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INDIAN LAW REPORTS

HIMACHAL SERIES

(March, 2015)

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Constitution of India, 1950- Article 226- Petitioner had filed a Writ Petition which was disposed of with a direction to examine the case of the petitioner and to grant him similar relief as was granted to similarly situated person- respondent examined the case of the petitioner and rejected it- Contempt Petition was filed by the petitioner in which respondent was asked to examine the case of the petitioner and to pass a fresh order- respondent passed an order holding that petitioner was entitled to the claim preferred by him but he had approached the Competent Authority at a belated stage and the similarly situated person had approached the authority promptly- held, that respondents are precluded from taking such defences as they were directed to consider the case of the petitioner and to grant him similar relief, which was granted to the similarly situated persons.

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Constitution of India, 1950- Article 226- Respondent No.1 was engaged on daily wages in the month of January, 1980 but was dis-engaged on 01.03.1982- he filed a reference petition before Labour Court which set aside the disengagement- a Writ Petition was filed before High Court which was allowed and the case was remanded to the Labour Court- award was passed by the Labour Court on 2007- another Writ Petition was filed - the Labour Court had not granted back wages w.e.f. 01.03.1982 till the date of passing of the award and it had directed that period from 01.03.1982 to 05.08.2000 shall not be counted towards his seniority- held, that writ petitioner was entitled to the back wages as he was wrongfully disengaged- respondent directed to release back wages in favour of the petition within the period of six months.

Title: Onkar Singh Vs. Executive Engineer, HPSEB Ltd. & another (D.B.)

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'I'

Indian Penal Code, 1860- Sections 307, 326 and 324- Accused hit the complainant with Khukhari on the head and caused grievous and simple injury to the complainant due to which he fell down- accused took mobile phone and cash worth Rs.3,000/- belonging to the complainant- prosecution witnesses did not support the prosecution version- some witnesses were given up by the prosecution- son of the complainant specifically stated in cross-examination that he had not seen any one inflicting injury on the person of his father and had seen Khukhari for the first time in the Court- medical evidence or recovery of the Khukhari and blood stained shirt are corroborative piece of evidence and do not implicate the accused- Trial Court had taken a reasonable view while acquitting the accused.

Title: State of Himachal Pradesh Vs. Mehboob Khan son of Shri Quim Khan

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Indian Penal Code, 1860- Section 302 read with Section 34- Complainant saw the accused digging a water channel to divert the flow of water towards his house- complainant asked the accused not to do so and to convene a Panchayat to resolve the matter- Panchayat asked the parties to allow the water to pass as before but the accused did not agree to the suggestion of the Panchayat - accused 'S' picked up a danda and gave 2-3 blows on the shoulder and back of 'L'- accused 'P' picked up a stone and threw it on the chest of 'L'- 'L' collapsed on the spot and was taken to the home- 'L' succumbed to the injury – Medical Officer had not noticed any penetrative injury on the chest wall- no fracture of ribs was noticed- there was no injury to lungs and heart and no wound was detected on the pulmonary artery- no internal bleeding was noticed from the vital organs- held, that severe injury would be caused by a stone if it is thrown from a distance with force – in these circumstances, prosecution was not proved- accused acquitted.

Title: Pritam Chand & another vs. State of Himachal Pradesh (D.B.) Page-125

Indian Penal Code, 1860- Sections 147, 148, 341, 323, 326 and 506 – Accused formed an unlawful assembly- they wrongfully restrained the complainant and abused him- Accused 'J' and 'M' caused injury on the arm of the complainant with sharp edged weapon- complainant raised alarm on which his father arrived at the spot- accused also administered beating to him- some people gathered at the spot who rescued the complainant- there were contradictions regarding the person who had handed over the darat to the police- no disclosure statement was made by the accused prior to the handing over the darat to the police- these facts lead to an inference that accused was unaware of the place of hiding or that the darat was not recovered at the instance of the accused but was planted by Investigating Officer- Investigating Officer had omitted to collect the blood stained earth bearing the blood stains of the victim - eye-witness deposed that Darat was blunt at the time of recovery but was found sharp in the court, which shows that it was sharpened subsequently- all these circumstances make the prosecution case doubtful- accused acquitted.

