# BAIL AND ACQUITTAL JUDGEMENTS

2024(2)GBAJ445

**IN THE SUPREME COURT OF INDIA**

[From PATNA HIGH COURT]

[Before Bela M Trivedi; Satish Chandra Sharma]

Criminal Appeal No 1031 of 2015, 1578 of 2017, 765 of 2017, 1579 of 2017

**dated 25/09/2024**

*Vijay Singh@vijay Kr Sharma*

**Versus**

*State of Bihar*

**ACQUITTAL IN MURDER CASE**

Indian Penal Code, 1860 Sec. 380, Sec. 34, Sec. 449, Sec. 302, Sec. 364, Sec. 450, Sec. 342, Sec. 120B, Sec. 323, Sec. 506 - Code of Criminal Procedure, 1973 Sec. 313 - Acquittal in Murder Case - Appellant convicted under IPC Sec. 302 and 364 for abduction and murder in 1985 - Conviction based on circumstantial evidence and testimonies of eyewitnesses - Appellant argued inconsistencies in witness statements, motive, and time of death - Court found that testimonies were unreliable and circumstantial evidence was insufficient to establish guilt beyond reasonable doubt - High Court's reversal of acquittal lacked legal grounds - Conviction set aside, and all accused acquitted - Appeals Allowed

**Law Point: Conviction based on circumstantial evidence requires a complete and reliable chain of proof, and failure to establish the foundational facts or credible witness testimony warrants acquittal.**

ભારતીય દંડ સંહિતા, ૧૮૬૦ સે. ૩૮૦, સેક. ૩૪, સેક. ૪૪૯, સેક. ૩૦૨, સેક. ૩૬૪, સેક. ૪૫૦, સેક. ૩૪૨, સેક. ૧૨૦બી, સેક. ૩૨૩, સેક. ૫૦૬ - ફોજદારી કાર્યરીતીની સંહિતા, ૧૯૭૩ સેક. ૩૧૩ - હત્યા કેસમાં નિર્દોષ છુટકારો - અપીલકર્તાને ૧૯૮૫માં અપહરણ અને હત્યા માટે આઇપીસી કલમ ૩૦૨ અને ૩૬૪ હેઠળ દોષિત ઠરાવવામાં આવ્યો હતો. - સંજોગોવશાત્ પુરાવા અને પ્રત્યક્ષદર્શીઓની જુબાનીઓના આધારે દોષિત ઠરાવવામાં આવે છે - અપીલકર્તાએ સાક્ષીના નિવેદનો, હેતુ અને મૃત્યુના સમયમાં અસંગતતાઓની દલીલ કરી - અદાલતે શોધી કાઢ્યું હતું કે જુબાનીઓ અવિશ્વસનીય હતી અને વાજબી શંકાની બહાર અપરાધ સ્થાપિત કરવા માટે સંયોગાત્મક પુરાવા

અપૂરતા હતા - હાઈકોર્ટના નિર્દોષ છુટકારાને પલટાવવામાં કાયદાકીય આધારોનો અભાવ હતો - દોષિત ઠરાવેલ રદ કરવામા આવ્યું, અને તમામ આરોપીઓને નિર્દોષ જાહેર કર્યા - અપીલની મંજૂરી

કાયદાનો મુદ્દો: સંજોગોવશાત્ પુરાવાના આધારે દોષિત ઠરાવવા માટે પુરાવાની સંપૂર્ણ અને વિશ્વસનીય સાંકળની જરૂર હોય છે, અને પાયાના તથ્યો સ્થાપિત કરવામાં નિષ્ફળતા અથવા વિશ્વસનીય સાક્ષીની જુબાની નિર્દોષ જાહેર કરે છે.

**Acts Referred:**

Indian Penal Code, 1860 Sec. 380, Sec. 34, Sec. 449, Sec. 302, Sec. 364, Sec. 450, Sec. 342, Sec. 120B, Sec. 323, Sec. 506

Code of Criminal Procedure, 1973 Sec. 313

**JUDGEMENT**

**Satish Chandra Sharma, J.- [1]** On 30.08.1985, Neelam breathed her last in Simaltalla, PS Sikandra, District Munger, Bihar. The factum of her death was discovered in furtherance of the written report lodged by the Criminal Appeal No. 1031/2015 and others Page 2 of 26 informant and brother-in-law of the deceased, namely, Ramanand Singh (examined as PW18 before the Trial Court ) wherein he alleged that Neelam was abducted by seven persons from their house in an incident which occurred at around 10:00 PM on the said day. On the basis of this information, an FIR bearing no. 127 of 1985 was lodged at PS Sikandra and investigation was commenced which led to the filing of a chargesheet against the seven accused persons, namely Krishna Nandan Singh (Accused No. 1), Ram Nandan Singh (Accused No. 2), Raj Nandan Singh (Accused No. 3), Shyam Nandan Singh (Accused No. 4), Bhagwan Singh (Accused No. 5), Vijay Singh (Accused No. 6) and Tanik Singh (Accused No. 7).

**[2]** The Trial Court charged all seven accused persons for the commission of offences punishable under Sections 323, 302, 364, 449, 450, 380/34 and 120-B of the Indian Penal Code, 1860. Later, accused nos. 6 and 7 were distinctly charged for the commission of offences punishable under Sections 342, 506 read with Section 34 of IPC. After trial, the Trial Court, vide order dated 05.06.1992, convicted the accused persons listed as accused nos. 1, 2, 3, 4 and 5 for the commission of offences under Section 302/34 and 364/34 of IPC. They were acquitted of all other charges, and accused nos. 6 and 7 were acquitted of all the charges.

**[3]** The convicts preferred an appeal before the Patna High Court against the order of conviction and the State preferred an appeal before the High Court against the order of acquittal of the two accused persons. The Patna High Court, vide a common

judgment dated 26.03.2015, upheld the conviction of the five convicts and set aside the acquittal of accused nos. 6 and 7 by finding them guilty of the commission of offences under Sections 364/34 and 302/34 of IPC. Accordingly, accused nos. 6 and 7 were also convicted and were sentenced to undergo rigorous life imprisonment on each count. The present batch of appeals assail the order/judgment dated 26.03.2015 of the Patna High Court.

**BRIEF FACTS**

**[4]** Shorn of unnecessary details, the facts reveal that deceased Neelam was the wife of one Ashok Kumar who happened to be the son of PW3/Ganesh Prasad Singh, and the informant PW18/Ramanand Singh was the brother of Ashok Kumar. The informant s case was that at the relevant point of time, the deceased was residing with her husband and the informant in the house belonging to her late father Jang Bahadur Singh, who belonged to Simaltalla. The house was partially occupied by the deceased, her husband and her brother-in-law and the remaining portion was rented out and tenants were residing in those portions.

**[5]** As per the prosecution case, on 30.08.1985 at about 10:00 PM, PW18 was sitting outside the house on a rickshaw along with one Doman Tenti, Daso Mistry and Soordas, and Neelam was sleeping inside the house. Her husband, Ashok Kumar, had gone to his native place Ghogsha. Suddenly, the seven accused persons, including the appellants before us, came from north direction along with 15 other unknown assailants. Accused Vijay Singh/A-6 caught hold of the informant/PW18 and as soon as he raised alarm and started shouting, two unknown persons pointed out pistols towards him and directed him to maintain silence. Thereafter, the accused persons who had caught the informant, assaulted him with fists and slaps, and confined him near the well situated on the north side of the house. Meanwhile, A-1 entered the house with 5-7 other accused persons by getting the house unlatched through a resident namely Kumud Ranjan Singh and dragged Neelam out of the house. As soon as they dragged her out, four persons caught hold of Neelam by her arms and legs, lifted her and started moving towards Lohanda. As per the informant, the accused persons also picked up two sarees, two blouses, two petticoats and a pair of slippers from Neelam s room while going out.

**[6]** As the informant raised alarm, other people of the mohalla also gathered around including PW2 Vinay Kumar Singh, PW4 Chandra Shekhar Prasad Singh and PW5 Ram Naresh Singh. The Criminal Appeal No. 1031/2015 and others Page 5 of 26 said three witnesses witnessed the accused persons taking away Neelam but could not stop them. The informant explained that no one dared to follow the accused persons as they had pointed pistols and had threatened of dire consequences. The informant also explained the motive behind the commission of the crime. It transpires from his statement that Neelam s late father Jang Bahadur Singh had no son and his house was in possession of his daughter Neelam. She was abducted in order to forcefully obtain

the possession of the house belonging to her father. The second limb of motive stems from the pending litigation between A-1 to A-5 (appellants) on one side and deceased Neelam, her maternal grandfather and her two sisters on the other side. The accused persons had obtained letters of administration and probate of the Will left by late Jang Bahadur Singh from the competent court and the said order came to be challenged before the Patna High Court by the deceased, her maternal grandfather and younger sisters. In the said appeal, the Patna High Court had injuncted the accused persons from alienating any part of the property. The High Court also restrained the execution of the probate of the Will by restraining the delivery of possession of the property to the accused persons. Thus, deceased Neelam was residing in her father s house along with her husband and brother-in-law in order to retain the possession of the property. In this backdrop, the matter went for trial.

**BEFORE THE TRIAL COURT**

**[7]** The Trial Court, while acquitting A-6 and A-7, observed that the motive attributed for the commission of the crime was not attributable to the said two accused persons as no interest of theirs could be disclosed in the pending litigation. Further, it also found that A-6 was not named in the FIR registered upon the information supplied by PW18 and in his oral testimony, no statement of assault by A-6 and A-7 was given by him. It further held that no evidence sur-faced during the trial to indicate the participation of A-6 and A-7 in the acts of abduction and commission of murder.

**[8]** While convicting A-1 to A-5 on the charges under Sections 302/34 and 364/34 of IPC, the Trial Court primarily relied upon the oral testimonies of PW18/informant, PW2, PW4 and PW5. The motive for the commission of the offence was supplied by the pending legal dispute relating to the property belonging to late Jang Bahadur Singh. The Court also replied upon circumstantial evidence borne out from the testimonies of PW7 (maternal uncle of the de-ceased), PW3 (father-in-law of the deceased), PW23 (sister of the deceased) and PW13 (doctor) to arrive at the finding of guilt.

**BEFORE THE HIGH COURT**

**[9]** A reading of the impugned judgment passed by the High Court suggests that the High Court carried out a fresh appreciation of evidence. The High Court firstly examined the question whether Neelam was actually residing in the house from which she was abducted. Relying upon the testimonies of PW7 (maternal uncle of deceased), PW18 (broth-er-in-law of deceased and informant) and PW21 (Investigating Officer), the Court concluded that Neelam was indeed re-siding in the said house. In doing so, the Court discarded the fact that the other independent occupants of the house such as Ram Chabila Singh, his son, Kumud Ranjan Singh etc. did not come in support of the said fact. To overcome this deficiency, the Court relied upon the statements of PW21 and PW23 (sister of deceased) that some make-up articles were found in a bag lying in

the room, which was suggestive of the fact that a woman was residing in the said room.

**[10]** In further consideration, the High Court excluded the evidence of PW5 for the reason that his presence at the place of incident was doubtful. For, PW5 deposed that he was heading towards his home from Deoghar and on the way from Lakhisarai to Simaltalla, he stopped at Sikandra Chowk along with PW2 and PW4. It was at this point that they heard the hulla and ended up witnessing the commission of offence. The High Court took note of the fact that while going from Deoghar to Simaltalla, Lakhisarai and Ghogsha would come first and thus, there was no reason for PW5 to come all the way to Sikandra Chowk if he was going to his home in Ghogsha as he could have directly proceeded from Lakhisarai to Ghogsha. Nevertheless, the High Court duly relied upon the evidence of PW2, PW4 and PW18 as well as on circumstantial evidence comprising of the testimonies of PW23, PW13 (doctor) and absence of suitable explanation in the statements of accused persons under Section 313 of the Code of Criminal Procedure, 1973 as regards the fatal injuries suffered by the deceased. Thus, the High Court upheld the finding of guilt of A-1 to A-5.

**[11]** As regards A-6 and A-7, the High Court reversed the finding of acquittal of the Trial Court into that of conviction. Primarily, the High Court observed that the said two accused persons were acquitted on the basis of the exonerating testimony of PW5 and the same cannot be sustained as the testimony of PW5 has been excluded by the High Court in appeal. Further, the Court held that the testimonies of PW2, PW4 and PW18 were consistent regarding the participation of A-6 and A-7 and thus, they were convicted for the commission of the offences under Sections 364 and 302 of IPC read with Section 34 of IPC. The applicability of Section 34 IPC was based on the fact that A-6 and A-7 had confined PW18 near the well in order to eliminate any Criminal Appeal No. 1031/2015 and others Page 9 of 26 chances of resistance in the acts committed by the other five accused per-sons.

**SUBMISSIONS**

**[12]** On behalf of A-6 and A-7, it is submitted that there was no motive for the said accused persons to have indulged in the commission of the offence in question. The motive, if any, existed only for the remaining five accused persons who were interested in the outcome of the pending litigation between the parties. It is further contended that the High Court ought not to have entered into the exercise of re-appreciation of the entire evidence without finding any infirmity in the view taken by the Trial Court. To buttress this submission, it is submitted that since the view taken by the Trial Court was a possible view, it could not have been disturbed by the High Court in appeal. In this regard, reliance has been placed upon the decisions of this Court in **State of Goa v. Sanjay Thakran , Chandrappa v. State of Karnataka , Nepal Singh v. State of Haryana , Kashiram v. State of M.P. , Labh Singh v. State of Punjab and Suratlal v. State of M.P. .**

**[13]** It is further submitted that no reliance could be placed upon the testimonies of PW2 and PW4 as their presence at the spot was doubtful. Further, if they were 400 yards away when hue and cry was raised, they could not have seen A-6 taking away PW18 towards the well as the said fact took place prior to the hue and cry. It is further submitted that in the FIR, no pistol was assigned to A-6, whereas, the said fact was brought forward at the time of evidence. The appellants have also raised a question regarding the time of incident on the basis of medical evidence. It is stated that the post-mortem report indicated that halfdigested food was found in the stomach of the deceased, whereas, the informant PW18 deposed that the incident took place immediately after dinner. If such was the case, the death ought to have occurred around 1-2 AM in the intervening night of 30.08.1985-31.08.1985, but the post-mortem report, based on the post-mortem conducted at around 05:30 PM on 31.08.1985, indicated that death took place about 24 hours ago and thus, the time of death was around 05:00 PM on 30.08.1985 and not 10:00 PM, as alleged.

**[14]** The appellants have also submitted that the prosecution has not proved that the deceased was actually residing in the concerned house at Simaltalla.

**[15]** Per contra, it is submitted on behalf of the State that mere non-examination of some independent witnesses shall not be fatal to the case of the prosecution. Reliance has been placed upon the decision of this Court in **Rai Saheb & ors. v. State of Haryana** to contend that at times, independent witnesses may not come forward due to fear. It is further submitted that the High Court has correctly appreciated the evidence in order to arrive at the finding of guilt of the accused persons. It is further submitted that the testimonies of PW2, PW4 and PW18 are consistent and the High Court has correctly placed reliance upon their testimonies. As regards motive as well, it is submitted that the evidence is sufficient to reveal motive for the commission of the crime.

**[16]** We have heard learned counsels for the appellants as well as for the State. We have also carefully examined the record.

**DISCUSSION**

**[17]** In light of the rival contentions raised by the parties, the principal issue that arises before the Court is whether the finding of guilt of the appellants arrived at by the High Court is sustainable in light of the evidence on record. As a corollary of this issue, it also needs to be examined whether the approach of the High Court was in line with the settled law for reversing an acquittal into conviction in a criminal appeal.

**[18]** After two rounds of litigation before the Trial Court and the High Court, it is fairly certain the case is to be examined only with respect to the offences under Sections 364 and 302 of IPC read with Section 34 IPC. With respect to the offence under Section 364 IPC, the case of the prosecution is based on direct oral evidence, and with respect to the offence under Section 302 IPC, the case of the prosecution is

essentially based on circumstantial evidence as no direct evidence of the commission of murder could be collected. However, it is quite evident that the offence of murder was committed after the commission of the offence of abduction. There is a sequential relationship between the two offences and thus, in order to set up a case for the commission of the offence of murder, it is necessary to prove the commission of the offence of abduction by the accused persons/appellants. For, the chain, in a case based on circumstantial evidence, must be complete and consistent.

**[19]** In order to prove the offence under Section 364 IPC, the prosecution has relied upon the oral testimonies of four eye witnesses PW-2, PW-4, PW-5 and PW-18. Their testimonies have been assailed on various counts. The appellants have termed the said witnesses as interested and chance witnesses. The former charge originates from the fact that the witnesses were related to the deceased, and the latter charge originates from the fact that the witnesses had no rea-son to be present at the place of offence and they just appeared unexpectedly as a matter of chance. Let us examine both the aspects. We may first examine the testimonies of the witnesses independently, without going into their relationship with the deceased.

**[20]** The informant PW18 has deposed that he was standing near a rickshaw outside his house and the deceased was sleeping inside the house. PW18 was standing along with three independent persons namely, Doman Tenti, Daso Mistry and Soordas. The seven accused persons came along with 15 other persons. A-6 and A-7, along with unknown persons, first came to PW18 and took him away towards the well and confined him there. Thereafter, the remaining accused persons, along with other unknown assailants, entered the house wherein the deceased was sleeping. Interestingly, as per the version of the informant, the house was bolted from inside and was opened by a tenant namely Ku-mud Ranjan Singh. The problem with the informant s version begins from this point itself. As per his version, the first eye witnesses of the incident ought to have been Doman Tenti, Daso Mistry, Soordas and Kumud Ranjan Singh. One person, namely Soordas, was stated to be blind and thus, he may be excluded. Nevertheless, the prosecution ought to have examined the three natural witnesses of the incident namely, Doman Tenti, Daso Mistry and Kumud Ranjan Singh. There is no explanation for non-examination of the natural eye witnesses. The version becomes more doubtful when it is examined in light of his statement that he could not prevent the accused persons as A-6 had threatened him with a pistol. In the FIR, no pistol has been attributed to A-6, whereas in the statement recorded before the Trial Court, this fact was introduced for the first time, which is indicative of improvement. Furthermore, PW18 got it recorded in the FIR that A-6 and others had assaulted him with fists and slaps, but the said fact was not deposed before the Trial Court in his examination in chief. The discrepancy assumes greater seriousness in light of the fact that no pistol has been recovered from any of the accused persons and if the factum of branding of pistol is un-der the cloud of doubt, the entire conduct of PW18 becomes doubtful and unnatural, as he did not try to

prevent the accused persons from entering the premises or from abducting the deceased or from taking away the deceased on their shoulders in front of his eyes as he was the brother-in-law of the deceased.

**[21]** The other eye witnesses, PW2, PW4 and PW5, de-posed collectively in favour of the prosecution as they had arrived at the scene of crime together. At around 10:00 PM on the fateful night, the said eye witnesses happened to be present at Sikandra Chowk and they heard some hue and cry at the house of the deceased. The witnesses were coming together in a jeep from Lakhisarai and were going towards their home in Ghogsha village, the village wherein the deceased was married and also the native village of PW18/informant. PW2 was the driver of PW4. The testimo-nies of the said PWs have made it clear that while coming from Lakhisarai to Sikandra Chowk, Ghogsha came first, followed by Lohanda and Simaltalla. In such circumstances, their presence at Sikandra Chowk at 10:00 PM must be explained to the satisfaction of the Court. For, if they were going to their village, there was no occasion for them to come to Simaltalla as it did not fall on their way. But no such ex-planation is forthcoming from the material on record.

**[22]** Interestingly, this lacuna was duly noted by the High Court with respect to PW5 as there was no reason for him to be present at Sikandra Chowk at the time of incident and his testimony was excluded. However, the same logic was not extended to the testimony of PW4 as well, as it was equally improbable for him to be present at Sikandra Chowk at 10:00 PM on the date of incident. His visit to Sikandra Chowk was not necessitated for going to his village. Even otherwise, since the three eye witnesses were similarly placed as per their own version, the rejection of testimony of one witness ought to have raised a natural doubt on the testimonies of the other two witnesses unless they had a better explanation. However, no such doubt was entertained by the High Court and the impugned judgment offers no explanation for the same. In light of their own testimonies, none of the three eye witnesses were required to visit Sikandra Chowk or Simaltalla for going to their village.

**[23]** The testimonies of the eye witnesses are also impeachable in light of the other evidence on record. PW21 was the investigating officer in the case and he had examined the aforesaid PWs as eye witnesses of the incident. The version put forth by the eye witnesses meets a serious doubt when examined in light of the evidence of DW3 and DW4, the concerned Deputy Superintendent and Superintendent of Police respectively who had supervised the investigation of the present case. Both these officers were examined as defence witnesses on behalf of the appellants. As per the supervision notes prepared by DW3 during the course of investigation, PW2 and PW4 got to know about the incident only when PW18 came running to them after the incident. PW2, at that time, was sitting in a hotel with Umesh Singh to have prasad . Similarly, the evidence of DW4 indicates that on the date of incident, at around 10:00 PM, PW4 was coming from Lakhisarai in his jeep and he saw six-seven persons

fleeing away in a jeep and he identified them as the accused persons. Thus, PW4 entered the scene after the commission of offence and he did not witness the act of abduction. The testimony of PW2 strengthens the doubt as he deposed that when they reached the police station after the incident with PW18, neither him nor PW4 in-formed the IO that they had directly seen the incident. The stark difference between the versions put forth by the PW21 and DW3/DW4 raises serious concerns regarding the fairness of investigation conducted by PW21 and it is a reasonable possibility that the eye witnesses were brought in to create a fool proof case. The evidence of DW3 and DW4, both senior officers who had exercised supervision over the investigation conducted by PW21, indicates that the so- called eye witnesses of the incident were actually accessories after the fact and not accessories to the fact.

**[24]** The second limb of the objection against the testimonies of the eye witnesses is that none of the eye witnesses is an independent witness of fact. Ordinarily, there is no rule of law to discard the testimonies of the witnesses merely be-cause they were known to the victim or belonged to her family. For, an offence may be committed in circumstances that only the family members are present at the place of occurrence in natural course. However, the present case does not fall in such category. In the facts of the present case, the natural presence of the eye witnesses at the place of occurrence is under serious doubt, as discussed above, and for unexplained reasons, the naturally present public persons were not examined as witnesses in the matter. The nonexamination of natural witnesses such as Doman Tenti, Daso Mistry, Soordas, Kumud Ranjan Singh and many other neighbours who admittedly came out of their houses to witness the offence, coupled with the fact that the projected eye witnesses failed to explain their presence at the place of occurrence, renders the entire version of the prosecution as improbable and unreliable. The eye witnesses, being family members, were apparently approached by PW18 who in-formed them about the incident and later, their versions were fabricated to make the case credible. Notably, when the version put forth by the interested witnesses comes under a shadow of doubt, the rule of prudence demands that the independent public witnesses must be examined and corroborating material must be gathered. More so, when public witnesses were readily available and the offence has not taken place in the bounds of closed walls.

**[25]** Pertinently, the conduct of the eye witnesses also ap-pears to be unnatural considering that they were all relatives of the deceased. Firstly, PW18 did not try to prevent the ab-duction. Even if it is believed that he was held against a pistol, the statement regarding the existence of pistol comes as an improvement from his first information given to the police, as already noted above. Nonetheless, it is admitted that PW2, PW4 and PW5 came in a jeep and they saw the accused persons leaving with Neelam after abducting her. It is also admitted that they had identified the accused persons, who were essentially the relatives of the eye witnesses. In such circumstances, as per natural human conduct, the least that they could have done was to follow the accused persons in their jeep. They admittedly had a ready vehicle with them. Despite

so, there was no such attempt on their part, so much so that the dead body of Neelam was not even discovered until the following morning as none of the eye witnesses had any clue as to where the accused persons had taken away the deceased after abducting her.

**[26]** One crucial foundational fact in the present case is that the deceased was residing in her father s house at Simaltalla. Although, the Trial Court and High Court have not doubted the said fact, we have our reservations regarding the same. In addition to the statements of PW18 (informant), PW23 (sister of deceased) and PW7 (maternal uncle of deceased), no other witness has deposed to prove the factum of residence. The admitted evidence on record sufficiently indicates that various other tenants were residing in the same house, including Kumud Ranjan Singh, Education Officer Ram Chabila Singh along with his daughter and son.

**[27]** The investigating officer PW21 had inspected the house and no direct material, except some make-up articles, could be gathered so as to indicate that Neelam was actually residing there. Admittedly, another woman namely, Chando Devi (sister of Ram Chabila Singh) was also residing in the same portion of the house. The High Court did take note of this fact but explained it away by observing that since Chando Devi was a widow, the make-up articles could not have belonged to her as there was no need for her to put on make-up being a widow. In our opinion, the observation of the High Court is not only legally untenable but also highly objectionable. A sweeping observation of this nature is not commensurate with the sensitivity and neutrality expected from a court of law, specifically when the same is not made out from any evidence on record.

**[28]** Be that as it may, mere presence of certain make-up articles cannot be a conclusive proof of the fact that the deceased was residing in the said house, especially when another woman was admittedly residing there. Furthermore, if Neelam was indeed residing there, her other belongings such as clothes etc. ought to have been found in the house and even if not so, the other residents of the same house could have come forward to depose in support of the said fact.

**[29]** Notably, certain clothes such as two sarees, two blouses and two petticoats were recovered along with the dead body of the deceased. The prosecution version is that the accused persons had taken away the said clothes from the house of the deceased while abducting her. There is absolutely no explanation for the said conduct on the part of the accused persons. It is difficult to understand as to why the accused persons would take her clothes along while abducting her. On the contrary, this fact actually serves the case of the prosecution in proving that the deceased was actually residing at the house in Simaltalla. The clothes appear to have been planted along with the dead body in order to support the fact of actual residence of the deceased at her father s house in Simaltalla. In light of the material on record, it could be concluded that no material whatsoever could be found at the house of Jang Bahadur Singh to

directly indicate that the deceased was residing there. The make-up articles were linked with the deceased on the basis of a completely unacceptable reasoning and without any corroborative material. The prosecution has failed to examine even one cohabitant to prove the said fact. Furthermore, no personal belongings of the deceased, such as clothes, footwear, utensils etc., could be found in the entire house. Therefore, we are not inclined to believe that the deceased was actually residing in the house at Simaltalla. In the same breath, we may also note that even for PW18, no material was found in the said house to indicate that he was in fact residing there. Apart from his own statement, no witness has come forward to depose that the informant was a resident of the said house. The prosecution has not spotted any room in the entire house wherein PW18 was residing and thus, his own presence at the place of occurrence is doubtful.

**[30]** The appellants have also raised certain objections with respect to the time of death. The discrepancy has been flagged in light of the post mortem report, based on the post-mortem conducted at around 5:30 PM on 31.08.1985, which indicates that death took place around 24 hours ago. It indicates that the time of death must have been around 5:00 PM on 30.08.1985, which is contrary to the evidence of PW18 that the incident took place around 10:00 PM on 30.08.1985. A post mortem report is generally not considered as conclusive evidence of the facts mentioned in the re-port regarding the cause of death, time of death etc. It could always be corroborated with other direct evidence on record such as ocular evidence of the eye witnesses. However, when there is no other credible evidence on record to contradict the report, the facts stated in the post mortem report are generally taken as true. In the present matter, the evidence of the eye witnesses has been declared as wholly unreliable including on the aspect of time of death. Thus, there is no rea-son to doubt the post mortem report and the findings there-in.

**[31]** At this stage, we may also note that the approach of the High Court in reversing the acquittal of A-6 and A-7 was not in line with the settled law pertaining to reversal of acquittals. The Trial Court had acquitted the said two accused persons on the basis of a thorough appreciation of evidence and the High Court merely observed that their acquittal was based on the improbable statement of PW5 and since the evidence of PW5 stood excluded from the record, there was no reason left for the acquittal of A-6 and A-7. Pertinently, the High Court did not arrive at any finding of illegality or perversity in the opinion of the Trial Court on that count. Furthermore, it did not arrive at any positive finding of involvement of the said two accused persons within the sphere of common intention with the remaining accused persons. Equally, the exclusion of the evidence of PW5, without explaining as to how the evidence of PW2 and PW4 was not liable to be excluded in the same manner, was in-correct and erroneous.

**[32]** We do not intend to say that the High Court could not have appreciated the evidence on record in its exercise of appellate powers. No doubt, the High Court was well within its powers to do so. However, in order to reverse a finding of acquittal, a higher threshold is required. For, the presumption of innocence operating in favour of an accused through-out the trial gets concretized with a finding of acquittal by the Trial Court. Thus, such a finding could not be reversed merely because the possibility of an alternate view was alive. Rather, the view taken by the Trial Court must be held to be completely unsustainable and not a probable view. The High Court, in the impugned judgment, took a cursory view of the matter and reversed the acquittal of A-6 and A-7 without arriving at any finding of illegality or perversity or impossibility of the Trial Court s view or non-appreciation of evidence by the Trial Court.

