint an Amicus Curiae to assist the Court but the cause in any case ought not to be allowed to go unrepresented.

7. In the circumstances, we have no other alternative but to set aside the judgment[1] passed by the High Court and to restore Criminal Appeal No. 2798 of 1988 to the file of the High Court to be disposed of afresh.

8. The record indicates that the appellant was on bail while the appeal was pending in the High Court and has since then been taken in custody. In the circumstances, we request the High Court to consider taking up Criminal Appeal No. 2798 of 1988 for hearing at an early date and in order to facilitate the exercise, we direct the Registry of the High Court to list the appeal before the appropriate Court on 11-1-2021 for directions. The appellant shall appear through advocate(s) on 11-1-2021 and the said advocate(s) shall continue to represent the cause of the accused and in case there is any default on the part of the advocate(s), the High Court may consider appointing an Amicus Curiae in the matter to assist the Court.

9. During the pendency of the matter before the High Court, the appellant shall continue to remain in custody.

10. With the aforesaid observations, the appeal is disposed of.

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1 *Subedar* v. *State of U.P.*, 2017 SCC OnLine All 2980

(2020) 19 Supreme Court Cases 178

2J

(BEFORE MOHAN M. SHANTANAGOUDAR AND R. SUBHASH REDDY, JJ.)

SHAIK MUKTHAR AND ANOTHER .. Appellants;

Versus

STATE OF ANDHRA PRADESH (NOW STATE OF TELANGANA) .. Respondent.

Criminal Appeal No. 1753 of 2019†, Order dated February 4, 2020

A. **Criminal Procedure Code, 1973 — S. 374 — Appeal against conviction — Disposal of, by confirming conviction without hearing appellant — Held, is impermissible, because the appellant should not be penalised for his advocate remaining absent on the date of hearing — In such situation, High Court should either appoint an Amicus Curiae or refer the matter to the Legal Services Committee requesting it to appoint an advocate for the appellant**

— High Court having not done so, matter held to be fit for remission to High Court — However, considering period of custody of the appellant and pendency of matter since long time, Supreme Court declined to remit the matter to High Court and decided the same by reappreciating the entire evidence (Paras 2 to 4)

Rakesh v. *State of M.P.*, (2011) 12 SCC 513 : (2012) 1 SCC (Cri) 613, *relied on*

Sk. Mukthar v. *State of A.P.*, 2019 SCC OnLine TS 3367, *reversed in law*

B. **Penal Code, 1860 — S. 498-A — Liability of appellant relatives of husband of deceased, but who lived separately from deceased wife and her husband — Held, the same by itself is not enough to exonerate the appellants, when minor son of the deceased specifically deposed that the appellants despite living separately, also used to harass and beat his mother (Paras 5 to 9)**

C. **Penal Code, 1860 — S. 498-A — Evidence of minor — Reiterated, the same needs to be scrutinised by the court very carefully — Evidence Act, 1872, S. 118 (Paras 5 to 9)**

D. **Penal Code, 1860 — S. 498-A — Charge of cruelty against appellant relatives of husband of deceased, but who lived separately from deceased wife and her husband — Evidence of minor**

— A-1, husband of deceased wife, charged separately under S. 302 and after conviction undergoing sentence of life imprisonment — Appellants, husband's relatives, though found residing separately, but minor son of the deceased specifically deposed that they also used to harass and beat the deceased — This minor witness withstood the test of cross-examination — Thus, High Court held justified in convicting the appellants under S. 498-A — Evidence Act, 1872, S. 118 (Paras 5 to 9)

Sk. Mukthar v. *State of A.P.*, 2019 SCC OnLine TS 3367, *reversed in law* and *modified*

SK-D/67410/SR

† Arising from the Judgment and Order in *Sk. Mukthar* v. *State of A.P.*, 2019 SCC OnLine TS 3367 (Telangana High Court, Criminal Appeal No. 1140 of 2013, dt. 20-3-2019)

Advocates who appeared in this case :

P. Prabhakar, P. Srinivas Reddy and Manoj C. Mishra (Advocate-on-Record), Advocates, for the Appellant;

Ms Bina Madhavan, S. Udaya Kr. Sagar (Advocate-on-Record) and Ms Swati Bhardwaj, Advocates, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. 2019 SCC OnLine TS 3367, *Sk. Mukthar* v. *State of A.P.* **(reversed in law)** 179*b-c*, 179*c-d*
2. (2011) 12 SCC 513 : (2012) 1 SCC (Cri) 613, *Rakesh* v. *State of M.P.* 179*d*

ORDER

1. This appeal is filed questioning the judgment dated 20-3-2019 passed by the High Court of the State of Telangana at Hyderabad in *Sk. Mukthar* v. *State of A.P.*[1] confirming the conviction of the appellants for the offence under Section 498-A of the Penal Code, 1860 ("IPC") and sentencing the appellants to undergo imprisonment for two years. The trial court had sentenced to undergo imprisonment for three years.