Title: Dharmender Singh and others Vs. State of H.P. Page-118

Indian Penal Code, 1860- Sections 306 and 498-A read with Section 34- Deceased disclosed to the complainant one month prior to her death that she was maltreated and harassed by the accused persons because of her inability to bear a child – subsequently she committed suicide by consuming poison – marriage of the deceased with the accused subsisted for about 8 years- no child was born out of wedlock- complainant stated that her statement was only recorded on 4.5.2007 whereas FIR was recorded on 1.5.2007- this makes prosecution case highly suspect- she admitted in her cross-examination that she had told the police that deceased used to remain disturbed for not bearing the child which shows that the agony suffered by the deceased was self engineered- PW-2 had not disclosed to any person that deceased had complained about the harassment to her which makes her testimony suspect- therefore, in these circumstances, conclusion of the Trial Court that prosecution case was not proved was reasonable.

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Indian Penal Code, 1860- Sections 320 and 323- Accused inflicted a darat blow on the head of the deceased – when 'C' tried to snatch the darat, she also sustained injuries on the right hand- accused jumped from the veranda and ran away- PW-14 stated that a telephonic information was received from the Pardhan, Gram Panchayat, Melandi that accused had killed his brother, on the basis of which a rapat was entered- it was not explained as to who had informed the Pardhan about the incident- PW-1 and PW-2 did not state that they had informed the Pardhan- Pardhan was not examined- wife of the deceased was present on the spot but was not examined by the Prosecution- no independent witness was associated from the Village- accused had not made any disclosure statement but he had simply produced darat at the time of his arrest- it is difficult to believe that he would be carrying darat with him from the date of commission of offence till the time of arrest- held, that in these circumstances, prosecution version is not proved- accused acquitted.

Title: Man Singh Vs. State of Himachal Pradesh (D.B.) Page-174

Indian Penal Code, 1860- Sections 447, 307, 323, 506, 34- Complainant and her sister were working in their field- accused, owner of the other field, came to cut grass from the common boundary – complainant objected to the same- accused 'S' picked up a danda and tried to beat the complainant unsuccessfully – she asked the other accused to give beating- the accused attacked the complainant party with the stone- one stone thrown by accused 'V' hit 'S'- Medical Officer found multiple injuries which render the prosecution version of 'S'

being hit by stone to be doubtful- sister of the complainant was not produced before the Court- accused and the complainant did not have cordial relation – hence, in these circumstances, prosecution version was not established beyond reasonable doubt- accused acquitted.

Title: Vijender Singh Vs. State of Himachal Pradesh Page-158

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Motor Vehicle Act, 1988- Section 146- Deceased was a gratuitous passenger- owner had committed willful breach- held, that right of the third party cannot be defeated even if owner had committed breach and the insurer has to satisfy the award.

Title: National Insurance Company Ltd. vs. Santoshi Devi & others Page-183

Motor Vehicle Act, 1988- Section 157- Registered owner had sold the offending vehicle- it was contended that the insurance agreement was not in force after the sale- held that transfer of vehicle cannot absolve the insurer from the third party liability.

Title: National Insurance Company Ltd. vs. Santoshi Devi & others Page-183

Motor Vehicle Act, 1988- Section 166- Deceased was a Government servant and his gross pay was Rs.7,535/- Tribunal had deducted subscription which is not permissible and the income of the deceased was to be taken as Rs.7,535/-- Tribunal had deducted ½ as loss of dependency whereas 1/3rd was to be deducted towards the loss of dependency - taking loss of dependency as Rs.5,000/-, claimant is entitled for the compensation of Rs. 6,60,000/-.

Title: Harpal Singh and others Vs. Ram Pal @ Sanju and others Page-163

Motor Vehicle Act, 1988- Section 166- Deceased was earning Rs. 3,500/- per month- Tribunal had taken his income as Rs. 3,000/-- held, that Tribunal had wrongly taken the income of the deceased as Rs. 3,000/- per month- income of the deceased cannot be less than Rs. 4,000/-- 1/3rd was to be deducted towards personal expenses- claimants had lost source of dependency to the tune of Rs. 2,800/- per month and applying the multiplier of '16', claimants are entitled to the compensation of Rs. 5,37,600/-.