**[33]** We may usefully refer to the exposition of law in **Sanjeev v. State of H.P.,** wherein this Court summarized the position in this regard and observed as follows:

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 , Anwar Ali v. State of H.P.** )

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.** )

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** )

**[34]** Having observed that the case of the prosecution is full of glaring doubts as regards the offence of abduction, we may briefly note and reiterate that the offence of murder is entirely dependent on circumstantial evidence. Although, the post mortem report indicates that the death of the deceased was unnatural and the commission of murder can-not be ruled out. But there is no direct evidence on record to prove the commission of murder by the accused per-sons. The link of causation between the accused persons and the alleged offence is conspicuously missing. The circumstantial evidence emanating from the facts sur-rounding the offence of abduction, such as the testimonies of eye witnesses, has failed to meet the test of proof and cannot be termed as proved in the eyes of law. Therefore, the foundation of circumstantial evidence having fallen down, no inference could be drawn from it to infer the commission of the offence under Section 302 IPC by the accused persons. It is trite law that in a case based on circumstantial evidence, the chain of evidence must be complete and must

give out an inescapable conclusion of guilt. In the pre-sent case, the prosecution case is far from meeting that standard.

**[35]** As regards motive, we may suffice to say that motive has a bearing only when the evidence on record is sufficient to prove the ingredients of the offences under consideration. Without the proof of foundational facts, the case of the prosecution cannot succeed on the presence of motive alone. Moreover, the motive in the present matter could operate both ways. The accused persons and the eyewitnesses belong to the same family and the presence of a property related dispute is evident. In a hypothetical sense, both the sides could benefit from implicating the other. In such circumstances, placing reliance upon motive alone could be a double-edged sword. We say no more.

**[36]** The above analysis indicates that the prosecution has failed to discharge its burden to prove the case beyond reasonable doubt. The reasonable doubts, indicated above, are irreconcilable and strike at the foundation of the prosecution s case. Thus, the appellants are liable to be acquitted of all the charges.

**[37]** In light of the foregoing discussion, we hereby conclude that the findings of conviction arrived at by the Trial Court and the High Court are not sustainable. Moreover, the High Court erred in reversing the acquittal of A-6 and A-7. Accordingly, the impugned judgment as well as the judgment rendered by the Trial Court (to the extent of conviction of A-1 to A-5) are set aside, and all seven accused persons (appellants) are hereby acquitted of all the charges levelled upon them. The appellants are directed to be released forthwith, if lying in custody.

**[38]** The captioned appeals stand disposed of in terms of this judgment. Interim application(s), if any, shall also stand disposed of. No costs

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2024(2)GBAJ457

**IN THE SUPREME COURT OF INDIA**

[From DELHI HIGH COURT]

[Before B R Gavai; K V Viswanathan]

Criminal Appeal **dated 24/09/2024**

*Sunil @ Sonu Etc*

**Versus**

*State NCT of Delhi*

**ALTERATION OF CONVICTION**

Indian Penal Code, 1860 Sec. 308, Sec. 34, Sec. 302, Sec. 307, Sec. 304, Sec. 323 - Code of Criminal Procedure, 1973 Sec. 161, Sec. 313 - Alteration of Conviction - Appellants convicted under Section 302 IPC for causing the death - Trial court

convicted appellants based on eyewitness testimony - Defense argued appellants arrived drunk and initiated the fight - Appellants also sustained injuries during the altercation, which prosecution failed to explain - Court found possibility of a sudden quarrel without premeditation, holding that Section 302 not applicable - Conviction altered to Part-I of Section 304 IPC as the appellants acted in the heat of passion - Sentence reduced to time already served. - Appeal Partly Allowed

**Law Point: Conviction for murder under Section 302 IPC can be altered to culpable homicide not amounting to murder under Section 304 Part-I IPC when death occurs in the heat of passion during a sudden quarrel without premeditation.**

ભારતીય દંડ સંહિતા, ૧૮૬૦ સે. ૩૦૮, સેક. ૩૪, સેક. ૩૦૨, સેક. ૩૦૭, સેક. ૩૦૪, સેક. ૩૨૩ - ફોજદારી કાર્યરીતીની સંહિતા, ૧૯૭૩ સેક. ૧૬૧, સેક. ૩૧૩ - દોષિત ઠરાવવામાં ફેરફાર - અપીલકર્તાઓ મૃત્યુનું કારણ બનવા બદલ આઇપીસી કલમ ૩૦૨ હેઠળ દોષિત ઠરેલા - ટ્રાયલ કોર્ટે પ્રત્યક્ષદર્શીની જુબાનીના આધારે અપીલકર્તાઓને દોષિત ઠરાવ્યા - બચાવ પક્ષે દલીલ કરી કે અપીલકર્તાઓ નશામાં પહોંચ્યા અને લડાઈ શરૂ કરી - તકરાર દરમિયાન અપીલકર્તાઓને ઇજાઓ પણ થઈ હતી, જેનું ખુલાસો કરવામાં ફરિયાદી નિષ્ફળ રહી હતી - અદાલતે ધારા 302 લાગુ પડતી નથી તેવું માનતા, પૂર્વધારણા વિના અચાનક ઝઘડો થવાની શક્યતા જણાઈ – આઇપીસી કલમ ૩૦૪ ના ભાગ-૧માં દોષિત ઠરાવવામાં આવ્યા કારણ કે અપીલકર્તાઓએ જુસ્સાની ગરમીમાં કામ કર્યું હતું - સજા પહેલાથી જ આપવામાં આવેલ સમય સુધી ઘટાડવામાં આવી છે. - અપીલ અંશતઃ મંજૂર

કાયદાનો મુદ્દો: આઇપીસી કલમ ૩૦૨ હેઠળ હત્યા માટે દોષિત હત્યામાં બદલી શકાય છે જે આઇપીસી કલમ ૩૦૪ ભાગ-૧ હેઠળ હત્યાની ગણતરીમાં નહીં હોય જ્યારે પૂર્વગ્રહ વિના અચાનક ઝઘડા દરમિયાન જુસ્સાની ગરમીમાં મૃત્યુ થાય છે.

**Acts Referred:**

Indian Penal Code, 1860 Sec. 308, Sec. 34, Sec. 302, Sec. 307, Sec. 304, Sec. 323
Code of Criminal Procedure, 1973 Sec. 161, Sec. 313

**Counsel:**

Rishi Malhotra, Prashant Singh

**JUDGEMENT**

**B.R. Gavai, J.- [1]** Leave granted.

**[2]** The present appeals challenge the judgment and order dated 26th June 2023, passed by the Division Bench of the High Court of Delhi at New Delhi in Criminal Appeals No. 408 and 137 of 2018, wherein the Division Bench dismissed the appeals filed by the appellants Sunil @ Sonu (Accused No.1) and Nitin @ Devender (Accused No.4). By the said judgment and order, the High Court upheld the judgment and order dated 25th October 2017 rendered by the Additional Sessions Judge, North District, Rohini, Delhi (hereinafter referred to as "the trial court") in Sessions Case No. 139 of 2017 convicting the appellants for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). The High Court also upheld the order of sentence dated 6th November 2017 vide which the trial court had sentenced them to undergo rigorous imprisonment for life along with fine of Rs. 10,000/- each, in default whereof simple imprisonment for 1 year for the offence punishable under Section 302 read with Section 34 of IPC.

**[3]** Shorn of details, the facts leading to the present appeals are as under:

**3.1** The case of the prosecution is that Rahul (PW-1) and Sachin (deceased) had pre-existing disputes with one of the present appellants Sunil @ Sonu (Accused No.1) and his brother Satish @ Chhotu (Accused No. 2). On 28th November 2016, Rahul (PW-1) along with Sachin (deceased) was walking on the road and appellant Sunil @ Sonu (Accused No.1), Satish @ Chhotu (Accused No.2), Gaurav (Accused No. 3) and the other appellant Nitin @ Devender (Accused No.4) were standing there. At about 09:15 PM, they started abusing Rahul (PW-1) and Sachin (deceased) and after a verbal altercation, all the four accused caught hold of them and started attacking them with knives and dandas. Sachin (deceased) tried to run, and the present appellants chased him while being armed with a knife. They caught him and inflicted knife blows. Thereafter, Shivani (PW-2) (Aunt of Rahul/PW-1) while trying to save Rahul (PW-1), saw a police official namely ASI Subhash Chandra (PW-15) passing by and after stopping him took him to the place of the incident. On seeing them, the accused persons ran away.

**3.2** The police were called, and two separate PCR vans took Rahul (PW-1) and Sachin (deceased) to the hospital. Thereafter, SI Suresh (PW-19) arrived at the spot. Rahul (PW-1) could not be found, and Sachin (deceased) was found unfit to give a statement. A search was conducted for Rahul (PW-1) but he could not be found. Thereafter, Rahul (PW-1) himself arrived at the Police Station on 29th November 2016 at about 11:45 PM and his statement was recorded. Subsequently, a First Information Report (hereinafter referred to as "FIR") No. 667 of 2016 was registered at P.S. Jahangir Puri, District North West, Delhi on 30th November 2016 against three out of the four accused persons for offences punishable under Section 307 read with Section

34 of IPC based on the written statement of Rahul (PW-1) narrating the whole incident from his point of view.

**3.3** The search for the accused persons began and all the four accused were found behind PRAYAS Home, EE Block, Jahangir Puri. All four were arrested and their disclosure statements were recorded.

**3.4** On 2nd December 2016, information was received that Sachin (deceased) had died during treatment and the charge for offence punishable under Section 302 read with Section 34 of IPC was added.

**3.5** The post-mortem of Sachin (deceased) was conducted by Dr. Arun Kumar (PW-8), and as per the post-mortem report the cause of death was opined to be septicemic shock consequent upon compartment syndrome and infection of left lower limb as a result of ante mortem injury to left thigh produced by pointed sharp edged object.

**3.6** The medical examination of Rahul (PW-1) was conducted on 30th November 2016 by Dr. Avinash Tripathi (PW-9) and the existence of abrasions were found and it was opined that Rahul had sustained simple injuries.

**3.7** On completion of the investigation, charge-sheet was filed by the Investigating Officer Inspector Ajay Kumar (PW-23). Charges were framed against the accused persons Satish @ Chhotu and Gaurav Kumar for offences punishable under Section 308 read with Section 34 of IPC and the present appellants were charged for offences punishable under Section 302 read with Section 34 of IPC.

**3.8** In order to substantiate its charges levelled against the accused persons, the prosecution examined 23 witnesses and on the other hand, to rebut the case of the prosecution, the defense examined 3 witnesses.

**3.9** After the evidence of the prosecution was completed, one of the appellants Sunil @ Sonu (Accused No.1) gave his statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") and denied all charges. He further stated that the present FIR was registered as a counterblast to an earlier FIR (No. 664 of 2016 lodged at P.S. Jahangir Puri, District North West, Delhi) for offences punishable under Section 307 read with Section 34 of IPC registered by appellant Sunil @ Sonu (Accused No.1) himself and where Rahul (PW-1) is an accused person. It was further stated that Shivani (PW-2) is an interested witness being the aunt of Rahul and that she is trying to save him from the earlier FIR by helping him take revenge through the present FIR.

**3.10** At the conclusion of the trial, the trial court convicted the present appellants (Accused No. 1 and 4) for offences punishable under Section 302 read with Section 34 of IPC and convicted Satish @ Chhotu (Accused No. 2) and Gaurav Kumar (Accused No. 3) for offences punishable under Section 323 read with Section 34 of IPC. The

trial court vide a separate order dated 6th November 2017 sentenced the present appellants to rigorous imprisonment for life with fine of Rs. 10,000/- each in default to undergo further simple imprisonment for 1 year for the offences punishable under Section 302 read with Section 34 of IPC.

**3.11** Being aggrieved thereby, the present appellants preferred criminal appeals before the High Court challenging the orders of conviction and sentence awarded by the trial court. The High Court vide the common impugned judgment and order dismissed the appeals and affirmed the conviction and sentence awarded by the trial court.

**3.12** Being aggrieved thereby, the present appeals.

**[4]** We have heard Shri Rishi Malhotra, learned Senior Counsel appearing on behalf of the appellants and Shri Prashant Singh, learned counsel appearing on behalf of the respondent-State.

**[5]** Shri Malhotra, learned Senior Counsel appearing on behalf of the appellants submitted that the learned trial court has erred in convicting the appellants and the High Court has also erred in affirming the said conviction. Shri Malhotra submitted that there is an inordinate delay in lodging the FIR which is not explained by the prosecution. It is submitted that although Rahul (PW-1) was present with the deceased Sachin at the time of the occurrence, he has lodged the FIR only on the next day. It is submitted that there are material contradictions in the testimony of Rahul (PW-1). The learned Senior Counsel further submitted that insofar as Shivani (PW-2) is concerned, she is an interested witness. It is submitted that Shivani (PW-2), in her cross-examination, has admitted that she did not tell the police in her statement about the accused persons causing injuries to deceased Sachin and Rahul (PW-1). Shri Malhotra further submitted that with respect to the same incident, a cross FIR being No. 664/2016 was already registered by the appellant Sunil @ Sonu on 29th November 2016 which was much prior in point of time. It is submitted that, in the said incident, both the appellants Sunil @ Sonu and Nitin @ Devender had received severe injuries. It is submitted that both the courts below have failed to take into consideration that the prosecution has failed to explain the injuries sustained by the appellants. The learned Senior Counsel therefore submitted that the order of conviction as recorded by the trial court and affirmed by the High Court is not sustainable in law.

**[6]** In the alternative, Shri Malhotra submitted that since the prosecution has failed to explain the injuries sustained by the appellants, the prosecution has suppressed the real genesis of the incident. It is therefore submitted that the conviction under Section 302 of the IPC would not be sustainable and the same would be at the most under Part-I or II of Section 304 of IPC.

**[7]** Shri Prashant Singh, learned counsel appearing on behalf of the respondent-State, on the contrary, submitted that the trial court and the High Court have

concurrently, upon correct appreciation of evidence, found that the prosecution has proved the case beyond reasonable doubt and as such, the judgment and order of conviction and sentence warrants no interference.

**[8]** With the assistance of the learned counsel for the parties, we have perused the materials placed on record.

**[9]** From the evidence of Dr. Arun Kumar (PW-8) who conducted the post-mortem as well as the evidence of Rahul (PW-1) and Shivani (PW-2), we find that the prosecution has proved beyond reasonable doubt that the injuries which were sustained by deceased Sachin were caused by the appellants and injury No. 13 was sufficient to cause death of deceased Sachin. As such, we find that no interference would be warranted with the finding of the trial court and the High Court that the appellants have caused homicidal death of deceased Sachin.

**[10]** The next question that arises for consideration is as to whether the accused can be convicted for the offence punishable under Section 302 of IPC or in the facts and circumstance of the case, the conviction needs to be altered to a lesser offence.

**[11]** According to Rahul (PW-1), on the date of the incident i.e. 28th November 2016 at around 8:45-9:00 PM, when he was talking to Shivani (PW-2), the accused persons came there and started arguing with deceased Sachin. He stated that accused Gaurav @ Bakra started abusing deceased Sachin and when they both (Rahul (PW-1) and deceased Sachin) objected to this, the accused persons caught hold of deceased Sachin. When the said witness attempted to save deceased Sachin, the accused persons hit him with danda on his head. Then, accused Nitin @ Devender pulled out a knife from his possession. On seeing this, deceased Sachin started running to save himself. However, accused persons caught deceased Sachin at the pulia of gandanala at Block-EE and started giving knife blows to him. At that time, a police official was passing from the street on motor-cycle and Shivani (PW-2) stood before his motor-cycle and stopped him. Shivani (PW-2) brought the police official to the place where deceased Sachin was being beaten up. On seeing the said police official, all the four accused ran away. Shivani (PW-2) made calls on No. 100 and after some time, a PCR van reached the spot. Thereafter, deceased Sachin and Rahul (PW-1) were taken to the hospital.

**[12]** It is to be noted that, though the incident was alleged to have taken place on the night of 28th November 2016, the FIR was lodged on 30th November 2016 i.e. after more than 24 hours. Though Rahul (PW-1) has tried to give an explanation that after he had been taken to BJRM Hospital, he left the said hospital in order to search for his friend deceased Sachin and thereafter he fell unconscious; the said explanation does not appear to be plausible inasmuch as the record would show that deceased Sachin had already been taken to BJRM Hospital. If that be so, then the conduct of Rahul (PW-1) in leaving the BJRM Hospital in search of deceased Sachin appears to be strange. It can further be seen that, though in the statement recorded under Section

161 Cr.P.C., Rahul (PW-1) admitted that he and deceased Sachin had consumed liquor, he has denied the same in his cross-examination. Rahul (PW-1) has admitted that there is one case registered against him for the offence punishable under Section 307 of IPC with respect to the present incident. It is further to be noted that though in his examination-in-chief, Rahul (PW-1) tried to give explanation that he could not lodge the FIR expeditiously since he fell unconscious, he admitted in his cross-examination that he regained consciousness in the morning of the next day. Then the question is what prevented him from lodging the FIR till 21:15 hours. Shivani (PW-2) also deposed almost to the same effect. There are various contradictions in her deposition. She also admitted that Rahul (PW-1) was also arrested by the police and that she gave her statement after Rahul (PW-1) was arrested by the police.

**[13]** In the FIR lodged at the instance of appellant Sunil @ Sonu, it is stated that Rahul (PW-1) and deceased Sachin had come to the shop of Satish in a heavily drunken condition, and they had tried to assault the appellants. The medical certificates of appellants Sunil @ Sonu and Nitin @ Devender would show that they had sustained the following injuries:

"**Injuries sustained by appellant Sunil @ Sonu:**

1) Pain and bleeding from Right side of parietal region.

2) Abrasions on middle finger of the right hand.

**Injuries sustained by appellant Nitin @ Devender**

1) Incised contused lacerated wound on parietal region of size 3 x 1 x 0.5 cm.

2) Abrasion over left side of abdomen of size 3 x 0.5 cm."

**[14]** Undisputedly, the said injuries are not explained by the prosecution.

**[15]** The defence of the accused persons is specific that, it is the deceased Sachin and Rahul (PW-1) had come in a drunken condition at the shop of Satish and they started abusing and assaulting the appellants. The evidence of SI Suresh, Investigating Officer (PW-19) would reveal that when he visited the BJRM Hospital on 28th November 2016, he found not only deceased Sachin but also found all the accused persons admitted in the said hospital. He has also admitted that he did not find Rahul (PW-1) in the said hospital. SI Rakesh Kumar (DW-3), who is an IO in FIR No. 664/2016 which was registered at the instance of appellant Sunil @ Sonu, also deposed that all the accused persons were medically examined and had received injuries which were exhibited vide Ex.DW-3/A to Ex.DW-3/D. It can thus clearly be seen that the defence of the appellants is a possible defence. There is a possibility of deceased Sachin and Rahul (PW-1) coming to the shop of Satish and a fight taking place between the two groups. There is nothing on record to establish that there was any pre-meditation. As such, we find that the possibility of the offence being committed by the appellants without pre-meditation in a sudden fight in the heat of passion upon a

sudden quarrel cannot be ruled out. There is nothing on record to show that the appellants have taken undue advantage or acted in a cruel or unusual manner.

**[16]** In that view of the matter, we are of the considered opinion that the appellants are entitled to the benefit of doubt. We find that the present case would be covered under Part-I of Section 304 of IPC and as such, the conviction under Section 302 of IPC would not be tenable.

**[17]** The appellants have undergone the sentence of more than 8 years without remission. We are therefore inclined to partly allow the appeals.

**[18]** In the result, we pass the following order:

(i) The appeals are partly allowed;

(ii) The conviction of the appellants under Section 302 of IPC is altered to Part-I of Section 304 of IPC;

(iii) The appellants are sentenced to the period already undergone and are directed to be released forthwith if not required in any other case.

**[19]** Pending application(s), if any, shall stand disposed of

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2024(2)GBAJ464

**IN THE SUPREME COURT OF INDIA**

[Before Sanjay Kumar; Aravind Kumar]

Criminal Appeal No 477 of 2017 **dated 23/09/2024**

*Yogarani*

**Versus**

*State By The Inspector of Police*

**PASSPORT OFFENCE ACQUITTAL**

Indian Penal Code, 1860 Sec. 420, Sec. 120B - Prevention of Corruption Act, 1988 Sec. 13 - Passports Act, 1967 Sec. 12 - Passport Offence Acquittal - Appellant convicted of facilitating the issuance of a second passport for accused No.1, charged under Section 420 IPC and Section 12(2) of the Passports Act - Co-accused, including accused Nos. 1 and 3-5, acquitted on similar charges - Appellant's conviction based on hostile testimony and weak handwriting evidence - Court held that without corroborative evidence, the conviction could not be sustained - Appeal Allowed

**Law Point: Conviction cannot be sustained based solely on weak and uncorroborated testimony or expert opinion, especially when co-accused are acquitted on identical evidence.**

ભારતીય દંડ સંહિતા, ૧૮૬૦ સે. ૪૨૦, સેક. ૧૨૦બી - ભ્રષ્ટાચાર નિવારણ અધિનિયમ, ૧૯૮૮ સેક. ૧૩ - પાસપોર્ટ એક્ટ, ૧૯૬૭ સેક. ૧૨ - પાસપોર્ટ ગુનામાં નિર્દોષ છુટકારો - આરોપી નંબર ૧ માટે બીજો પાસપોર્ટ જારી કરવાની સુવિધા આપવા બદલ અરજદારને દોષિત ઠરાવવામાં આવ્યો છે, જેની આઇપીસી કલમ ૪૨૦ અને પાસપોર્ટ એક્ટની કલમ ૧૨(૨) હેઠળ આરોપ મૂકવામાં આવ્યો છે. - આરોપી નંબર ૧ અને ૩-૫ સહિત સહ-આરોપીઓ સમાન આરોપોમાંથી નિર્દોષ છૂટ્યા – ફરી ગયેલાઓની જુબાની અને નબળા હસ્તાક્ષર પુરાવાના આધારે અપીલકર્તાની દોષી ઠરાવ્યા - કોર્ટે માન્યું હતું કે સમર્થનાત્મક પુરાવા વિના, દોષિત ઠરી શકાય નહીં - અપીલની મંજૂરી

કાયદાનો મુદ્દો: માત્ર નબળા અને અસમર્થિત જુબાની અથવા નિષ્ણાતના અભિપ્રાયના આધારે દોષિત ઠરાવી શકાય નહીં, ખાસ કરીને જ્યારે સહ-આરોપીઓને સમાન પુરાવા પર નિર્દોષ જાહેર કરવામાં આવે.

**Acts Referred:**

Indian Penal Code, 1860 Sec. 420, Sec. 120B
Prevention of Corruption Act, 1988 Sec. 13
Passports Act, 1967 Sec. 12

**JUDGEMENT**

**Aravind Kumar, J.- [1]** The appellant who has been arraigned as accused No.2 has challenged the concurrent conviction and sentence ordered under Section 420 Indian Penal Code (for short 'IPC') read with Section 12(2) of the Passports Act, 1967 (herein after referred as 'Passports Act') and sentenced to one-year rigorous imprisonment for each of the offences which are to run concurrently.

**[2]** The short and long of prosecution story is that appellant had wrongfully and illegally facilitated accused No. 1, for obtaining a second passport, who was already holding an Indian passport. It was further alleged that accused No.1 having deposited his passport with his employer at Dubai had applied for second passport in order to have better employment opportunities and said application was forwarded/ routed through the appellant. The prosecution alleged that second passport which was issued and dispatched to Accused No.1 had been returned undelivered to the Passport Office Trichy and was kept in safe custody and later it was delivered to the appellant by accused No.3 who was in charge of safe custody of the passports through accused No.4 who was working as a casual labourer in the Passport Office. It was also alleged that appellant had demanded payment of Rs.5,000/- from accused No.1 for handing

over the passport and he having refused resulted in appellant returning the second passport to the Passport Office by registered post.

**[3]** Along with the appellant other accused persons namely Mr. J.Joseph (Accused No.1), Smt. Sasikala (Accused No.3) - in charge of safe custody of passports, Mr. P. Manisekar (Accused No.4) working as a casual labour in the Passport Office, Trichy and Mr. S. Raghupathy (Accused No.5) then working as an Upper Division Clerk in Passport Office, Trichy who had made an endorsement that no passport had earlier been issued in favour of Accused No.1 were also tried for the offences punishable under Section120B read with Section 420 of IPC, Section 12(1)(b), 12(2) of Passports Act and Section 13(2) and Section 13(1)(d) of Prevention of Corruption Act, 1988 before the Special Judge for CBI cases, Madurai, which resulted in acquittal of all the accused persons in respect of charge of conspiracy. Accused Nos.3 and 4 were acquitted of all other charges also. The CBI did not prefer any appeal against acquittal of accused Nos.3 and 4. However, accused Nos.1 and 2 were convicted for offences punishable under Section 420 IPC and Section 12(1)(b) and Section 12(2) of Passports Act respectively. Accused No.5 was convicted under Section 12(2) of Passports Act and Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. Accused Nos.1, 2 and 5 preferred criminal appeals challenging their conviction and sentence and by impugned common judgment the High Court allowed the appeals filed by accused Nos.1 and 5 and acquitted them and said judgment has attained finality as it has not been challenged by the CBI. However, the appeal filed by accused No.2 came to be dismissed and as such she is before this Court.

**[4]** We have heard the arguments canvassed on behalf of the appellant and the respondent.

**[5]** The thrust of the argument advanced by the learned counsel appearing on behalf of the appellant is that conviction of appellant alone is not sustainable for more than one reason. Firstly, when accused Nos.3 and 4 who were charged for similar offences had been acquitted of all the charges and no appeal having been filed challenging their acquittal; secondly, when accused No.1 for whose benefit the alleged second passport had been issued, had been acquitted by disbelieving the story of the prosecution namely accused No.3 who was in charge of safe custody of passport had illegally given the second passport to the appellant through accused No.4. It is further contended that both the courts had erroneously convicted the appellant on the strength of the testimony of PW-3 though she had not deposed that appellant being aware of the details of the previous passport held by accused No.1 had knowingly processed the application of accused No.1. It is further contended that PW-3 had turned hostile and had not supported the story of prosecution and as such conviction could not have been sustained on the basis of the testimony of the said witness. He would also further contend that the High Court had erroneously evaluated the evidence of PW-16 (handwriting expert) who had not expressed any definite opinion with regard to the

hand writing found on the returned postal cover with that of admitted hand writing of the appellant and thereby the guilt of the accused was not proved or established beyond reasonable doubt. Learned Counsel would also elaborate his submissions by contending that the testimony of PW-15 did not establish as to when the application of the accused No.1 had been received by the appellant and there was no iota of evidence placed by the prosecution in this regard including the purported payment of registration fees and service charges from appellant by PW-15. Pointing to these gaping holes in the prosecution story it is contended that the judgment of conviction and sentence imposed on the appellant would not be sustainable as such he has prayed for appeal being allowed and appellant being acquitted.

**[6]** On the contrary, learned counsel appearing for the respondent would support the case of the prosecution and would contend that both the courts on proper evaluation of evidence has arrived at a conclusion that the appellant had committed the offence and convicted her, which finding does not suffer from any infirmity either in law or on facts calling for interference. Hence, learned counsel appearing for the respondent has prayed for dismissal of the appeal.

**DISCUSSION AND FINDING**

**[7]** The case of the prosecution as noted herein above is that appellant had illegally facilitated the issuance of second passport in favour of accused No.1 or in other words accused No.1 who held an Indian Passport had deposited the same with his employer at Dubai and in search of better employment opportunities had clandestinely applied for second passport through the appellant and other accused persons had connived with the appellant in procuring second passport to Accused No.1.

**[8]** The conviction of appellant is based on the deposition of three witnesses namely PW-3 (Selvi Sakila Begum), PW-15(Mr. Selvaraj), and PW-16 (Mr. Ravi). PW-3 is an employee of the proprietorship firm of appellant i.e. Kamatchi Travels and in her examination-in-chief she has deposed that she was working in the said travels which was offering various services including facilitating and obtaining the passports. She has further deposed that as the firm in which she was working could not render such services directly and the applications of their customers for issuance of passports were routed through Eagle Travels run by PW-15. She has also deposed that the application of accused No.1 was filled by her. However, she had turned hostile and nothing worthwhile was elicited in her crossexamination except to the extent of her admission that appellant was sitting next to her while she was filling the application form of accused No.1. She does not depose that appellant had any knowledge of Accused No.1 was already possessing a passport or appellant having informed her about the passport already held by Accused No.1.