2. We find from the judgment[1] of the High Court that the appellants were not heard in the High Court. The appellants' advocate remained absent on the date of hearing. The appellants should not have been penalised for the same.

3. It is by now well settled by a catena of judgments such as the decision of this Court in *Rakesh* v. *State of M.P.*[2], that it is in the interest of justice to appoint an Amicus Curiae to assist the court where the accused is unrepresented. The Court may also refer the matter to the Legal Services Committee, which may appoint an advocate to represent the accused. The High Court, unfortunately, has not chosen to either appoint an Amicus Curiae or to refer the matter to the Legal Services Committee requesting it to appoint an advocate. Hence, the matter is fit to be remitted to the High Court.

4. However, we have chosen to appreciate the evidence placed on record having regard to the fact that the incident occurred in the year 2011 and that the accused have been in custody for about 8 months.

5. It is relevant to note that Accused 1, the husband of the deceased, was charged separately under Section 302 IPC, and was convicted by the trial court as well as the High Court. He has not questioned the judgment of conviction and consequently is undergoing sentence of life imprisonment.

6. The prosecution mainly relies upon the evidence of PW 1 to PW 5 to prove that the appellants have committed the offence punishable under Section 498-A IPC. We have carefully perused the evidence of PW 1 to PW 5 in detail. Though in his examination-in-chief, PW 1 has deposed against these appellants, in the cross-examination, he admits that Accused 2, Appellant 1 herein, was married much prior to the marriage of the deceased with Accused 1 and was residing separately. He has two houses at Chandoor. The mother of

1 2019 SCC OnLine TS 3367
2 (2011) 12 SCC 513 : (2012) 1 SCC (Cri) 613

Accused 2 also resides in an old house situated near the house of Accused 1. Accused 3, the sister of Accused 1, Appellant 2 herein, was also married. PW 2, PW 3 and PW 4 have not deposed anything as against the appellants herein. Thus, virtually, the evidence of PW 1 to PW 4 does not support the case of the prosecution so far as the appellants herein are concerned.

7. However, PW 5, the minor son of the deceased and Accused 1 has specifically deposed that the appellants herein also used to harass and beat the deceased. He also admits that Accused 2 (Appellant 1 herein) is residing in his house independently in the old locality of Chandoor. We are conscious of the well-settled proposition that the evidence of a minor, particularly when he is the sole witness, has to be scrutinised by the Court very carefully.

8. Be that as it may, since PW 5 had deposed certain facts against the appellants and has withstood the test of cross-examination, in our considered opinion, the High Court was justified in maintaining the conviction as against the appellants for the offence punishable under Section 498-A IPC. However, having regard to the entire material on record as well as under the facts and circumstances of this case, we are of the considered view that the interest of justice will be met in case the sentence imposed upon these appellants is reduced to the period already undergone. We have taken into consideration the fact that Accused 2 (Appellant 1 herein) was living in a separate house in a different area along with his aged mother. Accused 3 (Appellant 2 herein) was also a married sister.

9. The appeal is, therefore, allowed in part. The conviction of the appellants for the offence punishable under Section 498-A IPC is maintained. However, the sentence is reduced to the period already undergone. Since the appellants are in custody, they shall be released forthwith if not required in any other case.

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(2021) 2 Supreme Court Cases 735

3J

(BEFORE ASHOK BHUSHAN, R. SUBHASH REDDY AND M.R. SHAH, JJ.)

STATE OF GUJARAT .. Appellant;

Versus

BHALCHANDRA LAXMISHANKAR DAVE .. Respondent.

