BAIL AND ACQUITTAL JUDGEMENTS

2024(2)MBAJ447

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.

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

---

2024(2)MBAJ459

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.

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

2024(2)MBAJ465

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.

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

---

2024(2)MBAJ473

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.

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

2024(2)MBAJ481

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.

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.

---

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

---

2024(2)MBAJ485

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.

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

---

2024(2)MBAJ490

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.

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

---

2024(2)MBAJ491

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.

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

2024(2)MBAJ493

IN THE SUPREME COURT OF INDIA

[From UTTARAKHAND HIGH COURT]

[Before B R Gavai; Sanjay Karol; K V Viswanathan]

S L P (Cr) (Special Leave Petition (Criminal)); Criminal Appeal No 9783 of 2023; 3350 of 2024 **dated 13/08/2024**

James Kunjwal

Versus

State of Uttarakhand & Anr

FALSE AFFIDAVIT FILING

Indian Penal Code, 1860 Sec. 193, Sec. 376, Sec. 195, Sec. 504, Sec. 196, Sec. 191, Sec. 200, Sec. 205, Sec. 340, Sec. 211, Sec. 199 - Code of Criminal Procedure, 1973 Sec. 195 - False Affidavit Filing - Appellant granted bail by High Court on charges of rape and intimidation - Complainant applied for bail cancellation, citing contradictions in appellant's statements - High Court dismissed cancellation but noted that appellant intentionally filed false affidavit - Directions issued to file complaint against appellant under Sec. 193 IPC - Appellant contended that mere denial in affidavit does not constitute perjury - Court found no deliberate falsehood or malicious intent in affidavit - High Court's direction for prosecution set aside - Proceedings arising therefrom quashed - No impact on pending criminal trial - Appeals Allowed

Law Point: Filing a false affidavit without evidence of deliberate falsehood or malicious intent does not meet the threshold for prosecution under Section 193 of IPC

Acts Referred:

Indian Penal Code, 1860 Sec. 193, Sec. 376, Sec. 195, Sec. 504, Sec. 196, Sec. 191, Sec. 200, Sec. 205, Sec. 340, Sec. 211, Sec. 199

Code of Criminal Procedure, 1973 Sec. 195

JUDGEMENT

Sanjay Karol, J.- [1] Leave Granted.

[2] Impugned in the present appeal is the final order dated 1st October 2022, passed by the High Court of Uttarakhand at Nainital in Bail Cancellation Application

No.24/2022, whereby, although the said application was dismissed, it was observed that James Kunjwal, the present appellant had intentionally filed a false affidavit before the High Court and as such, a direction was issued to the Registrar (Judl.) of the High Court to file a complaint against him. This, in a nutshell, forms the basis for this appeal.

[3] It would be necessary to appreciate the background in which the impugned order came to be passed. Briefly stated, the facts are:-

3.1 The appellant was made an accused in FIR No.109 of 2021 dated 2nd May, 2021 under Sections 376 & 504 of the Indian Penal Code, (45 of 1860) ['IPC' hereinafter] by the second respondent 'X' [Complainant] on the ground that the appellant had established relations with her on the false pretext of marriage, and the same continued after efforts towards marriage by the complainant repeatedly fell through.

3.2 In reference to the said FIR, the appellant applied for bail, before the learned Additional District and Sessions Judge, Nainital which was rejected. [First Bail Petition No.180 of 2021, at Annexure P-3] Aggrieved thereby, the appellant pleaded his case for bail before the High Court. [First Bail Application No.1190 of 2021, at Annexure P-4] Vide order dated 8 th June, 2021, such an application was allowed.

3.3 The complainant sought cancellation of such order of bail by way of Bail Cancellation Application No.24/2022. Various grounds were urged therein, including the appellant having made contradictory statements.

3.4 The High Court, while dismissing the application for cancellation of bail, vide impugned judgment made observations and issued directions, now the subject matter of adjudication in appeal before this Court.

[4] The order dated 1st October, 2022 of the learned Single Judge, while dismissing the bail cancellation application, made reference to the conflict of facts in the affidavits filed by the complainant and the present appellant. While the complainant submitted in her affidavit that certain events took place, the present appellant denied the same with certain explanations. It was further noted that the State's affidavit supported the position of the present respondent. Despite the said contradiction having been brought to the notice of the present appellant, he "did not assist the Court in finding the truth about the incident of 24.07.2022". It was, as such, concluded that the appellant had intentionally filed a false affidavit before the Court. Accordingly, in the penultimate paragraph of the judgment, issued the following directions:

"28. The above narration establishes that the respondent no.2 intentionally filed false affidavit before the Court, Therefore, this Court requests Registrar, Judicial of this Court to file a complaint against the respondent no.2 in, the court of competent jurisdiction for filing a false affidavit."

[5] Pursuant to such an Order by the High Court, a complaint under Section 193 of the IPC was filed before the Chief Judicial Magistrate, Nainital bearing the following particulars - Criminal Complaint No.2991 of 2022, titled as State Through Registrar (Judicial), Hon'ble High Court of Uttarakhand at Nainital v. James Kunjwal.

[6] By way of the special leave petition it is urged that mere denial of the averments in the pleadings would not constitute the offence of perjury. Further, it was urged that a Court is not "bound" to make a complaint under Section 195(1)(b), Code of Criminal Procedure, 1973, unless it is of the opinion that it is expedient in the interest of justice to do so. Reliance is placed on a Constitution Bench judgment of this Court in **Iqbal Singh Marwah v. Meenakshi Marwah**, 2005 4 SCC 370.

[7] In the counter affidavit it has been claimed that the appellant has misrepresented and twisted certain facts, for instance, that he continued to have relations with the 2nd Respondent despite his marriage being fixed with someone else; that the appellant had forced the complainant to terminate her pregnancy etc. The respondent, in view of the above, has submitted that the High Court was justified in directing the filing of the complaint against the appellant. At this juncture, for ready reference, we extract the relevant portion of what the complainant had said in her bail cancellation application. It reads as under:-

> "9 That the applicant want to seek the kind attention of the Hon'ble court that on today's date. It is evident and obvious that the personal status of the applicant and her family would be again in knowledge of the accused but still accused James Kunjwal is chasing applicant opting various ways, asking and pressurizing her to settle down the case by stating that he loves applicant, giving her love proposal, asking her to meet, to call etc and also sending obscene text, and status to applicant and on denial by the applicant and asking him to put his words before the respected hon'ble court and trial court started abusing her and her family badly also talking obscene to her. For the kind perusal of this Hon'ble court a true photo copy of the WhatsApp messages and status text and instagram messages are being filed herewith and marked as Annexure No.7 to this bail cancellation application.
>
> 10. That being aggrieved by the aforesaid objectionable activities of the accused the applicant/complainant made a complaint before the police station - kathgodam on 24-7-2022. For the kind perusal of this Hon'ble court a true photo copy of the complaint letter along with its type copy is being filed herewith and marked as Annexure No.8 to this bail cancellation application.
>
> 11. That pursuant to this complaint the accused was called at police station and before police station he made a statement that he made a statement he will not repeat the any action in any manner but after returning from the police station when he reach his home the accused again started abusing her badly and also passing obscene comments to applicant through Whatsapp text

status. For the kind perusal of this Hon'ble court a true photo copy of the whatsapp text status is being filed herewith and marked as Annexure No.9 to this bail cancellation application.

12. That despite the promise made before the police station the accused did not stop the sending 10 abusing watsapp status messages therefore she again informed to the concerned police station kathgodam, on the perusal of which they called accused again where he accepted that he is doing this intentionally therefore police gave warning to him not to repeat the same again and again and police told the applicant that thought they can lodge the F.I.R. against the accused but the applicant cannot proof just on the basis of the various messages through social media platforms (WhatsApp and Instagram)."

[8] In response thereto, the appellant in his affidavit had averred as under:

"9. That the contents of the para no 9 are denied.

10. That the contents of the Para no 10 are matter of record and hence need no comments.

11. That the contents of the para no 10, 11 & 12 are denied. That the no such incident took place in the Police station and there is no material evidence to prove this. The respondent no 2 did not approach the applicant in fact it was the applicant who messaged and abused the respondent no.2 and communicated said indecent things about respondent no.2. The applicant alleged regarding depicting whatsapp status, but the respondent no2 denies communicating the status to the applicant. It is pertinent to mention here that Whatsapp status is not a message and is not sent or deliver to a specific person. It requires positive act by viewer to look into somebody status which is his own privacy. If someone is seeing a whatsapp status than that person is invading/barging into the privacy of other person who has allegedly depicted his status. Thus it cannot be said that respondent no.2 somehow threatened or abused the applicant. It is a case where the applicant is hoodwinking the whole process, moreover the applicant has not mentioned on which dates these status were uploaded, the applicant is just using these random screenshot to file a frivolous case."

[9] Hence, in the attending facts, the short question that falls for consideration of this Court is whether the contents of the affidavit filed before the High Court, as taken note of in the impugned order, constitutes an offence under Section 193 IPC, as defined in Section 191 IPC?

[10] Section 191 IPC which defines the offence, reads as under:-

"191. Giving false evidence. Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and

which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1. A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2. A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know."

Section 193 IPC, under which the appellant is sought to be prosecuted is extracted below for reference.

"193. Punishment For False Evidence. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1. - A trial before a Court-martial is a judicial proceeding.

Explanation 2. - An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice."

[11] Section 195(b)(1) of Cr.P.C. (relevant portion reproduced hereinbelow) provides that no Court shall take cognizance of an offence committed under Sections 193 to 196, 199, 200, 205-211; except on the complaint in writing of the Court or by an officer of the Court, duly authorized. Section 340 mentions the procedure in respect of the prosecution as delineated under Section 195.

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. (1) No Court shall take cognizance

(a) ....

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) .....

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii)....

(2) ....

(3) ....

(4) ...."

[12] The proper approach in cases where Section 193 is in play, it has been held by this Court in **Dr. S.P. Kohli, Civil Surgeon, Ferozepur v. High Court of Haryana Through Registrar**, 1979 1 SCC 212. as under:

> **"16.** It is true that what the courts have to see before issuing the process against the accused is whether there is evidence in support of the allegations made by the complainant to justify the initiation of proceedings against the accused and not whether the evidence is sufficient to warrant his conviction, but this does not mean that the courts should not prima facie be of the opinion that there are sufficient and reasonable grounds for setting the machinery of criminal law in motion against the accused. The moment this guiding principle is overlooked, the prosecution degenerates itself into persecution which often is fraught with evil consequences."
>
> (Emphasis supplied)

Referred to in Himanshu Kumar & Ors. v. State of Chhattisgarh & Ors,2022 SCCOnLineSC 884.

[13] When prosecution should be sanctioned under this Section by Courts has been expounded on by a Bench of three learned Judges in **Chajoo Ram v. Radhey Shyam & Anr**, 1971 1 SCC 774.

> **"7.** The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge...."
>
> (Emphasis supplied)

Referred to in **Himanshu Kumar** (supra); **Narendra Kumar Srivastava v. State of Bihar & Ors**, 2019 3 SCC 318.

[14] In this regard we may also notice the pronouncement in **R.S. Sujatha v. State of Karnataka**, 2011 5 SCC 689. referred to in **Aarish Asgar Qureshi v. Fareed Ahmad Qureshi**, 2019 18 SCC 172. wherein it was observed:

> **"9.** Both these judgments were referred to and relied upon with approval in R.S. Sujatha v. State of Karnataka [**R.S. Sujatha v. State of Karnataka**, 2011 5 SCC 689: (2011) 2 SCC (Cri) 757] (at paras 15 and 16). This court, after setting down the law laid down in these two judgments concluded: (SCC pp. 694-95, para 18)
>
> "18. Thus, from the above, it is evident that the inquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring home the charge of perjury. More so, the court has also to determine as on facts, whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."
>
> (Emphasis supplied)

[15] The three essential factors which can be said to be sine qua non for the application of Section 193 IPC as held in Bhima Razu Prasad v. State Rep. by Deputy Supdt. of Police, CBI/SPE/ACU-II,2021 19 SCC 25. are:-

(1) false statement made on oath or in affidavits;

(2) that such statements be made in a judicial proceeding; or

(3) such statement be made before an authority that has been expressly deemed to be a 'Court'.

[16] What we may conclude from a perusal of the above-noticed judicial pronouncements is that:-

(i) The Court should be of the prima facie opinion that there exists sufficient and reasonable ground to initiate proceedings against the person who has allegedly made a false statement(s);

(ii) Such proceedings should be initiated when doing the same is "expedient in the interests of justice to punish the delinquent" and not merely because of inaccuracy in statements that may be innocent/immaterial;

(iii) There should be "deliberate falsehood on a matter of substance";

(iv) The Court should be satisfied that there is a reasonable foundation for the charge, with distinct evidence and not mere suspicion;

(v) Proceedings should be initiated in exceptional circumstances, for instance, when a party has perjured themselves to beneficial orders from the Court.

[17] The statement made by the appellant, that has been deemed to be befitting the offence of giving false evidence before the Court, which is known commonly as perjury, was more in the nature of denial of the statements made in the affidavits of the complainant herein.

[18] We are of the view that, in the present facts, a denial simpliciter cannot meet the threshold, as described in the judgments above, particularly when no malafide intention/deliberate attempt can be understood from the statement made by the appellant in the affidavit. As has already been observed, mere suspicion or inaccurate statements do not attract the offence under the Section. It cannot be disputed that the statements made in the affidavit were only to state his version of events and/or deny the version put forth by the complainant.

[19] We are also of the firm opinion that such statements do not make it expedient in the interest of justice, nor constitute exceptional circumstances in which such Sections may be invoked. Given that these proceedings would constitute an offence, independent of the one for which the appellant is already facing trial, it cannot be unequivocally held that there was deliberate falsehood on a matter of substance.

[20] We find that at least three of the possible scenarios, as discussed supra, in which a court would be justified in invoking these powers on the face of it appear to be unmet, prosecution, therefore, would be unjust. We say so for the reason that the respondent in her counter affidavit filed before this Court makes no particular allegation nor does she provide any of the material that was allegedly placed before the competent prosecuting authorities or the Court. She only alleges untruth on the part of the appellant 8/12/2024stating that the Court was correct in initiating proceedings against him for making the false statement. She further makes certain statements that fall outside the scope of the present adjudication and pertain to the trial of the main offence pending before the court of competent jurisdiction.

[21] Consequent to the above discussion, we set aside the direction of the High Court of Uttarakhand in regard to registering a complaint against the present appellant. Any proceedings arising therefrom shall stand quashed. The appeal is, accordingly allowed. Before parting with the matter, it stands clarified that the decision in this appeal shall have no bearing on the criminal case pending against the appellant which shall proceed on its own merits as per law. Pending application(s), if any, shall stand disposed of

---

2024(2)MBAJ501

IN THE SUPREME COURT OF INDIA

[From MADHYA PRADESH HIGH COURT]

[Before B R Gavai; K V Viswanathan; Nongmeikapam Kotiswar Singh]

Criminal Appeal No 520 of 2012 **dated 12/08/2024**

Mahendra Kumar Sonker

Versus

State of Madhya Pradesh

CONVICTION UNDER IPC 353

Indian Penal Code, 1860 Sec. 186, Sec. 351, Sec. 201, Sec. 353, Sec. 350, Sec. 349 - Code of Criminal Procedure, 1973 Sec. 195 - Prevention of Corruption Act, 1988 Sec. 13, Sec. 7 - Conviction under IPC 353 - Appellant convicted for obstructing public servants during trap proceedings - Appellant was a Patwari charged with demanding illegal gratification - Trap laid and appellant resisted arrest - Lower courts convicted appellant under Sec. 353 IPC - Appellant argued that wife was acquitted on similar evidence - Court examined evidence and found that no criminal force or assault was established - Jostling during the attempt to escape was not with intent to deter public servants from performing duties - Conviction under Sec. 353 IPC set aside - Appellant acquitted and sentence overturned. - Appeal Allowed

Law Point: Conviction under Section 353 IPC requires intent to assault or use criminal force to deter a public servant from performing duties - Mere resistance or jostling without intent does not constitute an offense under this Section.

Acts Referred:

Indian Penal Code, 1860 Sec. 186, Sec. 351, Sec. 201, Sec. 353, Sec. 350, Sec. 349

Code of Criminal Procedure, 1973 Sec. 195

Prevention of Corruption Act, 1988 Sec. 13, Sec. 7

Counsel:

Siddharth Aggarwal, Garima Bajaj, Abhinav Sekhri, Vishwajeet Singh, Karan Dhalla, Kumar Karan, Arjun Garg, Aakash Nandolia, Sagun Srivastava, Kriti Gupta

JUDGEMENT

K.V. Viswanathan, J.- [1] The present appeal calls in question the judgment dated 14.10.2009 passed by the High Court of Judicature at Jabalpur, Madhya Pradesh in Criminal Appeal No. 1949 of 2007. By the said judgment, the appellant's conviction under Section 353 of the Indian Penal Code, 1860 (for short 'the IPC') and sentence of six months simple imprisonment and fine of Rs. 1,000/- imposed by the Special Judge, Sagar has been confirmed. Aggrieved, the appellant is in Appeal.