**[9]** Pw-15 (Mr. Selvaraj) who is the proprietor of Eagle Travels has deposed that the application Ex.P-7 for issuance of passport in favour of accused No.1 was submitted through his firm and it was received from the appellant and appellant had paid the registration fee. PW-16 (Mr. Ravi), the Principal Scientific Advisor of Central Forensic Sciences Laboratory who has been examined by prosecution to drive home the fact that hand writing found on the returned postal cover is that of the appellant, though had deposed that there are similarities in the writings has also admitted that it is not possible for him to express any opinion in that regard on the basis of material on hand. It is pertinent to note at this juncture that prosecution had contended that accused No.3 who was in charge of safe custody of returned passports in the Passport Office had illegally removed the returned passport of accused No.1 from safe custody and had handed over the same to the appellant through accused No.4. However, trial court has not accepted this version of the prosecution and had acquitted accused Nos.3 and 4. The prosecution had failed to place on record any evidence to establish as to the how the passport kept in the safe custody had gone missing and in what manner it was handed over to the appellant or appellant in turn having returned the same back to Passport Office by post. Thus, for lack of direct evidence the accused No.3 and 4 have been acquitted.

**[10]** The Court cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons. In the case of **Javed Shaukat Ali Qureshi v State of Gujarat**, 2023 INSC 829, this court has held that:

> "**15.** When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination."

In the case on hand, allegations against the appellant being the same as made against Accused No.3 & 4, the Courts below could not have convicted the Appellant while acquitting the other two.

**[11]** There is no direct incriminating information emanating from the evidence of the PW-3 against the Appellant. All that she has deposed is that she had filled the application form of accused No.1 and Appellant was by her side while she was filling the application and she has also deposed that appellant would verify and check the application after filling of the application. PW-3 was treated as hostile by prosecution as already noted herein above and prosecution was not able to elicit any incriminating material against the Appellant in her cross examination. As such the evidence of PW-3 is not reliable and trustworthy.

**[12]** Pw-15 has deposed that application of accused No.1 has been submitted to his firm by Appellant herein and that the charges were paid by Appellant. Apart from the said statement, no documentary evidence was produced to show that charges were paid by the Appellant and that the Appellant had prior knowledge of accused No.1 having a passport. Evidence of this witness does not inspire confidence and even if the same is taken at its face value, it would not discharge the burden cast on the prosecution to prove the guilt of the Appellant beyond reasonable doubt.

**[13]** Evidence of PW-16 would also not come to the assistance of prosecution and, merely because he has deposed there are some similarities between the writings found on postal cover i.e. Ex.P8 and that of admitted writings of Appellant, by itself would not be sufficient to convict the Appellant, since he has admitted that it is not possible for him to express any opinion on the rest of the questioned items except with regard to handwriting of PW-3. It is pertinent to note that with regard to signature found in Ex.P7/passport application, no opinion was given by him as to who signed the same. It is crucial to note that evidence of PW-16 is not corroborated by any other evidence. This Court in catena of decisions has held that, without independent and reliable corroboration, the opinion of the handwriting experts cannot be solely relied upon to base the conviction. This Court in **Padum Kumar v State of Uttar Pradesh**, 2020 3 SCC 35 has held as under:-

> **"14.** The learned counsel for the appellant has submitted that without independent and reliable corroboration, the opinion of the handwriting experts cannot be relied upon to base the conviction. In support of his contention, the learned counsel for the appellant has placed reliance upon S. Gopal Reddy v. State of A.P. [**S. Gopal Reddy v. State of A.P.**, 1996 4 SCC 596: 1996 SCC (Cri) 792] , wherein the Supreme Court held as under: (SCC pp. 614-15, para 28)
>
> **"28.** Thus, the evidence of PW 3 is not definite and cannot be said to be of a clinching nature to connect the appellant with the disputed letters. The evidence of an expert is a rather weak type of evidence and the courts do not generally consider it as offering "conclusive" proof and therefore safe to rely upon the same without seeking independent and reliable corroboration. In Magan Bihari Lal v. State of Punjab [**Magan Bihari Lal v. State of Punjab**, 1977 2 SCC 210: 1977 SCC (Cri) 313] , while dealing with the evidence of a handwriting expert, this Court opined: (SCC pp. 213-14, para 7)
>
> **'7.** ...we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial

corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra v. State of U.P. [Ram Chandra v. State of U.P., AIR 1957 SC 381: 1957 Cri LJ 559] that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in Ishwari Prasad Misra v. Mohd. Isa [Ishwari Prasad Misra v. Mohd. Isa, AIR 1963 SC 1728] that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in Shashi Kumar Banerjee v. Subodh Kumar Banerjee [**Shashi Kumar Banerjee v. Subodh Kumar Banerjee**, 1964 AIR(SC) 529] where it was pointed out by this Court that an expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakhruddin v. State of M.P. [**Fakhruddin v. State of M.P.**, 1967 AIR(SC) 1326: 1967 Cri LJ 1197] and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial.'"

**15.** Of course, it is not safe to base the conviction solely on the evidence of the handwriting expert. As held by the Supreme Court in Magan Bihari Lal v. State of Punjab [**Magan Bihari Lal v. State of Punjab**, 1977 2 SCC 210: 1977 SCC (Cri) 313] that: (SCC p. 213, para 7)

"**7.** ... expert opinion must always be received with great caution ... it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law."

**16.** It is fairly well settled that before acting upon the opinion of the handwriting expert, prudence requires that the court must see that such evidence is corroborated by other evidence either direct or circumstantial evidence. In Murari Lal v. State of M.P. [**Murari Lal v. State of M.P.**, 1980 1 SCC 704: 1980 SCC (Cri) 330] , the Supreme Court held as under: (SCC pp. 708-09, paras 4 and 6)

"**4.** ... True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are

unreliable witnesses - the quality of credibility or incredibility being one which an expert shares with all other witnesses - but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of fingerprints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. But that is a far cry from doubting the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, howsoever the opinion may be backed by the soundest of reasons. It is hardly fair to an expert to view his opinion with an initial suspicion and to treat him as an inferior sort of witness. His opinion has to be tested by the acceptability of the reasons given by him. An expert deposes and not decides. His duty "is to furnish the Judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the Judge to form his own independent judgment by the application of these criteria to the facts proved in evidence [ Vide Lord President Cooper in Davis v. Edinburgh Magistrate,1953 SCC 34 quoted by Professor Cross in his evidence] .

**5.** ***

**6.** Expert testimony is made relevant by Section 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person "specially skilled" "in questions as to identity of handwriting" is expressly made a relevant fact. ... So, corroboration may not invariably be insisted upon before acting on the opinion of an handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard-and-fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it."

**[14]** Appellant has also been charged for the offence punishable under Section 12(2) of the Passports Act, 1967 which reads as under:

**"12. Offences and penalties.-** (1) Whoever-

(a) contravenes the provisions of section 3; or

(b) **knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document;** or

(c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or

(d) knowingly uses a passport or travel document issued to another person; or

(e) knowingly allows another person to use a passport or travel document issued to him;

shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

**(1A)** xxxxxxx

**(2) Whoever abets any offence punishable under sub-section (1) or sub-section (1A) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence."**

It is needless to state that burden is cast on the prosecution to prove that the appellant had knowingly furnished false information or supressing known material information with the intent of securing a passport or travel document to a person and thereby had abetted in the commission of offence punishable under Section 12(1) and thereby punishable under Section 12(2) of the Passports Act.

**[15]** In the case on hand the prosecution failed to place any evidence to prove that the appellant had prior information of accused No.1 was already possessing a passport or knowingly had furnished false information to the passport authorities namely after knowing that accused No.1 had possessed or holding a passport was applying for second passport or having known the fact of accused No.1 possessing the passport was applying for the second passport and thereby there has been suppression of material information. In other words, the prosecution had failed to place on record any evidence to prove that appellant had any previous knowledge of accused No.1 was already possessing a passport. In the absence of any cogent evidence placed in this regard and accused Nos. 1 and 3 to 5 having been acquitted of the offences alleged, the conviction and order of sentence imposed against the appellant alone cannot be sustained or in other words it has to be held that prosecution had failed to prove the guilt of the appellant beyond reasonable doubt.

**[16]** For the reasons afore-stated the appeal succeeds and appellantaccused No.2 is acquitted of the offences alleged against her. The judgment of the Trial Court passed in

C.C. No.5 of 2007 as affirmed in C.A.(Md) No.203 of 2008 by the High Court of Madras at Madurai Bench dated 18.08.2011 are hereby set aside.

**[17]** The bail bonds of the appellant stands cancelled. The appeal stands allowed in the above terms

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2024(2)GBAJ473

**IN THE SUPREME COURT OF INDIA**

[From UTTARAKHAND HIGH COURT]

[Before J B Pardiwala; Manoj Misra]

Criminal Appeal No 249 of 2013 **dated 20/09/2024**

*Shoor Singh & Anr*

**Versus**

*State of Uttarakhand*

**DOWRY DEATH ACQUITTAL**

Indian Penal Code, 1860 Sec. 304B, Sec. 498A - Code of Criminal Procedure, 1973 Sec. 313 - Evidence Act, 1872 Sec. 113B, Sec. 32 - Dowry Prohibition Act, 1961 Sec. 2, Sec. 4, Sec. 3 - Dowry Death Acquittal - Appellants convicted of dowry death and cruelty under Sections 304-B and 498-A IPC for the death of their daughter-in-law due to burn injuries - Deceased allegedly harassed over dowry demands for a motorcycle and cash - Court observed inconsistencies in evidence, including the failure of the deceased's parents to confront the accused and shifting testimonies - No independent witnesses supported the dowry demand - Held that the prosecution failed to prove essential ingredients of dowry death beyond reasonable doubt - Appellants acquitted - Appeal Allowed

**Law Point: Conviction for dowry death requires clear proof of cruelty or harassment related to dowry demands; in its absence, the presumption under Section 113B of the Evidence Act does not apply.**

ભારતીય દંડ સંહિતા, ૧૮૬૦ સે. ૩૦૪બી, સેક. ૪૯૮એ - ફોજદારી કાર્યરીતીની સંહિતા, ૧૯૭૩ સેક. ૩૧૩ - એવિડન્સ એક્ટ, ૧૮૭૨ સેક. ૧૧૩બી, સેક. ૩૨ - દહેજ પ્રતિબંધ અધિનિયમ, ૧૯૬૧ સેક. ૨, સેક. ૪, સેક. ૩ - દહેજ મૃત્યુ નિર્દોષ - અપીલકર્તાઓ તેમની પુત્રવધૂના દાઝી જવાને કારણે મૃત્યુ માટે આઇપીસી કલમ ૩૦૪-બી અને ૪૯૮-એ હેઠળ દહેજ મૃત્યુ અને ક્રૂરતા માટે દોષિત - મૃતકને મોટરસાયકલ અને રોકડની માંગણીને લઈને કથિત રીતે ત્રાસ આપવામાં આવ્યો હતો - અદાલતે પુરાવામાં

વિસંગતતાઓ જોવી, જેમાં મૃતકના માતા-પિતાની આરોપીઓનો સામનો કરવામાં નિષ્ફળતા અને જુબાની બદલવાનો સમાવેશ થાય છે. - કોઈ સ્વતંત્ર સાક્ષીએ દહેજની માંગને સમર્થન આપ્યું ન હતું - દહેજ મૃત્યુના આવશ્યક ઘટકોને વાજબી શંકાની બહાર સાબિત કરવામાં ફરિયાદી નિષ્ફળ રહી હોવાનું માનવામાં આવે છે - અપીલકર્તાઓને નિર્દોષ જાહેર કરવામાં આવ્યા - અપીલની મંજૂરી

કાયદાનો મુદ્દો: દહેજ મૃત્યુ માટે દોષિત ઠરાવવા માટે દહેજની માંગણી સંબંધિત ક્રૂરતા અથવા ઉત્પીડનના સ્પષ્ટ પુરાવાની જરૂર છે; તેની ગેરહાજરીમાં, પુરાવા અધિનિયમની કલમ ૧૧૩બી હેઠળની ધારણા લાગુ પડતી નથી.

**Acts Referred:**

Indian Penal Code, 1860 Sec. 304B, Sec. 498A
Code of Criminal Procedure, 1973 Sec. 313
Evidence Act, 1872 Sec. 113B, Sec. 32
Dowry Prohibition Act, 1961 Sec. 2, Sec. 4, Sec. 3

**JUDGEMENT**

**Manoj Misra, J.- [1]** This appeal is against the judgment and order of the High Court [The High Court of Uttarakhand at Nainital] dated 26.04.2012, whereby, while affirming the conviction of the appellants under Sections 304-B and 498- A IPC [Indian Penal Code, 1860], the appeal [Criminal Appeal No.87 of 2010] of the appellants was partly allowed thereby reducing the sentence awarded by the Trial Court [Sessions Judge, Pauri Gharwal] from 10 years to 7 years R.I. under Section 304-B IPC and maintaining the sentence of 1 year R.I. under Section 498-A IPC.

**FACTUAL MATRIX**

**[2]** The appellants are father-in-law and mother-in-law, respectively, of the deceased (Neelam), who was daughter of Shanker Singh (PW-1) and Sarojini Devi (PW-2). The deceased was married to appellants' son Jitendra Singh (coaccused) on 1.03.2006. On 30.12.2006, deceased gave birth to a male child. Naming ceremony of the child was performed on 11.01.2007. On 17.01.2007, deceased died at her matrimonial home due to extensive burn injuries. Upon being informed of her death, PW-1 lodged a first information report [FIR] (Ex. Ka-1) on the same day, inter alia, alleging that,- when he along with PW-2 had visited deceased's matrimonial home on 4.1.2007, deceased's father-in-law, mother-in-law, brother-in-law (i.e., husband's elder brother not tried) and sister-in-law (husband's elder brother's wife not tried) had told PW-1 and PW-2 that on the day of naming ceremony of the child they would have to give a motor-cycle and cash of Rs.50,000/-. Besides that, it was alleged that when PW-

1 and PW-2 visited deceased's matrimonial home on 11.01.2007, the deceased inquired from PW-1 and PW-2 whether they had brought motorcycle and cash. However, when PW-1 expressed his inability to meet the demand, the deceased told PW-1 that lot of pressure was being put on her and if the demand is not met, she would be killed. With these allegations, and by stating that accused had killed his daughter on account of the demand being not met, PW-1 lodged the FIR, which was registered as case crime No.1 of 2007 at P.S. Langur Walla-2, district Pauri Garhwal, under Sections 304-B, 498-A IPC and Sections 3/ 4 Dowry Prohibition Act, 1961, against three accused, namely, Jitendra Singh (husband of the deceased) and the appellants, who were all tried together by the Court of Session, Pauri Garhwal in Sessions Trial No.25 of 2007.

**[3]** During trial, prosecution examined 7 witnesses. PW-1 (the first informant father of the deceased); PW-2 (mother of the deceased); and PW-3 (uncle of the deceased) were family members of the deceased who proved the date of marriage and alleged that the deceased was depressed on account of the demand. PW-4 was the doctor who conducted autopsy of the cadaver. He proved that the deceased had suffered extensive ante-mortem burn injuries which resulted in her death. PW-5 is cousin of the deceased who had arrived at the spot along with PW-1 on receipt of information regarding her death. He is also the inquest witness. PW-6 is the Patwari who made GD entry of the FIR and took initial steps of investigation such as preparation of inquest report and dispatch of the cadaver for autopsy. PW-7 completed the investigation and submitted charge-sheet. PW-7, inter alia, stated that at the time of inquest the body of the deceased was lying in the courtyard.

**[4]** In their statement recorded under Section 313 CrPC [Code of Criminal Procedure, 1973] the accused admitted:

(a) the factum of marriage;

(b) the date of marriage;

(c) the date of childbirth;

(d) that parents of the deceased visited her matrimonial home on 04.01.2007 to see their daughter and the child; and

(e) that on 11.01.2007 child naming ceremony was done.

The accused, however, denied demand of dowry/ motorcycle/ cash of Rs.50,000/- as well as harassment of the deceased. Jitendra Singh (i.e., husband of the deceased) stated that the deceased committed suicide due to depression on account of staying separate from him as no quarter was allotted to him, and also because a photograph of her with a male stranger was found. He had also stated that at the time of the incident he had gone to collect wood. Accused Shoor Singh (appellant no.1 herein) added that he had gone to Lansdowne at the time of incident. Similarly, accused Gangotri Devi (appellant no.2 herein) stated that she had gone out to wash clothes.

**[5]** The defense had examined 4 witnesses (DW-1 to DW-4) and produced color photographs (Ex Kha-1 to Kha-6). DW-1 stated that the deceased used to accompany her for collecting grass and wood, but she never made any complaint about her harassment on account of dowry demand. Rather, the deceased used to say that if she is not taken by her husband to his workplace she would die. DW2 stated that in the morning of 17.01.2007 (i.e., date of the incident) she had seen Shoor Singh (appellant no.1 herein) going towards Lansdowne. DW-3 stated that between 12.30 and 1.00 p.m. he saw smoke bellowing from the house of Shoor Singh. When he reached there, he noticed that none of the accused were there, and the body of the deceased was lying outside the shutter in a burnt condition. Whereafter, he went to inform Gangotri Devi who was washing clothes near a water well. DW-4 stated that he was present at the time of inquest when he saw an empty can of kerosene and matchsticks lying near the body of the deceased; and smell of kerosene was all over.

**[6]** The trial court primarily relied on the testimonies of PW-1, PW-2 and PW-3 to hold that the deceased was harassed soon before her death in connection with demand for a motorcycle and cash and, therefore, in view of the presumption under Section 113-B of the Evidence Act, 1872, the accused were liable to be convicted for dowry death, punishable under Section 304-B IPC, and for cruelty, punishable under Section 498-A IPC.

**[7]** Aggrieved therewith, two separate criminal appeals were filed before the High Court. One appeal was by the husband of the deceased and the other was by the appellants herein. Both appeals were decided by the impugned order. In so far as the accused Jitendra Singh is concerned, he has served out the sentence and has not filed any appeal. This appeal is, therefore, by father-in-law and mother-in-law of the deceased.

**[8]** We have heard learned counsel for the parties and have perused the record.

**SUBMISSIONS ON BEHALF OF THE APPELLANT(S)**

**[9]** Learned counsel for the appellants submitted:

(i) The autopsy report indicated no mark of injury, other than burn injuries, on the body of the deceased. Body of the deceased was found in the courtyard of the house. Further, the evidence indicated death during daytime. The defense evidence indicated that when smoke was noticed, the witness reached the spot to find a burnt body of the deceased lying in the courtyard and, at that time, none of the accused persons were present. Even prosecution witnesses do not state that at the time of incident the accused were present in the house. All of this would suggest that it is a case of suicide, which could be for multiple reasons.

(ii) There is no direct evidence regarding demand of dowry by the appellants. The testimonies of PW-1 and PW-2 do not support the FIR allegation that on 4.1.2007 appellants had demanded a motorcycle and cash from PW-1 and PW-2.

(iii) There is no evidence that motorcycle or cash was demanded in connection with marriage. Hence, a case of dowry death is not made out.

(iv) The courts below failed to test the merit of the allegations against the weight of surrounding circumstances and the deposition of prosecution witnesses during cross-examination.

Interestingly, PW-1 and PW-2, who had been visiting the matrimonial home of the deceased, admitted during cross-examination that they did not confront the accused in respect of the alleged demand as reported to them by their daughter (i.e., the deceased) because they thought it to be a joke. If it was so, the question of subjecting the deceased to cruelty does not arise.

(v) Admittedly, husband of the deceased in connection with service was residing elsewhere. Accused in their statement under Section 313 CrPC stated that the deceased was unhappy and depressed because she was not able to live with her husband as no residential quarter was allotted to him. A suggestion to that effect was also given to the prosecution witnesses. Hence, this was a material circumstance explaining the drastic step to commit suicide.

(vi) PW-1 tried to implicate even the elder brother of the husband of the deceased even though he resided in another town in connection with service. This would suggest that there was a malicious attempt to implicate the entire family without any basis. In such circumstances, the Court ought to have been circumspect. More so, when no witness of the locality was produced in support of the prosecution case.

(vii) Presumption under Section 113-B of the Evidence Act arises only when the necessary ingredients of a dowry death are proved beyond reasonable doubt. Here there was no direct and reliable evidence that the deceased was subjected to cruelty in connection with demand of dowry soon before her death. Hence, there was no occasion to raise a presumption in respect of a dowry death.

(viii) There were sufficient reasons for the deceased to commit suicide, such as:

(a)She was depressed for not being able to reside with her husband who had to be away from home in connection with his service.

(b) She was shamed by discovery of a photograph (Ex. Kha-1) wherein she was noticed alone with a male stranger in front of a waterbody.

**SUBMISSIONS ON BEHALF OF STATE**

**[10]** On behalf of the prosecution (i.e., the State of Uttarakhand), it was submitted:

(i) PW-1, PW-2 and PW-3 have all been consistent about the deceased reporting to them that accused persons were demanding a motorcycle and cash of Rs.50,000/- and threatening her that if their demand is not met by the date of child naming ceremony, she would be killed. Naming ceremony was held on 11.01.2007 and soon

thereafter the deceased died on 17.01.2007. Thus, deceased's statement was in respect of circumstances of the transaction which resulted in her death and, therefore, admissible in evidence under Section 32 (1) of the Evidence Act.

(ii) The courts below justifiably raised a presumption of the offence of dowry death; and that presumption was not dispelled by the accusedappellants. Moreover, the appellants being fatherin-law and mother-in-law of the deceased, residing in the same house where the deceased died an unnatural death, were liable to be convicted.

(iii) The photograph (Ex. Kha-1) was not admissible in evidence as neither the person who took the photograph nor its negative was produced in evidence. Otherwise also, it did not reveal any such compromising position of which the deceased will be ashamed of.

(iv) The appeal is concluded by concurrent findings of fact, therefore no case for interference is made out.

**ANALYSIS/ DISCUSSION**

**[11]** Before we proceed to test the merit of the rival submissions, it would be useful to cull out certain facts as regards which there is no serious dispute. These are:

(a)the deceased was married to the son of the appellants within seven years of her death;

(b)the deceased died an unnatural death on account of ante-mortem burn injuries;

(c) place of death of the deceased was her matrimonial home;

(d)just 18 days before her death, the deceased had given birth to a male child;

(e) prior to her death there was no police complaint or FIR in respect of harassment of the deceased for any reason whatsoever;

(f) there is no evidence that any of the accused demanded dowry, or a motorcycle, or cash from the family members of the deceased either before the marriage or at the time of marriage; and

(g)there is no evidence that the deceased was physically assaulted by any of the accused in connection with demand for dowry or motorcycle or cash.

**[12]** To constitute a 'dowry death', punishable under Section 304- B **[1]** IPC, following ingredients must be satisfied:

i. death of a woman must have been caused by any burns or bodily injury or it must have occurred otherwise than under normal circumstances;

ii. such death must have occurred within seven years of her marriage;

iii. soon before such death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

iv. such cruelty or harassment must be in connection with any demand for dowry.

The phrase 'otherwise than under normal circumstances' is wide enough to encompass a suicidal death.

**[13]** When all the above ingredients of 'dowry death' are proved, the presumption under Section 113-B **[2]** of the Evidence Act is to be raised against the accused that he has committed the offence of 'dowry death'. What is important is that the presumption under Section 113-B is not in respect of commission of an act of cruelty, or harassment, in connection with any demand for dowry, which is one of the essential ingredients of the offence of 'dowry death'. The presumption, however, is in respect of commission of the offence of 'dowry death' by the accused when all the essential ingredients of 'dowry death' are proved beyond reasonable doubt by ordinary rule of evidence, which means that to prove the essential ingredients of an offence of 'dowry death' the burden is on the prosecution.

**[14]** In the instant case, it is not in dispute that the deceased died otherwise than under normal circumstances within seven years of her marriage. However, the issue between the parties is about her being subjected to cruelty or harassment by her husband or his relative, soon before her death, in connection with any demand for dowry.

**[15]** The testimonies of PW-1, PW-2 and PW-3 do not indicate that any demand for dowry was made by the accused-appellants either before or at the time of marriage of the deceased with their son. Further, there is no evidence that the accused appellants directly demanded a motorcycle or cash from any of the above witnesses. In fact, evidence is to the effect that the deceased had informed PW-1 and PW-2 on 4.1.2007 and 11.1.2007 about the demand for a motorcycle and cash. Further, from the deposition of PW-1 and PW-2, it appears that the aforesaid demand was not in connection with marriage but as a mark of celebration on birth of a male child.

**[16]** No doubt testimonies of PW-1 and PW-2 would not be hit by the rule against hearsay evidence because it related to one of the circumstances of the transaction resulting in their daughter's unnatural death. However, a distinction must be drawn between admissibility and acceptability/reliability of a piece of evidence. Merely because a piece of evidence is admissible does not mean that it must be accepted. Before accepting the evidence to hold that the fact in issue stands proved beyond reasonable doubt, the Court must evaluate the same against the weight of surrounding circumstances and other facts proven on record.

**[17]** In the instant case, the witnesses PW-1 and PW-2 were asked whether they took up the issue of motorcycle /cash demand with the accused. Their reply was that they did not, because they took it as a joke. We fail to understand how parents could treat their daughter's multiple reporting of apprehension to her life, on account of demand being not met, as a joke. This creates a serious doubt about the truthfulness of

the allegation more so when there is no allegation that any such demand was ever raised either before or at the time of marriage. This doubt gets fortified by change in stance of PW-1 from what was taken in the FIR. Notably, in the FIR it was alleged that the accusedappellants including their elder son, and his wife, had directly raised demand for a motorcycle and cash. This allegation was not supported by the deposition of both PW-1 and PW-2 while admitting that appellant's elder son was a doctor serving in another district. Thus, there appears to be a knee-jerk reaction to the unnatural death of their daughter to make out a case of dowry death. Besides that, no independent witness of the vicinity was examined. In our considered view, therefore, one of the essential ingredients of dowry death, namely, any demand for dowry, was not proved beyond reasonable doubt.

**[18]** Indisputably, the accused have not been convicted for murder, and rightly so, because there was no worthwhile evidence to show that except for the burn injuries, which could be self- inflicted, the accused suffered any other antemortem injury. Moreover, the presence of the accused in the house at the time of occurrence is not proved. In such circumstances, the death was most probably suicidal though this would not make a difference for commission of an offence punishable under Section 304-B IPC if all the other ingredients of dowry death stand proved. But, as noted above, here harassment/ cruelty at the instance of the appellants in connection with any demand for dowry has not been proved beyond reasonable doubt. As regards the reason to commit suicide, though it is not necessary for us to dwell upon, suffice it to say that husband of the deceased was in service and stayed away from the deceased. Suggestion was given to the prosecution witnesses, and statement was also made under Section 313 CrPC, that the deceased used to remain depressed for being unable to join her husband at the place of his posting due to lack of residential quarter. That apart, a photograph of the deceased (Ex. Kha 1), regarding which no dispute was raised by the prosecution witnesses, showing her alone with a male stranger had surfaced. In the statement under Section 313 CrPC a stand was taken that this photograph had shamed her. Be that as it may, once all the necessary ingredients of dowry death have not been proved beyond reasonable doubt, the presumption under Section 113-B of the Evidence Act would not be available to the prosecution. Hence, in our considered view, the appellants are entitled to be acquitted of the charge of offences punishable under Section 304-B and 498-A IPC.

**[19]** The appeal is accordingly allowed. The order convicting and sentencing the appellants under Section 304-B and 498-A IPC is set aside. The appellants are on bail. They need not surrender. Their bail bond(s) stand discharged.

**[20]** Pending application(s), if any, stand disposed of.

**1 Section 304-B. Dowry Death.** (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation. -- For the purpose of this sub-section, 'dowry' shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 [28 of 1961].