Criminal Appeal No. 99 of 2021†, decided on February 2, 2021

A. **Public Accountability, Vigilance and Prevention of Corruption — Prevention of Corruption Act, 1988 — S. 7 r/w Ss. 13(1) and 13(2) — Acquittal by High Court — Reversal of — When warranted — Failure on part of High Court to reappreciate entire evidence on record in detail — High Court ought to have appreciated that it was dealing with the offences under the Prevention of Corruption Act, which offences are against the society — Hence, High Court ought to have been more careful and ought to have gone into the matter in detail — Impugned acquittal order set aside and matter remitted for decision afresh in accordance with law**

— Acquittal recorded by High Court by setting aside conviction without adverting to the reasons given by trial court while convicting the accused and without reappreciating the entire evidence on record in detail — Impugned decision of High Court, held, is based on totally erroneous view of law by ignoring the settled legal position — Approach of High Court in not dealing with the evidence, held, is patently illegal leading to grave miscarriage of justice — Criminal Procedure Code, 1973, Ss. 374 and 378

B. **Criminal Procedure Code, 1973 — Ss. 386, 374 and 378 — Appeal against conviction or acquittal — Duty of appellate court in regard to reappreciation of evidence — High Court as first appellate court is required to re-appreciate the entire evidence on record and also the reasoning given by trial court — Non-reappreciation of the evidence on record may affect the case of either the prosecution or the accused**

Held :

On perusal of the impugned judgment and order of acquittal passed by the High Court, it is found that the High Court decision is based on totally erroneous view of law by ignoring the settled legal position. The approach of the High Court in dealing/non-dealing with the evidence was patently illegal leading to grave miscarriage of justice. Therefore, the impugned judgment and order passed by the High Court acquitting the respondent-accused without adverting to the reasons given by the trial court while convicting the accused and without reappreciating the entire evidence on record in detail, cannot be sustained and the same deserves to be quashed and set aside. Therefore, the matter deserves to be remanded to the High

† Arising out of SLP (Crl.) No. 9105 of 2015. Arising from the impugned Judgment and Order in *Bhalchandra Laxmishankar Dave* v. *State of Gujarat*, 2015 SCC OnLine Guj 2471 (Gujarat High Court, Crl. A. No. 92 of 2003, dt. 12-1-2015)

Court to consider and deal with the appeal afresh in accordance with law and on its own merits keeping in mind the observations made hereinabove. The High Court ought to have appreciated that it was dealing with the offences under the Prevention of Corruption Act which offences are against the society. Therefore the High Court ought to have been more careful and ought to have gone in detail. The manner in which the High Court has dealt with the appeal cannot be approved. (Para 6)

Umedbhai Jadavbhai v. *State of Gujarat*, (1978) 1 SCC 228 : 1978 SCC (Cri) 108, *affirmed*

Bhalchandra Laxmishankar Dave v. *State of Gujarat*, 2015 SCC OnLine Guj 2471, *reversed*

SK-D/67324/CR

Advocates who appeared in this case :
Ms Deepanwita Priyanka, Advocate, for the Appellant;
J.S. Attri, Senior Advocate (Haresh Raichura, Advocate), for the Respondent.

Chronological list of cases cited ***on page(s)***

1. 2015 SCC OnLine Guj 2471, *Bhalchandra Laxmishankar Dave* v. *State of Gujarat* **(reversed)** 736*d-e*, 736*g-h*, 737*a*, 737*c-d*, 737*d-e*, 738*d-e*, 738*e*, 738*h*, 739*b*
2. (1978) 1 SCC 228 : 1978 SCC (Cri) 108, *Umedbhai Jadavbhai* v. *State of Gujarat* 738*a-b*

The Judgment of the Court was delivered by

M.R. SHAH, J.— Leave granted. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 12-1-2015 passed by the High Court of Gujarat in *Bhalchandra Laxmishankar Dave* v. *State of Gujarat*[1] by which the High Court has acquitted the respondent herein-original accused for the offences under Section 7 read with Sections 13(1) and 13(2) of the Prevention of Corruption Act (hereinafter referred to as "the Act") by quashing and setting aside the judgment and order of conviction passed by the learned Special Judge, Bharuch, the State of Gujarat has preferred the present appeal.

2. The respondent herein-original accused (hereinafter referred to as "the accused") who was working as Assistant Director in ITI, Gandhi Nagar was charged for the offences punishable under Section 7 read with Sections 13(1) and 13(2) of the Act.