[2] Originally, the appellant along with his wife Mamta stood trial. While the appellant was charged for offences under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act') as well as Sections 201 and 353 of the IPC, his wife Mamta was charged under Section 353 and 201 of the IPC.

[3] We are, in this appeal, concerned only with the conviction of the appellant under Section 353 of the IPC. The appellant has been acquitted of other charges and his wife Mamta has been completely acquitted including for the offence under Section 353 of the IPC. Accordingly, only those aspects of the facts which have a bearing on the present appeal are set out hereinbelow.

Brief Facts:

[4] The complainant in the original corruption case is one Babulal Ahirwar (PW-1). It appears that on his complaint to the Collector about the irregularities in the work of construction of the Education Guarantee Building, the then President of the Committee constituted for the purpose of construction, Santosh Ahirwar was removed from the President's post.

[5] The appellant, who was posted as Patwari in Circle No. 89, Village Naryaoli, District Sagar had been entrusted with the inquiry into a complaint against the said Babulal Ahriwar to the effect that he had made a false complaint against Santosh Ahirwar. It transpires that the appellant, in the inquiry, found the charge against Babulal Ahirwar to be false. When Babulal Ahirwar sought a copy of the report from the appellant, the case of the prosecution is that the appellant demanded a sum of Rs. 500/- as illegal gratification.

[6] The said Babulal Ahirwar, on 28.06.2004, filed a complaint with the Superintendent of Police, Special Police Establishment Lokayukt, Sagar against the appellant in this regard. An FIR was registered under Section 7 of the Act and trap proceedings were organized. O.P. Tiwari (PW-4) and M.K. Choubey were co-opted along with the trap party which consisted of Head Constable Niranjan Singh, Constable Raj Kumar, Constable Shiv Shanker Dube and Inspector N.K. Parihar. The case set up by the prosecution was that they waited for the accused-appellant and when he arrived at his house, Babulal Ahirwar accosted him and handed over the currency to the appellant and signaled to the trap party. The trap party arrived there to apprehend the appellant.

[7] We are directly concerned with what transpired at this point since the only surviving Section under which the appellant has been convicted is Section 353 of the IPC. We will deal with this aspect in detail a little later in the judgment.

[8] Special Case No. 20 of 2005 was registered against the appellant and his wife for the offences mentioned hereinabove. The appellant and his wife denied the charges and claimed trial. Prosecution examined thirteen witnesses and the defence examined three witnesses.

[9] By the judgment of 05.09.2007, the learned Special Judge, Sagar while acquitting the appellant for offences under Sections 7, 13(1)(d) read with 13(2) of the Act and Section 201 of the IPC, convicted him for the offence under Section 353 of IPC and sentenced him to undergo simple imprisonment for six months. Additionally, a fine of Rs. 1000/- was imposed and the appellant's wife was acquitted of all the charges.

[10] Aggrieved, the appellant preferred an appeal to the High Court which has since been dismissed.

[11] Insofar as the charge under Section 353 of the IPC was concerned, the allegation was that the appellant in collusion with his wife with an intention to obstruct the members of the trap team in performing their public duty during the trap proceeding, attacked them or exercised criminal force on them. It is this part of the case which has been believed by the courts below.

[12] We have heard Mr. Siddharth Aggarwal, learned senior counsel for the appellant and Mr. Arjun Garg, learned counsel for the respondent State.

CONTENTIONS:

[13] Mr. Siddharth Aggarwal, learned senior counsel contended that the courts below were not justified in recording the conviction under Section 353 of IPC; that on the same evidence the wife of the appellant, Mamta has been acquitted; that the evidence of PW-1 Babulal Ahirwar, PW-4 O.P. Tiwari, PW-8 N.K. Parihar, PW-9 Niranjan Singh read with the evidence of PW-13 Dr. H.L. Bhuria, do not make out a case for conviction under Section 353 of IPC against the appellant and that none of the ingredients required to maintain a conviction under Section 353 of IPC have been established. Mr. Arjun Garg, learned counsel for the State defended the conviction and prayed that no case for interference with the concurrent conviction is made out.

[14] We have carefully considered the arguments of the parties and have perused the records of the case, including the original records.

[15] At the outset, we extract hereinbelow Section 353 of the IPC:

> **"353.- Assault or criminal force to deter public servant from discharge of his duty. -** Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

A perusal of Section 353 indicates that whoever assaults or uses criminal force (a) to any person being a public servant in the execution of his duty as such public servant, or (b) with intent to prevent or deter that person from discharging his duty as such

public servant, or (c) in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with the imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[16] It is important at this stage to notice the definition of criminal force as defined in Section 350 of the IPC.

> **"350. Criminal force.-** Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other."

As would be clear, what is required to establish criminal force is intentional use of force to any person without that person's consent in order to the committing of any offence.

[17] Section 349 of the IPC which defines force is extracted hereinbelow:

> **"349. Force.-** A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.
>
> First. - By his own bodily power.
>
> Secondly. - By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.
>
> Thirdly. - By inducing any animal to move, to change its motion, or to cease to move."

[18] Assault under Section 351 of the IPC would mean whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person.

[19] In this background, if we peruse the evidence on record, insofar as the charge under Section 353 of the IPC is concerned, it will transpire that none of the ingredients required for convicting a person under Section 353 of IPC were attracted.

[20] PW-1 Babulal Ahirwar, insofar as this part of the event that transpired is concerned deposed as under:

"6. ....The name and address was asked from the accused and the accused was caught. On being asked from the accused about the money he became uncontrolled and tried to run from there. Taking advantage of the dark, the accused threw away those notes.

7. With much difficulty the accused could be won over. The wife of the accused also came at that time and crowd had also gathered there. Wife of the accused was striking her head on the jeep....."

(Emphasis supplied)

[21] PW-4 O.P. Tiwari has deposed as under:

"3. .....When we caught hold of the accused he was not having money. The applicant then told that the accused has thrown the money in the dark. Thereafter the Inspector started searching the money by starting the torch. The Inspector found in the light of the torch, one 50 rupees note lying. Inspector Parihar took that note up and gave it to me and asked me to keep it. Other notes were also searched there but notes could not be found there.

4. After that we tried to apprehend the accused patwari and forced him to sit in the vehicle to take him to police station Naryaoli but the accused Patwari objected to it. In spite of the objection taken by the accused anyhow the accused was made to sit in the vehicle. At the same time the wife of the accused arrived and lay down before the vehicle. In such a condition the vehicle was reversed and turned back and we had to go to police station. When the vehicle moved the wife of the accused started her head striking with the bonnet of the vehicle. Other persons present there, caught hold of the wife of the accused and removed her from there only then we people took the vehicle and started for police station Naryaoli...."

(Emphasis supplied)

[22] PW-8 N.K. Parihar has deposed as under:

"6. .....Therefore the trap team surrounded the accused and tried to apprehend him. The accused objected to it forcefully so they could not catch him all of a sudden.

7. The accused had shouted so crowd had assembled there. In the meanwhile the accused took out the bribe notes from his pocket and had thrown them. The accused was apprehended. On searching the notes on the ground only one note of Rs.50/- was seen which panch witness Shri Tiwari picked up. Looking to the opposition, we took accused to police station Naryaoli where solution of sodium carbonate was prepared, which was colouring less.....

xxx xxx xxx

9. ....I had given one application in regard to the incident to Station House Officer Naryaoli, photocopy of which is enclosed. On 30.6.2004 I had filled MLC form for getting medically examined the head constable Niranjan Singh, myself & Rajkumar Sen, on which I had signed which are P-22 to P-25 respectively. After that I had handed over the case for investigation to D.S.P. Shri Ranjan Tiwari."

(Emphasis supplied)

[23] We have also perused the original record insofar as the application given to the Station House Officer is concerned, the translated portion obtained officially reads as under:

"To

The PS In-charge

Sic Narayavali (Madhya Pradesh)

Subject - Regarding the accused Mahendra Kumar of trap.(Sic)

Shri Mahendra Sonkar was caught taking bribes on 29/06/03 at 8 O'clock. He called out to his wife. The woman clung to her husband to free him. She put her head on the jeep sic and grabbed the accused's hand and started pulling him out of the jeep. The accused also grabbed her hand so that he could escape from the case by taking shelter of his wife. He also threw bribe notes but only one note was recovered in the trap sic. The accused created a lot of ruckus which disrupted the work. Please investigate this case.

Sd/-illegible 29.6.04

Sd/-illegible

29.6.04

(Shyam Bihari Mishra H.C.)"

(Emphasis supplied)

This document however does not appear to have been exhibited.

[24] We have also seen Exh.P-22 to Exh.P-25. The translated portions of which read as under:

"Exh.P-22:

To

The Medical Officer,

District Hospital Sagar District

Sagar

Subject: Regarding medical examination of the injuries sustained by Head Constable Niranjan Singh, Special Police Establishment, Lokayukta, Sagar Division, Sagar and submitting a report

During the trap proceedings dated 29-6-2004 in Crime No.0/04 under Section 7, 13(1) 13(2) PC Act 1988, when accused Mahendra Kumar Sonkar and his wife tried to resist, Head Constable Niranjan Singh sustained the following injuries. Please examine and submit a report.

1. Injury with swelling near the right eye

2. Injury with swelling on the ankle of the right foot

Sd/-illegible

30.6.04

SPL No.20/05

Ex P 22

PW8

21.11.06

(Satyendra Kumar Singh)

Special Judge and

First Additional Session Judge, Sagar

(Emphasis supplied)

Exh.P-23:

To

The Medical Officer

District Hospital

Sir,

It is requested that Mahendra Sonkar accused of Crime No.0/04 and his wife opposed the proceedings, as a result Inspector N.K. Sic sustained injuries in the middle finger of left hand causing swelling. Kindly examine and send report.

Sd/-

30.6.24

SPL No.20/05

Ex P23

PW8

21.11.06

Sd/-

(Satyendra Kumar Singh)

Special Judge and

First Addl Sessions Judge, Sagar

Exh.P-24:

Illegible

Subject: Constable Rajkumar illegible

It is requested that in Case Crime No. sic 7, 13(1) D, 13(2) PC Act, Mahendra Kumar Sonkar and his wife tried to sic avoid the proceedings and resisted and hence the constable has suffered the following injuries to examine & give the report.

1. Swelling in the wrist of the right hand

2. Small scratches on both hands

3. Many sic injuries

Sd/-illegible

30.6.04

SPL NO.20/05

Ex P24

PW8

21.11.06

(Satyendra Kumar Singh)

Special Judge and

First Additional Session Judge, Sagar

(Emphasis supplied)

Exh.P-25

Sic District

Subject: Constable Shivshankar sic

In the proceedings of Crime No.0/04 u/s 7, 13(1)D, sic PC Act, accused Mahendra Kumar Sonkar sic and his wife resisted in which constable sustained following injuries. Examine and give the report.

1. There is swelling in the little finger of the right hand.

2. There is pain in the chest and back.

Sd/-illegible

30.6.04

SPL NO.20/05

Ex P.25

P.628

21.11.06

(Satyendra Kumar Singh)

Special Judge and First

Additional Session Judge, Sagar"

(Emphasis supplied)

[25] PW-9 Niranjan Singh has deposed as under:

"2. ...After some time the non-applicant Patwari came by his motorcycle and he contacted with the applicant in front of his residence. The applicant gave the amount of bribe to the accused Patwari. He took it in his hand and placed it in the pocket of his shirt.

3. During this time constable Shivshanker and Rajkumar suddenly tried to catch and the accused patwari tried to run away and constable Shivshanker and Rajkumar caught him. At the same time taking advantage of the darkness, the accused threw away the bribe money on the ground and the accused began to swing and jerk ('jhooma-jhatki' as available from the Hindi version). At the same time wife of the accused came out of the residence and began to cry. Enough crowds assembled at the spot of incident and patwari was doing too much swing and jerk....

During the incident I had suffered injuries near my right eye and at the ankle of the right leg. In this regard my medical examination was also done at District hospital Tili Sagar"

(Emphasis supplied)

[26] We have also examined the evidence of Dr. H.L. Bhuria PW-13, who recorded the injuries as mentioned hereinabove and stated that the injuries might have been caused with hard and blunt object.

(Emphasis supplied)

[27] We have also carefully perused the defence witnesses including the evidence of DW-2 Sitaram Chourasia who generally states that three to four persons came and there was pushing and shoving ('dhakka mukki' as is evident from the Hindi deposition) between the accused and those persons.

[28] Having considered the oral evidence and the medical evidence, we are constrained to conclude that the prosecution has not established that the appellant has assaulted or used criminal force against the trap party. In fact, what transpires is that when the appellant was apprehended there appears to have been an attempt by the appellant to wriggle out and in the process, jostling and pushing appears to have happened, in the process of the appellant trying to extricate himself from the arrest. None of the ingredients of assault or criminal force have been attracted.

[29] Further, there is absolutely no evidence to show that the accused used any hard and blunt object. PW-13 Dr. H.L. Bhuria had deposed that the injuries on PW-9 Niranjan Singh, PW-8 N.K. Parihar, Constable Raj Kumar and Constable Shivshankar might have been caused by hard and blunt object. In view of the above, there is no evidence to indicate that the accused assaulted or used criminal force on the trap party in execution of their duties or for the purpose of preventing or deterring them in discharging their duties. In short, none of the ingredients of Section 353 are attracted. The jostling and pushing by the accused with an attempt to wriggle out, as is clear from the evidence, was not with any intention to assault or use criminal force.

[30] In fact, it will be interesting here to contrast Section 353 of the IPC with Section 186 of the IPC under which Section the appellant has not been charged. Section 186 of the IPC reads as follows.

> **"186. Obstructing public servant in discharge of public functions.-** Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

[31] To take cognizance of Section 186, the procedure under Section 195(1)(a)(i) of the Cr.P.C. ought to have been followed. There is not even a complaint by the officer against the appellant for any offence having been committed under Section 186 of the IPC.

[32] In view of the above, we have no hesitation in setting aside the judgment of the High Court. The result would be that the appellant would stand acquitted for the offence under Section 353 of the IPC. The Conviction under Section 353 of the IPC and the sentence imposed are set aside. The appeal is allowed. The bail bonds shall stand discharged

---

2024(2)MBAJ510

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before S G Mehare]

Criminal Revision Application No 344 of 2004 **dated 23/09/2024**

Namdeo S/o Laxman Bansode

Versus

State of Maharashtra; Kaduba Dhanaji Kolhe

ACQUITTAL IN SUICIDE CASE

Indian Penal Code, 1860 Sec. 107, Sec. 306, Sec. 498A - Code of Criminal Procedure, 1973 Sec. 164 - Evidence Act, 1872 Sec. 113A - Acquittal in Suicide Case - Appellant

was convicted for abetment of suicide and cruelty under Sec. 306 and 498A of IPC - Appellate court maintained conviction - Appellant challenged conviction citing contradictory medical opinions regarding cause of death - High Court noted absence of proximate evidence of harassment leading to suicide - Prosecution failed to prove cruelty or incitement as required under Sec. 306 IPC - Held that presumption under Sec. 113A of the Evidence Act does not automatically apply - Conviction set aside - Appeal Allowed

Law Point: To convict for abetment of suicide under Sec. 306 IPC, prosecution must prove intentional incitement or aiding in suicide, not just general harassment or demands, even if death occurs within seven years of marriage.

Acts Referred:

Indian Penal Code, 1860 Sec. 107, Sec. 306, Sec. 498A

Code of Criminal Procedure, 1973 Sec. 164

Evidence Act, 1872 Sec. 113A

Counsel:

Arun S Shejwal, S B Narwade

JUDGEMENT

S G Mehare, J.- [1] The applicant/convict preferred this revision against the judgment and order of conviction of the learned 5th Ad-hoc Assistant Sessions Judge, Aurangabad, in Sessions Case No.21 of 2004 dated 28.04.2004 and the learned 4th Additional Sessions Judge, Aurangabad, in Criminal Appeal No.80 of 2004, dated 30.06.2004. The appellate Court maintained the conviction against the applicant/ husband and acquitted his parents.