Title: Tara Kaundal and others Vs. Krishan Kumar and others Page-190

Motor Vehicle Act, 1988- Section 166- FIR was lodged against the driver- final report was presented against him before the Court- he was acquitted on the ground that identity of the vehicle was not established- it was admitted in the reply that accident was caused but it was stated that it was caused due to negligence of the deceased and not of driver which shows that identity of the driver and the vehicle was not disputed, therefore, it was not appropriate for the Tribunal to dismiss the petition on the ground that identity of the driver had not been established.

Title: Magni Devi & others Vs. Suneel Kumar & others Page-168

Motor Vehicle Act, 1988- Section 166- Tribunal had awarded Rs. 50,000/- under the head "pain and suffering" and Rs. 50,000/- under the head "loss of amenities of life" which is meager- claimant had suffered 50% disability- thus, an additional amount of Rs. 25,000/- awarded under the head "pain and suffering".

Title: Laxmi Nand Sharma Vs. Sunil Kumar and others Page-165

Motor Vehicle Act, 1988- Section 166- Tribunal had taken the income of the deceased as Rs. 2,100/- per month and had deducted Rs.1,100/- per month towards personal expenses- held, that deduction was not in accordance with law- 1/4th amount was to be deducted- hence, loss of dependency is taken to Rs. 1,600/- per month and applied multiplier of '15'- claimants are entitled for the compensation of Rs. 2,88,000/-.

Title: Leela & others Vs. The Oriental Insurance Company & others Page-166

Motor Vehicle Act, 1988- Section 169- Claimants are not to prove their case beyond reasonable doubt but they have to prove their case prima facie by adopting summary procedure- granting of compensation is just to ameliorate the woes of the victims of the vehicular accidents and to save them from succumbing to the social evils-granting of compensation is a welfare legislation and the hyper technicalities, mystic maybes, procedural wrangles and tangles have no role to play and cannot be made ground to defeat the claim petitions and social purpose of granting compensation.

Title: Magni Devi & others Vs. Suneel Kumar & others Page-168

Motor Vehicle Act, 1988- Section 171- Tribunal had awarded 9% interest from the date of the Claim Petition- held, that Tribunal had fallen in error while awarding interest @ 9% from the date of the Claim Petition- no amount was to be awarded from the date of the award- award modified and the claimant held entitled to interest @ 7.5% per annum from the date of award till the deposit.

Title: National Insurance Company Ltd. vs. Sandeep Chauhan & another (FAO No. 201 of 2007) Page-179

Motor Vehicle Act, 1988- Section 173- Tribunal had awarded amount of Rs.55,000/- as compensation- Insurance Company filed an appeal questioning the award- held, that reputed Insurance Company should not have questioned the award on the ground of inadequacy of awarded amount – award is reasonable and needs no interference.

Title: National Insurance Company Ltd. Vs. Sandeep Chauhan & another

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'N'

N.D.P.S. Act, 1985- Section 20- Accused was found in possession of 4 kg 200 grams of charas- PW-1 stated that accused was straightway searched and no effort was made to trace any independent witness or to stop any vehicle- PW-8 admitted that there was huge traffic flow at the national highway but he had not asked the Constable to stop the vehicle to associate any witness- no reason was given for non-association of independent witness at the time of recovery- the person who carried ruqqa and the case property to the police station was not examined- Column No. 1 to 11 of NCB Form were filled up by same person- Column No.1 to 8 are supposed to be filled up by the Investigating Officer- Column No. 9 to 11 are to be filled up by SHO at the time of resealing the case property- held, that in these circumstances, prosecution version is not proved beyond reasonable doubt- accused acquitted.

Title: Narotam Ram Vs. State of H.P. (D.B.) Page-152

'T'

Transfer of Property Act, 1882- Section 41- Plaintiff had appointed defendant No. 2 as his Power of Attorney- subsequently, Power of Attorney was cancelled by way of registered deed- notice of revocation was given to defendant No. 2- defendant No. 2 executed a Sale Deed

after the cancellation of the deed- defendant No. 1 claimed to be bona fide purchaser for consideration- cross-examination of defendant No. 1 showed that his son was posted as Patwari in Halqa to whom notice of cancellation of deed was given- defendant No. 1 also admitted that he had not visited the suit land and had not seen general power of attorney - he had not obtained any affidavit about the existence of the power of attorney, therefore, plea of defendant No.1 being bonafide purchaser is not acceptable.