2.1. The learned Special Judge, Bharuch after full-fledged trial and appreciation of the entire evidence on record and by detailed judgment and order convicted the accused under Section 7 read with Sections 13(1) and 13(2) of the Act. The learned Special Judge held the accused guilty and convicted the accused for the aforesaid offences and imposed the sentence of 5 years' imprisonment and with fine of Rs 10,000.

2.2. Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the learned Special Judge in Special ACB Case No. 14 of 2000 — the accused preferred appeal before the High Court being Criminal Appeal No. 92 of 2003. By the impugned judgment[1] and order, the High Court without any detailed reappreciation of the entire evidence on record, has acquitted the accused for the offences for which he was convicted.

1 2015 SCC OnLine Guj 2471

3. Feeling aggrieved and dissatisfied with the impugned judgment[1] and order of acquittal passed by the High Court, the State of Gujarat has preferred the present appeal.

4. We have heard Ms Deepanwita Priyanka, learned advocate appearing on behalf of the State of Gujarat and Shri J.S. Attri, learned Senior Advocate and Shri Haresh Raichura, learned advocate appearing on behalf of the respondent-accused.

4.1. Number of submissions have been made by the learned counsel of the respective parties. However, for the reasons stated hereinbelow, we propose to remand the matter to the High Court, any observation made by this Court may affect either the prosecution or the defence, we refrain from dealing with the submissions made by the learned counsel appearing on behalf of the respective parties on merits.

5. We have gone through the detailed judgment and order of conviction passed by the learned trial court and also the evidence on record laid down by the prosecution as well as the defence. We have perused the impugned judgment[1] and order of acquittal passed by the High Court to ascertain whether the High Court has conformed to the principles while exercising in the criminal appeal against the judgment and order of conviction. We find that the High Court has not strictly proceeded in the manner in which the High Court ought to have while dealing with the appeal against the order of conviction.

5.1. On perusal of the impugned judgment[1] and order of acquittal passed by the High Court, we find that, as such, there is no reappreciation of the entire evidence on record in detail while acquitting the respondent-accused. The High Court has only made general observations on the depositions of the witnesses examined. However, there is no reappreciation of the entire evidence on record in detail, which ought to have been done by the High Court while dealing with the judgment and order of conviction passed by the learned trial court.

5.2. The High Court ought to have appreciated that it was dealing with the first appeal against the order of conviction passed by the learned trial court. Being the first appellate court, the High Court was required to reappreciate the entire evidence on record and also the reasoning given by the learned trial court while convicting the accused. Non-reappreciation of the evidence on record may affect the case of either the prosecution or even the accused. Being the first appellate court, the High Court ought to have re-appreciated the entire evidence on record without any limitation, which might be there while dealing with an appeal against the order of acquittal passed by the learned trial court.

5.3. An appellate court while dealing with an appeal against acquittal passed by the learned trial court, is required to bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent

1 *Bhalchandra Laxmishankar Dave* v. *State of Gujarat*, 2015 SCC OnLine Guj 2471

unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. Therefore, while dealing with the cases of acquittal by the trial court, the appellate court would have certain limitations. Even in the case of acquittal passed by the learned trial court, in *Umedbhai Jadavbhai* v. *State of Gujarat*[2], it is observed and held by this Court that: (SCC p. 233, para 10)

> "*10*. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence."

The High Court would be justified against an acquittal passed by the learned trial court even on reappreciation of the entire evidence independently and come to its own conclusion that acquittal is perverse and manifestly erroneous. However, so far as the appeal against the order of conviction is concerned, there are no such restrictions and the court of appeal has wide powers of appreciation of evidence and the High Court has to reappreciate the entire evidence on record being a the first appellate court. Keeping in mind that once the learned trial court has convicted there shall not be presumption of innocence as would be there in the case of acquittal.

6. On perusal of the impugned judgment[1] and order of acquittal passed by the High Court, we find that the High Court decision[1] is based on totally erroneous view of law by ignoring the settled legal position. The approach of the High Court in dealing/non-dealing with the evidence was patently illegal leading to grave miscarriage of justice. Therefore, we are of the firm opinion that the impugned judgment[1] and order passed by the High Court acquitting the respondent-accused without adverting to the reasons given by the learned trial court while convicting the accused and without reappreciating the entire evidence on record in detail cannot be sustained and the same deserves to be quashed and set aside. We are of the opinion that therefore the matter deserves to be remanded to the High Court to consider and deal with the appeal afresh in accordance with law and on its own merits keeping in mind the observations made hereinabove. The High Court ought to have appreciated that it was dealing with the offences under the Prevention of Corruption Act which offences are against the society. And therefore the High Court ought to have been more careful and ought to have gone in detail. We do not approve the manner in which the High Court has dealt with the appeal.