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life

**2 Section 113-B. Presumption as to dowry death.** When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, dowry death shall have the same meaning as in section 304 capital B of the Indian Penal Code [45 of 1860

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2024(2)GBAJ481

**IN THE SUPREME COURT OF INDIA**

[From MADHYA PRADESH HIGH COURT]

[Before Sanjiv Khanna; Sanjay Kumar]

Criminal Appeal No 2030 of 2024 **dated 19/09/2024**

*Santosh @ Rajesh @ Gopal*

**Versus**

*State of Madhya Pradesh*

**ACQUITTAL IN MURDER CASE**

Indian Penal Code, 1860 Sec. 201, Sec. 34, Sec. 302, Sec. 120B - Evidence Act, 1872 Sec. 83 - Arms Act, 1959 Sec. 25 - Acquittal in Murder Case - Appellant was convicted of murder based on circumstantial evidence, including recovery of a pistol allegedly used in the crime - Ballistic report confirmed bullet matched the pistol recovered - Prosecution relied on co-accused's disclosure leading to recovery - Supreme Court held that circumstantial evidence was insufficient to prove appellant's involvement in the murder - Absence of direct evidence or corroboration linking the appellant to the crime - Conviction set aside - Appeal Allowed

**Law Point: Circumstantial evidence must conclusively establish guilt by excluding all other hypotheses, and the absence of corroborative evidence weakens the prosecution's case in murder convictions.**

ભારતીય દંડ સંહિતા, ૧૮૬૦ સે. ૨૦૧, સેક. ૩૪, સેક. ૩૦૨, સેક. ૧૨૦બી - એવિડન્સ એક્ટ, ૧૮૭૨ સેક. ૮૩ - આર્મ્સ એક્ટ, ૧૯૫૯ સેક. ૨૫ - મર્ડર કેસમાં નિર્દોષ છુટકારો - ગુનામાં કથિત રીતે વપરાયેલી પિસ્તોલની પુનઃપ્રાપ્તિ સહિત સંજોગોવશાત્ પુરાવાના આધારે અપીલકર્તાને હત્યા માટે દોષિત ઠરાવવામાં આવ્યો હતો. - બેલેસ્ટિક રિપોર્ટમાં પુષ્ટિ થઈ છે કે ગોળી મળી આવેલી પિસ્તોલ સાથે મેળ ખાતી હતી - પ્રોસિક્યુશન સહ-આરોપીના ખુલાસા પર આધાર રાખે છે જે પુનઃપ્રાપ્તિ તરફ દોરી જાય છે - સુપ્રિમ કોર્ટે જણાવ્યું હતું કે હત્યામાં અપીલકર્તાની સંડોવણી સાબિત કરવા માટે સંજોગોવશાત પુરાવા અપૂરતા હતા. - અપીલ કરનારને અપરાધ સાથે જોડતા સીધા પુરાવા અથવા સમર્થનની ગેરહાજરી - દોષિત ઠરાવવામાં આવેલ રદ કરવામા આવે છે - અપીલની મંજૂરી છે

કાયદાનો મુદ્દો: સંજોગોવશાત્ પુરાવાઓએ અન્ય તમામ પૂર્વધારણાઓને બાદ કરીને નિર્ણાયક રીતે અપરાધની સ્થાપના કરવી જોઈએ, અને સમર્થનાત્મક પુરાવાઓની ગેરહાજરી હત્યાની સજામાં ફરિયાદીના કેસને નબળો પાડે છે.

**Acts Referred:**

Indian Penal Code, 1860 Sec. 201, Sec. 34, Sec. 302, Sec. 120B
Evidence Act, 1872 Sec. 83
Arms Act, 1959 Sec. 25

**JUDGEMENT**

**Sanjiv Khanna, J.- [1]** Five individuals, namely, Laadkunwar Bai, Jitendra Singh, Nirbhay Singh @ Rajesh Mama, Meharban Singh and the appellant, Santosh @ Rajesh @ Gopal, were prosecuted for the murder of Narayan Singh in the chargesheet arising out of First Information Report No. 640/2011 dated 13.11.2011, registered with Police Station - Industrial Area, District Dewas, Madhya Pradesh, for offence(s) punishable under Sections 302, 34 and 120B of the Indian Penal Code, 1860, and Section 25(1-B)(A) of the Arms Act, 1959.

**[2]** Three out of these five persons are related to the victim, Narayan Singh. Laadkunwar Bai and Jitendra Singh are the wife and son of the victim, Narayan Singh. Meharban Singh is the father-in-law of Jitendra Singh, the son of Narayan Singh. The

remaining two persons, namely, Nirbhay Singh and the appellant, Santosh @ Rajesh @ Gopal, are allegedly hired killers.

**[3]** On 30.11.2017, the trial court acquitted Laadkunwar Bai and Meharban Singh. However, Nirbhay Singh @ Rajesh Mama, Jitendra Singh, and the appellant, Santosh @ Rajesh @ Gopal, were convicted.

**[4]** Following this, Nirbhay Singh @ Rajesh Mama, Jitendra Singh, and the appellant filed appeals before the High Court of Madhya Pradesh at Indore. During the pendency of the appeal, Nirbhay Singh @ Rajesh Mama passed away, resulting in the dismissal of his appeal as abated.

**[5]** By the impugned judgment dated 18.10.2022, Jitendra Singh has been acquitted. His acquittal has not been challenged. However, the conviction of the appellant, Santosh @ Rajesh @ Gopal, was upheld, prompting him to file the present appeal.

**[6]** The prosecution's case, in brief, is that on 13.11.2011, at 9.30 p.m., Rachna Bai, the mother of the victim, Narayan Singh, deposed as PW-2 that both she and Narayan Singh were sleeping at their house in Village Binjana, District Dewas, Madhya Pradesh. Someone called out Narayan Singh's name from outside, prompting him to open the door. At that moment, Rachna Bai (PW-2) heard a gunshot. She ran towards Narayan Singh, and shortly after, a second gunshot was fired, striking Narayan Singh in the chest, and causing him to fall. When Rachna Bai (PW-2) went outside, she saw her daughter-in-law, Laadkunwar Bai (Narayan Singh's wife), and Jitendra Singh (Narayan Singh's son) standing on the opposite side of the house. She also saw two individuals with their faces covered fleeing the scene on a motorcycle.

**[7]** The prosecution's primary evidence against the appellant, Santosh @ Rajesh @ Gopal, also referenced in the impugned judgment, is the recovery (Exhibit P-6) of a pistol and the ballistic report (Exhibit P-57), which confirms that the bullet (Exhibit B-1) recovered from the body of the victim, Narayan Singh, was fired from the country-made pistol (Exhibit A-1 and C-1). There is evidence to show that the pistol was recovered (Exhibit P-6) from the appellant, Santosh @ Rajesh @ Gopal, and we would accept the said version of the prosecution.

**[8]** There are no eyewitnesses to the crime, implicating the appellant, Santosh @ Rajesh @ Gopal. The case against the appellant, Santosh @ Rajesh @ Gopal, rests entirely on circumstantial evidence.

**[9]** Where the case rests entirely on circumstantial evidence, a finding of guilt is justified only if all the incriminating facts and circumstances are incompatible with the accused's innocence. In other words, there must be a chain of evidence so far complete, such that every hypothesis is excluded but the one proposed to be proved and such circumstances must show that the act has been done by the accused within all human probability. [Hanumant v. State of Madhya Pradesh,1952 2 SCC 71.]

**[10]** In **Sharad Birdhichand Sharda v. State of Maharasthra**, 1984 4 SCC 116. this Court outlined five essential principles, often referred to as the "golden rules", which must be satisfied for circumstantial evidence to conclusively establish the guilt of the accused:

> "(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> xxx xxx xxx
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
>
> (3) the circumstances should be of a conclusive nature and tendency,
>
> (4) they should exclude every possible hypothesis except the one to be proved, and
>
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

**[11]** The ballistic report (Exhibit P-57) connects the pistol recovered (Exhibit P-6) from the appellant, Santosh @ Rajesh @ Gopal, with the bullet (Exhibit B-1) recovered from the body of the victim, Narayan Singh. This is an inculpatory fact. However, it is also the prosecution's case that the said discovery and recovery is attributable to the disclosure statement (Exhibit P-35) provided by the co-accused, Nirbhay Singh (since deceased). Such discovery and recovery at the instance of an accused are governed by Sections 8**[3]** and 27 **[4]** of the Indian Evidence Act, 1872 [For short, "Evidence Act".].

**[12]** This Court, in **Perumal Raja v. State, Represented By Inspector of Police**, 2024 1 SCR 87. has referred to **Mohmed Inayatullah v. State of Maharashtra**, 1976 1 SCC 828. which elucidated the conditions required to be satisfied under Section 27:

> "Section 27 of the Evidence Act is an exception to Sections 25 and 26 of the Evidence Act. It makes that part of the statement which distinctly leads to discovery of a fact in consequence of the information received from a person accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the accused. The fact which is discovered as a consequence of the information given is admissible in evidence. Further, the fact discovered must lead to recovery of a physical object and only that information which distinctly relates to that discovery can be proved."

The word, "distinctly", used in Section 27 relates to the discovered fact. Only that much which relates to the discovery of a physical object is admissible. The rest of the testimony is to be excluded. The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items that were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show the involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case. Further, a fact already known to the police is not admissible under Section 27 of the Evidence Act.

**[13]** As the disclosure statement (Exhibit P-35) has led to the arrest of the appellant, Santosh @ Rajesh @ Gopal, the prosecution may take the benefit of Section 8 of the Indian Evidence Act, 1872. However, even assuming this to be the case, the absence of any corroborative evidence directly linking the appellant to the crime introduces a significant gap in facts as alleged in the chain of circumstances. In our view, this fails to establish a hypothesis of guilt that conclusively excludes all other reasonable possibilities.

**[14]** This Court, in **State of Maharashtra v. Suresh**, 2000 1 SCC 471. observed that when any incriminating material is discovered based on a disclosure statement, three hypotheses emerge: -

> "26. We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there..."

**[15]** In the present context, it is the prosecution's case that the location of the pistol was disclosed by the co-accused, Nirbhay Singh (since deceased). However, to establish that the appellant, Santosh @ Rajesh @ Gopal, participated in the murder, the prosecution must present further material and evidence linking the appellant to the actual crime. While the appellant, Santosh @ Rajesh @ Gopal, may be guilty of an offence under Section 201 of the IPC, the evidence provided by the prosecution is insufficient to secure a conviction for the murder of the victim, Narayan Singh, on 13.11.2011. Consequently, the prosecution has failed to prove that the appellant, Santosh @ Rajesh @ Gopal, is guilty of murder, either individually or with shared common intention or in conspiracy with the co-accused, Nirbhay Singh @ Rajesh Mama (now deceased).

**[16]** We, therefore, allow the present appeal and set aside the conviction of the appellant, Santosh @ Rajesh @ Gopal. The appellant, Santosh @ Rajesh @ Gopal, was granted bail by this Court on suspension of sentence, vide order dated 08.04.2024. The bail bonds and sureties furnished by the appellant, Santosh @ Rajesh @ Gopal, shall be treated as cancelled.

**[17]** The impugned judgment is set aside and the appeal is allowed. Pending application(s), if any, shall stand disposed of.

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**3** Section 8 of the Evidence Act reads:

"8. Motive, preparation and previous or subsequent conduct.- Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto."

**4** Section 27 of the Evidence Act reads:

"27. How much of information received from accused may be proved.- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved

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2024(2)GBAJ486

**IN THE SUPREME COURT OF INDIA**

[From BOMBAY HIGH COURT]

[Before Sanjay Kumar; Aravind Kumar]

Criminal Appeal No 313 of 2012, 314 of 2012 **dated 18/09/2024**

*Saheb, S/o Maroti Bhumre Etc*

**Versus**

*State of Maharashtra*

**MURDER CONVICTION**

Indian Penal Code, 1860 Sec. 324, Sec. 149, Sec. 148, Sec. 302 - Code of Criminal Procedure, 1973 Sec. 374 - Murder Conviction - Twenty-two persons were accused of murder - Trial court convicted nine of them under Sections 148, 302, 324 read with Section 149 of IPC - Nine appellants challenged the conviction - Prosecution's case stated that the accused attacked the deceased and his family with axes and sticks

during a power cut - High Court upheld the conviction of three accused and acquitted the others due to lack of specific charges regarding the injuries caused - High Court relied on sole testimony of widow (PW-1), disbelieving other witnesses - Supreme Court found inconsistencies in widow's testimony - Held that the evidence of PW-1 was unreliable due to contradictions in her statements - Court noted appellants had already served over ten years in prison - Benefit of doubt was extended to appellants - Appellants acquitted of charges and ordered release from custody - Appeals allowed

**Law Point: Conviction cannot be sustained solely on unreliable and inconsistent testimony, especially when key witnesses fail to corroborate crucial facts. Benefit of doubt extended where evidence lacks clarity.**

ભારતીય દંડ સંહિતા, ૧૮૬૦ સે. ૩૨૪, સેક. ૧૪૯, સેક. ૧૪૮, સેક. ૩૦૨ - ફોજદારી કાર્યરીતીની સંહિતા, ૧૯૭૩ સેક. ૩૭૪ - હત્યાની સજા - બાવીસ વ્યક્તિઓ પર હત્યાનો આરોપ હતો - ટ્રાયલ કોર્ટે તેમાંથી નવને આઈપીસીની કલમ ૧૪૯ સાથે કલમ ૧૪૮, ૩૦૨, ૩૨૪ હેઠળ દોષિત ઠરાવ્યા હતા. - નવ અપીલકર્તાઓએ સજાને પડકારી હતી - પ્રોસિક્યુશનના કેસમાં જણાવાયું છે કે પાવર કટ દરમિયાન આરોપીઓએ મૃતક અને તેના પરિવાર પર કુહાડી અને લાકડીઓ વડે હુમલો કર્યો હતો. - હાઈકોર્ટે ત્રણ આરોપીઓની સજાને યથાવત રાખી અને અન્યને છજાઓ અંગે ચોક્કસ આરોપોના અભાવે નિર્દોષ છોડી મૂક્યા - હાઈકોર્ટે વિધવા (PW-1)ની એકમાત્ર જુબાની પર આધાર રાખ્યો, અન્ય સાક્ષીઓ પર વિશ્વાસ ન કર્યો - સુપ્રીમ કોર્ટને વિધવાની જુબાનીમાં વિસંગતતાઓ મળી - તેણીના નિવેદનોમાં વિરોધાભાસને કારણે PW-1ના પુરાવા અવિશ્વસનીય હોવાનું જણાવ્યું - કોર્ટે નોંધ્યું કે અપીલકર્તાઓ પહેલાથી જ દસ વર્ષથી વધુ જેલમાં રહી ચૂક્યા છે - શંકાનો લાભ અપીલકર્તાઓને આપવામાં આવ્યો - અપીલકર્તાઓને આરોપોમાંથી મુક્ત કર્યા અને કસ્ટડીમાંથી મુક્ત કરવાનો આદેશ આપ્યો - અપીલની મંજૂરી

કાયદાનો મુદ્દો: માત્ર અવિશ્વસનીય અને અસંગત જુબાની પર દોષિત ઠરાવી શકાતી નથી, ખાસ કરીને જ્યારે મુખ્ય સાક્ષીઓ નિર્ણાયક તથ્યોને સમર્થન આપવામાં નિષ્ફળ જાય છે. જ્યાં પુરાવામાં સ્પષ્ટતાનો અભાવ હોય ત્યાં શંકાનો લાભ વિસ્તારવામાં આવે છે.

**Acts Referred:**

Indian Penal Code, 1860 Sec. 324, Sec. 149, Sec. 148, Sec. 302

Code of Criminal Procedure, 1973 Sec. 374

**JUDGEMENT**

**Sanjay Kumar, J.- [1]** Twenty-Two persons stood accused of the murder of Madhavrao Krishnaji Gabare and were tried by the learned Additional Sessions Judge, Basmathnagar, Maharashtra, in Sessions Trial No. 20 of 2006. By judgment dated 24.04.2008, the learned Additional Sessions Judge held nine of them guilty of offences punishable under Sections 148, 302 and 324, both read with Section 149, of the Indian Penal Code, 1860 (IPC). They were sentenced to imprisonment coupled with fine. Aggrieved thereby, all nine of them filed appeals under Section 374 Cr.P.C. before the High Court of Judicature of Bombay, Aurangabad Bench. Accused No. 2 (Khemaji s/o Maroti Gabare), was the appellant in Criminal Appeal No. 695 of 2008, Accused No. 3 (Saheb s/o Maroti Bhumre), was the appellant in Criminal Appeal No. 89 of 2009; and Accused No. 5 (Sitaram Pandurang Gabare), was the appellant in Criminal Appeal No. 618 of 2009. By judgment dated 06.12.2010, a Division Bench of the High Court sustained the conviction of Accused Nos. 2, 3 and 5 and acquitted the remaining six accused on the ground that the charges levelled against them were not specific in relation to the injuries afflicted on the deceased and other injured persons. Accused Nos. 2, 3 and 5 were also acquitted of the offence punishable under Section 324 IPC read with Section 149 IPC, but their conviction under Section 302 IPC read with Section 149 IPC and under Section 148 IPC were confirmed. Aggrieved thereby, Accused Nos. 3 and 5 are in appeal before this Court. Criminal Appeal No. 313 of 2012 was filed by Saheb, Accused No. 3, while Criminal Appeal No. 314 of 2012 was filed by Sitaram Pandurang Gabare, Accused No. 5. Significantly, Khemaji s/o Maroti Gabare, Accused No. 2, did not choose to file an appeal against the confirmation of his conviction.

**[2]** Both the appellants were incarcerated on 08.04.2006 and remained in custody. It was only on 30.06.2016 that this Court directed their release on bail. In effect, the appellants have suffered imprisonment for over ten years.

**[3]** The case of the prosecution was as follows: On 08.04.2006, at about 7.30-8.00 pm, the deceased Madhavrao Krishnaji Gabare and his family members, viz., his wife, Janakibai Gabare, their son, Ganesh, and their daughter-in-law, Annapurnabai, and others were attacked by the accused with axes and sticks at the residence of the deceased in Village Singi. On Janakibai Gabare's complaint, FIR No. 36 of 2006 was registered. The deceased was stated to have expired on the spot. His post-mortem examination revealed that he had suffered as many as nine injuries. The cause of his death was ascertained as - head injury and intracranial hemorrhage with multiple fractures. Nine other persons were said to have been injured during the incident. The cause for the altercation was stated to be political rivalry. The deceased, as per his

widow, was the Sarpanch of the Village about 15 years prior to the incident and since then, Khemaji and Sambhaji, two of the accused, were on inimical terms with him. Thereafter, Laxmibai, the wife of the nephew of the deceased, became the Sarpanch of the Village, leading to further animosity. Significantly, both Khemaji and Sambhaji were the nephews of the deceased being the sons of his brothers, Maroti and Deorao.

**[4]** Admittedly, at the time of the incident, there was a power cut due to load shedding, but according to the widow, Janakibai, who was examined as PW-1, there was sufficient moonlight to identify all the accused and the weapons that they used during the attack. Fifteen witnesses, in all, were examined by the prosecution to bring home the guilt of the accused. Documents and material objects were marked in evidence through them. PW-1 (Janakibai Gabare), PW-4 (Kamalbai Gabare), PW-5 (Govind Gabare) and PW-8 (Ganesh Gabare) were examined as eye-witnesses to the attack on the deceased. All four of them are closely related. As already noted, Janakibai Gabare is the wife of the deceased while Ganesh Gabare is their son. Govind Gabare is the nephew of the deceased and Kamalbai Gabare is his wife. The Trial Court, having placed reliance on the evidence of these witnesses, came to the conclusion that except Accused Nos. 1 to 5, 11 to 13 and 15, none of the other accused participated in the assault on the deceased. Holding so, the Trial Court convicted and sentenced Accused Nos. 1 to 5, 11 to 13 and 15 accordingly.

**[5]** However, in appeal, the High Court found that there was no indication as to when Govind Gabare (PW-5) and his wife, Kamalbai Gabare (PW-4), actually came to the spot so as to witness the incident. Janakibai (PW-1) had clearly stated that, at the time of the incident, she, along with her husband, her son, Ganesh (PW-8), and daughter-in-law, Annapurnabai, were present in the house. In view of this, the High Court disbelieved that PW-4 and PW-5 were eye-witnesses. Similarly, the evidence of Ganesh Gabare (PW-8) was discarded by the High Court on the ground that he did not state anything about the assault on the deceased. The High Court, therefore, placed reliance only upon the evidence of Janakibai (PW-1). Even in relation to her testimony, the High Court recorded that she had, no doubt, embroidered her story but concluded that it did not mean that her evidence was not reliable totally. As she had stated that the assault on the deceased was made by Khemaji (Accused No. 2), Saheb (Accused No. 3) and Sitaram (Accused No. 5), the High Court acted upon the same. As she did not attribute any overt act or active participation to Sambhaji who had accompanied Khemaji (Accused No. 2), the High Court gave him the benefit of doubt. Similarly, the other accused, who were found guilty by the Trial Court, were let off by the High Court on the ground of omissions. Insofar as conviction under Section 324 IPC read with Section 149 IPC was concerned, the High Court opined that as no specific charges were levelled against each of the accused in relation to inflicting of the injuries sustained by injured persons, as evidenced by their medical certificates, their conviction under Section 324 IPC read with Section 149 IPC could not be sustained.

**[6]** We are conscious of the fact that Madhavrao Krishnaji Gabare was brutally murdered in his own house on 08.04.2006, but the guilt of those responsible for his murder has to be proved beyond reasonable doubt. All that the defence needs to establish is the existence of reasonable doubt for the accused to be given the benefit thereof. In the case on hand, the guilt of the appellants hinges solely upon the testimony of the widow, Janakibai (PW-1), as the other so-called eye-witnesses have been discarded by the High Court. Notably, Annapurnabai, the daughter-in-law, a key eye-witness by all accounts, was not even examined by the prosecution.

**[7]** Certain facts, admitted as they are, may first be noted. The incident occurred between 7:30-8:00 PM on 08.04.2006 and there was a power cut at that point of time. The attack upon the deceased appears to have been in the courtyard of his house, as his dead body was also found there. However, except for the statement of Janakibai (PW-1), that there was moonlight at that time, no other evidence has been adduced by the prosecution to substantiate that fact. Further, Janakibai (PW-1) also does not state that it was a full-moon night or, at least, nearing the full-moon night, whereby the moonlight would have been bright enough for her to see, with clarity and certainty, the events that unfolded during the attack, i.e., the weapons used in the course thereof and the persons who actually wielded those weapons.

**[8]** In her deposition before the Trial Court, Janakibai (PW-1) stated that, at the time of the incident, along with the deceased, their son, Ganesh, daughter-in-law, Annapurnabai, and she were present in the house. Accused No. 2, Khemaji, and Accused No. 4, Sambhaji, allegedly came to the house and the rest of the accused followed them. She further stated that Accused No. 13, Chandu Gabare, caught hold of the hands of the deceased and Accused No. 2, Khemaji; Accused No. 3, Saheb; and Accused No. 5, Sitaram; dealt axe blows to him. The rest of the accused were stated to be holding sticks in their hands. She said that the deceased succumbed to the injuries on the spot. She further stated that one of the accused hit her on the head with a stick and that, her son, Ganesh, and her daughter-in-law, Annapurnabai, were also beaten. She then added that the accused also beat Govind Gabare and others. According to her, one of the accused picked up Govind's infant daughter from the cradle and threw her down. Thereafter, she said that all the accused persons ran away from the spot. She identified the complaint given by her in the hospital which was marked as Exh-111. In her cross-examination, PW-1 stated that, except for Khemaji, Accused No. 2, and Sambhaji, Accused No. 4, they had cordial relations with the other accused till the incident. She stated that the moon was there on that night at about 7:00 PM and denied the suggestion that the moon rose at 10:00 PM on that day. She further denied that there was darkness throughout the village due to load shedding. She further stated that Ganesh and Pravin, her sons, had not taken dinner at home on that night. She added that they were intending to take their dinner after her sons ate. She claimed that the deceased returned to the house at 7:30 PM and that she did not enquire with him about his dinner. She again stated that one of the accused picked up Govind's 2-3 months old

daughter and threw her in front of the house. She, however, did not know whether the baby sustained any injury, which is rather unbelievable and manifests that this allegation was an afterthought, added to shock and prejudice the Court. She conveniently claimed that she had stated this fact but the same was not recorded in her complaint given at the hospital. She further stated that she could not say as to which accused had held which axe or stick in his hand. According to her, the incident went on for two hours!! She then stated that the accused first beat the deceased and, thereafter, hit her on the head. She said that she lost consciousness after she was given the blow on the head and remained unconscious till she was taken to the hospital at Basmathnagar.

**[9]** Significantly, in her complaint recorded on 09.04.2006 at the hospital, Janakibai (PW-1) had a different story to tell. She stated that the deceased and Ganesh, her son, had their dinner and she along with her daughter-in-law were just sitting down to have their dinner at the time the attack occurred. She further stated that the accused, without speaking a single word, started beating the deceased and her, her son, Ganesh, her daughter-in-law, Annapurnabai, her nephew, Govind, and others. She identified Khemaji, Accused No. 2; Sitaram, Accused No. 5; Saheb, Accused No. 3 and Chandu Gabare, Accused No. 13, as the persons who had axes and who attacked them with the same. She further stated that she was hit on the head and was also injured on her back but owing to the chaos, she did not know who had hit her.

**[10]** Juxtaposition of her deposition before the Trial Court and her initial complaint clearly demonstrate that Janakibai (PW-1) embellished her narration of how the attack occurred, resulting in a lot of inconsistencies. On the one hand, she stated that Chandu, Accused No. 13, was holding an axe and was one of the persons who attacked with an axe, but on the other, she stated that Chandu caught hold of the hands of the deceased as soon as the accused came to their house, which would mean that he was unarmed. Further, she clearly tried to include more witnesses and added extra details of the assault in her deposition. The contradictions in her story would raise reasonable doubt, as her statement in her deposition that she was attacked after the attack on the deceased was made to buttress her narration as to who attacked the deceased with axes, but in the first instance, she had stated that the accused attacked all of them as soon as they entered the house.

**[11]** Picturing a scenario where twenty-two persons entered into the premises armed with axes and sticks on a dark night, even if dimly lit by moonlight, it is difficult to believe that, in the melee that ensued, any person who was under attack would be in a position to identify, clearly and with certainty, as to who was assaulting whom and with what weapon. More so, as PW-1 claimed that Sambhaji, Accused No. 4, was one of the first persons to enter the premises along with Khemaji, Accused No. 2, but no attack was attributed to him, leading to his acquittal by the High Court.

**[12]** It is no doubt possible that PW-1 could have identified the accused who first entered the premises armed with axes and launched the initial attack on her husband, but given her contrary statements on even these crucial facts and more particularly, in the context of Sambhaji, Accused No.4, and Chandu, Accused No.13, her evidence is placed wholly in the realm of uncertainty and no credence can be given to her solitary testimony on any aspect. Though the maxim 'Falsus in uno, falsus in omnibus' is only a rule of caution and has not assumed the status of a rule of law in the Indian context, an attempt must be made to separate truth from falsehood and where such separation is impossible, there cannot be a conviction (See **Narain vs. State of M.P**, 2004 2 SCC 455). We find that to be so in the case on hand.

**[13]** As already noted, the appellants have suffered 10 years' incarceration. Given the lacunae in the prosecution's case and the shaky evidence adduced in support thereof by PW-1, we necessarily have to extend the benefit of doubt to the appellants. The appellants are, therefore, acquitted of the offences under Section 148 IPC and Section 302 IPC read with Section 149 IPC.

The appeals are accordingly allowed.

The bail bonds and sureties furnished by the appellants shall stand discharged. Fine amount, if any, paid by the appellants shall be refunded

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2024(2)GBAJ492

**IN THE SUPREME COURT OF INDIA**

[From RAJASTHAN HIGH COURT]

[Before Sudhanshu Dhulia; Ahsanuddin Amanullah]

Special Leave To Appeal (Criminal) No 9510 of 2024 **dated 17/09/2024**

*Ramlal*

**Versus**

*State of Rajasthan*

**BAIL APPLICATION**

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 21, Sec. 29, Sec. 8 - Bail Application - Petitioner and other accused charged under Narcotic Drugs and Psychotropic Substances Act for possessing 450 grams of smack - Petitioner applied for bail after spending 1 year and 6 months in jail - High Court rejected bail leading to the petition before Supreme Court - State was deemed to be served but no representation from the State appeared - Court considered the prolonged incarceration and the absence of criminal antecedents for petitioner - Held that petitioner has made a valid case for bail - Ordered immediate release on usual terms to be set by concerned authority - Petition Allowed

**Law Point: Prolonged incarceration and absence of prior criminal record can serve as valid grounds for granting bail under Narcotic Drugs and Psychotropic Substances Act.**

નાર્કોટિક ડ્રગ્સ એન્ડ સાયકોટ્રોપિક સબસ્ટન્સ એક્ટ, ૧૯૮૫ સેક. ૨૧, સે. ૨૯, સેક. ૮ - જામીન અરજી – અરજદાર અને અન્ય આરોપીઓ પર ૪૫૦ ગ્રામ સ્મેક રાખવા બદલ નાર્કોટિક ડ્રગ્સ એન્ડ સાયકોટ્રોપિક સબસ્ટન્સ એક્ટ હેઠળ આરોપ મૂકવામાં આવ્યો - અરજદારે ૧ વર્ષ અને ૬ મહિના જેલમાં વિતાવ્યા બાદ જામીન માટે અરજી કરી - હાઇકોર્ટે જામીન નામંજૂર કર્યા, સુપ્રીમ કોર્ટ સમક્ષ અરજી કરી - રાજ્યને મંજૂરી આપવાનું માનવામાં આવતું હતું પરંતુ રાજ્ય તરફથી કોઈ રજૂઆત દેખાઈ ન હતી - કોર્ટે અરજદાર માટે લાંબા સમય સુધી જેલવાસ અને ગુનાહિત ઇતિહાસની ગેરહાજરીને ધ્યાનમાં લીધી - ધાર્યું કે અરજદારે જામીન માટે માન્ય કેસ કર્યો છે - સંબંધિત સત્તાધિકારી દ્વારા નિર્ધારિત કરવા માટે સામાન્ય શરતો પર તાત્કાલિક મુક્ત કરવાનો આદેશ આપ્યો - અરજી મંજૂર

કાયદાનો મુદ્દો: લાંબા સમય સુધી જેલવાસ અને અગાઉના ગુનાહિત ઇતિહાસની ગેરહાજરી નાર્કોટિક ડ્રગ્સ એન્ડ સાયકોટ્રોપિક સબસ્ટન્સ એક્ટ હેઠળ જામીન આપવા માટે માન્ય આધાર તરીકે સેવા આપી શકે છે.