Title: Basanti Devi Vs. Parkash Kaur and others Page-114

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BEFORE HON'BLE MR.JUSTICE SURESHWAR THAKUR, J.

Basanti Devi Appellant.
Versus
Parkash Kaur and others Respondents.

RSA No. 437 of 2001
Date of decision: 2.3.2015.

Transfer of Property Act, 1882- Section 41- Plaintiff had appointed defendant No. 2 as his Power of Attorney- subsequently, Power of Attorney was cancelled by way of registered deed- notice of revocation was given to defendant No. 2- defendant No. 2 executed a Sale Deed after the cancellation of the deed- defendant No. 1 claimed to be bona fide purchaser for consideration- cross-examination of defendant No. 1 showed that his son was posted as Patwari in Halqa to whom notice of cancellation of deed was given- defendant No. 1 also admitted that he had not visited the suit land and had not seen general power of attorney - he had not obtained any affidavit about the existence of the power of attorney, therefore, plea of defendant No.1 being bonafide purchaser is not acceptable. (Para-11)

For the appellant: Ms. Sunita Sharma, Advocate.
For the respondents: Mr. Sanjeev Kuthiala, Advocate for respondent No.1.

The following judgment of the Court was delivered:

Sureshwar Thakur, J.*(oral)*

The instant appeal is directed against the judgment and decree, rendered on 16/05/2001, in Civil Appeal No. 34-NL/13 of 1998 by the learned Additional District Judge, Solan, H.P., whereby, the learned First Appellate Court dismissed the appeal, preferred before it by the defendant No.1/appellant.

2. The subject matter of the present suit is that the land measuring 5-18 bighas of land being 1/3rd share in total land measuring 17 bighas 12 biswas comprised in Khewat/Khatauni No. 51/51 Khasra Nos. 276 to 278 and 282 to 285 situate in village Chandpur, Pargana and Tehsil Nalagarh (hereinafter called the suit land).

3. The facts giving rise to the present case are that the plaintiff has alleged that he is owner in possession of the suit land. According to him as he was not in a position to manage the suit land properly he appointed his nephew, defendant No. 2 as his power of attorney to look after the suit land. It is further alleged that for some time the defendant No. 2 acted in accordance with the instructions of the plaintiff but later on the defendant No. 2 started working against his interest and as such he revoked and cancelled the power of attorney given to defendant No.2 through a registered deed and notice of this revocation was also given by him to the defendant No. 2 orally as well as in writing. The plaintiff further alleges that after revocation of the attorney the defendant No. 2 wrongly and illegally executed sale of the suit land in favour of defendant No.1. He further pleaded that the defendant No. 2 fraudulently acted as his power of attorney and as such the aforesaid sale deed executed by him in favour of defendant No. 1 wrong, illegal, null and void and as such defendant No.2 cannot be held to be a bonafide purchaser.

4. The defendants have contested this suit. The defendant No. 1 has taken up preliminary objections regarding locus standi of the plaintiff to file the present suit. On merits he has pleaded that he is a bonafide purchaser for value consideration.

5. The defendant No. 2 in his written statement has taken the objection regarding the maintainability of the suit. On merits he has pleaded that he had sold the suit land to the defendant No. 1 as per instruction of the plaintiff as his general power of attorney.

6. On the pleadings of the parties, the learned trial Court struck following issues inter-se the parties in contest:-

1. *Whether the defendant No. 2 has procured fraudulently general power of attorney from the plaintiff, as alleged? OPP.*
2. *Whether the plaintiff has revoked the said general power of attorney on 19.11.1992, if so its effect? OPP.*
3. *Whether the sale deed executed on 28.11.1992 registered on 30.11.1992 by defendant No. 2 in favour of defendant No. 1 is illegal and void? OPD*
4. *Whether the suit is not maintainable? OPD*
5. *Whether the plaintiff has no locus standi to file the present suit? OPD.*
6. *Whether the suit is bad for misjoinder of necessary parties? OPD.*
7. *Whether the defendant No. 1 is bonafide purchaser of the suit land for a consideration as alleged? OPD-1.*
8. *Relief.*

7. On appraisal of the evidence, adduced before the learned trial Court, the learned trial Court had decreed the suit of the plaintiff and the learned Additional District Judge, Solan, affirmed the findings of the learned trial Court.