7. In view of the above and for the reasons stated hereinabove and without expressing anything on merits of the case, the present appeal is allowed. The impugned judgment and order dated 12-1-2015 in *Bhalchandra Laxmishankar Dave* v. *State of Gujarat*[1] passed by the High Court acquitting the accused for

2 (1978) 1 SCC 228 : 1978 SCC (Cri) 108
1 *Bhalchandra Laxmishankar Dave* v. *State of Gujarat*, 2015 SCC OnLine Guj 2471

the offences under the Act for which he was tried is hereby quashed and set aside. The appeal before the High Court is restored to its original file. The High Court to decide and dispose of the appeal in accordance with law and on its own merits bearing in mind the observations made hereinabove. At the cost of repetition, we observe that we have not expressed anything on merits in favour of either prosecution or even the accused and the High Court to decide and dispose[1] of the appeal on its own merits as observed hereinabove.

1 *Bhalchandra Laxmishankar Dave* v. *State of Gujarat*, 2015 SCC OnLine Guj 2471

(2022) 6 Supreme Court Cases 294

3J

(BEFORE UDAY U. LALIT, S. RAVINDRA BHAT AND P.S. NARASIMHA, JJ.)

SANJEEV AND ANOTHER .. Appellants;

Versus

STATE OF HIMACHAL PRADESH .. Respondent.

Criminal Appeal No. 870 of 2016†, decided on March 9, 2022

A. **Narcotics, Intoxicants and Liquor — Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 20 — Reversal of acquittal by High Court — Whether proper — High Court proceeded to consider evidence on record straightaway without considering reasons that had weighed with trial court in acquitting them — Considering totality of circumstances, assessment on facts made by trial court, held, was absolutely correct and did not call for any interference by High Court — Hence, acquittal restored**

— On the day of incident at about 9 p.m., Head Constable *N* (PW 8) along with other police personnel was on patrolling duty in official vehicle — They found appellant-accused sitting by roadside by side of bonfire and a bag was lying on ground near them — As police put searchlight towards direction of appellants, they tried to run away — Police party followed them and after having crossed a distance of about 100 m, they were nabbed — Thereafter, bag was also retrieved which was found to contain charas weighing about 1.5 kg — The investigation was completed and challan was put up before court after completing all codal formalities

— Entire evidence was considered by trial court and in its opinion, broadly three features emerged from evidence: (1) report of FSL did not show anywhere that resin was of cannabis plant in order to bring it within definition of "Charas"; (2) police did not give any option to appellants to be searched before a Magistrate or a competent Gazetted Officer; and (3) going by evidence on record, case of prosecution could not be believed

— Further, arrest memos do not reflect that any option or choice was given to accused before their personal search was undertaken — It is true that personal search did not result in recovery of any contraband material but non-compliance of requirement of affording an option, was one of reasons which weighed with trial court in disbelieving case of prosecution

— Considering totality of circumstances, assessment on facts made by trial court, held, was absolutely correct and did not call for any interference by High Court (Paras 4 to 11)

B. **Criminal Procedure Code, 1973 — Ss. 378 and 386(a) — Appeal against acquittal — Interference by appellate court with order of acquittal — When warranted — Principles reiterated (Paras 7 to 9)**

† Arising from the Judgments and Orders in *State of H.P.* v. *Sanjeev*, 2016 SCC OnLine HP 1855 (Himachal Pradesh High Court, Criminal Appeal No. 546 of 2012, dt. 26-5-2016) and *State of H.P.* v. *Sanjeev*, 2016 SCC OnLine HP 4298 (Himachal Pradesh High Court, Criminal Appeal No. 546 of 2012, dt. 20-6-2016) **[Reversed]**

Anwar Ali v. *State of H.P.*, (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395; *Atley* v. *State of U.P.*, AIR 1955 SC 807, *relied on*

Vijay Mohan Singh v. *State of Karnataka*, (2019) 5 SCC 436 : (2019) 2 SCC (Cri) 586; *Sambasivan* v. *State of Kerala*, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320; *Ramesh Babulal Doshi* v. *State of Gujarat*, (1996) 9 SCC 225 : 1996 SCC (Cri) 972, *affirmed*