**Acts Referred:**

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 21, Sec. 29, Sec. 8

**Counsel:**

Namit Saxena, Awnish Maithani, Shivam Raghuwanshi, Pranav Khoiwal, Isha Nagpal

**JUDGEMENT**

**[1]** The petitioner and the other accused persons are accused for the offences punishable under Sections 8/21 & 8/29 of the Narcotic Drugs and Psychotropic Substances Act and allegation is that 450 gram of smack has been recovered from them. The bail application of the petitioner was dismissed by the High Court. Hence, he approached this Court. He has already undergone about 1 year and 6 months in jail.

**[2]** Heard learned counsel for the petitioner. As per office report dated 13.09.2024, the service is deemed complete on the sole respondent-State but no one has appeared for the State.

**[3]** Considering the period of incarceration of the petitioner and the fact that the petitioner has no criminal antecedents, we are of the opinion that a case of bail is made out for the petitioner.

**[4]** Accordingly, the petitioner is directed to be released on bail forthwith on the usual terms and conditions to be decided by the concerned Court.

**[5]** The present petition shall stand disposed of in the above terms along with pending application(s), if any

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2024(2)GBAJ494

**IN THE SUPREME COURT OF INDIA**

[From KERALA HIGH COURT]

[Before Sudhanshu Dhulia; Ahsanuddin Amanullah]

Criminal Appeal No 3700 of 2024 **dated 03/09/2024**

*Mallan @ Rajan Kani*

**Versus**

*State of Kerala*

**RAPE CONVICTION**

Indian Penal Code, 1860 Sec. 376 - Rape Conviction - Appellant convicted under Section 376 IPC for repeatedly raping his stepdaughter in a forest and at their home - Conviction upheld by the High Court, and appellant sentenced to life imprisonment with a fine of Rs. 2 lakhs - Appellant sought sentence reduction, citing financial difficulties and having served over 8 years in prison - Court reduced the sentence to 10 years but retained the fine - Failure to pay fine within one year would result in an additional one-year sentence - Appeal disposed of accordingly. - Appeal Partly Allowed

**Law Point: Courts may reduce sentences considering the totality of circumstances, but fines imposed must still be paid within a specified period to avoid further imprisonment.**

ભારતીય દંડ સંહિતા, ૧૮૬૦ સે. ૩૭૬ – બળાત્કાર માટે દોષિત - અપીલકર્તા આઈપીસી કલમ ૩૭૬ હેઠળ તેની સાવકી દીકરી પર જંગલમાં અને તેમના ઘરે વારંવાર બળાત્કાર કરવા બદલ દોષિત ઠરાવવામાં આવ્યો - હાઈકોર્ટ દ્વારા દોષિત ઠરાવવામાં આવ્યો, અને અપીલ કરનારને ૨ લાખ રૂપિયાના દંડ સાથે આજીવન કેદની સજા - અપીલકર્તાએ આર્થિક મુશ્કેલીઓ અને ૮ વર્ષથી વધુ જેલમાં રહીને સજા ઘટાડવાની માંગ કરી હતી. - કોર્ટે સજા ઘટાડીને ૧૦ વર્ષ કરી પરંતુ દંડ યથાવત રાખ્યો - એક વર્ષની અંદર દંડ

ભરવામાં નિષ્ફળતા પર એક વર્ષની વધારાની સજા થશે - તે મુજબ અપીલનો નિકાલ કરવામાં આવ્યો. - અપીલ અંશતઃ મંજૂર

કાયદાનો મુદ્દો: અદાલતો સંજોગોની સંપૂર્ણતાને ધ્યાનમાં રાખીને સજા ઘટાડી શકે છે, પરંતુ વધુ કેદ ટાળવા માટે લાદવામાં આવેલ દંડ હજુ પણ ચોક્કસ સમયગાળામાં ચૂકવવો આવશ્યક છે.

**Acts Referred:**
Indian Penal Code, 1860 Sec. 376

**Counsel:**
D N Goburdhun (Senior Advocate), Nidhi, Harshad V Hameed, Dileep Poolakkot, Ashly Harshad, Farhad Tehmu Marolia

**JUDGEMENT**

**[1]** Leave granted.

**[2]** The appellant has been convicted and sentenced for life imprisonment with fine of Rupees Two lakh in default to pay the fine to undergo RI for two more years for the offences punishable under Section 376 of the Indian Penal Code, which has been upheld in appeal before the High Court vide order dated 14.12.2021. The case of the prosecution against the appellant is that he is the step father of the victim and the he used to insist that the victim accompany him to the nearby forest to collect fire woods where she was raped by the appellant. The victim also states that the appellant had raped her on previous occasions as well, at the very same forest and also at her dwelling house.

**[3]** Under these circumstances, we see absolutely no reason to interfere with the well-considered finding of the Trial Court as well as the High Court on conviction.

**[4]** Learned senior counsel for the appellant thereafter argue on the sentence. Presently, the appellant is in his 40s and he had already undergone more than 8 years of the sentence. His financial condition is such that he will never been able to pay the fine of Rupees Two lakh which has been additionally imposed upon him, states his counsel who has been assigned to argue this Court as a legal aid matter.

**[5]** Having consider the totality of the facts and circumstances of the case, we reduce the sentence to 10 years and retain the fine amount as Rupees Two lakhs. The appellant shall pay the said fine amount within a period of one year from today.

**[6]** In case the said fine amount is not paid by the appellant within the stipulated time, the appellant shall undergo one year (instead of two years RI) of further sentence.

**[7]** The appeal stands disposed of in the above terms.

**[8]** All pending applications stand disposed of

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2024(2)GBAJ496

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

[Before Gita Gopi]

Criminal Revision Application (For Regular Bail) No 1360 of 2024 **dated 18/09/2024**

*Manish Harishbhai Chauhan Thro Harishbhai Chhanabhai Chauhan*

**Versus**

*State of Gujarat*

**BAIL FOR JUVENILE**

Indian Penal Code, 1860 Sec. 302, Sec. 354, Sec. 506 - Code of Criminal Procedure, 1973 Sec. 439 - Protection of Children from Sexual Offences Act, 2012 Sec. 9, Sec. 10 - Juvenile Justice (Care and Protection of Children) Act, 2015 Sec. 102, Sec. 101, Sec. 12 - Gujarat Police Act, 1951 Sec. 135 - Bail for Juvenile - Child in conflict with law (CCL) sought bail under Section 12 of the Juvenile Justice Act after being charged with murder under IPC Sec. 302 - Children's Court denied the bail citing the severity of the offense - CCL's advocate argued that the court failed to consider the criteria outlined in the Juvenile Justice Act, such as moral or psychological danger, and lacked the necessary probation report - Based on the assessment report, CCL's helpful nature, and the absence of criminal history, the High Court granted bail, instructing monitoring by a probation officer - Bail Granted

**Law Point: Section 12 of the Juvenile Justice Act mandates that bail must be granted to juveniles unless it is proven that release would expose them to danger or defeat the ends of justice; probation reports are essential for such determinations.**

ભારતીય દંડ સંહિતા, ૧૮૬૦ સે. ૩૦૨, સેક. ૩૫૪, સેક. ૫૦૬ - ફોજદારી કાર્યરીતીની સંહિતા, ૧૯૭૩ સેક. ૪૩૯ - જાતીય અપરાધોથી બાળકોનું રક્ષણ અધિનિયમ, ૨૦૧૨ સેક. ૯, સેક. ૧૦ - જુવેનાઇલ જસ્ટિસ (બાળકોની સંભાળ અને રક્ષણ) અધિનિયમ, ૨૦૧૫ સેક. ૧૦૨, સેક. ૧૦૧, સેક. ૧૨ - ગુજરાત પોલીસ અધિનિયમ, ૧૯૫૧ સેક. ૧૩૫ - કિશોર માટે જામીન - કાયદા સાથે સંઘર્ષમાં રહેલા બાળકે (CCL) આઈપીસીની કલમ ૩૦૨ હેઠળ હત્યાનો આરોપ લગાવ્યા બાદ જુવેનાઈલ જસ્ટિસ એક્ટની કલમ ૧૨ હેઠળ જામીન માંગ્યા હતા. - ચિલ્ડ્રન કોર્ટે ગુનાની ગંભીરતાને ટાંકીને જામીન નામંજૂર

કર્યા હતા - સીસીએલના એડવોકેટે દલીલ કરી હતી કે કોર્ટ જુવેનાઈલ જસ્ટિસ એક્ટમાં દર્શાવેલ માપદંડો, જેમ કે નૈતિક અથવા માનસિક જોખમને ધ્યાનમાં લેવામાં નિષ્ફળ રહી હતી અને જરૂરી પ્રોબેશન રિપોર્ટનો અભાવ હતો. - એસેસમેન્ટ રિપોર્ટ, સીસીએલની મદદરૂપ પ્રકૃતિ અને ગુનાહિત ઈતિહાસની ગેરહાજરીના આધારે, હાઈકોર્ટે જામીન આપ્યા, પ્રોબેશન ઓફિસર દ્વારા મોનિટરિંગની સૂચના આપી - જામીન મંજૂર

કાયદાનો મુદ્દો: જુવેનાઈલ જસ્ટિસ એક્ટની કલમ ૧૨ એ આદેશ આપે છે કે કિશોરોને જામીન આપવા જોઈએ સિવાય કે તે સાબિત થાય કે મુક્તિ તેમને જોખમમાં મૂકશે અથવા ન્યાયના અંતને પરાસ્ત કરશે; આવા નિર્ણયો માટે પ્રોબેશન રિપોર્ટ્સ આવશ્યક છે.

**Acts Referred:**

Indian Penal Code, 1860 Sec. 302, Sec. 354, Sec. 506

Code of Criminal Procedure, 1973 Sec. 439

Protection of Children from Sexual Offences Act, 2012 Sec. 9, Sec. 10

Juvenile Justice (Care and Protection of Children) Act, 2015 Sec. 102, Sec. 101, Sec. 12

Gujarat Police Act, 1951 Sec. 135

**Counsel:**

Apurva K Jani, Monali Bhatt

**JUDGEMENT**

**Gita Gopi, J.- [1] RULE** returnable forthwith. Learned Additional Public Prosecutor waives service of notice of Rule on behalf of respondent - State.

**[2]** This Revision Application has been filed by the child in conflict with law (hereinafter referred to in short as 'CCL'), through his father as Guardian, under Section 102 of the Juvenile Justice (Care & Protection of Children) Act, 2015 (hereinafter referred to in short as the 'JJ Act') challenging the order dated 18.06.2024 passed by the learned Incharge Judge, Children Court and learned Additional Sessions Judge, City Civil and Sessions Court, Ahmedabad in Criminal Appeal No.4414 of 2024 whereby the bail application of the CCL came to be rejected.

**[3]** The First Information Report (FIR) being C.R. No.11191032240020 of 2024 was registered on 10.01.2024 with Maninagar Police Station, Ahmedabad City for the offence punishable under Section 302 of the Indian Penal Code and under Section 135(1) of the G.P. Act. The CCL is aged about 17 years and four months.

**[4]** Learned Advocate for the applicant Mr. Apurva K. Jani submitted that the learned Children's Court was required to sit as an Appellate Court and not the Court of the first instance by entertaining the application under Section 439 of Cr.P.C. It is further submitted that the learned Children's Court was required to consider the application of the CCL in accordance with the provisions of Section 12 of the JJ Act and not as per Section 439 of the Cr.P.C. It is also submitted that the learned Children's Court was required to verify the matter of the Juvenile Justice Board (hereinafter referred to in short as 'JJB') since it is only on that order, the learned Children's Court can entertain the application for grant of bail under Section 101 of the JJ Act.

**[5]** Learned Advocate Mr. Apurva K. Jani further submitted that under revisional jurisdiction, the Revisional Court on its own motion can also entertain an application against the order passed by the JJB or the learned Children's Court to examine the legality and propriety of the said order. It is also submitted that the order passed by the learned Children's Court is not in accordance to the law and the Court was required to consider the application in accordance with Section 12 of the JJ Act whereby the said Section does not make any distinction between bailable and non-bailable offences. It is submitted that the learned Children's Court was required to consider the criteria as laid down under Section 12 of the JJ Act where it was incumbent on the Court to find out whether release of CCL would likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. It is also stated that the learned Children's Court as the learned Appellate Court was required to record the reason to deny the bail and circumstances that led to such a decision.

**[6]** Learned Advocate Mr. Apurva K. Jani has relied on the decision dated 14.08.2024 of the Hon'ble Apex Court in the case of Juvenile in Conflict with Law v. The State of Rajasthan and Another in Special Leave Petition (Crl.) No.9566 of 2024 to submit that the Hon'ble Apex Court has dealt with the matter of a juvenile against whom offences under Sections 354 and 506 of the Indian Penal Code and Sections 9 and 10 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO') were registered. The Hon'ble Apex Court on observing the one year custody of CCL and referring to Section 12 of the JJ Act, has observed about the proceedings. Learned Advocate for the applicant has referred to Paragraphs 6, 7 and 9 of the above decision which reads as under:-

"6. From the phraseology used in sub-section 1 of Section 12, a juvenile in conflict with law has to be necessarily released on bail with or without surety or placed under supervision of a probation officer or under the care of any fit person unless proviso is applicable.

7. We have perused all the orders passed earlier by the JJ Board, Special Court and High Court and specially the order dated 11th December, 2023 passed by the JJ

Board. There is no finding recorded that the proviso to sub-Section 1 of Section 12 is applicable to the facts of the case. Without recording the said finding, bail could not have been denied to juvenile in conflict with law.

9. Though none of the courts at no stage have recorded a finding that in the facts of the case, the proviso to sub-Section 1 of Section 12 was applicable, the juvenile in conflict with law has been denied bail for last one year."

**[7]** Learned Advocate Mr. Apurva K. Jani has referred to the preliminary assessment of the CCL by the Department of Psychiatry, General Hospital, Mehsana (Gujarat). The assessment reveals that the CCL has never been involved in any other matter, he is living in a joint family and has a normal behaviour. The CCL has been living in the institution since the last one and half months and is a Standard IX dropout. The Report further states that the CCL has not taken alcohol or any other drugs. It is also found that the CCL was co-operative and has average level of intelligence and his psycho-motor activities were found to be normal. The Report further reveals that the CCL is able to understand the nature, severity and consequences of his act, is mentally fit and no physical illnesses were found to be present.

**[8]** A reference is made to the statement of Ritesh Bhupendrabhai Patel, who is a handicapped person. The statement of this witness reveals that the CCL has a helpful nature and he not only assists his father but also helps others in arranging the carts. The CCL also assists the said witness. It is further that the CCL has confided before this witness and has repented for his act. It was therefore, urged that considering the facts and circumstances of the case, discretion be exercised by this Court in favour of the CCL.

**[9]** On the other hand, learned Additional Public Prosecutor submitted that it is a case of CCL who has murdered his father's friend as the deceased has found the CCL to have fallen into bad company and therefore, the deceased had complained to the father of the CCL. It is further submitted that considering the nature of the grievous offence, bail ought not to be granted to the CCL.

**[10]** This Court had called for the Probation Officer's Report. As per the Report, prior to four days of his death, the deceased had informed the father of the CCL that the CCL is consuming liquor and ganja and till late night, the CCL is sitting with girls and talking with them. The CCL's father thus rebuked CCL. Hence, the CCL went to the deceased and asked as to why he is telling false facts to his father. The Report further states that the deceased had verbally abused the CCL and hence, the CCL went away from the place. The Report also states that on the date of incident, when the CCL and his sister were eating dumplings ('pakodi'), the deceased went there and started a quarrel with the CCL. Again the father of the CCL scolded him because of which the CCL went away crying at the father's cart. The Report further states that the CCL's

sister took away the mobile phone of the CCL and in anger, CCL left the place and after some time, he returned to arrange the carts. The CCL reached the ware house and saw a rusted knife. At about 11.30 pm, the CCL confronted the deceased asking him as to why he was telling false things to his father, the deceased got enraged and it is noted on the deceased's provocation, the CCL gave knife blows on the chest and stomach of the deceased. The Probation Officer has further noted that the CCL has repented for his action and he requires counselling.

**[11]** Heard the submissions canvassed and perused the records of the case. The allegations are to the effect that the deceased was complaining about the CCL to his father stating that the CCL is consuming liquor and ganja. The assessment report of the Department of Psychiatry reveals that the CCL is not taking alcohol or any other drugs. The statement of Ritesh Bhupendrabhai Patel shows that the CCL is also assisting the said witness in parking his cart. The said witness had stated that at about 12.30 pm when the CCL was helping this witness, he told him about his act and since he was afraid seeing the deceased in a pool of blood, he had come to the witness. After taking the CCL to the place where the deceased was lying, the witness through the CCL had called for 108 Ambulance and thereafter, the witness had informed the Maninagar Police Station.

**[12]** In an application filed for bail by a CCL, Section 12 of the JJ Act is required to be taken into consideration. Section 12 of the JJ Act mandates that the juvenile, in a bailable or non-bailable offence, is arrested or detained or appears or brought before the Court, has to be released on bail with or without surety or place under the supervision of the Probation Officer or under the care of any fit institution of fit person but shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. The Court below has not examined the aspect by calling upon the Report of the Probation Officer. Further, the Court has also have failed to note as to whether the CCL would be exposed to moral, physical or psychological danger and to examine these aspects, the Report was required to be called upon. It was also required to be considered whether the CCL's release would defeat the ends of justice.

**[13]** Taking into consideration the Assessment Report of the Department of Psychiatry, the Probation Officer's Report and the First Information Report, it appears that the deceased was 57 years of age. The deceased was required to discipline the CCL, being a friend of the CCL's father. The Report states that the deceased was unmarried. The CCL was often complaining to the deceased that he was telling false things about him to his father. The Probation Officer's Report shows that the CCL was being rebuked often by the deceased and the CCL was disturbed by this act of the deceased and even at the time of incident, the deceased appears to have provoked the CCL, which led to the incident. The CCL is staying in a joint family, the deceased was

rather required to discipline the CCL if at all, it was found that the CCL was falling into bad company. Nothing has come on record to suggest that the CCL had fallen into bad company. Rather, the statement of Ritesh Bhupendrabhai Patel suggests that the CCL was of helpful nature and he was assisting his father and others in arranging the carts.

**[14]** Considering the above role of the CCL, discretion is exercised in favour of the child to enlarge him on bail.

**[15]** In view of the observations and discussion made herein above, the present application succeeds and is accordingly, allowed. The order impugned in this revision of the learned Children's Court, referred herein above is set aside, i.e. the order dated 18.06.2024 passed by the learned Incharge Judge, Children Court and learned Additional Sessions Judge, City Civil and Sessions Court, Ahmedabad in Criminal Appeal No.4414 of 2024.

**[16]** The CCL is ordered to be released on bail in connection with the aforesaid FIR, by his father, executing a personal bond in sum of Rs.10,000/- (Rupees Ten Thousand only) before the JJ Board.

**[17]** It is directed that the Probation Officer shall monitor the conduct of the CCL and shall quarterly submit the report before the Trial Court. Moreover, if the Probation Officer considers any necessity of sending the CCL for any behavior modification then necessary therapy and psychiatric support be provided to the CCL.

**[18]** The father of the CCL to ensure that the CCL will not fall into bad company.

**[19]** Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith

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2024(2)GBAJ501

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

[Before M R Mengdey]

Criminal Miscellaneous Application (For Successive Regular Bail - After Chargesheet) No 12345 of 2024 **dated 12/09/2024**

*Kirtikumar Kanajibhai Sankhla (Mali)*

**Versus**

*State of Gujarat*

**BAIL IN CONSPIRACY CASE**

Indian Penal Code, 1860 Sec. 304A, Sec. 201, Sec. 114, Sec. 302, Sec. 120B - Code of Criminal Procedure, 1973 Sec. 439, Sec. 173 - Motor Vehicles Act, 1988 Sec. 184, Sec. 134, Sec. 177 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 483 - Bail in

Conspiracy Case - Application for regular bail filed after chargesheet - Applicant accused of conspiracy to eliminate deceased - Allegedly arranged driver and vehicle used in crime - Previous bail canceled due to cancellation of main accused's bail - Trial delayed, only 9 witnesses examined out of 46 - Court considered delay and lack of progress - Bail granted with conditions - Bail Granted

**Law Point: Bail may be granted when trial progress is delayed, even in conspiracy cases, provided conditions ensure no tampering with evidence and compliance with law**

ભારતીય દંડ સંહિતા, ૧૮૬૦ સે. ૩૦૪એ, સેક. ૨૦૧, સેક. ૧૧૪, સેક. ૩૦૨, સેક. ૧૨૦બી - ફોજદારી કાર્યરીતીની સંહિતા, ૧૯૭૩ સેક. ૪૩૯, સેક. ૧૭૩ - મોટર વ્હીકલ એક્ટ, ૧૯૮૮ સેક. ૧૮૪, સેક. ૧૩૪, સેક. ૧૭૭ - ભારતીય નાગરિક સુરક્ષા સંહિતા, ૨૦૨૩ સેક. ૪૮૩ - કાવતરાના કેસમાં જામીન - ચાર્જશીટ બાદ રેગ્યુલર જામીન માટેની અરજી દાખલ - અરજદાર પર મૃતકને ખતમ કરવાના કાવતરાનો આરોપ - કથિત રીતે ગોઠવાયેલ ડ્રાઈવર અને ગુનામાં વપરાયેલ વાહન - મુખ્ય આરોપીના જામીન રદ થતાં અગાઉના જામીન રદ - ટ્રાયલ વિલંબિત, ૪૬માંથી માત્ર ૯ સાક્ષીઓની તપાસ કરી - કોર્ટે વિલંબ અને પ્રગતિનો અભાવ ગણાવ્યો - શરતો સાથે જામીન મંજૂર - જામીન મંજૂર.

કાયદાનો મુદ્દો: જ્યારે ટ્રાયલની પ્રગતિમાં વિલંબ થાય ત્યારે જામીન મંજૂર થઈ શકે છે, કાવતરાના કેસોમાં પણ, જો શરતો પુરાવા સાથે ચેડાં ન થાય અને કાયદાનું પાલન ન થાય તે સુનિશ્ચિત કરે.

**Acts Referred:**

Indian Penal Code, 1860 Sec. 304A, Sec. 201, Sec. 114, Sec. 302, Sec. 120B
Code of Criminal Procedure, 1973 Sec. 439, Sec. 173
Motor Vehicles Act, 1988 Sec. 184, Sec. 134, Sec. 177
Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 483

**Counsel:**

Ashish M Dagli, Hriday Buch, Dhavan Jaiswal

**JUDGEMENT**

**M R Mengdey, J.- [1]** Rule. Learned APP waives service of notice of Rule on behalf of respondent State and learned advocate Mr.Buch waives service of notice of Rule on behalf of original complainant.

1. The applicant has filed this Application under Section 439 of the Code of Criminal Procedure, 1973 (Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS)) for enlarging the applicant on Regular Bail in connection with FIR being C.R.No.11195008201056 of 2020 registered with Bhildi Police Station, District: Banaskantha for offences punishable under Sections 304(A), 302, 120(B), 114 and 201 of the Indian Penal Code and under Sections 177, 184 and 134 of the Motor Vehicles Act.

**[2]** Heard learned advocate Mr.Ashish Dagli for the applicant.

2.1 He submitted that the present applicant has been arrested in connection with the present offence on 22.04.2022. Earlier the applicant had preferred Criminal Miscellaneous Application No.1480 of 2023 which was allowed to be withdrawn by this Court vide order dated 14.12.2023. While allowing the said application to be withdrawn, the liberty was granted to file an application afresh after period of four months if the trial does not get concluded in the stipulated time. Learned advocate for the applicant submitted that thereafter the trial has not progressed satisfactorily and as of now only nine witnesses have been examined. He further submitted that earlier applicant was ordered to be enlarged on bail by the learned Sessions Court. However, the bail granted to the present applicant came to be cancelled as bail granted to the main accused was cancelled by the Apex Court. He submitted that the complainant has also filed an application seeking further investigation which is pending before this Court since last more than two years and if the said application is allowed, the trial is not likely to conclude in near future. He, therefore, prayed to allow the present application by imposing suitable terms and conditions.

**[3]**

3.1 Per contra, learned APP appearing for the respondent State authority opposed the present application contending that present applicant was part of conspiracy which was hatched for elimination of the deceased. The applicant happens to be the friend of the main co-accused who happens to be the husband of the deceased and the said main accused was in contact with the present applicant before incident, during the incident and after the incident and it was the present applicant, who only had managed for a driver who was driving the car at the time of incident. He also submitted that the main accused i.e. husband of the deceased had bought insurance policy in the name of the deceased for Rs.60 Lakhs and had also obtained loan over the said policy and with an amount of said loan, a car was purchased which was allegedly used in commission of crime and the delivery of the said car had been taken by the present applicant. Thus, there is active involvement of the present applicant in commission of offence and, therefore, he prayed to dismiss the present application.

3.2 Learned advocate Mr.Hriday Buch appearing for the original complainant has also opposed the present application contending that after the order of this Court dated

14.12.2023, on no occasion, the case has been adjourned before the concerned trial Court because of the prosecution and the prosecution is not responsible for the delay caused in conclusion of the trial. On the contrary, on several occasions, witnesses, who are relatives of the present applicant and the main accused had not remained present and because of absence of these witnesses, trial had to be adjourned. Therefore, he prayed to dismiss the present application.

**[4]** Heard learned advocates for the parties and perused the record.

**[5]**

5.1 At the outset, it is required to be noted that earlier the applicant was ordered to be enlarged on bail by the learned Sessions Court, however, the said bail granted by the concerned Sessions Court, which was granted on the basis of grant of bail to the main accused, came to be cancelled upon cancellation of bail granted to the main accused, by the Apex Court as the Sessions Court while granting bail to the present applicant had relied upon the grant of bail to the main accused. Thereafter the applicant was arrested and since 22.04.2022 the applicant is in custody. The record further indicates that prosecution has also preferred an application before this Court asking for further investigation under Section 173 (8) of the Cr.P.C. and the said application is still pending before this Court.

5.2 Insofar as the role attributed to the present applicant is concerned, it is alleged against the present applicant that he was part of the conspiracy which was hatched to eliminate the deceased and as a part of the said conspiracy the present applicant had managed for driver of the car which was allegedly used in commission of offence in question.

5.3 The applicant had earlier preferred an application being Criminal Miscellaneous Application No.1480 of 2023 which was allowed to be withdrawn by this Court vide order dated 14.12.2023 and the applicant was allowed to file an application afresh after period of four months if the trial is not progressed satisfactorily. The record indicates that as of now only nine to ten witnesses have been examined during the course of trial out of 46 witnesses cited by the prosecution and as such the trial is not likely to conclude in near future. Having considered all these aspects, the present application deserves consideration and accordingly stands allowed. The Applicant Accused is ordered to be released on bail in connection with the aforesaid FIR on executing a personal bond of **Rs.10,000/-** with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that the applicant shall:

(a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence.

(b) maintain law and order and not to indulge in any criminal activities.

(c) furnish the documentary proof of complete, correct and present address of residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change the residence without prior permission of the trial Court.

(d) provide contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in writing immediately to the trial Court.

(e) file an affidavit stating his immovable properties whether self acquired or ancestral with description, location and present value of such properties before the Trial Court, if any.

(f) not leave India without prior permission of the Trial Court

(g) surrender passport, if any, to the Trial Court within a week. If the Applicants do not possess passport, shall file an Affidavit to that effect.

(h) mark presence before the concerned Police Station once ina month for a period of six months between 11.00 a.m. and 2.00 p.m.

**[6]** Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to furnish the solvency certificate if prayed for.

**[7]** If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities will release the Applicant forthwith if not required in connection with any other offence for the time being.