8. Now the LR of defendant No.1/appellant has instituted the instant Regular Second Appeal before this Court, assailing the findings recorded by the learned first Appellate Court, in, its impugned judgment and decree. When the appeal came up for admission on 20.09.2001, this Court, admitted the appeal on, the hereinafter extracted substantial questions of law:-

1. Whether t*he duly executed sale deed by attorney of vendor can be set aside merely on the withdrawal of power of attorney by the vendor without any notice of such withdrawal to purchaser or without a public notice of such withdrawal.*
2. *Whether the judgement and decree of the courts below is vitiated for non framing of material issue of collusion between plaintiff and defendant No. 2 thus rendering the appraisal and appreciation of the Evidence illegal and defective.*
3. *Whether the title of a bonafide purchaser can legally be set aside when the purchaser has no notice, knowledge of withdrawal of power of attorney executing the sale deed for and on behalf of*

vendor particularly when the sale deed is executed also to the knowledge of vendor?

9. The learned counsel appearing for the defendant-appellant has canvassed before this Court that the findings on issue No.2 are infirm inasmuch as the then holder of the general power of attorney duly constituted under Ext.PA by the plaintiff extantly arrayed as defendant No.2, whose authorization to act on behalf of the plaintiff-respondent was revoked/cancelled under Ext.PW-2/A, was apparently not made aware of or had remained un-awakened of the factum of his hitherto authorization under Ext.PA having come to be revoked under Ext.PW-2/A. Consequently, she submits that since the act of execution of sale deed qua the suit land inter se the defendant No.1 and defendant No.2 while purportedly acting as the holder of attorney of the plaintiff was begotten on account of lack of the latters awareness or his having no knowledge qua its rescission arising from want of notice issued to him by the plaintiff, as such, the act of execution of sale deed by defendant No. 2 in favour of defendant No. 1 is not illegitimized. She also proceeds to argue that the testimony of the general power of attorney of the plaintiff is insufficient to prove the averments in the plaint especially in the face of the plaintiff having not stepped into the witness box. She concerts to give succor to her contention by adverting to an averment existing in paragraph 3 of the plaint wherein the plaintiff had averred that notice of revocation of Ext.PA under Ext. PW-2/A was communicated orally as well as in writing to the defendant No.2. The general power of attorney of the plaintiff being unaware of the said factum while falling exclusively within the frontiers of the knowledge of the plaintiff hence, was disempowered to prove the averment aforesaid existing in paragraph 3 of the plaint. She espouses that, hence, the testimony of the general power of attorney necessitates its being discarded. Sequelly she contends that the plaintiff ought to be nonsuited.

10. The arguments addressed by the learned counsel for the parties heard at length.

11. The defendant No.2 executed a sale deed with defendant No.1 qua the suit land under the hitherto general power of attorney constituted in his favour by the plaintiff comprised in Ext.PA. The suit land sold under sale deed executed by defendant No.2 with defendant No.1 is canvassed to be covered with the shroud/mantle of protection contemplated under Section 41 of the Transfer of Property Act inasmuch as the defendant No.1 hence being a bonafide purchaser for value for consideration is as such entitled to be construed to be a legitimate beneficiary under sale deed Ext.DW-2/A. As such, she contends that even in the face of cancellation of Ext.PA by the plaintiff, with the defendant No.2 being unaware of revocation of the general power of attorney qua the suit land while executing the sale deed in favour of defendant No.1, the sale deed Ext.DW-2/A having been as such executed in good faith does not loose its legal efficacy. However, her argument that the sale deed qua the suit land comprised in Ext.DW-2/A has been facilitated by good faith or his being construable to be a bonafide purchaser for value would attain success only in the face of theirs being sufficient and ample evidence existing on record portraying the factum that its execution was preceded by a deep and incisive inquiry on the part of the vendee i.e. the defendant No.1 qua the factum of both the tenability and of the valid existence of authorization by the plaintiff to the defendant No.2 to execute a valid deed of conveyance qua the suit land. A reading of the cross-examination of defendant No.1 unveils an admission qua his son being posted as a Patwari in the Halqa where the suit land is situated, its existence therein when entwined with the existence of an admission in the deposition of PW-1 that intimation qua the revocation of general power of attorney was given to the Halqa Patwari who is the son of defendant No. 1 and which part of the statement existing therein has not been concerted to be shred apart by the defendants by proceeding