[2] The learned counsel for the applicant has vehemently argued that both Courts erred in law in not commenting upon the contradictory opinions of the Medical Officer performing the postmortem report and Chemical Analyzer about the cause of death. Considering the chemical analysis report, the prosecution failed to prove the exact cause of death. Since the cause of death is not proven, the applicant cannot be blamed for the alleged offences. The conviction is based only upon the partisan witnesses. The neighbours were not examined. The evidence has not been appreciated properly. The prosecution case was based on hearsay evidence. The contradiction and omissions have not been correctly appreciated. The findings of the trial Court are self-contradictory. There was no evidence of abetment to commit suicide. The abetment, as defined under Section 107 of the Indian Penal Code ("IPC") has not been established. The learned trial Court erred in exhibiting the statement of the witnesses under Section 164 of the Code of Criminal Procedure without giving an opportunity to cross-examine the Special Executive Magistrate.

[3] To bolster his arguments, he relied on the case of - (i) **Naresh Kumar vs. State of Haryana, Criminal Appeal (No.) 1722 of 2010 (@ Special Leave Petition (Criminal) No.8873 of 2008, SC, dated 22 February, 2024,** and (ii) Kashibai and Ors. vs. The State of Karnataka,2023 LiveLaw(SC) 149 **Criminal Appeal No. .... of 2023 (Arising out of SLP (Crl.) No.8584 of 2022, dated 28.02.2023::.**

[4] Per contra, the learned A.P.P. submits that there are concurrent judgments of conviction imposed on the applicant. The Revision Court cannot re-appreciate the evidence. Both Courts have correctly appreciated the evidence and recorded the conviction against the applicant. The difference of opinion between the Medical Officer and the Chemical Analyzer does not vitiate the prosecution. In such a case, circumstantial evidence is to be considered. Both Courts have correctly considered the circumstances. The applicant had a false defense of snake biting. There is no error of law in the impugned judgment.

[5] To bolster his arguments, he relied on the case of **State of Kerala: Managing Director, Western India Plywoods vs Puttumana Illath Jathavedan Namboodriri**, 1999 AIR(SC) 981.

[6] The Hon'ble Supreme Court, in the case of **State of Kerala** (supra), has laid down the law that the revisional powers cannot be equated with the power of an Appellate Court, nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

[7] The first legal question is whether contradictory opinions as regards the cause of death vitiate the trial.

[8] The Medical Officer who performed the postmortem, has opined that the cause of death was insecticidal poisoning. His opinion was based upon the postmortem signs that the brain was congested oedematous, right and left lungs congested oedematous, paritoneuum was congested, imparting abnormal smell, the stomach contained 20 cc., dark reddish liquid imparting abnormal smell, mucosa congested, eroded with defused submucosal haemorrhage. Other contents of the stomach, pancreas, spleen, and kidney were congested. She had conceived a child.

[9] The Assistant Chemical Analyzer, Regional Forensic Laboratory, Aurangabad, found results of the analysis that the central and specific chemical testing did not reveal any poison in the stomach and pieces small of the intestine with contents, pieces of the liver spleen, and kidney and the blood of the deceased.

[10] In **Modi's Medical Jurisprudence & Toxicology**, Twenty-third Edition, Editors- K. Mathiharan and Amrit K. Patmail, LexisNexis Butterworths, in Section 2 -

Toxicology at page No.26, Modi opined that cases in which there were definite signs of death from poisoning, although the Chemical Examiner failed to detect the poison in the viscera preserved for chemical analysis. It has, therefore, been wisely held by Christison that in cases where the poison has not been detected on chemical analysis, the Judge, in deciding a charge of the poisoning, should weigh in evidence the symptoms, postmortem appearance, and the moral evidence.

[11] In the case in hand, the evidence of the Medical Officer performing the postmortem on the deceased was based upon the signs and the postmortem appearances. He noticed the signs and the postmortem appearances immediately after the death. Modi further observed that it is possible that a person may die from the effects of poison, and yet none may be found in the body after death if the whole of the poison disappeared from the lungs by evaporation or has been removed from the stomach and intestine by vomiting and purging, and after absorption has been detoxified, conjugated and eliminated from the system by the kidneys and other channels.

[12] In the facts and circumstances, evidence of the medical officer performing postmortem would prevail over the opinion of the Chemical analyser. Therefore, the objection of the learned counsel for the petitioner/accused that the prosecution could not establish the cause of death has no force of law.

[13] The next legal question raised by the learned counsel for the applicant is that without establishing abatement, both courts illegally convicted the accused/applicant for the offence punishable under Section 306 of the IPC.

[14] In **Naresh Kumar** (supra), the Hon'ble Supreme Court, in paragraph No.16, referred to the case of **Ude Singh & Others v. State of Haryana**, 2019 17 SCC 301. It was held in that case that to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. It was observed as under:-

> "16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of

suicide by another or not, could only be gathered from the facts and circumstances of each case."

[15] In paragraph No.16.1 of **Ude Singh** (supra), it has been observed that;

"For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide."

[16] To complete the offence under Section 306 of the IPC, the prosecution must establish that the accused has directly or indirectly incited the deceased by his acts or omissions to commit suicide.

[17] The acts of the accused are such an offending action that compelled another person to comment on the life or commit suicide. The accused should provoke the deceased with the intention that she should commit suicide. There should be intentional instigation or aiding by any act or illegal omissions There should be clear mens rea to commit the offence punishable under Section 306 of the IPC. Mere suicide of a woman within seven years of her marriage, Section 113A of the Indian Evidence Act would not automatically apply. To apply Section 113A of the Evidence Act, the prosecution has to establish the abetment to commit the suicide and subjecting the deceased to cruelty. However, such facts are to be considered having regard to the other circumstances of the case.

[18] The Hon'ble Supreme Court in **Kashibai** (supra), discussing the various case laws on Section 107 and 307 of the IPC, laid down the law that "in order to bring the

case within the purview of "Abetment" under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused. For the purpose of proving the charge under Section 306 IPC, also there has to be evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide."

[19] To ascertain whether the acts of the applicant were instigating or he was aiding the deceased to drive her to commit suicide or was there abetment to commit suicide, a few facts relevant to the allegations need to be considered.

[20] Admittedly, the deceased died after two years of her marriage. The defence of the accused was that since she did not conceive, she was depressed. She was going frequently to her parents. She stayed with her father for a year and seven months and then sent back to the applicant. Thereafter, one and a half months before the incident, she went to her parents. At that time, she complained that the applicant was harassing her for golden ornaments. Then the applicant went to fetch her back, he was given the understanding that he would not illtreat her. Considering the allegations of her last stay and fetching her by the accused/applicant, she joined the company in mid-August 2003. She committed suicide on 23.10.2003. In the intervening period of one and half months, she never complained to anybody that she was again harassed and ill-treated for the golden ornaments. One fine morning, she consumed the pesticides. The applicant and his father admitted her to the hospital. However, the admission of the witness shows that she was residing with the applicant for five to six months back from the date of the incident, and then she committed suicide. The material fact on record is that in the morning on the day of the incident, her brother Devidas had been to the house of the applicant. He did not send the deceased with him. Thereafter, she consumed the insecticides. During her last stay with the applicant, there were absolutely no complaints. Since she was not permitted to go to her parents, she might have been angered and committed suicide.

[21] It has been argued for the applicant that the prosecution did not establish that the applicant had provoked, incited, or encouraged the deceased to commit suicide. It was not established that the offending action of the accused was proximate to the time of the occurrence. He went to fetch her back when she was residing with her parents. Therefore, the legal aspect of applying Section 107 of the IPC also appears missing in the case. There is an apparent error of law in holding the applicant abetted the deceased to commit suicide.

[22] It is apparent that the death of the deceased was not proximate to the alleged harassment, and the prosecution could not establish from the other circumstances that the applicant abetted the deceased to commit suicide. Therefore, the presumption under Section 113A of the Evidence Act does not attract, though the death was within seven years of the marriage. There was nothing to show that the applicant instigated the deceased with the intention of forcing her to commit suicide.

[23] The learned counsel for the applicant submits that the prosecution did not prove the charge under Section 498A of the Indian Penal Code. There was absolutely no evidence of coercion to the deceased for unlawful demand. The conviction of the accused for the said offence is bad in law.

[24] To prove the charge of Section 498A of the Indian Penal Code, the prosecution has to establish that the husband or his relative subjects such woman to cruelty. The term "cruelty" is explained in two parts in the said Section. The first part speaks of willful conduct of a nature that is likely to drive the woman to commit suicide or to cause grave injury or danger to the life, limb or health, either physical or mental, of such woman. The second part provides for harassment of a woman with a view to coercing her or any person related to her to meet unlawful demand for any property or valuable security on account of these failure, or any person related to her to meet such demand.

[25] The allegations reveal that the accused caused cruelty to the deceased by persistent demand for money for the golden ornaments. She was caused physical as well as mental cruelty. The parents could not satisfy the demands of the accused as they were financially poor. The prosecution case reveals that the accused husband went to fetch her back when she used to stay with her parents. When he assured he would not ill-treat her, she went to cohabit with him. It has been pointed out that there was no cogent and reliable evidence of her last visit to her parents. However, both Courts missed this material fact. The prosecution also had no case that soon after the incident or on the day of the incident, the deceased and the accused had a quarrel about the unlawful demand of ornaments.

[26] Section 498A of the IPC does not attract every harassment or every type of cruelty. The prosecution has to establish that the beating and harassment of the deceased were with a view to force her to commit suicide or to fulfil the illegal demand of dowry. Mere harassment for dowry or causing grave injury to her life or limb or health is not cruelty, as explained in Section 498-A of IPC. To constitute the offence under this Section, it is to be established that the harassment was caused by coercing the woman to meet unlawful demands.

[27] In **Smt. Raj Rani vs. State (Delhi Administration)**, 2000 AIR(SC) 3559, the Hon'ble Supreme Court held that when considering the case of cruelty with the context to the provision of Section 498A of IPC, the Court, must examine that the allegations/ accusations must be of a very grave nature and should be proved beyond a reasonable doubt.

[28] To hold the accused guilty for the offence punishable under Section 498A of the IPC, there should be a case of continuous state of affairs of torture by one to another.

[29] The record reveals that there was no continuous state of affairs of torture by the husband to the deceased wife. It has been established that her parents-in-law were

residing separately. The learned counsel for the petitioner succeeded in pointing out that there was no sufficient evidence to establish that the petitioner/accused willfully drove the deceased by his conduct to commit suicide nor the harassment as alleged prove that she was harassed with a view to coerce her or to her relatives to meet any unlawful demand of golden ornaments. There were general allegations of cruelty to the deceased or the demand for ornaments. The allegations were leveled for the first time after the funeral was over. The defence of the accused was that he did not allow her to go to her parent's home with her brother. Hence, she took a drastic step to end her life, appears probable from the material produced on record. The deceased was not harassed physically or mentally soon before the suicide. The record shows that both Courts did not appreciate the evidence in consonance with the elements of Section 498A of the Indian Penal Code.

[30] Bare exhibiting the statement under Section 164 of the Cr.P.C. does not affect the rights of the accused. Such a statement is used for contradiction and omission. Barely exhibiting such a statement is not admissible in evidence. Therefore, the arguments of the learned counsel of the applicant that he had lost his right to cross-examine the witness was affected materially has no foundation.

[31] For the above reasons, this Court is satisfied that the applicant/accused has been incorrectly held guilty without sufficient evidence or establishing the charges. Hence, criminal revision deserves to be allowed.

ORDER

i) The Criminal Revision Application is allowed.

ii) The judgment and order of conviction of the learned 5th Ad-hoc Assistant Sessions Judge, Aurangabad, in Sessions Case No.21 of 2004, dated 28.04.2004 and the learned 4th Additional Sessions Judge, Aurangabad in Criminal Appeal No.80 of 2004, dated 30.06.2004, stand quashed and set aside.

iii) Applicant / accused - Namdeo s/o. Laxman Bansode is acquitted of the offences punishable under Sections 306 and 498A of the Indian Penal Code.

iv) The fine amount, if any, deposited by the petitioner/accused be returned to him within a month by the trial Court.

v) The bail bonds of the accused stand cancelled. The surety stands discharged.

vi) Rule made absolute in the above terms.

vii) R & P be returned to the Court of learned 5th Ad-hoc Assistant Sessions Judge, Aurangabad

---

2024(2)MBAJ518

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Revati Mohite Dere; Sharmila U Deshmukh]

Criminal Appeal No 491 of 2024 **dated 20/09/2024**

Munib Iqbal Memon

Versus

State of Maharashtra

BAIL APPLICATION DELAY

Constitution of India Art. 21 - Indian Penal Code, 1860 Sec. 302, Sec. 307, Sec. 427, Sec. 435, Sec. 120B - Arms Act, 1959 Sec. 25, Sec. 3 - Explosive Substances Act, 1908 Sec. 5, Sec. 4, Sec. 3 - Unlawful Activities (Prevention) Act, 1967 Sec. 39, Sec. 20, Sec. 23, Sec. 16, Sec. 38, Sec. 18, Sec. 43D - Maharashtra Control of Organised Crime Act, 1999 Sec. 3, Sec. 21, Sec. 18 - National Investigation Agency Act, 2008 Sec. 21 - Bail Application Delay - Appellant sought bail citing prolonged pre-trial detention of over 11 years under charges including UAPA and MCOCA - Trial delayed despite expediting orders, with only 8 out of 107 witnesses examined - Court noted appellant's long incarceration without trial conclusion and violation of right to speedy trial under Article 21 - Held that statutory restrictions cannot override constitutional rights - Bail granted with stringent conditions - Appeal Allowed

Law Point: Prolonged pre-trial detention without trial conclusion, especially under UAPA, violates the right to a speedy trial under Article 21, justifying bail despite statutory restrictions when delays persist.

Acts Referred:

Constitution of India Art. 21

Indian Penal Code, 1860 Sec. 302, Sec. 307, Sec. 427, Sec. 435, Sec. 120B

Arms Act, 1959 Sec. 25, Sec. 3

Explosive Substances Act, 1908 Sec. 5, Sec. 4, Sec. 3

Unlawful Activities (Prevention) Act, 1967 Sec. 39, Sec. 20, Sec. 23, Sec. 16, Sec. 38, Sec. 18, Sec. 43D

Maharashtra Control of Organised Crime Act, 1999 Sec. 3, Sec. 21, Sec. 18

National Investigation Agency Act, 2008 Sec. 21

Counsel:

Mubin Solkar, Tahera Qureshi, Tahir Hussain, Anas Shaikh, Vaibhav Bagade, Kranti T Hiwrale

JUDGEMENT

Revati Mohite Dere, J.- [1] Heard learned counsel for the parties.

[2] Admit. Learned Special Public Prosecutor waives notice on behalf of the respondent-State.

[3] By this appeal, preferred under Section 21(4) of the National Investigation Agency Act, ('NIA Act'), the appellant seeks quashing and setting aside of the impugned order dated 5 th February 2024, passed by the learned Special Judge, City Civil and Sessions Court, Greater Bombay in Bail Application (Exhibit-445) filed in Special Case No.7 of 2013, by which, the appellant's application (Exhibit-445) seeking his enlargement on bail, came to be rejected by the said Court. Accordingly, the appellant seeks his enlargement on bail in connection with C.R. No. 9 of 2012 registered with the Anti Terrorism Squad Police Station ('ATS'), Mumbai (Original C.R. No.168 of 2012, registered with the Deccan Police Station, Pune), for the alleged offences punishable under Sections 307, 435 and 120B of the Indian Penal Code ('IPC'); Sections 3, 4 and 5 of the Explosive Substances Act; Sections 3 and 25 of the Arms Act; Sections 16(1)(b), 18, 20, 23, 38 and 39 of the Unlawful Activities (Prevention) Act of 1967 ('UAPA') as amended in 2008; and, under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act ('MCOC Act').

[4] Admittedly, the appellant's first appeal being Criminal Appeal No.299 of 2022 seeking his enlargement on bail in connection with the aforesaid C.R. was dismissed by this Court vide order dated 27th September 2022, having regard to Section 43(D)(5) of the UAPA, after observing that there are reasonable grounds for believing that the accusations against the appellant are prima facie true. The said order dismissing the appellant's first appeal seeking his enlargement on bail is at Exhibit - A, at page 27 of the appeal.

[5] The aforesaid appeal has been filed by the appellant on the ground of delay in the trial, resulting in infringement of the appellant's constitutional right guaranteed under Article 21 of the Constitution of India i.e. right to speedy trial.