**[8]** At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

**[9]** Rule is made absolute. Direct service permitted

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2024(2)GBAJ505

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

[Before Divyesh A Joshi]

Criminal Miscellaneous Application (For Successive Regular Bail - After Chargesheet) No 17260 of 2024 **dated 12/09/2024**

*Manoj Ashok Pagare (Patil)*

**Versus**

*State of Gujarat*

**REGULAR BAIL**

Indian Penal Code, 1860 Sec. 201, Sec. 114, Sec. 302, Sec. 294 - Code of Criminal Procedure, 1973 Sec. 439 - Applicant sought regular bail in connection with an FIR

under IPC sections including 302 - Applicant argued he was not named in the FIR and implicated based on co-accused statements - Co-accused, who had a graver role, was already granted bail - Court noted applicant in jail for over one and a half years, investigation was completed, and no further involvement of applicant was evident - Court exercised discretion and granted bail with conditions, including personal bond and regular police station visits - Bail Granted

**Law Point: Bail can be granted when the accused has undergone significant incarceration, the investigation is complete, and co-accused with a graver role has been released on bail**

ભારતીય દંડ સંહિતા, ૧૮૬૦ સે. ૨૦૧, સેક. ૧૧૪, સેક. ૩૦૨, સેક. ૨૯૪ - ફોજદારી કાર્યવાહીની સંહિતા, ૧૯૭૩ સેક. ૪૩૯ – અરજદારે આઇપીસી કલમો ૩૦૨ સહિત હેઠળ એફઆઈઆરના સંબંધમાં નિયમિત જામીન માંગ્યા - અરજદારે દલીલ કરી હતી કે એફઆઈઆરમાં તેનું નામ નથી અને સહ-આરોપીના નિવેદનોના આધારે તેને ફસાવવામાં આવ્યો છે. - ગંભીર ભૂમિકા ધરાવતા સહ-આરોપીને પહેલા જ જામીન મળી ગયા હતા - કોર્ટે નોંધ્યું કે અરજદાર દોઢ વર્ષથી જેલમાં છે, તપાસ પૂર્ણ થઈ છે, અને અરજદારની વધુ કોઈ સંડોવણી સ્પષ્ટ નથી - કોર્ટે વિવેકબુદ્ધિનો ઉપયોગ કર્યો અને વ્યક્તિગત બોન્ડ અને પોલીસ સ્ટેશનની નિયમિત મુલાકાત સહિતની શરતો સાથે જામીન મંજૂર કર્યા - જામીન મંજૂર

કાયદાનો મુદ્દો: જ્યારે આરોપી નોંધપાત્ર જેલવાસ ભોગવી ચૂક્યો હોય, તપાસ પૂર્ણ થઈ ગઈ હોય અને ગંભીર ભૂમિકા સાથે સહ-આરોપીને જામીન પર મુક્ત કરવામાં આવ્યો હોય ત્યારે જામીન આપી શકાય છે.

**Acts Referred:**

Indian Penal Code, 1860 Sec. 201, Sec. 114, Sec. 302, Sec. 294
Code of Criminal Procedure, 1973 Sec. 439

**Counsel:**

A A Zabuawala, Jay Mehta

**JUDGEMENT**

**Divyesh A Joshi, J.- [1]** Rule returnable forthwith. Learned APP waives service of notice of rule for and on behalf of the respondent-State.

**[2]** The present successive application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being C.R.

No.11210025230112 of 2023 registered with the Limbayat Police Station, Arvalli of the offence punishable under Sections 302, 294(B), 201 read with Section 114 of the IPC.

**[3]** Learned advocate appearing for the applicant has submitted that the applicant-accused was arrested on 10.01.2023 and since then he is in jail. Learned advocate for the applicant has also submitted that the investigation has already been completed and charge-sheet has also been filed. Learned advocate for the applicant has submitted this is a third round of litigation filed due to some development having taken place and found in the matter. He has submitted that the present applicant-accused has not been named in the FIR and he has been implicated in the present offence on the basis of the statement of the co-accused. It is moreso submitted that the development which has come on record after the withdrawal of the last application is that the other co-accused, namely, Santosh @ Sattu Rajubhai Patel, having graver role than that of the applicant-accused and from whose custody, as per the discovery Panchnama, the weapon (knife) used in the commission of the crime was found, has already been enlarged on bail by a Coordinate Bench of this Court. Under the circumstances, learned advocate for the applicant prays that the applicant may be enlarged on bail on any suitable terms and conditions.

**[4]** The learned APP appearing on behalf of the respondent- State has opposed grant of regular bail looking to the nature and gravity of the offence. He has submitted that the applicant-accused has actively participated in the commission of crime and he has done the task to hide the weapon (knife) used in the commission of the offence, which is clearly evident from the CCTV footages collected by the investigating officer. Learned APP has submitted that, therefore, considering the role attributed to the applicant-accused, this is a fit case wherein discretionary power of this Court is not required to be exercised in favour of the applicant-accused.

**[5]** The learned advocates appearing on behalf of the respective parties do not press for further reasoned order.

**[6]** I have heard the learned advocates appearing on behalf of the respective parties and perused the papers of the investigation and considered the allegations levelled against the applicant and the role played by the applicant. This Court has also considered the following aspects;

a) That the investigation has already been completed and charge-sheet has also been filed;

b) That the other co-accused, attributed with graver role than that of the applicant-accused, has already been enlarged on bail by a Coordinate Bench of this Court;

c) That the applicant-accused is in jail since 10.01.2023, i.e, for more than one and a half year and, therefore, considering the period of incarceration

already undergone by the applicant-accused, he is entitled to be enlarged on bail;

**[7]** This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra v. Central Bureau of Investigation**, 2012 1 SCC 40.

**[8]** In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the FIR, without discussing the evidence in detail, prima facie, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

**[9]** Hence, the present is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11210025230112 of 2023 registered with the Limbayat Police Station, Arvalli, on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injuries to the interest of the prosecution;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave the State of Gujarat without prior permission of the Sessions Judge concerned;

[e] mark presence before the concerned Police Station on alternate Monday of every English calendar month for a period of six months between 11:00 a.m. and 2:00 p.m.;

[f] furnish the present address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

**[10]** The authorities will release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.

**[11]** Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

**[12]** At the trial, the trial Court shall not be influenced by the observations of preliminary nature qua the evidence at this stage made by this Court while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent.

Direct service is permitted

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2024(2)GBAJ509

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

[Before S V Pinto]

Criminal Miscellaneous Application (For Leave To Appeal); Criminal Appeal No 9541 of 2023; 1238 of 2023 **dated 10/09/2024**

*Jayantibhai Naranbhai Patel*

**Versus**

*State of Gujarat & Ors*

**ACQUITTAL IN CHEQUE DISHONOR**

Code of Criminal Procedure, 1973 Sec. 378 - Negotiable Instruments Act, 1881 Sec. 139 - Sec. 138 - Acquittal in Cheque Dishonor - Application filed under Sec. 378(4) of Cr.P.C. challenging acquittal in cheque dishonor case - Respondents allegedly failed to pay enforceable debt - Cheque issued for Rs. 1,50,000/- dishonored due to insufficient funds - Trial Court acquitted respondents, holding cheque was given as security without sufficient evidence - Applicant argued that all required evidence was provided, including agreements and cheques - Court did not properly consider Memorandum of Agreement and evidence - Leave to appeal granted as presumption under Sec. 139 N.I. Act not rebutted - Appeal Allowed

**Law Point: In cases of cheque dishonor under Sec. 138 of N.I. Act, presumption favors the holder unless rebutted by the accused with cogent evidence, and the agreements and financial transactions must be considered in totality**

ફોજદારી કાર્યરીતીની સંહિતા, ૧૯૭૩ સેક. ૩૭૮ - નેગોશિયેબલ ઇન્સ્ટ્રુમેન્ટ્સ એક્ટ, ૧૮૮૧ સેક. ૧૩૯ - ચેક પરત ફર્યામાં નિર્દોષ છુટકારો - સીઆરપીસી કલમ ૩૭૮(૪) હેઠળ ચેક અપમાનના કેસમાં નિર્દોષ છુટકારાને પડકારતી અરજી દાખલ - પ્રતિવાદીઓ કથિત રીતે અમલપાત્ર દેવું ચૂકવવામાં નિષ્ફળ ગયા - ચેક રૂ. ૧,૫૦,૦૦૦/- અપૂરતા ભંડોળને કારણે અપમાનિત - ટ્રાયલ કોર્ટે પ્રતિવાદીઓને નિર્દોષ જાહેર કર્યા, પર્યાપ્ત પુરાવા વિના સુરક્ષા તરીકે હોલ્ડિંગ ચેક આપવામાં આવ્યો - અરજદારે દલીલ કરી હતી કે એગ્રીમેન્ટ અને ચેક સહિત તમામ જરૂરી પુરાવા આપવામાં આવ્યા હતા - કોર્ટે મેમોરેન્ડમ ઓફ એગ્રીમેન્ટ અને પુરાવાઓને યોગ્ય રીતે ધ્યાનમાં લીધા નથી - N I અધિનિયમ ધારા ૧૩૯ હેઠળ અનુમાન તરીકે મંજૂર કરાયેલ અપીલની રજા રદ કરવામાં આવી નથી - અપીલની મંજૂરી છે

કાયદાનો મુદ્દો: N । કાયદાની કલમ ૧૩૮ હેઠળ ચેકના અપમાનના કેસોમાં, ધારણા ધારકની તરફેણ કરે છે સિવાય કે આરોપી દ્વારા પુરાવા સાથે ખંડન કરવામાં આવે, અને કરારો અને નાણાકીય વ્યવહારોને સંપૂર્ણ રીતે ધ્યાનમાં લેવા જોઈએ.

**Acts Referred:**
Code of Criminal Procedure, 1973 Sec. 378
Negotiable Instruments Act, 1881 Sec. 139, Sec. 138

**Counsel:**
Ashish M Dagli, N K Majmudar, C M Shah

**JUDGEMENT**

**S V Pinto, J.- [1]** At the outset, learned advocate for the applicant seeks permission to delete the name of **Respondent No. 5 i.e. Patel Harishbhai Laxmibhaidas** as also submits that by an order dated 10/07/223 passed by this Court, matter qua **Respondent No. 6 i.e. Patel Rajnikant Hiralal** is abated since the respondent No. 6 has expired.

Permission as prayed for is granted. Registry is directed to delete the name of **Respondent No. 5 Patel Harishbhai Laxmibhaidas** and necessary amendment shall be carried out.

1. The present application has been filed by the original complainant seeking leave to appeal under Section 378(4) of the Code of Criminal Procedure, 1973 ( hereinafter referred to "Cr.P.C.", for short) challenging the judgement and order of acquittal dated **17/03/2023** passed by the **learned Judicial Magistrate First Class, Dakor** (hereinafter referred to as the learned trial Court) in **Criminal Case No. 85 of 2002**, whereby the learned trial Court was pleased to acquit the Respondent Nos. 2, 3, 4 and 7 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (herein after referred to as the "N.I Act", for short).

**[2]** Heard learned advocate Mr. Ashish Dagli for the applicant, learned Additional Public Prosecutor Ms. C.M.Shah for the respondent No. 1- State, learned advocate Ms. Raksha Dixit for the respondent No. 2 and learned advocate Mr. N.K. Majmudar for the respondent Nos. 3, 4 and 7. Perused the impugned judgement and order to examine whether the applicant has an arguable case to grant leave to appeal and admit the appeal.

**[3]** The brief facts culled out from the impugned judgement and order and the submissions of the learned advocates as also the petition are as under:-

3.1 The respondent No. 2 is CURE AIM PHARMACEUTICAL, a partnership firm and the respondent Nos. 3, 4 and 7 are the partners of CURE AIM PHARMACEUTICAL Firm. As per the complaint, the present applicant and the

Respondent Nos. 3, 4 and 7 had friendly relations and the Respondent No. 2-Firm was in need of some finance, which was given by the applicant and the applicant was added as a partner to the said Firm on 01/08/1998. The management of the said Firm was done by the Respondent Nos. 3, 4 and 7 and a dispute arose between them and a legal enforceable debt of Rs. 35,50,000/- till 31/05/1999 was outstanding to be paid to the applicant. An agreement on a stamp paper of Rs. 50/- was executed between them on 30/09/1999 but as the parties did not act as per the terms of the settlement, an Arbitration Petition - I.A.AP. No. 49 of 2000 was filed before this Court and an Arbitrator was appointed by an order dated 08/12/2000. The applicant also filed Arbitration Application No. 94 of 2000 before the Civil Court, Nadiad and an order of status quo was granted in favour of the applicant. The settlement proceedings were carried on and on 19/01/2001, a legally enforceable debt of Rs. 49,75,000/- was found to be outstanding to be paid to the applicant and a Memorandum of Understanding was executed in the presence of the Arbitrator and the advocates. The respondent No. 4 accepted the responsibility on behalf of the respondent No. 2 Firm and all the other respondents and 25 cheques of The Dakor Nagrik Sahkari Bank Ltd., Dakor Branch were issued in favour of the applicant. A **Cheque No "279501" of Rs. 1,50,000/-** dated **01/11/2001** was deposited by the applicant in his bank i.e. The Dakor Nagrik Sahkari Bank Ltd., Dakor Branch on **03/12/2001**, and the cheque was returned with the endorsement **"insufficient funds".** The applicant gave the statutory notice dated **15/12/2001** through his advocate by RPAD/ UPC, but the amount was not paid within the stipulated time period and hence the applicant filed the complaint under Section 138 of the N.I. Act before the learned trial court which was registered as **Criminal Case No 85 of 2002** . The respondent Nos. 2,3,4 and 7 appeared before the learned trial Court and at the conclusion of the trial the learned trial Court was pleased to acquit the respondent Nos. 2,3,4, and 7 from the offence.

**[4]** Learned advocate Mr. Ashish Dagli for the applicant has submitted that the applicant has produced all the oral and document evidences but the learned trial Court has not considered that the applicant had a legally enforceable debt and all the ingredients of Section 138 of the N.I.Act were fulfilled and satisfied and the presumption under Section 139 of the N.I. Act is to be drawn in favour of the applicant and the same has not been believed. The agreements have been produced and all the transactions in question have been proved by documentary evidence, but the learned trial Court has observed that the cheque was given as a security without any cogent evidence produced by the respondent Nos. 2, 3,4 and 7. The impugned judgement and order is illegal and perverse and interference is required, and the leave to appeal is required to be granted.

**[5]** Learned advocate Mr. N.K.Majmudar has submitted that the learned trial Court has considered all the aspects and no interference is required in the impugned judgement and order and leave to appeal is not required to be granted.

**[6]** Considering the submissions of the learned advocates and on perusal of the impugned judgement and order, it prima facie, transpires that the applicant has stepped into the witness box and the deposed at **Exh:111** and the **Cheque No."279501"** is produced at **Exh:P131/ P.W.1**, the return memo is produced at **Exh:P132/P.W.1**, the statutory notice given to the respondents is produced at **Exh:P134/P.W.1** and the RPAD slips and UPC slips have also been produced. The agreements executed between the parties are also produced in the evidence of the applicant. The respondents have produced the balance sheet of the respondent No. 2- Firm.

**[7]** At this juncture, it would be fit to refer to Section 139 of the N.I. Act which reads as under:-

**139. Presumption in favour of holder.-**

" It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

**[8]** In cases filed under Section 138 of the N.I.Act, the initial presumption is required to be drawn in favour of the complainant and it is settled position of law that presumption cannot be rebutted unless the contrary is proved by the accused. The rebuttal of presumption can be drawn from the evidence available on record and the accused may lead evidence or himself step into the witness box to put up his case. Considering the disputes involved between the parties and the arbitration proceedings, pursuant to which agreements have been executed between the parties, in the presence of the arbitrator and the advocates prima facie, it appears that there were financial transactions between the applicant and the respondent No. 2-Firm and disputes had arisen about these financial transaction and efforts were made to settle the financial transactions through arbitration proceedings and the Memorandum Of Agreement was executed in the presence of the Arbitrator and the advocates of the parties. The learned trial Court has not appreciated the Memorandum Of Agreement executed between the parties on 19/01/2001 in the correct perspective and the present leave to appeal deserves to be allowed and accordingly is allowed

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2024(2)GBAJ512

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

[Before Gita Gopi]

Criminal Miscellaneous Application (For Successive Regular Bail - After Chargesheet) No 14775 of 2024 **dated 10/09/2024**

*Priti Pramod Birjasinh*

**Versus**

*State of Gujarat*

**REGULAR BAIL**

Indian Penal Code, 1860 Sec. 201, Sec. 34, Sec. 302, Sec. 120B - Code of Criminal Procedure, 1973 Sec. 439, Sec. 226 - Gujarat Police Act, 1951 Sec. 135 - Regular Bail - Applicant sought regular bail in a case of alleged murder under Sections 302, 120B, 201, 34 IPC - Applicant was accused of conspiracy and direct involvement in the killing, but argued for bail due to prolonged incarceration since 2021 without trial progress - Court noted the delays caused by prosecution, including awaiting key evidence like FSL report - Given applicant's long incarceration and being a woman with children, the Court exercised discretion and granted bail - Bail Granted

**Law Point: Prolonged pre-trial detention, especially when prosecution delays evidence submission, can justify bail, particularly for women accused with dependent children**

ભારતીય દંડ સંહિતા, ૧૮૬૦ સે. ૨૦૧, સેક. ૩૪, સેક. ૩૦૨, સેક. ૧૨૦બી - ફોજદારી કાર્યરીતીની સંહિતા, ૧૯૭૩ સેક. ૪૩૯, સેક. ૨૨૬ - ગુજરાત પોલીસ અધિનિયમ, ૧૯૫૧ સેક. ૧૩૫ - નિયમિત જામીન - અરજદારે આઇપીસી કલમ ૩૦૨, ૧૨૦બી, ૨૦૧, ૩૪ હેઠળ કથિત હત્યાના કેસમાં નિયમિત જામીન માંગ્યા - અરજદાર પર ષડયંત્ર અને હત્યામાં સીધી સંડોવણીનો આરોપ હતો, પરંતુ ૨૦૨૧ થી ટ્રાયલ પ્રગતિ વિના લાંબી જેલવાસને કારણે જામીન માટે દલીલ કરી હતી. - કોર્ટે એફએસએલ રિપોર્ટ જેવા મહત્વના પુરાવાની રાહ જોવા સહિત પ્રોસિક્યુશનને કારણે થયેલા વિલંબની નોંધ કરી - અરજદારની લાંબી જેલવાસ અને બાળકો સાથે મહિલા હોવાને કારણે કોર્ટે વિવેકબુદ્ધિનો ઉપયોગ કર્યો અને જામીન મંજૂર કર્યા - જામીન મંજૂર

કાયદાનો મુદ્દો: લાંબા સમય સુધી પ્રી-ટ્રાયલ અટકાયત, ખાસ કરીને જ્યારે ફરિયાદી પુરાવા રજુ કરવામાં વિલંબ કરે છે, ત્યારે જામીનને વાજબી ઠરાવી શકે છે, ખાસ કરીને આશ્રિત બાળકો સાથે આરોપી મહિલાઓ માટે

**Acts Referred:**

Indian Penal Code, 1860 Sec. 201, Sec. 34, Sec. 302, Sec. 120B
Code of Criminal Procedure, 1973 Sec. 439, Sec. 226
Gujarat Police Act, 1951 Sec. 135

**Counsel:**

Ubin Bharda, Kishan H Daiya, Jyoti Bhatt

**JUDGEMENT**

**Gita Gopi, J.- [1]** Rule. Ms. Jyoti Bhatt, learned APP waives service of Rule on behalf of the respondent State.

**[2]** This application has been filed under section 439 of the Code of Criminal Procedure for regular bail in connection with the FIR no.Part A 11822023210266/2021 registered with Maroli Police Station, Navsari, for offence punishable under sections 302, 120B, 201 and 34 of IPC and Section 135 of the Gujarat Police Act.

**[3]** Learned advocate Mr. Zubin Bharda for Mr. Kishan Daiya for the applicant submitted that the applicant has been arrested for the offence under Section 302, 120B, 201 and 34 of IPC and Section 135 of the Gujarat Police Act. It is submitted that the allegation against the applicant is that she was having an affair with one Vinod @ Munno Maheshsing and because of the quarrel of the present applicant with the deceased, the applicant has asked for divorce but the deceased has refused to relieve the applicant and therefore, Mr. Bharda submitted that the allegation is that she along with other co-accused had hatched a conspiracy to kill the deceased and on 15.3.2021 at about 1.00, the deceased had been taken to Ubharat and when they were passing at Sai Bhoomi Kacha Road, coaccused Aniket @ Vikki has inflicted knife blows on the deceased. Mr. Bharda submitted that the present applicant is alleged to have inflicted blow with the wooden log after the deceased had fallen down and she along with others had hidden the dead body. Mr. Bharda submitted that the FIR has been lodged against her and other 3 accused and she came to be arrested on 20.3.2021. Mr. Bharda submitted that since then the trial has not seen any progress and for last three and a half years, she is in jail. Mr. Bharda submitted that the applicant is having two children and the son has been taken away by the complainant while the daughter is with the mother of the present applicant.

3.1 The report of the learned Trial Court was called for and as per the report of the Sessions Court called for during successive regular bail after charge-sheet in Criminal Misc. Application no.14775 of 2024 and as per the report, the documentary evidence was produced by the complainant on 30.6.2022. The charge was framed below Exh.27 on 7.7.2023 under Section 226 of the Cr.P.C.. The deposition of witness no.1 Dr. Chandresh Ishvarbhai Patel was recorded on 21.7.2023. It is stated that the FSL report was received only on 5.6.2024. Further supplementary charge-sheet has been filed which has been converted into Sessions Case no.97/23 and the matter is for further examination of witness no.1 Dr. Chandresh Ishvarbhai Patel.

**[4]** Ms. Jyoti Bhatt, learned Additional Public Prosecutor for the respondent-State relying upon the report of the Police Inspector, Maroli Police Station, Navsari submitted that the delay has occurred because the co-accused Vinod @ Munno could not be apprehended as he had been absconding and further stated that at present the

evidence of witness medical officer Dr. Chandresh Ishvarbhai Patel is for the examination by the prosecution.

**[5]** Earlier the bail application filed by the applicant was withdrawn. She has been arrested on 20.3.2021 and since then though Dr. Chandresh Ishvarbhai Patel has been placed in the witness box, the chief examination could not be proceeded. The Court was awaiting the FSL report and the cause of death certificate. Prima facie it appears that the delay has been caused by the prosecution as necessary documents were not procured. There has been delay in the trial and considering this fact and the fact that the applicant is a lady, discretion is exercised in favour of the applicant.

**[6]** Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR no.Part A 11822023210266/2021 registered with Maroli Police Station, Navsari on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety of the like amount to the satisfaction of the Trial Court and subject to the conditions that the applicant shall:

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injurious to the interest of the prosecution;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave India without prior permission of the concerned trial court;

[e] furnish the present address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the concerned Trial Court;

**[7]** The authorities shall release the applicant only if the applicant is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower Court having jurisdiction to try the case.

**[8]** Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith

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2024(2)GBAJ515

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

[Before Gita Gopi]

Criminal Miscellaneous Application (For Regular Bail - Before Chargesheet) No 16220 of 2024 **dated 09/09/2024**

*Bombewala Mohamad Rizvan Abdul Kadar*

**Versus**

*State of Gujarat*

**BAIL UNDER NDPS ACT**

Indian Penal Code, 1860 Sec. 323, Sec. 379A - Code of Criminal Procedure, 1973 Sec. 439 - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 29, Sec. 22 - Bail Under NDPS Act - Application for regular bail under Section 439 of CrPC - FIR registered under NDPS Act for possession of Mephedrone - Contraband found in a vehicle not owned or possessed by applicant - Co-accused named applicant as buyer - Applicant had past cases under IPC but no NDPS antecedents - Court noted lack of direct evidence linking applicant to drugs, no financial transactions traced, and absence of recent contact with co-accused - Bail Granted with conditions

**Law Point: In absence of direct involvement or significant evidence linking accused to contraband, bail can be granted under NDPS Act with appropriate conditions.**

ભારતીય દંડ સંહિતા, ૧૮૬૦ સે. ૩૨૩, સેક. ૩૭૯એ - ફોજદારી કાર્યરીતીની સંહિતા, ૧૯૭૩ સેક. ૪૩૯ - નાર્કોટિક ડ્રગ્સ એન્ડ સાયકોટ્રોપિક સબસ્ટન્સ એક્ટ, ૧૯૮૫ સેક. ૮, સેક. ૨૯, સેક. ૨૨ - એનડીપીએસ એક્ટ હેઠળ જામીન - સીઆરપીસી ની કલમ ૪૩૯ હેઠળ નિયમિત જામીન માટેની અરજી - મેફેડ્રોન રાખવા માટે એનડીપીએસ એક્ટ હેઠળ એફઆઇઆર નોંધવામાં આવી છે - અરજદારની માલિકીના કે કબજામાં ન હોય તેવા વાહનમાં પ્રતિબંધિત વસ્તુ મળી આવે છે - અરજદારનું ખરીદનાર સહ-આરોપી તરીકે નામ - અરજદાર પર આઈપીસી હેઠળના ભૂતકાળના કેસો હતા પરંતુ એનડીપીએસની પૂર્વસૂચનાઓ નથી - કોર્ટે નોંધ્યું કે અરજદારને ડ્રગ્સ સાથે જોડતા સીધા પુરાવાનો અભાવ, કોઈ નાણાકીય વ્યવહારો શોધી શક્યા નથી, અને સહ-આરોપી સાથે તાજેતરના સંપર્કની ગેરહાજરી - શરતો સાથે જામીન મંજૂર

કાયદાનો મુદ્દો: આરોપીને દારૂબંધી સાથે જોડતા સીધી સંડોવણી અથવા નોંધપાત્ર પુરાવાની ગેરહાજરીમાં, એનડીપીએસ એક્ટ હેઠળ યોગ્ય શરતો સાથે જામીન મંજૂર કરી શકાય છે.

**Acts Referred:**

Indian Penal Code, 1860 Sec. 323, Sec. 379A
Code of Criminal Procedure, 1973 Sec. 439
Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 29, Sec. 22

**Counsel:**

Amit D Shah, Jyoti Bhatt

**JUDGEMENT**

**Gita Gopi, J.- [1] Rule.** Learned APP waives service of notice of rule on behalf of respondent State. By consent, rule is fixed forthwith.

**[2]** This application has been filed under section 439 of the Code of Criminal Procedure for regular bail in connection with F.I.R. being IC. R. No.11210015240022 of 2024 registered with DCB Police Station, Dist. - Surat City for offences punishable under sections 8(c), 22(c) and 29 of NDPS Act.

**[3]** Mr. Brijesh Trivedi, learned advocate with Advocate Mr. Amit D.Shah for the applicant submits that Narcotic Mephedrone drug weighed 512.2 gms. Valued at Rs.51,22,000/- has been found in one four wheeler vehicle being Registration No.GJ-5-CJ-3998, which is not of the ownership of the present applicant, nor the present applicant was found in the vehicle or in conscious possession. Mr. Trivedi stated that one of the co-accused has named him as a potential buyer of the drug, which as per FIR was purchased from one Illias @ Illu of Madhya Pradesh.

3.1 Advocate Mr. Trivedi submitted that earlier too no such case has been registered against the applicant under NDPS Act that probably because of other antecedents of his case under section 379A and Gambling Act he may have falsely been implicated. It was, therefore, prayed that the present application may be allowed and the applicant herein may be released on regular bail.

**[4]** While countering the arguments, learned APP Ms. Jyoti Bhatt for the respondent State submitted that, as per the co-accused statement, the Mephedrone was purchased from Madhya Pradesh and was to be sent to the present applicant, but during that transit the vehicle got intercepted. Learned APP submitted that there are phone calls of the present applicant accused with other coaccused Gulam Sabir Mohammed Ishaq between 18.02.2024 to 23.02.2024 and about six SMS and from 09.05.2023 to 30.05.2023 shows his connections with the co-accused.

4.1 Learned APP further stated that there are statements of Mohammad Sahid Mohammad Iqubal Kureshi, Salman Mohammadhanif Sopariwala and Sufiyan Pirmohammad Teller, who had informed that since long time the applicant is in the sale of drugs.

**[5]** Heard learned advocates on both the sides and perused the material on record. The incident, which has been noted in the report of the Police sub-inspector, JCB Police Station, City against the applicant is of the year 2015 to 2023, which shows him to be involved under Gambling Act or of the case under section 323 IPC and three of the cases are under section 379A. There is no antecedent under NDPS Act.

5.1 The FIR is dated 04.03.2024 and the phone connection does not detailed out immediate contact of the present applicant with the coaccused. Further nothing has been brought on record by way of any monetary transactions of the present applicant

and since there are no antecedent under NDPS Act and as the Mephedrone contraband article was in the hands of the coaccused, the Court finds this to be a fit case where discretion could be exercised in favour of the applicant.