State of H.P. v. *Sanjeev*, 2016 SCC OnLine HP 1855; *State of H.P.* v. *Sanjeev*, 2016 SCC OnLine HP 4298, *reversed*

Appeal allowed Y-D/68642/CR

Advocates who appeared in this case :

A. Sirajudeen, Senior Advocate (Amicus Curiae) [S. Mahendran (Advocate-on-Record), Parnam Prabhakar, Aditya Dhawan, Chander Shekhar Ashri (Advocate-on-Record) and Abhinav Mukerji (Advocate-on-Record), Advocates], for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395, *Anwar Ali* v. *State of H.P.* 297*c*
2. (2019) 5 SCC 436 : (2019) 2 SCC (Cri) 586, *Vijay Mohan Singh* v. *State of Karnataka* 297*b-c*
3. 2016 SCC OnLine HP 4298, *State of H.P.* v. *Sanjeev* **(reversed)** 295*e-f*, 298*c-d*
4. 2016 SCC OnLine HP 1855, *State of H.P.* v. *Sanjeev* **(reversed)** 295*e*, 295*f-g*, 298*c-d*
5. (1998) 5 SCC 412 : 1998 SCC (Cri) 1320, *Sambasivan* v. *State of Kerala* 297*c-d*
6. (1996) 9 SCC 225 : 1996 SCC (Cri) 972, *Ramesh Babulal Doshi* v. *State of Gujarat* 297*e*
7. AIR 1955 SC 807, *Atley* v. *State of U.P.* 297*c*

The Judgment of the Court was delivered by

UDAY U. LALIT, J.— This appeal under the provisions of Section 379 of the Criminal Procedure Code, 1973 read with Section 2(A) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 is directed against the judgment dated 26-5-2016[1] passed by the High Court (the High Court of Himachal Pradesh at Shimla "the High Court") reversing the acquittal rendered in favour of the appellants by the trial court (the Special Judge, Fast Track, Kullu, Himachal Pradesh "trial court") and order dated 20-6-2016[2] passed by the High Court imposing punishment of rigorous imprisonment of ten years, with imposition of fine in the sum of Rs 1,00,000 (Rupees one lakh only) in respect of the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act" for short).

2. For the sake of facility, we may reproduce the case of the prosecution as narrated by the High Court in its judgment and order[1] under challenge: (*Sanjeev case*[1], SCC OnLine HP para 2)

> "2. The case of the prosecution, in a nutshell, is that on 22-12-2010, HC Nand Lal along with other police personnel was on patrolling duty in official vehicle. They spotted the accused of Ruara Bridge sitting by the side of the road. The accused tried to abscond. They were apprehended. The bag was also lifted and brought to the vehicle. Word "COASTER" was inscribed on the red-coloured bag. The place was solitary and no

1 *State of H.P.* v. *Sanjeev*, 2016 SCC OnLine HP 1855
2 *State of H.P.* v. *Sanjeev*, 2016 SCC OnLine HP 4298

independent person was available on the spot. The IO sent Const. Om Prakash (PW 7) to search for independent witnesses, however, he could not trace any independent witnesses. The IO associated Const. Om Prakash (PW 7) and Const. Bhupinder Singh as witnesses and checked the bag. On checking, stick and pancake like charas was recovered from the bag and some of the sticks were found to be wrapped in a polythene. The charas was weighed with the help of electronic scale. It weighed 1 kg 500 grams. The charas was repacked in the same bag and bag was sealed in a cloth parcel with three seals of seal impressions "A". The specimen of seal was obtained separately. Seal after use was handed over to Const. Om Prakash (PW 7). The IO filled in the NCB-I form in triplicate. Thereafter, IO prepared rukka. It was sent to the Police Station. FIR Ext. PW 2/B was registered. The IO prepared the spot map and handed over the case properly for resealing to ASI Naresh Chand (PW 2). He resealed the same with three seals of seal impression "T" and filled in Columns 9 to 11 of NCB-I form. On 23-12-2010, IO prepared the special report and produced the same before Dy. S.P. Kullu. ASI Naresh Chand deposited the parcel containing charas sealed with seal "A" and resealed with seal impression "T" along with NCB-I form in triplicate with MHC Chaman Lal, PW 1. He made necessary entry in the relevant register at Sr. No. 149. The case property was sent to FSL, Junga. The report of the FSL is Ext. PX. The investigation was completed and the challan was put up before the Court after completing all the codal formalities."