[6] Mr. Solkar, learned counsel for the appellant submits that the appellant is in custody i.e. pre-trial detention, since 26th December 2012 i.e. for almost 11 ½ years. He submits that although the incident took place in December 2012, charge came to be framed in the said case only in 2022 and it is only in February 2024 that the first witness stepped into the witness-box. Learned counsel submits that despite this Court's order dated 27th September 2022 expediting the appellant's trial, till date, the prosecution has examined only 7 witnesses and that the 8th witness is in the witness-box. He submits that the prosecution had made a statement that although there are 300 odd witnesses, they propose to examine only 107 witnesses. He submits that since no death had occurred, none of the offences are punishable with death and that the minimum sentence for the offences with which the appellant is charged under the UAPA are under 5 years, extending upto imprisonment for life. He submits that although charge was framed on 4th April 2022, for the offence punishable under Sections 307 r/w 120B, Sections 435 r/w 120B of the IPC and Section 16(1)(b) of the

UAPA against the appellant in addition to the other Sections under the IPC, UAPA as well as under MCOC Act, the aforesaid Sections i.e. Sections 307 r/w 120B, Sections 435 r/w 120B of the IPC and Section 16(1)(b) of the UAPA came to be amended and as such deleted qua the appellant on **20 th April 2022.** Mr. Solkar relied on the roznama which is there in the compilation of the documents tendered by him. Mr. Solkar submits that after the said ground was argued before this Court i.e. the appellant is not charged for the offences under Sections 307 r/w 120B of the IPC and other sections, the prosecution clandestinely moved an application and again got the said sections added and that now the appellant has moved the trial Court, pointing to the conduct of the prosecution and that the said application is pending before the trial Court.

[7] Mr. Solkar relied on the judgment of the Apex Court in the case of **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v/s State of Uttar Pradesh** [Cri.Appeal No. 2790/2024 dated 18th July, 2024] , in which the Apex Court by emphasizing the right to life and personal liberty enshrined under Article 21 of the Constitution of India granted bail to the accused therein, since the right of the accused-undertrial under Article 21 of the Constitution of India had been infringed. He submitted that in the said judgment it is categorically stated that the statutory restrictions would not come in the way, where there is a delay in the trial. Learned counsel submitted that the Apex Court has further observed that 'Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part'.

[8] Mr. Bagade, learned Special Public Prosecutor submitted that there is no change of circumstance warranting grant of bail to the appellant, more particularly when the appellant's appeal seeking his enlargment on bail i.e. Criminal Appeal No.299 of 2022, was dismissed by this Court on merits vide order dated 27th September 2022. He submitted that the trial of the appellant has already been expedited and that the prosecution will take all steps to ensure that the trial will conclude at the earliest.

[9] Perused the papers. At the outset, we may note that the appellant had preferred Criminal Appeal No.299 of 2022 seeking his enlargement on bail in connection with C.R. No. 9 of 2012 registered with the Anti Terrorism Squad Police Station ('ATS'), Mumbai i.e. original C.R. No.168 of 2012, registered with the Deccan Police Station, Pune, in this Court. By the said appeal, the appellant had sought bail on merits, on parity, as well as, on the ground of delay in commencement of the trial i.e. at the relevant time, the appellant had undergone pre-trial detention of about 9 years and 9 months. The said order by which the appeal seeking bail was dismissed is at Exhibit - A, at page 27 of the appeal.

[10] The prosecution case, is as under:

The case pertains to five bomb blasts that took place in Pune City on 1st August, 2012 at around 7:00 p.m. in the areas of Deccan Gymkhana, Bal Gandharv Rang Mandir and other adjoining areas. A live bomb was also recovered from one of the spots. The bombs which were used in the commission of the offences were placed in bicycle baskets. All the bicycles were placed in one of the prominent business and crowded areas in Pune. Pursuant to the said five blasts that took place at various locations in Pune City, an FIR came to be lodged initially with the Deccan Police Station, Pune as against unknown persons. The offences alleged were Sections 307, 427 and 120B of the Indian Penal Code etc. Thereafter, the investigation came to be transferred to the ATS, Mumbai. Nine persons came to be arrested in connection with the aforesaid offences and some accused are stated to be still absconding. It is the prosecution case, that the said bomb blasts were planned by the accused with the intent of striking terror in the minds of the people and for causing deaths/injuries to persons and/or causing loss or damage or destruction of property. It is the prosecution case, that the said bomb blasts were planned to avenge the death of one Quatil Siddique, a member of a banned terrorist organization, Indian Mujahideen. We may note here, that Quatil Siddique was arrested in connection with the conspiracy to commit bomb blast at Dagadu Sheth Ganpati Mandir in Pune. In connection with the said case, Quatil Siddique was arrested and was lodged at Yerwada Central Jail, Pune, where he was murdered by two persons, whilst in jail. It is the prosecution case, that to avenge the death of Quatil Siddique, the members of the Indian Mujahideen, a banned terrorist organization, acting as an organized crime syndicate conspired to cause bomb blasts, in Pune City. It is alleged by the prosecution, that initially there was a plan to kill the assailants of Quatil Siddique when they were brought to Court, by firing at them, however, as the said plan could not be executed, it was decided to cause bomb blasts.

[11] Whilst considering the appellant's first appeal seeking his enlargement on bail, we had noted that admittedly even according to the prosecution, the appellant was not amongst the accused, who had planted the bombs on bicycles on 1st August, 2012. As far as the appellant is concerned, his role was only spelt out by the co-accused - Irfan Mustafa Landge (original accused No.4), Farooq Bagwan (original accused No.6) and Firoz @Hamza Sayyed (original accused No.3) in their confessional statement, recorded under Section 18 of the MCOC Act on 9th January, 2013. The said three confessional statements of the aforesaid accused recorded under Section 18 of the MCOC Act revealed (i) that the appellant was a friend of Quatil Siddique, who was killed in jail custody; (ii) that the appellant was working with Firoz @Hamza (original accused No.3), in his tailoring shop (iii) that the appellant was present in the secret meeting which took place on 8th July 2012 at Firoz @Hamza's (original accused No.3) tailoring shop, when the conspiracy to plant bombs was hatched; (iv) that the appellant alongwith another co-accused i.e. Farooq Bagwan (original accused No.6), who was present in the said meeting had agreed to purchase SIM Cards by using fake documents; (v) that pursuant thereto, the appellant was assigned with the task of

procuring bogus Sim Card based on fabricated documents prepared by some of the accused; (vi) that the appellant visited the shop and purchased the Sim Card in the name of Mohsin Shaikh (vii) that the statement of the shopkeeper shows that the appellant had purchased the Sim Card in the name of Mohsin Shaikh (viii) that the said Sim Card was used in the commission of the offence; and (ix) that the appellant was entrusted to keep Farooq's mobile with him, till Farooq's return, post the blasts.

[12] Thus, having regard to the confessional statements of the co-accused, which prima facie revealed the complicity of the appellant in the crime, we prima facie came to the conclusion that there were no reasonable grounds for believing that the appellant was not guilty of the offences with which he was charged, as mandated under Section 21(4) of the MCOC Act nor were there any reasonable grounds for believing that the allegations against the appellant were not prima facie true, as mandated under Section 43(D)(5) of the UAPA and as such we rejected the appeal of the appellant seeking his enlargment on bail, on merits.

[13] As far as parity as prayed for i.e. parity with co-accused - Sayed Arif Amil @Kashif Biyabani and Aslam Shabbir Sheikh @Bunty Jagirdar, is concerned, we found that there was no parity with the said co-accused.

[14] Insofar as, delay in commencement of the trial was concerned, we in paras 18 and 19 of our order dated 27th September 2022 passed in the appellant's first appeal being Criminal Appeal No.299 of 2022 seeking his enlargement on bail, had observed as under:-

> "18. As far as delay in commencement of the trial is concerned, it appears that charge was framed in the said case on 25 th May 2022 and that the prosecution intends to examine about 107 witnesses. In this connection heavy reliance was placed on the judgment of the Apex Court in **Shaheen Welfare Association (supra)**, in which the Apex Court considered the conflicting claims of personal liberty emanating from Article 21 of the Constitution of India and protection of the society from terrorist acts, which the Terrorist and Disruptive Activities (Prevention) Act, 1987, professed to achieve. Whilst reconciling the two, the Apex Court issued directions for release of undertrial prisoners, who had suffered long incarceration, depending upon the gravity of the charges. The observations in paras 9 to 11 and 13 to 14 are material and hence reproduced hereinunder:-
>
> 9. The petition thus poses the problem of reconciling conflicting claims of individual liberty versus the right of the community and the nation to safety and protection from terrorism and disruptive activities. While it is essential that innocent people should be protected from terrorists and disruptionists, it is equally necessary that terrorists and disruptionists are speedily tried and punished. In fact the protection to innocent civilians is dependent on such speedy trial and punishment. The conflict is generated on account of the gross

delay in the trial of such persons. This delay may contribute to absence of proper evidence at the trial so that the really guilty may have to be ultimately acquitted. It also causes irreparable damage to innocent persons who may have been wrongly accused of the crime and are ultimately acquitted, but who remain in jail for a long period pending trial because of the stringent provisions regarding bail under TADA. They suffer severe hardship and their families may be ruined.

10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case, on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.

11. These competing claims can be reconciled by taking a pragmatic approach.

13. For the purpose of grant of bail to TADA detenus, we divide the undertrials into three (sic four) classes, namely, (a) hardcore undertrials whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general and to the complainant and prosecution witnesses in particular; (b) other undertrials whose overt acts or involvement directly attract Sections 3 and/or 4 of the TADA Act; (c) undertrials who are roped in, not because of any activity directly attracting Sections 3 and 4, but by virtue of Sections 120-B or 147, IPC, and; (d) those undertrials who were found possessing incriminating articles in notified areas and are booked under Section 5 of TADA.

14. Ordinarily, it is true that the provisions of Sections 20(8) and 20(9) of TADA would apply to all the aforesaid classes. But while adopting a pragmatic and just approach, no one can dispute the fact that all of them cannot be dealt with by the same yardstick. Different approaches would be justified on the basis of the gravity or the charges. Adopting this approach we are of the opinion that undertrials falling within group (a) cannot receive liberal treatment. Cases of undertrials falling in group (b) would have to be differently dealt with, in that, if they have been in prison for five years or more and their trial is not likely to be completed within the next six months, they can be released on bail unless the court comes to the conclusion that their antecedents are such that releasing them may be harmful to the lives of the complainant, the family members of the complainant, or witnesses. Cases of undertrials falling in groups (c) and (d) can be dealt with leniently and they can be released if they have been in jail for three years and two years

respectively. Those falling in group (b), when released on bail, may be released on bail of not less than Rs.50,000 with one surety for like amount and those falling in groups (c) and (d) may be released on bail on their executing a bond for Rs.30,000 with one surety for like amount, subject to the following terms:

(1) The accused shall report to the police station concerned once a week;

(2) The accused shall remain within the area of jurisdiction of the Designated Court pending trial and shall not leave the area without the permission of the Designated Court;

(3) The accused shall deposit his passport, if any, with the Designated Court. If he does not hold a passport, he shall file an affidavit to that effect before the Designated Court. The Designated Court may ascertain the correct position from the passport authorities, if it deems it necessary;

(4) The Designated Court will be at liberty to cancel the bail if any of these conditions is violated or a case for cancellation of bail is otherwise made out;

(5) Before granting bail, a notice shall be given to the public prosecutor and an opportunity shall be given to him to oppose the application for such release. The Designated Court may refuse bail in very special circumstances for reasons to be recorded in writing."

19. Having regard to the gravity of the offence, the role of the appellant, the evidence qua him and the observations made by us as stated aforesaid, we also decline to consider the appellant's plea for bail on the ground of delay in commencement of the trial. However, at the same time, we cannot be oblivious to the right of the appellant to an expeditious trial guaranteed to him under Article 21 of the Constitution of the India. Charges in this case were framed on 25 th May 2022. Accordingly, we expedite the trial of the appellant and direct the learned Special Judge, to conclude the trial, as expeditiously as possible, and in any event by December 2023. All parties i.e. prosecution and defence to co-operate with the learned Judge in the expeditious disposal of the trial."

[15] When the appellant's first appeal being Criminal Appeal No.299 of 2022 seeking his enlargement on bail, was dismissed, the appellant was in custody for about 9 years and 9 months. Today, the appellant is in custody for more than 11 ½ years with no prospect of the trial concluding within a reasonable period.

[16] As noted aforesaid, although the incident took place in December 2012, charge was framed in the said case only in 2022 and it is only in February 2024 that the first witness stepped into the witness-box. According to the prosecution, although there are 300 witnesses cited by them in the charge-sheet, the prosecution intends to examine only 107 witnesses. As noted aforesaid, till date only about 8 witnesses have

been examined and as such the possibility of the trial concluding in the immediate near future appears to be bleak.

[17] The Apex Court in the case of **Javed Gulam Nabi Shaikh v/s State of Maharashtra and Another** [Cri.Appeal No. 2787/2024 dated 3rd July, 2024] whilst dealing with the case under the UAPA has in para 19 observed, as under:

> "19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

[18] A three-Judge Bench of this Court in **Union of India v/s K.A. Najeeb**, 2021 3 SCC 713 had an occasion to consider the long incarceration and at the same time the effect of Section 43(D)(5) of the UAPA and observed as under:

> "17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

[19] Similarly, in **Satender Kumar Antil v/s Central Bureau of Investigation and Another**, 2022 10 SCC 51 , the Apex Court, in para 86 has observed as under:-

> "86. ....We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to

comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code."

[20] As noted above, in the incident that took place in 2012, only one person was injuried and no death was reported. It appears that initially charges were framed against the appellant on 4th April 2022, for the offences punishable under Sections 307 r/w 120B of the IPC, Sections 435 r/w 120B of the IPC; Sections 16(1)(b), 18, 20, 38 and 39 of the UAPA and, under Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act and subsequently on an application being made by the Counsel for the appellant the charge was modified. A perusal of the roznama shows that the prosecutor had conceded that Sections 307 r/w 120B, 435 r/w 120B of the IPC and Section 16(1)(b) of the UAPA, did not apply insofar as the appellant is concerned and as such the charge came to be amended. The said charge was amended vide order dated 20th April 2022 by the learned Special Judge.

[21] We may note that when the matter was heard by us on an earlier occassion, the aforesaid argument was advanced by the learned Counsel for the appellant, that there was no charge vis-a-vis the appellant under Section 307 of the IPC, the prosecutor on realising the same, filed an application before the learned Special Judge on 1st August 2024. The prosecutor in its application had stated as under:-

"Application for correction/ modification/ Alternation in charge at "Seventhly"

May it please your honour.

1. That The Ld. Session court was pleased to frame charge against all accused including wanted accused in the case vide Exh 344, Dated 20/04/2022.

2. After charges were framed, trial proceeded with examination of 09 prosecution witnesses. After reading charge it is now noticed that charge framed at "seventhly" needs further considerations in view of charge of conspiracy and objective of crime to be achieved pursuant to conspiracy.

3. Prosecution proposes correction or modification or alteration or addition in the charge as follows:

a) In charge firstly, thirdly, fourthly, fifthly, sixthly, tenthly & eleventhly, instead of "you accused nos. 1 to 10", as "you accused nos. 1 to 9".

b) In charge seventhly, add as "you accused nos. 1 to 9".

In view of above it is prayed that:

a) By passing suitable orders proposed charge against all accused be kindly be framed.

b) Any other just and further reliefs.

And for this act of kindness the Prosecution shall pray forever."

[22] Pursuant thereto, the trial Court on 1st August 2024 passed the following order:-

> ".....Prosecution filed application for correction/ modification/ alteration in charge at Seventhly, TOR and marked as Exh.535. O - Otherside to say. Order-Modification sought are in respect of technical and clerical mistake. The corrections do not at all cause prejudice to the defense in any manner. Hence, application Exhibit-535 is allowed. ....."

[23] It appears that thereafter an application was filed by the learned counsel for the appellant, for recall of the order dated 1st August 2024 passed on Exhibit-535 which was obtained by misrepresenting the Court. Pursuant thereto, the trial Court vide order dated 6th August 2024, passed the following order:-

> "..... Adv. for accused No.5, filed application for recalling of order dated 01.08.2024 on Exhibit-535 obtained by misrepresenting to this Hon'ble Court by Ld. SPP, TOR and marked as Exh.540. O - SPP to say. The case is already adjourned to 12/08/2024 for Evidence (part heard)."

[24] Thus, the matter is presently pending for consideration as to whether the charge under Section 307 of the IPC, is to be applied to the appellant or not. It may be noted here, that there is no charge under Section 302 of the IPC in the said case against any of the accused.

[25] It is not in dispute, that some of the offences with which the appellant is charged, the minimum sentence is 5 years, with the maximum sentence of imprisonment for life. As noted above, the appellant has already undergone 11 ½ years of pre-trial detention. As noted above the prosecution has examined only 8 witnesses till date and about 100 odd witnesses are yet to be examined. It is thus evident that the possibility of the trial concluding in the immediate near future appears to be bleak. The right to a speedy trial under Article 21 of the Constitution of India, is a fundamental right.