**[6]** Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with F.I.R. being I-C.R. No.11210015240022 of 2024 registered with DCB Police Station, Dist. - Surat City on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injurious to the interest of the prosecution;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave India without prior permission of the concerned trial court;

[e] furnish the present address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the concerned trial court;

**[7]** If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower Court having jurisdiction to try the case.

**[8]** Rule is made absolute to the aforesaid extent.

**Direct service today is permitted**

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2024(2)GBAJ518

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

[Before Gita Gopi]

Criminal Miscellaneous Application (For Regular Bail - After Chargesheet) No 11994 of 2024 **dated 09/09/2024**

*Mohammad Syed Abdul Rashid Ansari*

**Versus**

*State of Gujarat*

**ALLEGED POSSESSION**

Code of Criminal Procedure, 1973 Sec. 439 - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 52A, Sec. 2, Sec. 29, Sec. 22 - Alleged Possession - Applicant sought bail in an NDPS case involving the alleged possession of mephedrone - Applicant argued that no evidence showed conscious possession or involvement in drug transactions, and the co-accused had already been granted bail - Court noted that no financial transactions linked the applicant to the offence and the

co-accused sitting with the applicant had been released - Considering the lack of direct evidence against the applicant, bail granted with conditions including a bond and police station visits - Bail Granted

**Law Point: Bail can be granted when there is no evidence of conscious possession or financial transactions linking the accused to the offence and a co-accused has been released on bail**

ફોજદારી કાર્યરીતીની સંહિતા, ૧૯૭૩ સેક. ૪૩૯ - નાર્કોટિક ડ્રગ્સ એન્ડ સાયકોટ્રોપિક સબસ્ટન્સ એક્ટ, ૧૯૮૫ સેક. ૮, સેક. ૫૨એ, સેક. ૨, સેક. ૨૯, સેક. ૨૨ - કથિત કબજો - મેફેડ્રોનના કથિત કબજા સાથે સંકળાયેલા એનડીપીએસ કેસમાં અરજદારે જામીન માંગ્યા - અરજદારે દલીલ કરી હતી કે કોઈ પુરાવામાં સભાન કબજો અથવા ડ્રગ વ્યવહારોમાં સંડોવણી દર્શાવવામાં આવી નથી, અને સહ-આરોપીને પહેલાથી જ જામીન આપવામાં આવ્યા હતા - કોર્ટે નોંધ્યું હતું કે અરજદારને ગુના સાથે કોઈ નાણાકીય વ્યવહારો જોડ્યા નથી અને અરજદાર સાથેના સહ-આરોપીને છોડી દેવામાં આવ્યા છે. - અરજદાર સામે સીધા પુરાવાના અભાવને ધ્યાનમાં રાખીને બોન્ડ અને પોલીસ સ્ટેશનની મુલાકાત સહિતની શરતો સાથે જામીન મંજૂર - જામીન મંજૂર

કાયદાનો મુદ્દો: જ્યારે આરોપીને ગુના સાથે જોડતો હોય અને સહ-આરોપીને જામીન પર મુક્ત કરવામાં આવ્યો હોય ત્યારે જામીન અરજી પર કબજો અથવા નાણાકીય વ્યવહારોના પુરાવા ન હોય ત્યારે જામીન આપી શકાય છે.

**Acts Referred:**

Code of Criminal Procedure, 1973 Sec. 439

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 52A, Sec. 2, Sec. 29, Sec. 22

**Counsel:**

Brijesh Trivedi, Amit D Shah, Jyoti Bhatt

**JUDGEMENT**

**Gita Gopi, J.- [1] Rule.** Learned APP waives service of notice of Rule on behalf of respondent-State.

**[2]** This application is filed under Section 439 of the Code of Criminal Procedure for regular bail in connection with **F.I.R. being I-C.R.No.11210056232271 of 2023 registered with Dindoli Police Station, District Surat** for the offences punishable

under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act").

**[3]** Mr.Brijesh Trivedi, learned advocate for Mr.Amit Shah, learned advocate for the applicant submits that the complaint which has been lodged on 20/09/2023, on the basis of secret information, does not directly involve the present applicant since the factum of conscious possession of mephedrone drug alleged to have been recovered from the cupboard does not get proved to consider prima facie that the present applicant is involved in the matter. Mr. Brijesh Trivedi, learned advocate submitted that at the time of raid, present applicant and co-accused Zakir Aiyub Patel who has been granted bail were both present in the room which in SMC Bhestan Avas, Building No.B/67, ground flour, room no.2. The co-accused who is residing in room no.4 has been released on bail. Mr.Brijesh Trivedi, learned advocate submitted that procedure under Section 52A of the NDPS Act has to be rigorously followed and the magistrate concerned has to actually deal with the proceedings as noted under Section 52A which becomes prima face doubtful in the matter as the correspondence sending the mephedrone drug to the FSL is dated 21/09/2023 while the certificate issued by the magistrate bears the signature on 22/09/2023 where the learned magistrate certifies the inventory drawn under Sub- Section 2 of Section 52A of the NDPS Act. Mr.Brijesh Trivedi, learned advocate, thus, stated that the prima face the process becomes doubtful.

3.1. Referring to the affidavit filed from the side of the State by the Police Sub-Inspector, Dindoli, Mr.Brijesh Trivedi, learned advocate submitted that the main accused is Anjumbanu Rizwan Mohammad who is supplier of the contraband and she is procuring the drugs from one Reshmabanu from Maharashtra.

3.2. Mr. Brijesh Trivedi, learned advocate submitted that the house belongs to Zarinabibi, the wife of the present applicant and the monitory transactions of Anjumbanu does not reflect any such transaction with the present applicant where the transactions of Anjumbanu is with other co-accused Firozkhan Sheikh, one Shabana Patel and one Mubin and an accused Zakir Patel. Mr. Brijesh Trivedi, learned advocate, thus, submitted that the contraband found in the cupboard in the flat which belongs to wife of the applicant cannot be considered as a conscious possession where the transaction has to be corroborated by other monitory dealing which has not been shown in the present matter and further stated that since the co-accused who was sitting with the applicant has been granted bail, on the principle of parity, the applicant should be enlarged on bail, imposing suitable conditions.

**[4]** Countering the arguments, Ms. Jyoti Bhatt, learned APP submitted that the house belongs to present applicant since he staying in it though it may be in the name of his wife. The police has traced main supplier Anjumbanu who procures the contraband drugs from Reshmabanu from Maharashtra and she is distributing the same to the local peddlers of the Surat district. There are telephonic conversations of

Anjumbanu with other accused and there are numerous bank transactions with other co-accused. Those facts came to be light at the time of arrest of Mubin as his mobile was recovered and sent for FSL examination and from Mubin's mobile, messages were found which were being sent to Anjumbanu. Thus, learned APP further submitted that the messages were in code words and further stated that present applicant is the brother-in-law of Anjumbanu and, thus, in connivance, all are indulged in activity of distributing the contraband drugs.

**[5]** The co-accused was found sitting along with present applicant Zakir Aiyub Patel has been granted bail on 24/07/2024 in Criminal Misc. Application No.11085 of 2024. The mephedrone was found in the cupboard of the house which belongs to wife of present applicant. The monitory transaction as produced by the affidavit of the PSI, Dindoli, in the present matter, does not reflect any financial transaction of present applicant. From the mobile checking in connection with accused Mubin, there is no direct connection which shows the monitory transaction of the present applicant with Anjumbanu as is the case of the prosecution, the main accused who is already granted bail.

**[6]** Since the co-accused who was sitting along with the present applicant has been granted bail, prima facie, there is no evidence by way of any monitory transactions connecting the applicant with the alleged offence, discretion is required to be exercised to release the applicant on bail.

**[7]** Hence, the application is allowed and the applicant is ordered to be released on bail in connection with **F.I.R. Being I-C.R.No.11210056232271 of 2023 registered with Dindoli Police Station, District Surat** on executing a bond of **Rs.10,000/- (Rupees Ten Thousand only)** with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

(a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer or temper with the evidence;

(b) maintain law and order and not to indulge in any criminal activities;

(c) furnish the documentary proof of complete, correct and present address of residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change the residence without prior permission of the trial Court;

(d) provide contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in writing immediately to the trial Court;

(e) not leave India without prior permission of the Trial Court;

(f) surrender passport, if any, to the Trial Court within a week. If the Applicants do not possess passport, shall file an Affidavit to that effect.

**[8]** Bail bond to be executed before the Trial Court having jurisdiction to try the case.

**[9]** If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities will release the Applicant forthwith if not required in connection with any other offence for the time being.

**[10]** At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

**[11]** Rule made absolute to the aforesaid extent. Direct service is permitted

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2024(2)GBAJ522

**DELHI HIGH COURT**

[Before Amit Mahajan]

Crl L P (Criminal Leave Petition) No 547 of 2019 **dated 09/09/2024**

*State*

**Versus**

*Sarjeet*

**ACQUITTAL IN RAPE CASE**

Code of Criminal Procedure, 1973 Sec. 161, Sec. 378 - Protection of Children from Sexual Offences Act, 2012 Sec. 3, Sec. 4 - Acquittal in Rape Case - Respondent was charged under POCSO for raping a 17-year-old girl - Victim initially stated she ran away with the respondent voluntarily due to familial pressure to marry someone else - Later, she claimed abduction and rape under threat of harm to her brother - Trial court noted contradictions in her testimony and found no corroborative evidence of sexual assault - Medical examination showed torn hymen but no semen - Court also found discrepancies regarding the victim's age, favoring her birth certificate which indicated she was not a minor - Acquittal upheld due to lack of reliable evidence. - Petition Dismissed

**Law Point: Contradictory testimony and absence of corroborative evidence weaken the prosecution's case, especially when the victim's age and consent are in dispute.**

ફોજદારી કાર્યરીતીની સંહિતા, ૧૯૭૩ સેક. ૧૬૧, સેક. ૩૭૮ - જાતીય અપરાધોથી બાળકોનું રક્ષણ અધિનિયમ, ૨૦૧૨ સેક. ૩, સેક. ૪ - બળાત્કારના કેસમાં નિર્દોષ

છુટકારો - પ્રતિવાદી પર ૧૭ વર્ષની છોકરી પર બળાત્કાર કરવાનો POCSO હેઠળ આરોપ મૂકવામાં આવ્યો હતો - પીડિતાએ શરૂઆતમાં જણાવ્યું હતું કે તે અન્ય કોઈ સાથે લગ્ન કરવા માટે પારિવારિક દબાણને કારણે પ્રતિવાદી સાથે સ્વેચ્છાએ ભાગી ગઈ હતી. - બાદમાં, તેણીએ તેના ભાઈને નુકસાન પહોંચાડવાની ધમકી હેઠળ અપહરણ અને બળાત્કારનો દાવો કર્યો - ટ્રાયલ કોર્ટે તેણીની જુબાનીમાં વિરોધાભાસની નોંધ લીધી અને જાતીય હુમલાના કોઈ પુરાવા મળ્યા નથી - મેડિકલ તપાસમાં ફાટેલ હાઈમેન દર્શાવ્યુ પરંતુ વીર્ય નથી - કોર્ટને પીડિતાની ઉંમર અંગેની વિસંગતતાઓ પણ મળી, તેના જન્મ પ્રમાણપત્રની તરફેણમાં જે દર્શાવે છે કે તે સગીર નથી. - ભરોસાપાત્ર પુરાવાના અભાવે નિર્દોષ છુટકારો યથાવત. - અરજી ફગાવી

કાયદાનો મુદ્દો: વિરોધાભાસી જુબાની અને સમર્થનાત્મક પુરાવાઓની ગેરહાજરી ફરિયાદીના કેસને નબળો પાડે છે, ખાસ કરીને જ્યારે પીડિતાની ઉંમર અને સંમતિ વિવાદમાં હોય.

**Acts Referred:**

Code of Criminal Procedure, 1973 Sec. 161, Sec. 378

Protection of Children from Sexual Offences Act, 2012 Sec. 3, Sec. 4

**Counsel:**

Pradeep Gahalot, Sanyam Bansal, Sonali Sharma, Neelakshi, Azhar Alam

**JUDGEMENT**

**Amit Mahajan.-[1]** The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of leave to challenge the judgment dated 24.04.2019 (hereafter 'the impugned judgment'), in Sessions Case No. 440696/2016 arising out of FIR No.116/2014, registered at Police Station Jaffarpur Kalan, whereby the learned Trial Court had **acquitted** the respondent of the offence under Section 4 read with Section 3(i) of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

**[2]** The brief facts of the present case are that the respondent allegedly raped the prosecutrix, who was 17 years old at the time of the incident. The victim had been missing after leaving her house for school on 19.05.2014. The victim's father made a missing persons complaint on 20.05.2014 at 00:45 AM, and mentioned that he suspected the respondent, who was a resident of the village where the victim's maternal uncle resided. The present case was registered on the said complaint. Thereafter, the police visited the respondent's house in Haryana, and found him to be

missing. At around 12:30 PM on 20.05.2014, the complainant went to the police station with the victim and the respondent. In her statement under Section 161 of the CrPC, the victim stated that she had gone with the respondent of her own free will, as she considered the respondent as her husband and that she had known him since November, 2013. She stated that she had tried to persuade her parents, however, they intended to get her married to some other person. She stated that she had thus ran away with the respondent. She further stated that they spent the night in a Hotel near New Delhi Railway Station, where they had physical relations. She stated that her parents had asked them to return and promised to arrange their marriage, however, the victim did not want to live with them.

**[3]** The learned Trial Court framed the charge against the respondent vide order dated 04.08.2014 for the offence under Section 4 read with Section 3(i) of the POCSO Act.

**[4]** The learned Trial Court, by the impugned judgment, **acquitted** the respondent of the charged offence and observed that testimony of the victim was unreliable due to contradictions. It was noted that there was a lack of supporting evidence to prove the offence.

**[5]** The learned Trial Court held that the prosecution had failed to prove beyond reasonable doubt that the victim was a minor at the time of the incident as her age as per the birth certificate (Ex. PW-5/DA) was 01.05.1996. It was also noted that the victim had given contradictory statements wherein she had initially admitted that she had gone with the applicant willingly, however, in her testimony, she had stated that she had no friendship with the respondent and she had gone with him under threat that he would murder her brother.

**[6]** It was noted that even if the victim was assumed to be under 18 years of age, the prosecution failed to prove that the respondent had kidnapped her. Reliance was placed on the case of Vardhrajan v. State of Madras, 1965 AIR(SC),942 where the Hon'ble Apex Court had held that the offence of kidnapping was not made out as the girl, who was 17 years of age at that time, had voluntary gone with the accused therein having the capacity to know the import of doing so. Further, it was noted that while the hymen of the victim was torn, no semen was found in the MLC.

**[7]** It was also noted that the prosecution had miserably failed to prove its case and the accused was therefore **acquitted** in the present case.

**[8]** The learned Additional Public Prosecutor for the State submitted that the impugned judgment is based on conjectures and surmises and as such cannot stand the scrutiny of law and liable to be set aside.

**[9]** He submitted that the learned Trial Court has **acquitted** the respondent on account of some discrepancies in the statement of the victim. He contended that the courts should examine the broader probabilities of a case and not get swayed by minor

or insignificant discrepancies in the statement of the child victim, which are not of a fatal nature, to throw out an otherwise reliable prosecution case.

**[10]** He submitted that the testimony of the victim is corroborated by the FSL report which mentioned that at the time of medical examination, the victim's hymen was freshly torn.

**[11]** He submitted that it is trite law that conviction can be sustained on the sole testimony of the victim and in the present case the prosecutrix has clearly named the accused in her statements.

**[12]** He submitted that the learned Trial Court failed to appreciate the testimony of Dr. V.N.V. Satish, Junior Staff surgeon (PW-14) who had deposed that "as the upper second molars had not erupted, the possibility of her being 18 years of age or more is very bleak".

**[13]** The learned counsel for the respondent submitted that the testimony of the victim was riddled with discrepancies.

**[14]** He submitted that in the statements of the victim that were recorded under Sections 161 and 164 of the CrPC, the victim had stated that she wished to marry the respondent, however, the victim presented a different version in her testimony where she deposed that the respondent had threatened to kill her brother in custody of his friends.

**[15]** He submitted that the version of the prosecution is not supported by the statements of PW-2 (father of victim) and PW-5 (mother of victim) as the victim had made no mention of the alleged threats to them.

**[16]** He submitted that the victim's statement that the accused raped her by threatening to kill her brother whom he had kidnapped is contradicted by the statement of her mother (PW-5) who deposed that on the date of the alleged incident, the victim's brother was at home.

**[17]** He submitted that the victim was a major on the day of the incident, that is, 19.05.2014, as her date of birth on the birth certificate which was corroborated by the victim's mother is 01.05.1996. He submitted that the school certificate was unreliable since the date of birth was recorded merely on the word of the victim's parents at the time of admission, and no document was given to substantiate the same.

**ANALYSIS**

**[18]** It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a prima facie case is made out in favour of the appellant or if such arguable points have been raised which would merit interference.The Hon'ble Apex Court in the case of **Maharashtra v. Sujay Mangesh Poyarekar**, 2008 9 SCC 475 held as under:

"19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal "shall be entertained except with the leave of the High Court". It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

**20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.**

**21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits.** But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be "perverse" and, hence, no leave should be granted."

(emphasis supplied)

**[19]** In the present case, the prosecution allegations are sought to be proved only on the basis of statement of the prosecutrix. It is an admitted case that that the same is not corroborated by any other independent evidence.

**[20]** It is trite law that the accused can be convicted solely on the basis of evidence of the complainant / victim as long as same inspires confidence and corroboration is not necessary for the same. The law on this aspect was discussed in detail by the Hon'ble Apex Court by Nirmal Premkumar v. State,2024 SCCOnLineSC 260. The relevant portion of the same is produced hereunder:

**"11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence**.

12. In Ganesan v. State4 , this Court held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.

13. This Court was tasked to adjudicate a matter involving gang rape allegations under section 376(2)(g), I.P.C in Rai Sandeep v. State (NCT of Delhi)5 . The Court found totally conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness', the Court opined as under:

"22. In our considered opinion, the 'sterling witness' should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the crossexamination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for

holding the offender guilty of the charge alleged." (underlining ours, for emphasis)

14. In Krishan Kumar Malik v. State of Haryana6 , this Court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences. 32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant."

15. **What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a "sterling witness" without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistences excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded."**

(emphasis supplied)

**[21]** It has been argued by the learned APP that the respondent ought not to have been **acquitted** merely on account of minor discrepancies in the statements of the victim. It is relevant to note that the discrepancies in the versions of the victim are not minor. As rightly noted by the learned Trial Court, the victim initially admitted to

having gone with the respondent and stated that she wanted to marry him but her parents were objecting to the same. However, during her testimony, she took a diametrically opposite stand and alleged that the respondent had kidnapped her and raped her under the threat of harming her brother. The said contradiction goes to the root of the matter and cannot be said to be so minor so as to not affect the prosecution's case. The testimony of the victim is rendered doubtful due to her inconsistent and dubious stand and the same does not inspire confidence.

**[22]** The victim in her testimony had made allegations of kidnapping against the respondent. The learned Trial Court had rightly noted that the victim had not made any such allegations at the outset and neither informed about the same to her parents or the police. The brother of the victim at that time was at home as per her parents as well. The allegation that the victim had accompanied the respondent and he had raped her under threats of harm to the victim's brother is a significant improvement over the initial stance of the victim and seems improbable. As noted above, initially the victim had maintained that she had left her home voluntarily as her parents were not agreeing to her relationship with the respondent and wanted to get her married to someone else. In such circumstances, it does not seem that the victim was enticed away from lawful guardianship or forced into sexual relations.

**[23]** However, it is settled law that the consent of a minor is no consent. Insofar as the age of the victim is concerned, two contradicting documents were brought forth by the parties. While the prosecution placed reliance on the Admission Register for the period 19.07.1991 to 04.04.2008 of the victim's school to establish the date of birth of the victim as 01.05.1997, the defence relied upon a birth certificate (Ex. PW-5/DA) that was registered on 10.05.1996 where the date of the birth of the victim was shown as 01.05.1996. In the opinion of this Court, the learned Trial Court rightly favoured the birth certificate to determine the age of the victim. It was rightly appreciated that while the principal of the school (PW4) supported the Admission Register, however, she deposed that at the time of admission, no documents were produced by the parents of the victim regarding her age. Moreover, PW-5 (mother of the victim) had admitted the date in the said birth certificate and PW-2 (father of the victim), in his testimony, had admitted to lowering the victim's age at the time of admission. In the opinion of this Court, the learned Trial Court rightly noted that the prosecution had been unable to establish that the victim was a minor at the time of the incident.

**[24]** It is relevant to note that there is no cogent proof regarding the sexual relations being established either. While the MLC suggests that the hymen of the victim was torn, it was rightly noted by the learned Trial Court that no semen was found so as to suggest sexual relations had been established between the parties. It was also noted that PW2 (father of victim) and PW3 (Investigating Officer) had not stated that the victim had told them that the respondent has established sexual relations with her and their testimonies thus don't help the case of the prosecution. It seems that there

was a typographical error and the learned Trial Court was referring to PW5 (mother of victim) instead of PW3 as it was also mentioned that apart from the said witnesses, the rest of the witnesses were official witnesses.

**[25]** Furthermore, the learned Trial Court rightly noted that it was peculiar that the respondent accompanied the victim and her father to the police station. It seems odd as to why the respondent would present himself up for arrest and the same created a doubt in the story of the prosecution.

**[26]** Insofar as the argument regarding the presumption of guilt under Section 29 of the POCSO Act is concerned, the same comes into play once the prosecution establishes the foundational facts. It can be rebutted by discrediting the witnesses through cross-examination as well [Ref. Altaf Ahmed v. State (GNCTD of Delhi),2020 SCCOnLineDel 1938]. The respondent has successfully cast doubt over the age of the victim.

**[27]** Having noted that the testimony of the prosecutrix is in doubt and that there is no independent corroboration in the form of MLC or FSL, the possibility of the respondent's false implication cannot be ruled out.

**[28]** In view of the aforesaid discussion, this Court is of the opinion that the State has not been able to establish a prima facie case in its favour and no credible ground has been raised to accede to the State's request to grant leave to appeal in the present case.

**[29]** The leave petition is dismissed in the aforesaid terms

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2024(2)GBAJ530

**IN THE HIGH COURT AT CALCUTTA**

[Before Tirthankar Ghosh]

Cr A (Criminal Appeal) No 628 of 2019 **dated 05/09/2024**

*Jhuma Mondal*

**Versus**

*State of West Bengal*

**CONVICTION FOR CHILD DEATH**

Indian Penal Code, 1860 Sec. 302 - Sec. 304 - Conviction for Child Death - Appeal against conviction under Sec. 304(II) IPC for killing female child by throwing her out of hospital window - Confession relied upon by prosecution was extrajudicial and uncorroborated - Prosecution witnesses were hospital staff with inconsistent testimonies - No independent witnesses from 36 mothers present in the ward were examined - Court held that the evidence based on extrajudicial confession was weak

and unreliable - Conviction and sentence set aside - Appellant acquitted - Appeal Allowed

**Law Point: Extrajudicial confessions are considered weak evidence and cannot be the sole basis of conviction unless corroborated by independent and credible witnesses**

ભારતીય દંડ સંહિતા, ૧૮૬૦ સે. ૩૦૨ - સેક. ૩૦૪ - બાળ મૃત્યુ માટે દોષિત - મહિલા બાળકને હોસ્પિટલની બારીમાંથી બહાર ફેંકીને તેની હત્યા કરવા બદલ IPC કલમ ૩૦૪(૨) હેઠળ દોષિત ઠરાવવા સામે અપીલ - પ્રોસિક્યુશન દ્વારા કબૂલાત પર આધાર રાખ્યો હતો તે ન્યાયવિહીન અને અપ્રમાણિત હતો - ફરિયાદ પક્ષના સાક્ષીઓ અસંગત જુબાનીઓ સાથે હોસ્પિટલના સ્ટાફગણ હતા - વોર્ડમાં હાજર ૩૬ માતાઓના કોઈ સ્વતંત્ર સાક્ષીઓની તપાસ કરવામાં આવી ન હતી - કોર્ટે માન્યું કે ન્યાયવિહીન કબૂલાત પર આધારિત પુરાવા નબળા અને અવિશ્વસનીય છે - દોષિત ઠરાવેલ સજા રદ કરવામાં આવી છે - અપીલ કરનાર નિર્દોષ - અપીલની મંજૂરી છે

કાયદાનો મુદ્દો: ન્યાયવિહીન કબૂલાતને નબળા પુરાવા તરીકે ગણવામાં આવે છે અને જ્યાં સુધી સ્વતંત્ર અને વિશ્વસનીય સાક્ષીઓ દ્વારા સમર્થન ન હોય ત્યાં સુધી તે દોષિત ઠરાવવાનો એકમાત્ર આધાર ન હોઈ શકે.

**Acts Referred:**

Indian Penal Code, 1860 Sec. 302, Sec. 304

**Counsel:**

Abhinaba Dan, Anikita Mukherjee, Ranbir Roy Chowdhury, Mainak Gupta

**JUDGEMENT**

**Tirthankar Ghosh, J.- [1]** The present appeal has been preferred against the judgment and order of conviction and sentence passed by the Learned Sessions Judge, Bankura in connection with Sessions Trial No. 18 of 2018 arising out of Sessions Case No. 227 of 2018, wherein the Learned Trial Court was pleased to hold the appellant guilty under Section 304(II) of the Indian Penal Code and sentenced her to suffer rigorous imprisonment for 7 (seven) years and to pay a fine of Rs. 5,000/- in default to suffer rigorous imprisonment for 6 (six) months.

**[2]** Bankura Police Station case No. 76/2018 dated 25.02.2018 was registered for investigation under Section 302 of Indian Penal Code, on the basis of a complaint submitted by Dr. Jagat Jyoti Bhunia, Medical Officer, Bankura Sammilani Medical College and Hospital attached to SNCU Ward. The allegation made in the complaint

were to the effect that during morning census on 25.03.2018, one baby was found missing from step down ward at about 8.00 A.M. The mother of the missing baby was identified as Jhuma Mondal. The baby was admitted on 24.03.2018 at about 10.57 A.M. on day one of life because of mild umbilical bleeding. As the baby was stable she was shifted to step down ward for being with the mother. At 8.00 A.M. on interrogation in presence of police she confessed of having thrown the baby through window of bathroom inside SNCU. The baby was recovered from drain at about 9.10 A.M. by the hospital personnel. As such he requested the M.S.V.P., B.S.M.C. & H Bankura to do the needful.

**[3]** On receipt of the complaint submitted by Dr. Jagat Jyoti Bhunia, Medical Officer of SNCU, B.S.M.C & H Bankura, the Officer-in-Charge of Bankura Police Station registered the case and endorsed the case to Sub-Inspector of Police, Baranasi Layek. The investigating officer on conclusion of investigation submitted charge-sheet before the Learned C.J.M., Bankura under Section 302 of Indian Penal Code. Learned Magistrate was pleased to take cognizance of the offence and after complying with the relevant provisions of law committed the case to the Learned Sessions Judge, Bankura. The learned Sessions Judge, Bankura after taking cognizance of the offence was pleased to transfer the case to his personal file and on 03.08.2018 was pleased to frame charge under Section 302 of the Indian Penal Code against the accused/appellant Jhuma Mondal. The contents of the charge were read over to the accused who pleaded not guilty and claimed to be tried.

**[4]** The prosecution in order to prove its case relied upon seventeen (17) witnesses which included P.W.1, Dr. Jagat Jyoti Bhunia, complainant- Medical Officer of BSMC&H attached to SNCU Ward; P.W.2, Soma Mazumder, Staff Nurse (GNM) at SNCU Ward Bankura; P.W.3, Shankari Sahana, Staff Nurse who was engaged on 24.03.2018 at 'A' block of SNCU Ward; P.W.4, Dr. Rabi Adhikari, Medical Officer of SNCU Ward who was engaged between 9.00 P.M. to 9.00 A.M. on 24.03.2018; P.W.5, Jayashree Jana, Staff Nurse posted at SNCU 'B' Ward from 8.00 P.M. to 8.00 A.M.; P.W.6 Chhaya Murmu, Deputy Nursing Superintendent, BSMC&H Bankura; P.W.7, Dr. Damodar Chakraborty, Medical Officer at SNCU Ward under BMSC&H, Bankura; P.W.8, Partha Sarathi Bhunia, Medical Officer at SNCU Ward under BMSC&H Bankura; P.W.9, Padma Bauri, permanent employee, serving as a 'Dom' at BSMC&H, Bankura; P.W.10 Dr. Bipasha Dutta, Medical Officer at SNCU Ward, BSMC&H, Bankura; P.W.11, Mohan Chandra Orang, Constable attached to Bankura Police Station; P.W.12, Ranjit Kumar Paine, ASI of Police who prepared the case report; P.W.13, Sri Pradyut Kr. Sarkar, Sub-Inspector of Bankura Police Station who prepared the formal FIR; P.W.14, Barun Kumar Roy Facility Manager, BSMC&H, Bankura; P.W.15, Sanjoy Mondal husband of accused/appellant; P.W.16, Dr. Tanay Mohanta, Post-mortem doctor; P.W. 17 Baranasi Layek, Investigation Officer of the case.