3. The prosecution mainly relied upon the testimonies of PW 7 and PW 8, namely, Constable Om Prakash and Head Constable Nand Lal respectively. According to these witnesses, on the day in question at about 9.00 p.m. when the police party had reached the other side of the Ruara Bridge, they found the appellants sitting by the side of bonfire and a bag was lying on the ground near them. As the police put searchlight towards the direction of the appellants, the appellants tried to run away. The police party followed them and after having crossed a distance of about 100 m, they were nabbed. Thereafter, the bag was also retrieved which was found to contain charas weighing about 1.5 kg. According to the witnesses, the electronic weighing scale which was with the police party was utilised to check the weight of the contraband. Thereafter, the procedure for taking personal search of the accused was followed.

4. The entire evidence was considered by the trial court and in the opinion of the trial court, broadly three features emerged from the evidence:

1. The report of the FSL Ext. PX did not show anywhere that the resin was of cannabis plant in order to bring it within the definition of "Charas".

2. The police did not give any option to the appellants to be searched before a Magistrate or a competent Gazetted Officer.

3. Going by the evidence on record, the case of the prosecution could not be believed.

With this view, the trial court by its judgment and order dated 31-8-2012 acquitted the appellants of the offence for which they were charged.

5. The State being aggrieved preferred Criminal Appeal No. 546 of 2012 in the High Court, which appeal was allowed by the High Court by its judgment under challenge. By a subsequent order, the sentence as stated hereinabove was imposed upon the appellant.

6. In this appeal, we have heard Mr A. Sirajudeen, learned Senior Advocate assisted by Mr S. Mahendran and Mr Parnam Prabhakar, learned advocates, and Mr Aditya Dhawan, learned advocate for the appellants and Mr Abhinav Mukerji, learned advocate for the State.

7. It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see *Vijay Mohan Singh* v. *State of Karnataka*[3], *Anwar Ali* v. *State of H.P.*[4]).

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see *Atley* v. *State of U.P.*[5]).

7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see *Sambasivan* v. *State of Kerala*[6]).

8. A perusal of the judgment passed by the High Court does not show that the High Court had considered the matter from the perspective stated above. As a matter of fact, the High Court proceeded to consider the evidence on record straightaway without considering the reasons that had weighed with the trial court.

9. The approach to be adopted was laid down by this Court in *Ramesh Babulal Doshi* v. *State of Gujarat*[7] as under: (SCC p. 229, para 7)

> "*7.* Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the abovequoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous

3 (2019) 5 SCC 436, para 31 : (2019) 2 SCC (Cri) 586
4 (2020) 10 SCC 166, para 14.3 : (2021) 1 SCC (Cri) 395
5 AIR 1955 SC 807 at p. 809
6 (1998) 5 SCC 412, para 8 : 1998 SCC (Cri) 1320
7 (1996) 9 SCC 225 : 1996 SCC (Cri) 972

or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then—and then only—reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial court are sustainable or not."

10. We have checked the original record to satisfy ourselves. Exts. PW 8/B, PW 8/C, PW 8/D and PW 8/E, which are arrest memos, do not reflect that any option or choice was given to the accused before their personal search was undertaken. It is true that the personal search did not result in recovery of any contraband material but the non-compliance of requirement of affording an option, was one of the reasons which weighed with the trial court in disbelieving the case of the prosecution.

11. Considering the totality of the circumstances, in our view, the assessment on facts made by the trial court was absolutely correct and did not call for any interference by the High Court. We, therefore, allow this appeal, set aside the judgment and order[1, 2] passed by the High Court and restore the order of acquittal recorded by the trial court. The fine, if any, paid by the appellants be returned to them. The appellants shall be set at liberty forthwith unless their custody is required in connection with any other crime.

12. We express our gratitude for the assistance rendered by Mr A. Sirajudeen, learned Senior Advocate, Mr S. Mahendran and Mr Parnam Prabhakar, learned advocates, who appeared on behalf of the Supreme Court Legal Services Committee.

1 *State of H.P.* v. *Sanjeev*, 2016 SCC OnLine HP 1855
2 *State of H.P.* v. *Sanjeev*, 2016 SCC OnLine HP 4298