[26] Keeping in mind the aforesaid, the charges with which the appellant is charged and the judgments of the Apex Court, we pass the following order:-

ORDER

(i) The appeal is allowed;

(ii) The impugned order dated 5 th February 2024, passed by the learned Special Judge, City Civil and Sessions Court, Greater Bombay in Bail Application (Exhibit-445) in Special Case No.7 of 2013, stands quashed and set-aside;

(iii) The appellant be enlarged on bail, on executing PR Bond in the sum of Rs.1,00,000/- with one or more solvent sureties in the like amount, to the satisfaction of the learned Judge, NIA Court;

(iv) The appellant shall report to the office of the NIA, Mumbai Branch, Mumbai, on the first Saturday of every month from 10:00 a.m. to 12:00 noon, till the conclusion of the trial.

(v) The appellant shall not, either himself or through any other person, tamper with the prosecution evidence and give threats or inducement to any of the prosecution witnesses;

(vi) The appellant shall not leave the jurisdiction of NIA Court, Greater Bombay, till the conclusion of the trial, without the prior permission of the NIA Court;

(vii) The appellant shall not leave India, without the prior permission of the NIA Court;

(viii) The appellant shall surrender his passport, if any, before the NIA Court, before his release.

(ix) The appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(x) The appellant to cooperate with the conduct of the trial and attend the NIA Court on all dates, unless exempted;

(xi) The appellant shall file an undertaking with regard to clauses (iv) to (x) before the NIA Court, within two weeks of his release;

(xii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the appellant's bail.

[27] Appeal is allowed in the aforesaid terms and is accordingly disposed of.

[28] It is made clear that the observations made herein are prima facie, and the learned Special Judge shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this judgment.

All concerned to act on the authenticated copy of this judgment

---

2024(2)MBAJ528

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Madhav J Jamdar]

Bail Application No 2023 of 2023 **dated 19/09/2024**

Suryaji Pandurang Jadhav

Versus

Directorate of Enforcement, Worli & Anr

BAIL FOR LONG INCARCERATION

Constitution of India Art. 21 - Indian Penal Code, 1860 Sec. 34, Sec. 408, Sec. 420, Sec. 409, Sec. 468, Sec. 471, Sec. 467, Sec. 406 - Code of Criminal Procedure, 1973 Sec. 436A, Sec. 439 - Prevention of Money Laundering Act, 2002 Sec. 70, Sec. 45, Sec. 3, Sec. 2 - Maharashtra Protection of Interest of Depositors Act, 2002 Sec. 5, Sec. 4, Sec. 3 - Bail for Long Incarceration - Appellant sought bail after more than 4 years of custody under PMLA charges - Argued for release under Sec. 436A of CrPC, having served half of the maximum punishment - ED opposed citing serious offenses involving misappropriation of Rs. 71.78 crore - Court noted prolonged pre-trial detention and appellant's age, illness, and recovery of substantial amounts from attached properties - Bail granted with strict conditions - Bail Granted

Law Point: Pre-trial detention exceeding half of the maximum sentence allows bail under Sec. 436A of CrPC, even for PMLA offenses, when trial delays and health concerns outweigh statutory restrictions.

Acts Referred:

Constitution of India Art. 21

Indian Penal Code, 1860 Sec. 34, Sec. 408, Sec. 420, Sec. 409, Sec. 468, Sec. 471, Sec. 467, Sec. 406

Code of Criminal Procedure, 1973 Sec. 436A, Sec. 439 Prevention of Money-Laundering Act, 2002 Sec. 70, Sec. 45, Sec. 3, Sec. 2

Maharashtra Protection of Interest of Depositors Act, 2002 Sec. 5, Sec. 4, Sec. 3

Counsel:

Aabad Ponda (Senior Advocate), Prashant Patil, Swapnil Ambure, Nida Khan, Poorva Joshi, Shriram Shirsat, Karishma Singh, Veera Shinde

JUDGEMENT

Madhav J Jamdar, J.- [1] Heard Mr. Ponda, learned Senior Counsel for the Applicant, Mr. Shirsat, learned APP for Respondent No. 1 - Directorate of Enforcement (ED) and Ms. Shinde, learned APP for Respondent No. 2 - State.

[2] This regular Bail Application is preferred under Section 439 of the **Code of Criminal Procedure, 1973** ('Cr.P.C.') r/w. Section 45 of the **Prevention of Money Laundering Act, 2002** ('PMLA') in ECIR/MB/ZO-II/03/2020 lodged by Respondent No. 1 - ED. The relevant details are as follows:

1.	ECIR No. C.R./F.I.R. Number (Scheduled Offence)	ECIR/MB/ZO-II/03/2020 C. R. No. 0026/2020
2.	Date of Scheduled offence	2017 to 2018
3.	Date of Registration of ECIR No. C.R./F.I.R.	08.01.2020

	Number (Scheduled Offence)	
4.	Prosecuting Agency Name of the Police Station of scheduled offence	Enforcement Directorate Shivaji Nagar, Pune
5.	Sections invoked Scheduled offences	Section 3 r/w. 70 of the Prevention of Money Laundering Act, 2002 Sections 420 r/w. 34, 406, 408, 409, 465, 468 & 471 of the Indian Penal Code, 1860
6.	Date of arrest of the Applicant in Scheduled Offence Date of arrest in ECIR	24.02.2020 05.03.2021
7.	Date of filing of Chargesheet in Scheduled Offence ECIR Complaint	Charge-sheet bearing No. 32/2020 dated 18th May 2020 April 2021
8.	Status of Bail Application in scheduled offence	Scheduled Offence – Bail granted on 2nd March 2023 by a learned Single Judge in B. A. No. 2006 of 2021
9.	Main grounds for seeking bail	The Applicant has undergone 3 years 6 months in ECIR i. e. half of the punishment. The maximum punishment which can be awarded is 7 years. The Applicant is in custody for more than 4 years and 7 months.

[3] Respondent No. 1 - the Directorate of Enforcement ('ED') by filing affidavit-in-reply of Mr. Sunil Kumar, Assistant Director, Zonal Office-II, Mumbai, Directorate of Enforcement, Ministry of Finance, Department of Revenue, Government of India dated 22.01.2024 opposed the Bail Application. In the said affidavit, the prosecution case is set out in Paragraph Nos. 7.1 to 7.7 which read as under:

> "7.1 That, Shivajinagar Police Station, Pune registered FIR No. 0026/2020 dated 08.01.2020 against Mr. Anil Shivajirao Bhosale, Mr. Suryaji Pandurang Jadhav, Mr. Tanaji Dattu Padwal, Mr. Shailesh Sampatrao Bhosale and others on the basis of complaint filed by the Complainant Mr. Yogesh Rajgopal Lakade, Chartered Accountant (Partner of M/s. Torvi Pethe & Co.) invoking Sections 420 read with Sections 34, 406, 408, 409, 468 and 471 of Indian Penal Code, 1860 (hereinafter referred to as 'the IPC, 1860').

7.2 That, it is alleged in the FIR that RBI team during their periodical visit at head office of M/s. Shivajirao Bhosale Co-operative Bank Ltd. at Pune on 26.04.2019, noticed various discrepancies in records/books of accounts of the bank. Further, the RBI vide letter dated 16.05.2019 had given direction to M/s Torvi Pethe & Co. (Chartered Accountant Firm and Statutory auditor of the Bank) for verification of cash record of all the branches and head office of the Bank. Accordingly, on 25.05.2019 & 27.05.2019, statutory auditor verified all available cash of the branches and head office of the bank with their respective cash books. The Statutory auditor noticed that the entry of cash of Rs. 71.78 Crore which was kept pending at Head Office of the bank during the visit of RBI team was made by the head office of the bank on 04.05.2019 in their cash book. Further, in the head office of M/s. Shivajirao Bhosale Co-operative Bank, the statutory auditor found less cash of Rs. 71.78 Crore than their cash book. The same was communicated to RBI and District Special Auditor Co-operative Dept., Pune by the statutory auditor. Consequently, the Complainant, Mr. Yogesh Rajgopal Lakade, Chartered Accountant (Partner of M/s. Torvi Pethe & Co.) had lodged the said FIR.

7.3 That, it is mentioned in the FIR that Mr. Anil Shivajirao Bhosale (Accused No. 2) who was the Chairman of Shivajirao Bhosale Sahakari Bank Ltd. had misused his position and conspired with the co-accused and siphoned off the amount totaling to tune of Rs. 71,78,87,723/- from Shivajirao Bhosale Sahakari Bank Ltd. & its branches for personal gains.

7.4 That, subsequently EOW, Pune City carried out investigation and filed charge sheet bearing No. 32/2020 dated 18.05.2020 before the Hon'ble Additional Sessions Judge, Special M.P. I.D. Court, Shivajinagar, Pune against Mr. Anil Shivajirao Bhosale, Mr. Suryaji Pandurang Jadhav, Mr. Tanaji Dattu Padwal, Mr. Shailesh Sampatrao Bhosale and others for constituting the offences punishable under Sections 34, 406, 408, 409, 420, 468 and 471 of IPC, 1860 read with Sections 3, 4 & 5 of MPID Act.

7.5 That, Mr. Anil Shivajirao Bhosale and his 3 associates including the present applicant were arrested by the Crime Branch, Pune and produced before Additional Session Judge and Special Maharashtra Protection of Interest of Depositors Act (MPID) Judge Shivaji Nagar, Pune. Subsequently, the said Court sent/remanded them into Police custody till 19 March, 2020 and thereafter in the judicial custody.

7.6 That, a case under PMLA, 2002 was recorded vide ECIR/MBZO-II/03/2020 dated 07.02.2020 by the Enforcement Directorate, Mumbai Zonal Office-II, Mumbai, against Mr. Anil Shivajirao Bhosale, Mr. Suryaji Pandurang Jadhav, Mr. Tanaji Dattu Padwal, Mr. Shailesh Sampatrao Bhosale and others as sections 420, 467 & 471 of IPC invoked in the FIR are

scheduled offence under PMLA, 2002 within the meaning of section 2(1) (y) of PMLA, 2002 read with Part A Paragraph 1 of the schedule to the PMLA, 2002.

7.7 That, during the course of investigations conducted under the provisions of the PMLA, 2002, it was revealed that Anil Shivajirao Bhosale, the present applicant i. e. Suryaji Pandurang Jadhav (Accused no.3), Mr. Tanaji Dattu Padwal and Mr. Shailesh Sampatrao Bhosale being the Chairman, Director, CEO and Officer of M/s. Shivajirao Bhosale Sahakari Bank Ltd. respectively were the mastermind behind activities connected with the proceeds of crime and under their directions the proceeds of the crime was projected as untainted property."

[4] It is the submission of Mr. Ponda, learned Senior Counsel for the Applicant that insofar as the scheduled offence is concerned, the Applicant has already been granted bail by a learned Single Judge by Order dated 02.03.2023 passed in B. A. No. 2006 of 2021. He submits that the Applicant was arrested in scheduled offence on 24.02.2020 and in the present case, he is in custody since 05.03.2021. He submitted that the Applicant is incarcerated for more than 4 years and 7 months. He submits that in PMLA Case, the Applicant has completed 3 years and 6 months on 05.09.2024. He submitted that insofar as the present case is concerned, the maximum punishment which can be awarded is 7 years, out of which the Applicant has already completed half of the total punishment. He, therefore, submitted that the Applicant is entitled to be released on bail. He relied on the following Judgments:

(i) Javed Gulam Nabi Shaikh vs. State of Maharasht,2024 SCCOnLineSC 1693;

(ii) Vijay Madanlal Choudhary vs. Union of India,2022 SCCOnLineSC 929;

(iii) Manish Sisodia vs. Directorate of Enforcement,2024 SCCOnLineSC 1920;

(iv) Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. The State of Uttar Pradesh,2024 SCCOnLineSC 1755 .

(v) The decision of this Court in the case of Hari Sankaran vs. Serious Fraud Investigation Office,2024 SCCOnLineBom 753.

[5] He submitted that it is well established that speedy trial is a right guaranteed to the Applicant under Article 21 of the Constitution of India. He submitted that the factual position on record clearly shows that the said fundamental right of the Applicant is violated. In support of the said contention, he also relied on Section 436A of the Cr.P.C.. He submitted that he is seeking bail only on the ground of long incarceration. He further submitted that even on merits, insofar as the case of the prosecution is concerned, the Applicant's liability is Rs. 79,00,00,000/-. He tendered a chart which shows that substantial amount is recovered and valuable properties are attached by the ED. He, therefore, submitted that the Applicant is entitled to be

enlarged on bail. He also submitted that the Applicant is 72 years old and suffering from stage 4 of colon cancer.

[6] Mr. Shirsat, learned APP for Respondent No. 1 - ED strongly opposed the Bail Application. He submitted that the material on record shows that the Applicant is involved in a very serious crime. He submitted that cash has been given to various persons as per the instructions of the present Applicant. He pointed out the statements of various persons including the statement of Mr. Santosh Sahebrao Kale recorded during the investigation by ED. He also pointed out the register maintained by the staff of the M/s. Shivajirao Bhosale Sahakari Bank Ltd.. He pointed out the entries in the said register (Page 100) of the compilation dated 06.02.2018 which shows that cash of Rs. 5,00,000/-, Rs. 2,45,00,000/- and Rs. 2,50,00,000/- have been handed over to certain persons as per the instructions of the present Applicant. He submitted that therefore, the Applicant is involved in a very serious crime and therefore, the Applicant is not entitled to be released on bail in view of Section 45 of the PMLA. Mr. Shirsat, learned APP for Respondent No. 1 - ED has relied on the Judgment of the Supreme Court in the case of **Tarun Kumar vs. Assistant Director, Directorate of Enforcement** [SLP (Cri.) No. 9431 of 2023].

[7] A perusal of the record shows that insofar as the scheduled offence is concerned, C. R. No. 0026/2020 was registered on 08.01.2020 under Sections 420 r/w. 34, 406, 408, 409, 465, 468, 471 of the **Indian Penal Code, 1860** ('IPC'). The present case is ECIR/MB/ZO-II/03/2020 registered under Section 3 r/w. 70 of the PMLA. The Applicant has been arrested in scheduled offence on 24.02.2020 and the date of arrest in the present offence is 05.03.2021. Thus, the Applicant has completed 4 years and 6 months from the date of arrest in the scheduled offence, wherein he has been granted bail by a learned Single Judge by Order dated 02.03.2023 passed in B. A. No. 2006 of 2021.

[8] Insofar as the present offence is concerned, the Applicant is incarcerated since 05.03.2021. Thus, the Applicant has completed 3 years and 6 months on 05.09.2024. Admittedly, insofar as the present offence is concerned, the maximum punishment is 7 years. Thus, the Applicant has completed 3 years and 6 months i. e. half of the punishment.

[9] Section 45 of the PMLA Act is as follows:-

> **"45. Offences to be cognizable and non-bailable.-**(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless-]
>
> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm 113[or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by-

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in [* * *] subsection (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

[Explanation.-For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under Section 19 and subject to the conditions enshrined under this section.]"

[10] Thus, as per Section 45 of the PMLA Act, the following requirements are mandatory to be complied with before releasing the accused on bail:

(i) The Public Prosecutor is to be given an opportunity to oppose the Application seeking bail;

(ii) Where the Public Prosecutor opposes the Application:

(a) The Court is required to record satisfaction that there are reasonable grounds for believing that the Applicant is not guilty of such offence;

(b) The Court is required to record satisfaction that the Applicant is not likely to commit any offence while on bail.

[11] In this Bail Application, the Respondent No. 1 - ED filed affidavit opposing the Bail Application and Mr. Shirsat, learned APP for Respondent No. 1 has opposed the Bail Application. Thus, requirement as set out in Clause (i) hereinabove is satisfied. Thus, now what is required to be seen is whether twin conditions as contained in Clause (ii) noted hereinabove are fulfilled and effect of the said twin conditions on the entitlement of the Applicant in getting bail.

[12] In this background of the matter, it is required to be noted that the Supreme Court in the case of **Vijay Madanlal Choudhary** (supra) in Paragraph Nos. 412 to 421 considered the applicability of Section 436A of the Cr. P. C. which is concerning the maximum punishment for which an under trial prisoner can be detained. It has been held that Section 436A of the Cr. P .C. has come into effect on 23.06.2006 and the said provision is the subsequent law enacted by the Parliament and the same will prevail and will apply in spite of rigors of Section 45 of the PMLA Act. The relevant part of the said paragraphs 412 to 421 read as under:

> **"412.** As a result, we have no hesitation in observing that in whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, **the underlying principles and rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money-laundering.**
>
> **413. There is, however, an exception carved out to the strict compliance of the twin conditions in the form of Section 436A of the 1973 Code, which has come into being on 23.6.2006 vide Act 25 of 2005. This, being the subsequent law enacted by the Parliament, must prevail. Section 436A of the 1973 Code** reads as under:
>
> " 656 **[436A. Maximum period for which an undertrial prisoner can be detained.- Where a person has,** during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) **undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:**
>
> Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such

person for a period longer than one-half of the said period or **release him on bail instead of the personal bond with or without sureties:**

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.-In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.]