**[5]** P.W.1, Dr. Jagat Jyoti Bhunia was the Medical Officer of Bankura Sammilani Medical College and Hospital attached to SNCU Ward who deposed that on 24.03.2018 he was engaged in the same Hospital and on the morning of 25.03.2018 he submitted a letter addressed to MSVP, BSMC&H Bankura informing that Soma Majumdar, Sister at SNCU Ward reported about a missing baby of mother Jhuma Mondal. On 24.03.2018 Jhuma Mondal's baby, a girl child, aged one day was admitted at the SNCU Ward with mild umbilical bleeding under Dr. Abhay Charan Pal. According to the prevailing norms of the hospital whenever the baby was admitted at the SNCU Ward, his or her mother is also required to be admitted at the Gynae Ward of the hospital. In this case the condition of the baby was stable and she was handed over to the mother Jhuma Mondal at the step down Ward. The step down Ward is situated within the SNCU Ward where the stable babies are allowed to be breast fed by the mother. It is a norm to count the head of babies at the SNCU Ward once at 8.00 P.M. at night before handing over the charge by the sister and again at 8.00 A.M. when the charge is handed over by the sisters of the Ward and two census of the child are conducted in SNCU Ward of the hospital at 12.00 noon and 12.00 midnight. In the present case the child of Jhuma Mondal was found present at the SNCU during the head count at night, while in the morning at 8.00 A.M. at the time of the delivery of the charge by the sister on counting, a child was found short and the baby of Jhuma Mondal was not found. He informed the matter to MSVP at first over telephone and then through letter about the missing child. He identified the letter which was written and signed by him, the same was admitted in evidence. It was also stated simultaneously in the treatment sheet of Jhuma Mondal's daughter and the same was recorded in his handwriting. He also identified the treatment sheet which was in his own handwriting and contained his signature and as such the same was admitted in evidence. The witness also stated that information was also sent to the Ward Master's office and Jhuma Monadal was asked about the whereabouts of her daughter by the employees of the Ward Master's office. When the accused Jhuma Mondal was asked about the whereabouts of her baby by the employees she disclosed that she had thrown her baby outside through the window of SNCU of the hospital. The baby was recovered by those employees from a drain and brought back to SNCU. He examined the baby and found that she was brought dead and he declared her as clinically dead. He identified the accused Jhuma Mondal in Court. In cross-examination the witness replied that it is usual to mention in the BHT when the baby is handed over to the mother at the step down Ward and in this case at the time of admission of the baby it was not found in a serious condition so the baby was handed over to the mother at step down Ward from the very beginning. It was further replied by him in cross-examination that the baby was never separated from the mother to some other Ward. He denied the incident of Jhuma Mondal not having confessed before the hospital staff that she had thrown away the baby through the bathroom window from SNCU.

**[6]** P.W.2, Soma Mazumder is a Staff Nurse (GNM) at SNCU of Bankura Medical College. She deposed that she was engaged at the night shift from 8.00 P.M. to 8.00 A.M. on 24.03.2018 and at night after counting process of baby was completed, she took charge of the step down Ward where mother and baby are kept together. At the relevant time there were 36 mothers and 36 babies. She also checked the admission procedure of babies before they are shifted to two other Wards. According to her the place of keeping the babies after admission is known as 'Triage'. She deposed another census of the babies were conducted at the midnight and even during that count the number of mothers and babies they found to be in order. Before her shift/duty was about to end at about 7.00 A.M. while counting the number of babies she found one baby and mother were missing, she informed the P.W.1, Dr. Jagat Jyoti Bhunia, the on duty Medical Officer and she also informed the Nursing Superintendent Madam and Ward Master Office. At about 7.30 A.M. the mother as well as other family members of the baby came to the hospital and started inquiry about the missing baby and after some time the accused Jhuma Mondal, mother of the baby confessed that she had thrown the baby through the window. On further enquiry and on her indication the employees of the hospital found the baby from a drain nearby. The baby was brought to the SNCU Ward and examined by the Medical Officer Dr. Bhunia, who declared the baby dead. The baby was thereafter kept in death cot. She identified the accused in Court and further stated that they wanted to know from the accused why she had done such thing, when she replied that as the baby was a female child, she had thrown out. In cross-examination she replied that the baby was not suffering from serious illness or that the baby was not given to the custody of the mother she also denied in cross-examination regarding Jhuma Mondal not having confessed to them regarding throwing away the baby through the bathroom window.

**[7]** P.W.3, Shankari Sahana is a Staff Nurse at Bankura Sammilani Medical College and Hospital and was engaged in night duty as staff nurse at 'A' block of SNCU Ward of Bankura Medical College. She stated that there are four unit at SNCU Ward and when she went to hand over the charge after her duty on 25.03.2018 she heard that a baby was missing from the step down Ward of SNCU 'D' unit. The mother of the baby Jhuma Mondal confessed in presence of many people including her that she had thrown the baby out from the window of the bathroom. On identifying the bathroom from where the baby had been thrown, search was made and the baby was recovered from region below the window, from a drain. The baby was kept on the death cot after recovery at SNCU unit and the mother of the baby disclosed that it was a female child, so she had thrown away the child. She identified the accused Jhuma Mondal as the mother of the baby. In cross-examination she denied the fact of not having stated regarding the incident to the police officer who examined her and also that the baby was recovered shortly after the mother confessed about throwing out the baby.

**[8]** P.W. 4, Dr. Rabi Adhikary, Medical Officer, at SNCU Ward at BSMC&H, Bankura, who deposed that on 24.03.2018 he was engaged at the Ward from 9.00 P.M. to 9.00 A.M. Doctor Jagat Joyti Bhunia was also on duty along with him at the same Ward. On 25.03.2018 between 7.30 A.M. to 8.00 A.M. the baby of Jhuma Mondal was found missing according to the witness, at the time of counting of babies by the sister of the Ward. He was in the 'A' unit of the Ward and the incident took place in the step down Ward of 'D' unit. The baby was found missing, the mother was identified by the sister and then whereabouts of the baby was enquired from her, she was unable to give any answer and on being questioned by several persons she disclosed in his presence that she had thrown away the baby from window of a bathroom by the side of the Ward. Dr. Bhunia informed about this matter to the Ward Master, RMO, MSVP and Police. The baby was recovered from the drain below the bathroom window and he learnt from Dr. Bhunia that the baby had been recovered in dead condition. He identified the accused in Court. In crossexamination he replied that the SNCU Ward is situated at the first floor of the building and the Gynae Ward is situated in the ground floor and second floor of the building. He denied in cross-examination that Jhuma Mondal did not state that she had thrown her baby through the bathroom window. He further stated in his cross-examination that the baby was recovered at about 9.00 A.M. on 25.03.2018.

**[9]** P.W. 5, Jayashree Jana, attached Staff Nurse at BSMC&H, Bankura at SNCU Ward who deposed that she was posted at 'B' Ward from 8.00 P.M to 8.00 A.M. on 25.03.2018. She deposed at the time of handing over of charge, after completion of her duty on 25.03.2018 she learnt that one baby of SNCU 'D' unit was missing. Soma Majumder was performing duty at SNCU Ward 'D' unit from 8.00 P.M. on 24.03.2018 to 8.00 A.M. on 25.03.2018. She informed about the matter to the Deputy Nursing Superintendent in charge of her Ward. She further deposed that Jhuma Mondal the mother of the missing baby was called and she was not present in the step down Ward and was found at the gate of SNCU. On being asked the mother made inconsistent statement at first and then disclosed that since she gave birth to female child she had kept the baby by the side of the window and at times she said that she had thrown away the baby. On search, the missing baby of Jhuma Mondal was found from a drain by the side of the window and the baby was found dead on being examined by the doctor. She identified accused Jhuma Mondal in Court. In cross-examination she denied the fact that she stated to the Police that on the following day Padma Dom recovered the baby from the drain and brought it out. She also denied of having stated to the police that the mother of the baby was not in the Ward and she was near the gate.

**[10]** P.W.6, Chhaya Murmu, is a Deputy Nursing Superintendent, BSMC&H, Bankura and on 25.03.2018 she was posted in same place. At about 8.30 A.M. to 9.00 A.M. on 25.03.2018 at the time of handing over of the charge, she was informed by Soma Majumdar, Nursing Staff, from gynae and SNCU Ward that a baby was found

missing. After receiving such information she went to SNCU Ward and asked Jhuma Mondal, mother of the missing baby why the baby was missing when it was given to her custody at step down Ward. According to the witness the accused Jhuma Mondal confessed after sometime that since she gave birth to a girl child so she killed her. According to the witness the accused showed the window of the bathroom from where the baby was thrown. The baby was recovered from the drain below the window and on examination the doctor of the Ward declared her to be dead. She identified the accused Jhuma Mondal in Court. In cross-examination she denied the fact of not asking Jhuma Mondal regarding whereabouts of her baby as also she denied regarding disclosing the fact that the accused confessed before her that she had thrown away the baby through the window.

**[11]** P.W.7, Dr. Damadar Chakraborty, Medical Officer at SNCU Ward under BMSC&H, Bankura. He deposed on 25.03.2018 he was performing morning duty from 9.00 A.M. at SNCU 'A' Ward and was handed over the charge from Dr. Jagat Joyti Bhunia and Dr. Rabi Adhikary who were on duty on the previous night. He learnt from Dr. Bhunia and Dr. Adhikary that a baby was missing from the step down Ward from the custody of a mother and later on the baby was recovered from the drain below the SNCU Ward. He also deposed that he was busy with his duty and did not see the recovered baby and Dr. Bhunia and Dr. Adhikary were doing the necessary work. In cross-examination he deposed that he could not recollect from whom he heard regarding the incident.

**[12]** P.W.8, Partha Sarathi Bhunia is Medical Officer of SNCU Ward, BMSC & H, Bankura. He deposed that on 25.03.2018 he was on duty at the 'Triage' from 9.00 A.M. He further deposed that during the previous night Dr. Bhunia and Dr. Adhikary were on duty at SNCU Ward and he learnt from them that one baby was missing from the step down Ward at the time of head counting by sister in the morning. It was also informed to him that the mother of the missing baby Jhuma Mondal was traced out who confessed that she threw the baby from the window of the bathroom. The baby was recovered below the bathroom window and declared dead at the SNCU Ward. Later on he continued with his work at 'Triage'. In cross-examination he deposed that in the 'Triage' babies were given emergency medical attendance and they are shifted to their respective Wards after primary care. He further replied in cross-examination that he is unable to inform the Court under which doctor the deceased baby was admitted first at the 'Triage' or under which doctor she was undergoing treatment.

**[13]** P.W.9 is Padma Bauri who was a permanent employee, serving as a Dom at SNCU Ward under BSMC&H, Bankura, who deposed on 25.03.2018 at about 8.30 A.M. she was called to the SNCU Ward from the Ward Master's Office. The doctor, sister and Ward master asked her to look for a baby in the drain on the back side of the SNCU Ward. She looked for the baby and traced it out from the drain below the

SNCU Ward. According to the witness the baby was taken to the Ward and after police arrived she was taken to the morgue of the hospital.

**[14]** P.W.10, Dr. Bipasha Dutta, Medical Officer at SNCU Ward, BSMC&H, Bankura who deposed that on 25.03.2018 she reported for her duty at SNCU Ward at about 9.00 A.M. According to her on the previous night, Dr. Rabi Adhikary and Dr. Jagat Jyoti Bhunia were on duty at SNCU Ward along with Sister, Soma Majumdar and at the time of taking charge, Dr. Jagat Jyoti Bhunia informed her that the baby was missing from the Ward since 8.00 A.M. The baby was recovered before she joined for her duty in morning from the drain and she was unable to recollect as to whose baby was missing. In crossexamination she deposed that she did not notice the baby or the mother after reporting for duty.

**[15]** P.W.11 is Mohan Chandra Orang, a Constable attached to Bankura Police Station who on 25.03.2018 took the body of the baby to the morgue at Bankura. The challan according to him was prepared by ASI Ranjit kr. Paine. His signature in carbon impression was admitted in evidence. After the postmortem he produced the clothes of the baby at the Police Station which was seized from his possession and he signed the seizure list. He identified his signature in the seizure list which was admitted in evidence.

**[16]** P.W.12, Ranjit Kumar Paine was posted as ASI of Police at Bankura Sadar Police Station and on 25.03.2018 he conducted the inquest over the dead body of a new born baby of Jhuma Mondal at the compound of BSMCH, Bankura. He identified the carbon copy of the inquest report prepared by him which was admitted in evidence. He further deposed that he sent the body to the morgue for post-mortem examination and the copy of dead body challan with his signature. He identified his signature which was marked in evidence. He also identified the seizure list relating to the seizure of wearing apparels of the deceased baby which he signed as a witness, he identified his signature and the same was admitted in evidence. In cross-examination he replied that he found the dead body of the deceased baby in the bed of SNCU, BSMC&H, Bankura and was unable to recollect the bed number where the body was laid. He further deposed that Jhuma Mondal was present at the time of inquest examination.

**[17]** P.W.13, Pradyut Kumar Sarkar, Sub-Inspector of Bankura Sadar Police Station who prepared the formal FIR in connection with Bankura P.S. Case No. 76/18 dated 25.03.2018 under Section 302 of IPC. He deposed that he filled up the FIR as per instruction of the Inspector-in-Charge Bankura Police Station and he identified his signature in the formal FIR which was admitted in evidence. He also identified the endorsement which was also admitted in evidence.

**[18]** P.W.14, Barun Krmar Roy, is Facility Manager, BSMC&H, Bankura. He deposed that 25.03.2018 police personnel visited BSMC&H Bankura and conducted inquest on the dead body of a deceased baby of Jhuma Mondal. He signed the inquest

report as witness and identified his signature in the carbon copy of the inquest report which was marked in evidence. In cross-examination he replied that he did not personally see how the said baby died.

**[19]** P.W.15, Sanjoy Mondal is the husband of the accused Jhuma Mondal. He deposed that his wife gave birth to a female child on 25.03.2018 in their house and immediately thereafter the child was admitted in Amarkannan Rural Hospital and thereafter the child was admitted at BSMC & H, Bankura on the said date. His wife was with the child at the relevant time and the child was admitted in SNCU Ward, BSMC & H, Bankura. He was waiting in the area of BSMC&H Ward, Bankura and on the next day morning at about 8.00 A.M. his wife came to him when both of them took tea and after sometime they went to SNCU Ward and found that the baby was not in the bed. Both of them along with staff of the hospital tried to search out the baby and after sometime he heard the baby was lying in the drain, thereafter, the baby was brought to the said Ward and found to be dead. He identified the inquest report as well as signature therein which was admitted in evidence. In cross-examination, he replied that he did not state anything to police personnel who conducted and prepared inquest report.

**[20]** P.W.16 is Dr. Tanay Mohanta who is an Assistant Professor of BSMC&H, of SNCU Ward. He stated that on 25.03.2018 he conducted post-mortem examination on the body of one day old child of Jhuma Mondal. The body was brought by Constable Mohan Chandra Orang of Bankura Police Station in connection with Bankura P.S. U.D. case no. 191/18 dated 25.03.2018, on examination he found the following injuries:

"1. Abrasion 1/2" x 1/2" present over the chin.

2. Contusion 0.7" x 0.2" over left knee joint.

3. Contusion 1/2" x 0.3" over right knee joint.

4. Recent tear marks over umbilicus. On dissection,

5. Sub-Dural haemorrhage over both parietal lobe size 3" x 3"

6. Multiple bruise present over under surface of the liver. All the injuries showed evidences of vital reactions. No other internal or external injuries present even after careful dissection and examination with the help of a magnifying hand lance.

My opinion regarding cause of death, the death was due to the effects of ante-mortem injuries as noted above."

**[21]** According to him the cause of death was due to the effects of antemortem injuries. He identified the post-mortem report which was prepared and signed by him which was admitted in evidence and also deposed that if anybody throws away a baby from second floor, such type of injuries may occur to the body of a baby.

**[22]** P.W.17, Baranasi Layek, Sub-Inspector of Bankura Police Station and the investigating officer of the case who deposed the chronology in which he conducted the investigation after the same was endorsed to him. He stated that he contacted the complainant Dr. Jagat Jyoti Bhunia, visited the place of occurrence as per his identification and also visited the place where the new borns are kept in BSMC&H, Bankura. He prepared rough sketch maps of two places of occurrences with index. He also examined available witness after complying with all the legal formalities and arrested the accused Jhuma Mondal. He also seized the wearing apparels of the victim baby on 25.03.2018 under proper seizure list. He collected the post-mortem report of the victim baby, B.H.T. papers and inquest papers and thereafter submitted charge-sheet against the accused Jhuma Mondal under Section 302 of the Indian Penal Code. In cross-examination when the Investigating Officer was confronted regarding the statement made by some of witnesses he replied as follows:

> "Soma Majumdar stated before me that in the previous night when she counted the number of babies in the ward, she did not find the victim baby therein.
>
> She did not state before me that she narrated the incident to Jagatjyoti Bhunia for the first time.
>
> She did not state before me that after narrating the incident to Jagatjyoti, she narrated the incident to the Nursing Superintendent and Ward Master.
>
> She did not state before me that Jhuma Mondal told her and other members of Jhuma's family that she had thrown away the baby.
>
> Shankari Sahana did not state before me that Jhuma confessed before her that she had thrown away the baby from window.
>
> Dr. Rabi Adhikary told before me that he came to know that on the night of 24.3.18 the baby of Jhuma Mondal was missing
>
> He stated before me that on the next day one Padma Dom brought the dead body of the said baby from the drain and kept in the cot for the said baby.
>
> Jayashri Jana told before me that on 24.3.18 she was on duty at Gynae ward and received an information that one baby was missing from first floor.
>
> She stated that on the next day, Padma Dom brought the baby from the drain.
>
> She did not state before me that the mother of the baby was not in the ward and she was standing in the gate.
>
> Chhaya Murmu did not state before me that she enquired the matter from Jhuma.
>
> Chhaya Murmu did not state before me that Jhuma Mondal confessed before her that she had thrown away the baby through the window. She did not state

before me that Jhuma Mondal showed her the window through which she had thrown the baby away. Partha Sarathi Bhunia did not state before me that the baby was found missing at the time of counting in the morning.

He did not state before me that Jagatjyoti Bhuinia and Dr. Rabi Adhikary disclosed that mother of the baby confessed before them that she had thrown away the baby from the window of SNCU ward".

**[23]** Learned Advocate appearing for the appellant submitted that the prosecution has only relied upon specific set of witnesses who are associated with the Hospital and have tried to forcefully implicate the present appellant. In fact, there are no eye-witnesses to the incident neither there is any case of circumstantial evidence and the whole case is based on extrajudicial confession of the appellant which is not even corroborated by any materials or independent witnesses. Additionally, it has been submitted that there are material discrepancies in the evidence of the prosecution witnesses which dilutes the allegations, so far as the appellant is concerned and if the deposition of the prosecution witnesses are read in between the lines then in that case it would be transparent that the prosecution has failed to prove the case beyond reasonable doubt. As such the learned advocate submits that the appellant be acquitted of the charges by setting aside the judgment and order of conviction and sentence passed by the learned Trial Court.

**[24]** Mr. Ranabir Roy Chowdhury learned advocate appearing for the State on the other hand submitted that the prosecution witnesses consistently stated that the appellant confessed before them that she had thrown the child through the window of the bathroom and the recovery of the child beneath the window and from the drain by Padma Bauri (P.W.9) itself goes to show that it was at the instance of the appellant the child was recovered. According to the learned advocate the behaviour of the mother/appellant was unnatural as she was not there at the bed and was having tea with her husband which substantiates the motive which has been spelt out by the prosecution i.e. a female child being born second time she had thrown away the child. Learned advocate for the State submits that the prosecution has been able to prove the case beyond all reasonable doubt as the version of the prosecution witnesses have been consistent and there is no alternative factual aspect which can be arrived at in the given set of circumstances which can exonerate the appellant from the charges for which she was called upon to face the trial. So, it has been prayed on behalf of the State that no interference is called for in respect of the judgment and order of conviction and sentence passed by the learned Trial Court and the same may be affirmed.

**[25]** I have considered the deposition of all the witnesses as also the submissions advanced by the appellant and the State. On an analysis of the list of witnesses it is reflected that out of the 17 witnesses so relied upon by the prosecution 12 witnesses are from the hospital, 4 witnesses belong to the Police Department and the only witness (P.W.15) is the husband of the appellant. Before proceeding further it would

be relevant to state that the prosecution in this case has mainly built up their foundation on the confession made by the appellant before the hospital staff, as such the principles which deal with extrajudicial confession is required to be considered. In **Sunny Kapoor -versus- State of (UT of Chandigarh)**, 2006 10 SCC 182 the Hon'ble Supreme Court by relying upon the judgment of **Jaswant Gir versus-State of Punjab**, 2005 12 SCC 438 held that the first and foremost aspect which has to be assessed in case of extrajudicial confession is that whether there was an intimate relation or friendship existing for divulging the information to the witnesses concerned. In **Ajay Singh -versus- State of Maharashtra**, 2007 12 SCC 341, the Hon'ble Supreme Court while dealing with extrajudicial confession observed that the Court has to satisfy that the same was voluntary and without any coercion and undue influence. It further reiterated in the same judgment that extrajudicial confession can form basis of conviction if persons before whom it has been stated are unbiased and not even remotely inimical to the accused. Where there is material to show animosity, Court has to proceed cautiously and find out whether confession like any other evidence depends on veracity of witness to whom it is made. In **State of U.P. -VersusM.K. Anthony**, 1985 1 SCC 505 the Hon'ble Supreme Court in paragraph 15 observed as follow:

> "15. There is neither any rule of law nor of prudence that evidence furnished by extrajudicial confession cannot be relied upon unless corroborated by some other credible evidence. The courts have considered the evidence of extrajudicial confession a weak piece of evidence. (See **Jagta v. State of Haryana**, 1974 4 SCC 747, 752: 1974 SCC (Cri) 657, 662: (1975) 1 SCR 165, 170: 1974 Cri LJ 1010] and **State of Punjab v. Bhajan Singh**, 1975 4 SCC 472, 476: 1975 SCC (Cri) 584, 588: (1975) 1 SCR 747, 751: 1975 Cri LJ 282] .) In **Sahoo v. State of U.P.**, 1966 AIR(SC) 40: (1965) 3 SCR 86: 1966 Cri LJ 68] it was held that "an extrajudicial confession may be an expression of conflict of emotion, a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime". Before evidence in this behalf is accepted, it must be established by cogent evidence what were the exact words used by the accused. The Court proceeded to state that even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence. In that case, the evidence was that after the commission of murder the accused was heard muttering to himself that he has finished the deceased. The High Court did not interfere with the conviction observing that the evidence of extrajudicial confession is corroborated by circumstantial evidence. However, in **Piara Singh v. State of Punjab**, 1977 4 SCC 452: 1977 SCC (Cri) 614: (1978) 1 SCR 597: 1977 Cri LJ 1941] this Court observed that the law does not require that evidence of an

> extrajudicial confession should in all cases be corroborated. It thus appears that extrajudicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extrajudicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extrajudicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extrajudicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon."

**[26]** Thus, the proposition of law which emerges in respect of acceptance relating to evidentiary value of extrajudicial confession, depends upon the veracity of the witnesses to whom it is made and to decide on the acceptability of the evidence having regard to the credibility of the witnesses. Needless to state that extrajudicial confession by its nature is a weak piece of evidence.

**[27]** Having considered the aforesaid in the background of the present case particularly with respect to the deposition of P.W.1- Dr. Jagat Jyoti Bhunia, P.W.2- Soma Mazumder, P.W.3- Shankari Sahana, P.W.4- Dr. Rabi Adhikary, P.W.5.- Jayshree Jana, P.W.6.- Chhaya Murmu who in their deposition before the Court narrated that the appellant on being repeatedly asked by several persons confessed before them that she had thrown away the baby from the window of the step down Ward of B.S.M.C. & H, Bankura. It is seen that all these witnesses are either the doctors, the staff nurse or the Deputy Superintendent associated with SNCU Ward of B.S.M.C. & H, who were responsible for their duties at the relevant point of time when the child along with mother was at the hospital.

**[28]** Surprisingly in this case although in evidence it has surfaced that at the Step down ward there were 36 mothers along with their babies but the police authorities did not examine any of those mothers who were present in the unit where the appellant along with her baby was admitted. The lone independent witness after all is the husband of the appellant who did not support the prosecution case. What is much more alarming is the improvement made by the witnesses before the Court who were associated with the hospital as the investigating officer categorically deposed in cross-examination that PW2, Soma Majumdar stated before him that in the previous night

when she counted the number of babies in the ward she did not find the victim baby therein. In the same breath, in respect of PW2, Soma Majumdar the investigating officer deposed that PW2 did not state before him that the appellant Jhuma Mondal told her and other members of her family that she had thrown away the baby. The investigating officer further in respect of PW3 Shankari Sahana, staff nurse deposed that the said witness i.e. PW3 did not state before him that the appellant confessed before her that she had thrown away the baby from the window. The investigating officer further deposed that PW4, Dr. Rabi Adhikary told him that he came to know that on the night of 24.03.2018 the baby of Jhuma Mondal was missing. The investigating officer also deposed that PW5 Jayasree Jana, staff nurse stated before him that on 24.03.2018 while she was on duty at Gynae ward she received an information that a baby was missing from first floor. The investigating officer further deposed that PW5 did not state before him that the mother of the baby was not in the ward and she was standing in the gate. The investigating officer also before the Court in crossexamination deposed that PW6, Chhaya Murmu, Deputy Nursing Superintendent did not state before him that Jhuma Mondal confessed before her that she had thrown away the baby through the window and that the appellant Jhuma Mondal showed her the window from where she had thrown the baby. In respect of PW8, Partha Sarathi Bhunia, Medical Officer of SNCU ward the investigating officer deposed that he did not state before him that the baby was found missing at the time of counting in the morning and that Dr. Jagat Jyoti Bhunia and Dr. Rabi Adhikary disclosed that mother of the baby confessed before them that she had thrown away the baby from the window of SNCU Ward.

**[29]** On scrutiny and assessment of the aforesaid evidence it can be ascertained that there is a gulf of difference in respect of the statement made before the investigating officer by the aforesaid witnesses and their deposition in Court. All the witnesses were in discharge of their official duties at the relevant point of time in the hospital and they have improved their version in Court (if it is compared with their previous statement). To rely upon their evidence and arrive at a conclusion would be against the settled proposition of criminal jurisprudence as the reliability of these witnesses are questionable. Thus the prosecution case if taken as a whole suffers from the following defects:

(i) An attempt was built to establish the case on extrajudicial confession which itself is a weak piece of evidences;

(ii) Such narration regarding the confession was first time deposed before the Court and was not divulged in course of investigation as is reflected from the deposition (reply in cross-examination) of the investigating officer;

(iii)The relevant witnesses who could have supported the prosecution case particularly the other patients/mothers who were admitted in the same ward

were not cited as prosecution witnesses to make out a chain of circumstance for implicating the appellant in a criminal case;

(iv)The extrajudicial confession has not been corroborated by any material particulars or by way of any independent evidence for implicating the present appellant;

(v) Even if the extrajudicial confession is accepted to be true then also the same cannot be relied upon as majority of the witnesses have for the first time before the Court spoke of such confession being made without the same being disclosed in course of investigation to the investigating officer;

(vi) A set of the witnesses deposed that in the previous night while counting one of the babies were found to be short, while another set of witnesses stated/deposed that in the morning at 8.00 A.M. on 25.03.2018 while counting a baby was found to be missing.

**[30]** Having regard to the inherent factual weaknesses in the instant case it would be unsafe to rely upon such evidence to arrive at an order of conviction in respect of the appellant. Thus the judgment and order of conviction and sentence so passed by the learned Sessions Judge, Bankura in connection with Sessions Trial No. 18/2018 (arising out of Bankura Police Station case no. 76/18 dated 25.02.2018) is hereby set aside.

**[31]** The appellant is acquitted of the charges.

**[32]** The appellant is on bail and as such she is discharged from the bail bonds.

**[33]** Consequently, CRA 628 of 2019 is **allowed**.

**[34]** Pending connected application(s), if any, are also disposed of.

**[35]** Department is directed to send back the LCR immediately. A copy of the judgment be forwarded to the ld. Trial court immediately for compliance regarding the directions given above.

**[36]** All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

**[37]** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities

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