415. In Hussainara Khatoon v. Home Secretary, State of Bihar, Patna, this Court stated that the **right to speedy trial is one of the facets of Article 21 and recognized the right to speedy trial as a fundamental right.** This dictum has been consistently followed by this Court in several cases. The Parliament in its wisdom inserted Section 436A under the 1973 Code recognizing the deteriorating state of undertrial prisoners so as to provide them with a remedy in case of unjustified detention. **In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, the Court, relying on Hussainara Khatoon, directed the release of prisoners charged under the Narcotic Drugs and Psychotropic Act after completion of one-half of the maximum term prescribed under the Act. The Court issued such direction after taking into account the non obstante provision of Section 37 of the NDPS Act, which imposed the rigors of twin conditions for release on bail. It was observed:**

"15. ...We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh V. State of Punjab. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak, release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that **deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article21.** Of course, some amount of deprivation of personal liberty cannot

be avoided in such cases; but **if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. ..."**

416. The Union of India also recognized the right to speedy trial and access to justice as fundamental right in their written submissions and, thus, submitted that **in a limited situation right of bail can be granted in case of violation of Article 21 of the Constitution.** Further, it is to be noted that **the Section 436A of the 1973 Code was inserted after the enactment of the 2002 Act. Thus, it would not be appropriate to deny the relief of Section 436A of the 1973 Code which is a wholesome provision beneficial to a person accused under the 2002 Act.** However, Section 436A of the 1973 Code, does not provide for an absolute right of bail as in the case of default bail under Section 167 of the 1973 Code. For, in the fact situation of a case, the Court may still deny the relief owing to ground, such as where the trial was delayed at the instance of accused himself.

417. Be that as it may, in our opinion, this provision is comparable with the statutory bail provision or, so to say, the default bail, to be granted in terms of section 167 of the 1973 Code consequent to failure period of the investigating agency to file the chargesheet within the statutory and, in the context of the 2002 Act, complaint within the specified period after arrest of the person concerned. In the case of Section 167 of the 1973 Code, an indefeasible right is triggered in favour of the accused the moment the investigating agency commits default in filing the chargesheet/complaint within the statutory period. **The provision in the form of Section 436A of the 1973 Code, as has now come into being is in recognition of the constitutional right of the accused regarding speedy trial under Article 21 of the Constitution. For, it is a sanguine hope of every accused, who is in custody in particular, that he/she should be tried expeditiously - so as to uphold the tenets of speedy justice. If the trial cannot proceed even after the accused has undergone one-half of the maximum period of imprisonment provided by law, there is no reason to deny him this lesser relief of considering his prayer for release on bail or bond, as the case may be, with appropriate conditions, including to secure his/her presence during the trial.**

418. Learned Solicitor General was at pains to persuade us that this view would impact the objectives of the 2002 Act and is in the nature of super imposition of Section 436A of the 1973 Code over Section 45 of the 2002 Act. He has also expressed concern that the same logic may be invoked in respect of other serious offences, including terrorist offences which would be counterproductive. So be it. We are not impressed by this submission. For, **it is the constitutional obligation of the State to ensure that trials are concluded expeditiously and at least within a reasonable time where strict bail provisions apply. If a person is detained for a period extending up to one-half of the maximum period of imprisonment specified by law and is still facing trial, it is nothing short of failure of the State in upholding the constitutional rights of the citizens, including person accused of an offence.**

419. Section 436A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436A of the 1973 Code, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial.

420. However, that does not mean that the principle enunciated by this Court in Supreme Court Legal Aid Committee Representing Under trial Prisoners, to ameliorate the agony and pain of persons kept in jail for unreasonably long time, even without trial, can be whittled down on such specious plea of the State. If the Parliament/Legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the concerned offence by law. [Be it noted, this provision (Section 436A of the 1973 Code) is not available to accused who is facing trial for offences punishable with death sentence]

421. In our opinion, therefore, **Section 436A needs to be construed as a statutory bail provision and akin to Section 167 of the 1973 Code.** Notably, learned Solicitor General has fairly accepted during the arguments and also restated in the written notes that **the mandate of Section 167 of the 1973 Code would apply with full force even to cases falling under Section 3 of the 2002 Act, regarding money-laundering offences. On the same logic, we must hold that Section 436A of the 1973 Code could be invoked by accused arrested for offence punishable under the 2002 Act, being a statutory bail."**

(Emphasis added)

[13] The Supreme Court in the case of **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari** (supra) held in paragraph 32 as under:

"32. This Court has, time and again, emphasized that **right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way.** Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very strong to say that under a particular statute, bail cannot be granted. It would run counter to the very gain of our constitutional jurisprudence. In any view of the matter, K. A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us."

(Emphasis added)

[14] The Supreme Court in the case of **Union of India vs. K. A. Najeeb**, 2021 3 SCC 713 held in Paragraph No. 17 as under:

"17. It is thus clear to us that the **presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the**

prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

(Emphasis added)

[15] The Supreme Court in the case of **Manish Sisodia** (supra) held as follows:

"51. Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh, Shri Gurbaksh Singh Sibbia v. State of Punjab, Hussainara Khatoon (1) v. Home Secretary, State of Bihar, Union of India v. K.A. Najeeb and Satender Kumar Antil v. Central Bureau of Investigation. The Court observed thus:

"19. **If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."**

52. The Court also reproduced the observations made in Gudikanti Narasimhulu (supra), which read thus:

"10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in **Gudikanti Narasimhulu v. Public Prosecutor, High Court**, 1978 1 SCC 240. We quote:

"What is often forgotten, and therefore warrants reminder, is the **object to keep a person in judicial custody pending trial or disposal of an appeal.** Lord Russel, C.J., said [R v. Rose, 1898 18 Cox]:

"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that **bail is not to be withheld as punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.""**

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that **bail is not to be withheld as a punishment.** From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in

matters of grant of bail. **The principle that bail is a rule and refusal is an exception is, at times, followed in breach.** On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".

54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial."

(Emphasis added)

[16] Thus, as per the settled legal position whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail as enacted under Section 45 of the PMLA Act but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence.

[17] Thus, inspite of restrictive statutory provisions like Section 45 of the PMLA Act, the right of the accused undertrial under Article 21 of the Constitution of India cannot be allowed to be infringed. In such a situation, statutory restrictions will not come in the way of the Court to grant bail to protect the fundamental right of the accused under Article 21 of the Constitution of India.

[18] As far as the scheduled offences are concerned i.e. C. R. No. 26 of 2020, there are about 256 witnesses proposed to be examined by the prosecution. Insofar as the present case is concerned, 9 witnesses are proposed to be examined by the prosecution. The Charge-sheet in both the cases is voluminous. It is an admitted position that both the cases will be tried simultaneously and trial has not yet commenced. Thus, this is a case where the trial is unlikely to conclude any time soon and is likely to take a considerably long time. As noted hereinabove, the Applicant has completed more than half of the punishment and therefore, entitled to the benefit of Section 436A of the Cr.P.C.. The Judgment cited by Mr. Shirsat, learned APP in the case of Tarun Kumar (Supra) is not applicable to the facts of the present case, as in that case, the Accused has not completed half of the punishment.

[19] Apart from that, one more factor is required to be taken into consideration. As noted hereinabove, Mr. Ponda, learned Senior Counsel for the Applicant has submitted a chart of the properties attached by the ED of the Applicant as well as his wife. As per the said chart in the recovery proceedings, various properties of the Applicant have been sold and an amount of Rs. 60,49,74,709/- has been recovered. The said chart is reproduced hereinbelow:

"PROPERTIES ATTACHED BY ENFORCEMENT OF DIRECTORATE OF SURYAJI PANDURANG JADHAV AND SUJATA SURYAJI JADHAV:

Sr No	Property Holder	Address	Area	Estimated Valuation
1	Suryaji Pandurang Jadhav	Gat No 436, Village Bholawade, Taluka Bhor , District Pune	H.0-07R	50 Lakhs
2	Suryaji Pandurang Jadhav	Gat no 2191, Village Akiwat, Taluka Shirole, District Kolhapur (Agricultural Land)	H.0-79R	70 Lakhs
3	Sujata Suryaji Jadhav	Flat no 1, Yashodamai Apartments, CTS 783A ,	959 Sq ft	1.5 Crore
		Final Plot no 192 A, Shivajinagar Bhambhurda Taluka Haveli, Dist Pune		
4	Sujata Suryaji Jadhav	Flat no 8, Yashodamai Apartments, CTS 783A , Final Plot no 192 A, Shivajinagar Bhambhurda Taluka Haveli, Dist Pune	1147 Sq ft	1.7 Crore
				TOTAL: 4,40,00,000/-

Properties at Sr No. 3 and 4 are current residences of Applicant and his family. Suryaji Pandurang Jadhav has willingly deposited Rs 75 Lakhs (Seventy Five Lakhs) to the Liquidator of the Shivajirao Bhosale Bank on 2nd March 2023 (Please See High Court Order B. A. No. 2006/2021 passed by Hon'ble J. N R Borkar dated 2nd March 2023.)

RECOVERY PROCEEDING WERE CARRIED OUT, AGAINST RECOVERING CASH SHORT PROPERTIES OF ANIL SHIVAJIRAO BHOSALE WERE ATTACHED ON 08/09/2020 UNDER MCS ACT 1960 / 1961

Sr.No	Survey No	Area
1	Village Koregaon , Tal - Haveli, Dist Pune	2.25 hectares
2	Village Koregaon , Tal - Haveli, Dist Pune	1.89 Hectares
3	Village Koregaon , Tal - Haveli, Dist Pune	1.46 Hectares

Accordingly Fair Market Value /Reserve Price was decided on 22/11/2021.

Sr No	Survey No.	Area	Fair Market Value/ Reserve Price
1.	Village Koregaon , Tal - Haveli, Dist	2.5 Hectare	Rs. 27,85,18,500
2.	Pune Village, Koregaon, Tal- Haveli Dist	1.89 Hectare	for 1.89 Hectare Price was decided @ Rs 22,60,44,000/and for 00.5 hectare @ Rs.
3.	Village Koregaon, Tal- Haveli, Dist	1.46 Hecatre	Rs. 23,57,31,600
4.			Total: 74,54,07,000/-

Auctions were conducted on 1st April 2022, 20th April 2022, 26th May 2022, 15 June 2022 and 15 July 2022 and Reserve price was set at Rs. 59,63,25,600/- and the properties were auctioned for Rs. 60,49,74,709/-. On 15th July 2022, 15% of Rs. 60,49,74,709/- that would be Rs. 09,06,26,208/- was deposited in Bank via Demand Draft. Rest 85% of Amount i. e. Rs. 51,35,48,501/- minus TDS @1% Rs. 50,75,06,753.91 was deposited in the Bank on 12th August 2022."

[20] It is also required to be noted that the Applicant is 72 years old and is suffering from cancer.

[21] Mr. Ponda, learned Senior Counsel for the Applicant states that as several witnesses are residing in the same locality as that of the Applicant, the Applicant will therefore not reside within District - Pune and that the Applicant will reside at the residence of Mr. Shivajirao Patil, R/o. 'Vikram' Bungalow, Chintamani Nagar, Madhavnagar Road, Sangli - 416 416 and will attend the Sanjay Nagar Police Station, Sangli.

[22] The Applicant does not appear to be at risk of flight.

[23] Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:

O R D E R

(a) The Applicant - Suryaji Pandurang Jadhav be released on bail in connection with ECIR No. ECIR/MB//ZO-II/03/2020 registered with the Enforcement Directorate

on his furnishing P. R. Bond of Rs. 5,00,000/- with one or two solvent sureties in the like amount;

(b) The Applicant shall not enter District - Pune after being released on bail, except for reporting to the Investigating Officer, if called and for attending the trial;

(c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto;

(d) The Applicant shall report to the Sanjay Nagar Police Station, Sangli once a week, on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial and the Police Inspector of the Sanjay Nagar Police Station to communicate the details of the same to the Respondent No. 1 - ED;

(e) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel;

(f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner;

(g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments there at;

(h) The Applicant shall surrender his passport, if any, to the Investigating Officer;

[24] The Bail Application stands disposed of accordingly.

[25] It is clarified that the observations made herein are prima facie and the trial Court shall decide the case on its merits, uninfluenced by the observations made in this order

---

2024(2)MBAJ544

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Abhay S Waghwase]

Criminal Appeal No 289 of 2002 **dated 10/09/2024**

Mohammad Ejaz S/o Mohammad Osman

Versus

State of Maharashtra

ABETMENT TO SUICIDE

Indian Penal Code, 1860 Sec. 306, Sec. 498A - Abetment to Suicide - Appellant convicted under Sections 306 and 498A IPC for abetment to suicide and cruelty toward his wife, who immolated herself - Prosecution relied on dying declarations and

testimony from the deceased's parents, alleging cruelty and suspicion of infidelity - Appellant argued inconsistencies in dying declarations, lack of certification of fitness, and delay in recording - Court found no reliable evidence of direct instigation or mental cruelty, highlighting flaws in the dying declarations and lack of mens rea for abetment - Conviction quashed appellant acquitted. - Appeal Allowed

Law Point: Conviction under Section 306 IPC requires proof of direct or indirect acts of instigation; mere allegations of cruelty, without proximate or specific actions leading to suicide, do not suffice for abetment.

Acts Referred:

Indian Penal Code, 1860 Sec. 306, Sec. 498A

Counsel:

Niraj Pradeep Chudiwal, Chaitali Choudhari Kutti

JUDGEMENT

Abhay S Waghwase, J.- [1] The correctness of the judgment and order of conviction dated 16.05.2002 rendered by learned Additional Sessions Judge, Aurangabad in Sessions Case No. 253 of 2000, convicting present appellant for offence punishable under Sections 498-A and 306 of the Indian Penal Code [IPC] is under challenge.

FACTUAL MATRIX

Prosecution version:

[2] Deceased Shahana Begum was married to present appellant and after marriage, she came to reside with her husband and in-laws. Initially everything was smooth, but subsequently there was ill-treatment at the hands of accused persons. They suspected her fidelity and beat her. Two years after marriage, because of said ill-treatment, she had consumed phenyl and therefore, was brought back by her father PW5. After compromise, she came back to reside with husband and in-laws, but again ill-treatment began. According to prosecution, on 29.05.2000, husband beat her by suspecting her character. Finally, getting fed up of the same, she immolated herself and suffered 92% burns. PW3 Special Executive Magistrate recorded her dying declaration on the strength of which, crime was registered.

[3] Shahana Begum succumbed to the burns and therefore, investigation was carried out by PW9, who, after gathering sufficient evidence, chargesheeted accused persons for commission of offence punishable under Sections 498-A and 306 of IPC.

[4] Case being exclusively triable to the court of sessions, was on the file of Additional Sessions Judge, Aurangabad, who commenced trial vide Sessions Case No. 253 of 2000 on the charge of commission of offences punishable under Sections 498-A and 306 of IPC. After appreciating the oral and documentary evidence adduced by prosecution, learned trial Judge, by judgment dated 16.05.2002, acquitted accused nos.

2 and 3 from all charges, but convicted husband i.e. present appellant for commission of offence punishable under Sections 498-A and 306 of IPC, giving rise to the present appeal.

SUBMISSIONS

On behalf of the appellant:

[5] Criticizing the judgment of conviction, learned counsel for the appellant pointed out that prosecution had miserably failed to bring home the charges. According to him, neither ingredients for commission of offence under Section 498-A, nor 306 of IPC, as contemplated by law, are available in the prosecution evidence. He pointed out that on the same set of evidence, accused nos. 2 and 3 are already acquitted by learned trial court, but accused no.1 husband alone is held guilty. He pointed out that apparently, deceased had suicidal tendency. Initially also she had attempted to end up her life without any just and reasonable cause. He pointed out that even regarding second episode of burns, husband appellant was not in the house and it is so evident from the very dying declarations.

[6] Challenging the veracity of dying declarations, learned counsel for the appellant submitted that firstly, the dying declarations are undated, and secondly, there is no endorsement of fitness of deceased to give statement, that too when she had allegedly suffered 92% burns. He took this Court through all three dying declarations Exhibits 26, 35 and 39 and submitted that dying declarations are recorded in Marathi whereas deceased was only conversant with Urdu. There is no remark or statement in the dying declaration that statement was read over to deceased. According to learned counsel, this was fatal to the prosecution.

[7] On this count, learned counsel for the appellant takes recourse to the following rulings of the Hon'ble Apex:

1. **Laxman v. State of Maharashtra**, 2002 CrLJ 4095.

2. **P. Mani v. State of T.N.**, 2006 AIR(SC) 1319.

3. **Kanti Lal v. State of Rajasthan**, 2009 AIR(SC) 2703.

4. **Sanju alias Sanjay Singh Sengar v. State of M.P.**, 2002 AIR(SC) 1998.

5. **State of Maharashtra v. Sanjay D. Rajhans**, 2005 AIR(SC) 97.

6. Tukaram Dashrath Padhen v. State of Maharashtra,2013 CrLJ(NOC) 113 (Bom.) (Nagpur Bench).

7. **Ashok Pandurang Jadhav v. State of Maharashtra**, 2011 4 AIRBomR 10.

8. Radhakisan Dhondiba Bhalekar v. State of Maharashtra,2018 2 AIRBomR(Cri) 269.

9. Arjun Uddhav Arbad v. State of Maharashtra,2017 3 AIRBomR(Cri) 65.

[8] Learned counsel for the appellant next took this Court through the observations of learned trial Court and would submit that there is improper appreciation as, according to him, specific instances and specific role of beating is not defined in the testimony of any of the witnesses. There was no previous complaint of any sort at any place. Moreover, according to him, on the day of burns, victim was at her parents house and therefore there is no question of husband being responsible for the burns. He pointed out that all such crucial aspects are lost sight of by the learned trial Judge. Thus, according to him, on mere allegation of suspicion of character and on the basis of omnibus and general allegations, case of prosecution has been straightway accepted without assigning appropriate and sound reasons, and therefore, according to him, such judgment being not sustainable in the eyes of law, is required to be interfered with by allowing the appeal and setting aside the impugned judgment.

On behalf of the respondent-State:

[9] Per contra, supporting the judgment of conviction, learned APP pointed out that there are three dying declarations which are consistent. That, just before the incident of burns, husband had beaten her. That, ill-treatment meted out to her was regularly reported by deceased to her father and mother. That, they both are examined by prosecution. Their statements are consistent. Only because of suspicion of character and beating, deceased was forced to commit suicide and there was no other reason. She pointed out that required ingredients for attracting Section 498-A as well as Section 306 of IPC are readily available in the prosecution evidence and therefore, according to her, learned trial court has not committed any error. Rather, trial court's findings are infallible and do not warrant any interference at the hands of this Court. Hence, she prays to dismiss the appeal.

EVIDENCE BEFORE THE TRIAL COURT

[10] Prosecution has examined 9 witnesses in support of its case. Their role and status, and the sum and substance of their evidence can be summarized as under:

PW1	Dr, Aparna, Medical Officer at MGM Hospital, deposed about admission of deceased on 20.04.1997 on the history of consumption of phenyl and she being treated from 20.04.1997 to 22.04.1997.
PW2	Dr. Jinturkar, autopsy surgeon, who, after conducting postmortem, gave percentage of burns to be 92% and cause of death to be "shock due to burns".
PW3	Sanjay, Special Executive Magistrate, who, on requisition from police, visited Sushrut hospital on 30.05.2000 and recorded her dying declaration Exhibit 26.
PW4	Iqbalbegum is mother of deceased. Sum and substance of her evidence is that accused persons doubted character of her daughter and beat her. Due to ill-treated at their hands, once she consumed poison, but was taken back by husband. Ill-treatment and beating continued and so she committed suicide on 01.06.2020.

PW5	Harunbaig is father of deceased. Sum and substance of his evidence is that after two to four months, accused persons doubted character of his daughter and she reported whenever she visited him. After two to three years, due to cruelty, she consumed poison. On 29.05.2000, husband took her back and later on they learnt about incident of burns suffered by her.		
PW6	Sk. Roshan is the pancha to spot panchanama Exhibit 30.		
PW7	Dr. Yelikar, who gave endorsement about fitness of patient before recording dying declaration by police.		
PW8	A.S.I. Mundhe	|	are the Investigating Officers who
and		|	recorded dying declarations Exhibits
PW9	P.S.I. Dabhade	|	35 and 39 respectively.

ANALYSIS

[11] Here, there are two sets of evidence, **first set** - oral evidence and **second set** - three dying declarations.

First, let us appreciate the oral evidence, i.e. of parents of deceased.

ORAL EVIDENCE

[12] PW4 Iqbalbegum, mother of deceased, who is examined at Exhibit 27, initially deposed about marriage of her daughter with accused, for some time husband treating her daughter well, however, thereafter, she being ill-treated. **She deposed that accused nos. 1 to 3 along with mother-in-law of her daughter were beating her by doubting her character** and they were saying that she was having illicit relations with somebody. When her daughter came home, she disclosed this fact to her. After two years of marriage, she stated that, due to ill-treatment, her daughter consumed poison. After spending five days in the hospital, she was brought to her house for about two months. Matter was compromised and her daughter went to cohabit with accused no.1. After some days, again ill-treatment started. Regarding incident, she deposed as under:

"On the day of incident, at about 3.10 p.m., accused no.1 had been to my house with deceased Shahana. Shahana told me that accused nos. 1 to 3 beat her and they were taking doubt on her character. After 10 minutes, accused no.1 took away deceased at his house. Thereafter, we came to know that deceased had committed suicide. After we came to know the incident, we had been to M.G.M. Hospital. We have seen the deceased Shahana in burnt condition. By seing us the accused persons left the hospital. Thereafter we have taken the deceased at Sushrut hospital at Bansilal Nagar, Aurangabad. At Sushrut hospital, on enquiry deceased told me that she was illtreated by accused nos. 1 to 3 and her mother-in-law, and therefore, she committed suicide. On 1.6.2000 deceased died in the hospital.

While under cross, she is unable to give time and date of her daughter being beaten by accused persons. She admitted that after every 15 days to 1 month, her daughter was coming to her house and she was reached by accused no.1 and taken away after some time. She also admitted that some months before the incident, her daughter was doing tailoring work. Material omission is brought to the extent that "on the day of incident, accused no.1 along with deceased had been to her house and her daughter disclosed her about beating to her". Rest is all denial.

[13] PW5 Harunbaig, father of deceased, who is examined at Exhibit 28, deposed that after marriage, for about two to four months, deceased was treated well. Thereafter, accused nos. 1 to 3 were taking doubt on her character. On that count, **accused no.1 used to beat deceased.** That, whenever deceased came to the parents' house, she disclosed the ill-treatment. According to him, sometimes they were keeping daughter to their house, but accused no.1 was threatening to kill her sons. Three years back, his daughter had consumed phenyl because of ill-treatment meted out to her. That, after spending 5 to 6 days in MGM, his daughter was brought to the house and kept for three months. After compromise before panchas, his daughter was sent to the house of accused no.1, but ill-treatment was continued from accused persons. Regarding the incident, he deposed as under:

> "On 29.05.2000, accused no.1 had been to my house with deceased Shahana at around 3.30 p.m.. By leaving Shahana in my house, accused no.1 went away. Accused no.1 was standing outside my house. Accused no.1 has taken away deceased at 4.00 p.m. from my house. Now says after 5 to 7 minutes of stay of Shahana at my house, accused no.1 has taken away her. At about 7.00 p.m. I came to know about the incident. Thereafter my wife has admitted deceased to Sushrut hospital by taking her from M.G.M. hospital. On inquiry, deceased Shahana told me that she was having ill-treatment from accused nos. 1 to 3. She further told me that after leaving my house on 29.05.2000, accused no.1 has beaten her and therefore, she committed suicide."

In cross, omission is brought that accused nos. 2 and 3 were taking doubt on the character of his daughter. That, accused no.1 had been to his house with Shahanabegum at about 3.30 p.m. on 29.05.2000. Rest is all denial.

[14] On analyzing the evidence of parents, i.e. PW4 and PW5, they both are found to be deposing about proper treatment for some time after marriage, but there was said to be ill-treatment thereafter. According to mother, **all accused** beat her daughter after doubting her character. Whereas, according to father, **only accused no.1** husband beat her by doubting her character. Therefore, they are not consistent on the point of beating due to suspicion of character. Thus, general allegations are levelled against all in-laws. Regarding visit of deceased on 29.05.2000, material omission is brought that on said date, accused brought deceased to their house and she told that she was beaten

by husband that day. For said reasons, oral evidence of parents is not consistent and also carries material omission regarding beating on the day of episode of burns.

SECOND SET - DYING DECLARATIONS

[15] On appreciating the dying declarations which are Exhibits 26, 35 and 39 respectively, the same are recorded by PW3 Sanjay - Special Executive Magistrate and two Police Officials i.e. PW8 ASI Mundhe and PW9 PSI Dabhade, respectively. Before appreciating the credibility and veracity of dying declarations, it would be fruitful to give brief account of settled position on the point of manner of appreciation of dying declaration, more particularly, when they are plural in number.

[16] Here, there are three dying declarations. Therefore, it can be said that there are multiple dying declarations. In such contingency, some judicial precedents need to be dealt and discussed here. Very recently, the Hon'ble Apex Court in the case of **Abhishek Sharma v. State (Govt. of NCT of Delhi)**, 2023 INSC 924, while deciding Criminal Appeal No. 1473 of 2011, in para 8 discussed its own previous rulings and observations therein which are borrowed and reproduced as under:

> "8.1 This Court in **Kamla v. State of Punjab**, 1993 1 SCC 1, [AIR 1993 SC 374] has held:
>
> "5. It is well settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various tests (vide **Khushal Rao v. State of Bombay**, 1958 AIR(SC) 22: [1958 SCR 552: 1958 Cri LJ 106]). The ratio laid down in this case has been referred to in a number of subsequent cases with approval. It is also settled in all those cases that the statement should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration, they should be consistent. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without even any corroboration. In a case where there are more than one dying declaration if some inconsistencies are noticed between one and the other, the court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances."
>
> 8.2. In **State of Punjab v. Parveen Kumar**, 2005 AIR(SC) 1277, [2005 (9) SCC 769], this court further observed:
>
> "10. ..... The court must be satisfied that the dying declaration is truthful. If there are two dying declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declarations. It may be that if there was any other reliable evidence on record, this court could have

considered such corroborative evidence to test the truthfulness of the dying declarations..."

8.3. In **Amol Singh v. State of M.P.**, 2008 5 SCC 468 [AIR OnLine 2008 SC 62,],

"13. ... However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances."

8.4. Faced with multiple dying declarations, this Court in **Lakhan v. State of M.P**, 2010 8 SCC 514 observed-

"21. ... In case there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance."

This judgment was also referred to by this court recently in Makhan Singh v. State of Haryana,2022 SCCOnLineSC 1019 (2-Judge Bench).

8.5. In **Ashabai v. State of Maharashtra**, 2013 2 SCC 224 [(2- Judge Bench)] the court observed:-

"15. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assessed independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variations in the other."

8.6. In **Jagbir Singh v. State (NCT of Delhi)**, 2019 8 SCC 779, [AIR 2019 SC 4321] the following principles were observed:

31. A survey of the decisions would show that the principles of declarations can be culled out as follows: ....

31.6. However, there may be cases where there are more than one dying declaration. If there are more than one dying declaration, the dying declarations may entirely agree with one another. There may be dying declarations where inconsistencies between the declarations emerge. The extent of the inconsistencies would then have to be considered by the court. The inconsistencies may turn out to be reconcilable.

31.7. In such cases, where the inconsistencies go to some matter of detail or description but is incriminatory in nature as far as the Accused is concerned, the court would look to the material on record to conclude as to which dying declaration is to be relied on unless it be shown that they are unreliable;

31.8. The third category of cases is that where there are more than one dying declaration and inconsistencies between the declarations are absolute and the dying declarations are irreconcilable being repugnant to one another. In a dying declaration, the Accused may not be blamed at all and the cause of death may be placed at the doorstep of an unfortunate accident. This may be followed up by another dying declaration which is diametrically opposed to the first dying declaration. In fact, in that scenario, it may not be a question of an inconsistent dying declaration but a dying declaration which is completely opposed to the dying declaration which is given earlier. There may be more than two."

8.7. In **Uttam v. State of Maharashtra**, 2022 8 SCC 576 [(2- Judge Bench)] this court observed:

"15. In cases involving multiple dying declarations made by the deceased, the question that arises for consideration is as to which of the said dying declarations ought to be believed by the court and what would be the guiding factors for arriving at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the court would be expected to carefully scrutinise the evidence to find out as to which of the dying declarations can be corroborated by other material evidence produced by the prosecution. Of equal significance is the condition of the deceased at the relevant point in time, the medical evidence brought on record that would indicate the physical and mental fitness of the deceased, the scope of the close relatives/family members having influenced/tutored the deceased and all the other attendant circumstances that would help the court in exercise of its discretion."

In para 9, the principles that emerged on consideration of above rulings, which is observed, is reproduced as under:

"9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;

9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;

9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.

9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.

9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.

9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.

9.7 In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc."

[17] Having discussed above settled legal position, it would be further desirable to even reproduce the translated version of dying declarations at Exhibits 26, 35 and 39 in chronology. On careful scrutiny, it is emerging that deceased Shahanabegum suffered burns on the afternoon of 29.05.2000, but Exhibits 26 and 35 are shown to be recorded on 30.05.2000. Admittedly, time of recording both is not reflected on either of dying declarations. Whereas, third dying declaration Exhibit 39 is recorded on 31.05.2000.

Dying Declaration Exh. 26

Date: 30/5/2000

Statement

I, Shahanabegum W/o Mohmed Ezaz, age- 22 yrs., occupation-household, R/o Kiradpura, in front of Barkat grocery shop, Aurangabad.

Upon asking I do hereby state that, I got married five years ago with Mohmed Ejaz s/o Osman, R/o Kiradpura as per Muslim customs. I have two sons.

How the incident took place: - Yesterday on 29/05/2000 in the afternoon my husband quarreled with my by doubting my character. He abused me and beat me with slaps and fist blows. So, I went to the house of my sister-in-law Saliha and stayed in her house. Later, around 3 p.m., my husband brought me to our house and then he went out to the shop. My husband Mohmed Ejaz and my father-in-law Mohmed Osman used to harass me by raising doubts on my character. As I could not bear the harassment, so in the fit of the anger I poured kerosene on my person from the plastic canister and set myself ablaze at around quarter past three to half past three. At that time my mother-in-law Khalidabi and my sister-in-law Munnibi were present at home and my husband, father-in-law and brother-in-law had went out. While I was burning, my mother-in-law and sister-in-law did not

extinguish the fire. As the burns were causing more pain, I poured water on my person and extinguished the fire. After some time, my husband Md. Ejaz came home, and he took me to the M.G.M hospital for the initial treatment and thereafter he admitted me in Sushrut Hospital. At present I am undergoing treatment at Sushrut Hospital.

Therefore, yesterday as I had quarreled with my husband, namely Mohmed Ejaz and he used to harass me by raising doubts on my character and beat me up. Therefore, I got angry and poured kerosene on my person and set myself ablaze. My husband and father-in-law used to harass me by raising doubts on my character.

Hence this statement. [Left toe impression]

sd/-

30.05.2000

Sanjay Kashinathrao Jaibahar

[Special Executive Magistrate]

Dying Declaration Exhibit 35

Dt. 30.05.2000

Statement

Myself Shahana Begum w/o Mohmed Ejaz, r/at Kiradpura, Near Barkat Grocery Shop,Aurangabad.

I do hereby state in person that, I am residing at the above-mentioned place, my parents are residing at Roshan Gate. I am married 5 years ago to Mohmed Ejaz s/o Mohmed Osman from Kiradpura according to Muslim customs and have two children.

Yesterday on 29.05.2000 while at home in the afternoon, I had a quarrel with my husband. So, he abused, slapped and beat me with fist blow. So, I went and sat at the home of my sister in-law, namely Saliha. At around 3.00 O'clock my husband brought me to our house from my sister-in-law's house and he went outside to the shop. As my husband and father-in-law, Mohmed Osman used to harass me by raising doubts on my character and yesterday they quarreled with me and beat me up, so in the fit of the anger I poured kerosene on my person from the canister and set myself ablaze at around quarter past three to half past three. At that time my mother-in-law Khaledabi and my sister-in-law, Munnibi were present at home. They did not extinguish the fire. As the burns were causing more pain, I poured water on my person and extinguished the fire. After some time, my husband Mohmed Ejaz came home and at first, he took me to the M.G.M hospital for the initial treatment and thereafter he admitted me in Sushrut Hospital.

Therefore, yesterday I had quarreled with my husband namely Mohmed Ejaz s/o Mohmed Osman and he beat me up; similarly, as my husband Mohmed Ejaz and my father-in-law Mohmed Osman used to harass me by raising doubts on my character. Therefore, as I could not bear the harassment, I got angry and poured kerosene from the canister on my person and set myself ablaze. At present I am undergoing treatment at Sushrut Hospital, Aurangabad. Hence, you are requested to take action against my husband and father-in-law.

The above statement of mine is written as per my say and it is correct and true.

Before me	Statement by
Sd/-	Sd/-
ASI	Left Toe Impression.

Jinsi, Police Station,Aurangabad

Dying Declaration Exhibit 39

31/5/2000

Sushrut Hospital A'bad.

Statement

I, Shahana Begum w/o Mohmed Ejaz, Age -22 years, Occupation- Household, R/o. Kiradpura, Near Barkat Grocery Shop, Aurangabad.

I do hereby state in person that, I am residing at the above-mentioned place. My parents reside at Roshan Gate. I got married before 5 years ago with Md. Ejaz s/o. Osman from Kiradpura as per Muslim customs. I have two children; one is 4 years old and the other is 2 1/2 years old.

The day before yesterday i.e. on 29/5/2020 in the afternoon while I was at home my quarrel took place with my husband namely Md. Ejaz. He abused me and beat me with slaps and fist blows. So, I went to the house of my sister-in-law Saliha, who lives next door, and stayed in her house. Around 3 p.m., my husband brought me from the house of my sister-in-law Saliha to our house and then he went to the shop. My husband, father-in-law, and elder sister-in-law Munnibi used to harass me by raising doubts on my character and abuse me in filthy language. As day before yesterday my husband quarreled with me and beat me up, I got angry and around three or quarter past three o'clock in the afternoon I poured kerosene from the canister on my person and set myself ablaze. At that time my mother-in-law Khalidabi and my elder sister-in-law Munnibi were present at home, and they did not extinguish the fire. As the burns were causing more pain, I poured water on my person and extinguished the fire. After some time, my husband Md. Ejaz came home, and he took me to the M.G.M hospital for the initial treatment and thereafter he admitted me in Sushrut Hospital.

Therefore, the day before yesterday as I had quarreled with my husband namely Mohmed Ejaz s/o Mohmed Osman and he beat me up; similarly, as my husband Mohmed Ejaz and my father-in-law Mohmed Osman, my elder sister-in-law Munnibi alias Surraya used to harass me by raising doubts on my character, beat me and abuse me. Therefore, I got angry and poured kerosene from the canister on my person and set myself ablaze. At present I am undergoing treatment at Sushrut Hospital, Aurangabad. Hence, you are requested to take action against my husband, father-in-law and elder sister-in-law.

My above statement is read over to me, and it is true and correct as per my narration.

Before.

Sd/

PSI, Dabhade, P.S. Jinsi

31.05.2000

[Translated by Senior Translator of this Establishment]

[18] What is noticed from above dying declarations is that, firstly, there is no prompt recording of dying declarations since afternoon of 29.05.2000 till noon time of 30.05.2000. As pointed out by learned counsel for the appellant, on none of the three dying declarations Exhibits 26, 35 and 39, time of its recording is reflected, and surprisingly, on none of them there is certification of fitness of Shahanabebum to give dying declaration. In the considered opinion of this Court, it was crucial for the simple reason that she had suffered over 92% burns and there was already delay in recording prompt declaration. It is further surprising to note that PW3, who was at that point of time, Special Executive Magistrate, was a tailor by occupation. He claims that he received intimation from police at 4.00 to 4.30 p.m. on 29.05.2000 itself, but Exhibit 26 is recorded by him on next day and not on same day. In cross he has answered that when he visited hospital, he learnt from police that patient was not in fit condition to give statement and therefore he returned back. Police were not at all competent to inform him regarding fitness of the lady to give dying declaration. But it seems that believing police, he did not record statement on 29.05.2000 itself. As pointed out, the lady gave dying declaration in Urdu but this witness claims to have translated it in Marathi. There is nothing to show that he was conversant in Urdu so as to enable him to translate it in Marathi. As stated above, he has admitted that he did not note the timing and even did not take certification of doctor. Doctor PW7 has not stated about visit of PW3 for recording any dying declaration as said doctor only speaks about police approaching him. Such circumstances compel this court to doubt the veracity of dying declaration.

[19] As regards second dying declaration Exhibit 35 is concerned, it is recorded by PW8 ASI Mundhe, who, in his evidence at Exhibit 33, claims that after giving

communication to Special Executive Magistrate on 29.05.2000, he approached Sushrut Hospital. He claims that the doctor on duty certified Shahanabegum to be fit to give statement. Such certification is obtained on the carbon copy of communication at Exhibit 34, but it carries date as 29.05.2000, however, dying declaration Exhibit 35 is surprisingly carrying date as 30.05.2000. Such material clearly suggest that documents are prepared later on. Had PW8 issued letter to PW7 on 29.05.2000 which carries certification of doctor of same day, then, why dying declaration was not recorded at that very time, is not explained by prosecution or even this witness. Rather, he has identified statement of deceased at Exhibit 35 which is apparently of 30.05.2000.

[20] PW9 also has recorded 3rd dying declaration on 31.05.2000 and the same is at Exhibit 39. PW9, in his evidence at Exhibit 37, deposed about receiving case papers on 30.05.2000 but he appears to have visited Sushrut Hospital, not on same day, rather on next day i.e. on 31.05.2000 and then recorded statement Exhibit 39. It is also pertinent to note that certification is not on statement, rather on a communication Exhibit 38 which is also a carbon copy of communication to hospital authorities. Even time of recording dying declaration Exhibit 39 is not reflected nor there is thumb impression of deceased lady over it.

Above are the stark features emanating on meticulous examination of Exhibits 26, 35 and 39. There is perfunctory or casual approach by investigating authorities in not recording dying declaration promptly or with due care and caution.

[21] On careful scrutiny of Exhibit 26, it is noticed that deceased named husband alone for suspecting character and picking up quarrel and beating her. In Exhibits 35 and 36, she merely informed that there was quarrel between husband and wife, as such, reason stated in Exhibit 26 about suspicion of character is not finding place in Exhibits 35 and 39. It is also emerging from Exhibits 26, 35 and 39 that, after she was brought home back from his sister' place by husband accused, he had left the house, as according to deceased, he went to shop. Her such statement shows that husband was not present around at the time of immolation. She categorically stated that in rage of anger, she poured kerosene and incinerated herself.

[22] Resultantly, on carefully analyzing and re-appreciating three dying declarations, the distinct features which are emerging could be summarized as, **firstly,** there is delay in recording dying declarations, **secondly,** time of recording dying declaration is not appearing on any of the dying declarations. **Thirdly,** none of the dying declarations carry certification of doctor regarding fitness to give statement. Exhibit 39 recorded by Investigating officer on 31.05.2000 also does not carry thumb impression. For such reasons, there is considerable doubt about veracity and credibility of multiple dying declarations. In view of deceased having suffered 92% burns, it is also doubtful whether she was in capacity to give multiple dying declarations. On this count, support can be taken of the judgment of Hon'ble Apex Court in the case of **Surinder Kumar v. State of Haryana**, 2011 10 SCC 173.

[23] There is conviction for offence under Section 306 of IPC. Before attracting and applying said charge, it is bounden and statutory duty of prosecution to establish that there was abetment, inducement, instigation to commit suicide. Coupled with mens rea, positive role must be shown to have been played by accused.

Law to the above extent is time and again dealt and discussed in numerous judgments, including recent judgment of Kumar @ Shiva Kumar v. State of Karnataka,2024 SCCOnLineSC 216, wherein, from para 60 onwards, the Hon'ble Apex Court has discussed the legal aspect of abetment to suicide, as to what amounts to abetment as dealt under Section 107 of IPC and also, after discussing previous legal pronouncements in **M. Mohan v. State**, 2011 3 SCC 626; **Ramesh Kumar v. State of Chhattisgarh**, 2001 9 SCC 618, **Chitresh Kumar Chopra v. State**, 2009 16 SCC 605; **Amalendu Pal alias Jhantu v. State of West Bengal**, 2010 1 SCC 707; **Rajesh v. State of Haryana**, 2020 15 SCC 359 and **State of West Bengal v. Orilal Jaiswal**, 1994 1 SCC 73, culled out a principle that in order to prove guilt of accused for abetment to commit suicide, prosecution has to prove:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

Referring to the case of **Amalendu Pal** (supra), it has been observed in para 69 that:

69. ... this Court after referring to some of the previous decisions held that it has been the consistent view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative to put an end to her life. It must be borne in mind that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the deceased to commit suicide, conviction in terms of Section 306 IPC would not be sustainable. Thereafter, this Court held as under:

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore,

the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

[24] To sum up, here it is emanating from oral evidence of parents that husband suspected and doubted character of deceased and beat her. But when such instances occurred, is not specified. There is material omission regarding beating on the day of episode of burns. As discussed in para 14, parents are not consistent on the point of beating. Therefore, in the considered opinion of this Court, there is no convincing evidence on the point of subjecting deceased to mental cruelty. Resultantly, he cannot be held guilty of commission of offence under Section 498-A IPC. For above discussed reasons, as essential ingredients for attracting Section 306 IPC are patently missing in the prosecution evidence to hold him guilty for the same, he also deserves to be acquitted from charge under Section 306 IPC.

[25] In view of the above discussion, the following order is passed:

ORDER

I. The appeal is allowed.

II. The conviction awarded to the appellant-original accused no.1 by learned Additional Sessions Judge, Aurangabad in Sessions Case No. 253 of 2000 for offence under Sections 498-A and 306 of IPC on 16.05.2002 is hereby quashed and set aside.

III. The appellant stands acquitted of the offence punishable under Sections 498-A and 306 of IPC

IV. The bail bonds of the appellant stand cancelled.

V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.

VI. It is clarified that there is no change as regards the order regarding disposal of muddemal.

VII. Fees of the counsel appointed to represent the appellant is quantified at Rs. 15,000/- [Rupees fifteen thousand only] to be paid by the High Court Legal Services Sub-Committee, Aurangabad

---

2024(2)MBAJ559

IN THE HIGH COURT OF BOMBAY AT GOA

[Before Bharat P Deshpande]

Criminal Application (Bail) No 758 of 2024, 760 of 2024 **dated 10/09/2024**

Shailendra Yeshwant Garad; Saurabh Mahadev Dawne

Versus

State of Goa

BAIL GRANTED

Goa Children's Act, 2003 Sec. 8 - Protection of Children from Sexual Offences Act, 2012 Sec. 12 - Rights of Persons With Disabilities Act, 2016 Sec. 92 - Bharatiya Nyaya Sanhita, 2023 Sec. 126, Sec. 111, Sec. 351, Sec. 131, Sec. 3, Sec. 352, Sec. 192 - Bail Granted - Applicants were charged under various provisions including the Goa Children's Act and POCSO Act for wrongful restraint and abuse towards a handicapped individual and a minor - Incident arose from a parking dispute - Applicant Shailendra also filed a complaint which was not considered initially - Investigation did not show any organized crime involvement - Court observed that the altercation occurred in the heat of the moment and did not warrant continued judicial custody - Applicants granted bail with conditions - Bail Allowed

Law Point: Bail can be granted when an incident arises from a spontaneous altercation, and custodial interrogation is not necessary for further investigation.

Acts Referred:

Goa Childrens Act, 2003 Sec. 8

Protection of Children from Sexual Offences Act, 2012 Sec. 12

Rights of Persons With Disabilities Act, 2016 Sec. 92

Bharatiya Nyaya Sanhita, 2023 Sec. 126, Sec. 111, Sec. 351, Sec. 131, Sec. 3, Sec. 352, Sec. 192

Counsel:

C A Ferreira (Senior Advocate), Vibhav Amonkar, Nehal Govekar, S Karpe, Ritesh Rawal, Pravin Faldessai

JUDGEMENT

Bharat P. Deshpande, J.- [1] Heard learned Counsel for the parties. Case papers are now produced.

[2] Mr Ferreira submits that the complaint lodged by Applicant in B.A.(F) No.758/2024 with Mapusa Police Station was not taken to its logical conclusion. However, he now produces a copy of NC complaint registered on 10.09.2024 i.e. today at 12:15 hours and that too under Section 352, 351(2) of BNS 2023 (NC complaint).

[3] The incident took place on 23.08.2024 at around 23:45 hours. The complaint was lodged at Mapusa Police Station at around 13:51 hours on 24.08.2024.

[4] Along with the said complaint, the Accused by name Shailendra was also in the Police Station along with his written complaint dated 24.08.2024. However, such complaint was not considered by the investigating agency and only today it is registered as NC complaint, when the Accused is in custody from the date of arrest i.e. from 24.08.2024.

[5] Fir No.122/2024 is registered against the present Applicants for the offences punishable under Sections 111, 126, 192, 352, 131, 351(3), 3(5) of BNS 2023 along with Section 8 of Goa Children's Act, Section 92A of the Rights of Persons with Disabilities Act, 2016 and Section 12 of POCSO Act.

[6] Allegation against the Applicants and other Accused persons is that with a common intention, they wrongfully restrained the Complainant who is a handicapped, his students out of which one is minor, abused them with filthy words, insulted the Complainant in public by calling him as handicapped and made serious gestures to assault the Complainant and his students, threatened them with dire consequences and created a riotous situation at the spot.

[7] The application filed by the Applicant before the learned Sessions Court/Children's Court was rejected by order dated 30.08.2024. While rejecting such application, the learned Court observed in para 21 that in the present case, prima facie, Section 111 of BNS is not attracted as it cannot be said that it is a part of organized crime syndicate.

[8] Even otherwise, the complaint dated 24.08.2024 and the investigation carried out till date, prima facie, could not show that the offence lodged against the Applicant and others could be part of an organized crime syndicate.

[9] Though there is no doubt that Applicant by name Shailendra is facing various cases which are found mentioned in para No.1 of the reply itself, it is now reported that only four cases are pending as on date, whereas in remaining matters, said Shailendra has been acquitted.

[10] The fact remains that the complaint was lodged by Shailendra with Mapusa Police Station on 24.08.2024 itself wherein he has disclosed the entire incident and claimed that the Complainant and his associates fired the shots from the instruments which they were carrying in the car thereby creating an impression that such instruments are used as fire arms.

[11] Though along with the complaint, some certificates are produced stating that the said instruments are used in competitions as a sports event, it is clear that such instruments as per the licence are required to be used only as permitted therein i.e. during a practice session and that too in the firing range or during a competition organized by the concerned authorities having permission to do so.

[12] Though the incident occurred on 23.08.2024 as disclosed by both the sides i.e. the Complainant as well as the Accused Shailendra in their respective complaints, it is a fact that no cognizance of the complaint filed by Shailendra was taken by the concerned officer. However, it is now registered as NC complaint and that too at 12:15 hours today only. It is surprising that inspite of a written complaint, no steps were taken by the concerned officer in-charge of Mapusa Police Station.

[13] The allegations against the present Applicant would clearly show that the incident happened on the spur of moment and on a dispute with regard to parking of a scooter in front of a car used by the Complainant and his team members. The hurt certificate shows that there is no external injury caused to the Complainant though there are allegations of assault and giving threats including the minor.

[14] Even though there are cases pending against Accused Shailendra wherein he is attending the matters, peculiar circumstances of the matter in hand would go to show that the alleged incident happened only because of the parking of a vehicle and that too in a spur of moment. Though there are exchange of words and alleged threats, question of custody of the Applicant any further, would not be considered as necessary.

[15] As far as Shailendra is concerned, there are no allegations that he has violated the bail conditions in respect of the matters which are pending against him. In the given circumstances and the fact that the investigation in the present proceedings nowhere require custodial interrogation of the present Applicants who are admittedly in judicial custody, no purpose would be served by denying bail.

[16] Applicants are the permanent residents of the addresses disclosed in the application. Accordingly, they could be released on bail by imposing conditions.

[17] The application accordingly stands allowed. The Applicants shall be released on bail on furnishing personal bond of Rs.25,000/- with one solvent surety in the like amount to the satisfaction of the learned Children's Court and on the following conditions:

i. Applicants shall attend the Police Station as and when called.

ii. Applicants shall not in any manner try to influence the Complainant or the Prosecution witnesses or try to contact them directly or indirectly.

iii. Applicants shall not leave the State of Goa without the permission of the learned Children's Court.

[18] Application stands disposed of in the above terms.

[19] Parties to act on an authenticated copy of this order