to examine the Halqa Patwari for eliciting the fact whether he acquired knowledge qua the factum of revocation of the sale deed fillips, hence an apt inference that the Halqa Patwari, who is son of DW-1 conveyed information to DW-1 about its revocation/cancellation. Obviously, then in other words his attaining knowledge qua cancellation of Ext.PA under Ext. PW-2/A, leads to a natural conclusion that he had conveyed intimation to defendant No.1 qua the said factum. The effect of the above inference is that it erodes the fervor and strength of the submission of the learned counsel for the plaintiff that there was no notice or hence the defendant No.1 had no knowledge qua revocation of his hitherto general power of attorney comprised in Ext.PA. Besides a reading of the deposition of defendant No.1 portrays that he had omitted to carry out any a deep or pervasive inquiry so as to render sale deed Ext.DW-2/A to then acquire the flavor of its being executed in good faith or that hence the defendant No.1 was a bonafide purchaser thereof for consideration. Besides, his admission of his having not visited the suit land as also his having admitted that he did not see the general power of attorney before the execution of the sale deed, moreover his also having admitted that he had not obtained any affidavit about the existence of the power of attorney per-se communicates wanton negligence, as such, concomitantly portrays lack of carrying out of any deep and incisive inquiry by him for disinterring the entitlement of the defendant No.2 to execute a sale deed qua the suit land with defendant No.1. Rather then the conclusion which is to be drawn is that the protection of Section 41 as claimed by the appellant is unavailable to him. Even though the counsel for the defendant-appellant also submits that the testimony of the plaintiff is to be discarded in the face of the plaintiff having not by stepping into the witness box proven the averments in the plaint. However, the mere factum of the plaintiff having not stepped into the witness box to prove the averments in the plaint would not result in discarding the testimony on oath of his general power of attorney, especially when the latter is his son-in-law and who is to be presumed, more so when there is no apposite cross-examination, to have been made aware by the plaintiff of the details averred in the plaint. Though there is a specific averment in paragraph 3 of the plaint of the plaintiff having served a notice orally as also in writing to the defendant No.2 about the revocation of general power of attorney comprised in Ext.PA and hence she contends that the said fact falling within the exclusive knowledge of the plaintiff was necessarily enjoined to be proven on oath by the plaintiff alone. However, assuming that the said fact fell within the ambit and knowledge of the plaintiff alone and warranted the stepping into the witness box of the plaintiff to prove it. Nonetheless, the factum of existence of an averment in paragraph 5 of the plaint, of the general power of attorney of the plaintiff having also orally intimated the defendant No. 1 about revocation of Ext.PA qua which a para-materia deposition exists and which has remained un-shattered did hence also render him equally competent to depose as a witness qua the factum of defendant No. 2 having been intimated qua the factum of cancellation of Ext.PA under Ext.PW-2/A. Even otherwise, communication or non communication orally or in writing of the cancellation of Ext.PA under Ext.PW-2/A and it being warranted to be deposed alone by the plaintiff looses its significance, in the face of the aforesaid discussion unfolding the factum that the claim of the defendant No.1 herein of his being bonafide purchaser of the suit land for value hence enjoying the protection of Section 41 of the Transfer of Property Act, suffers erosion for the reasons detailed hereinabove.

12. In view of the above discussion, I find no merit in this appeal, which is accordingly dismissed and the judgment and decree of the both the Courts below are maintained and affirmed. Substantial questions of law are answered accordingly. No costs.

****

BEFORE HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Dharmender Singh and others .....Petitioner/Accused.
Versus
State of H.P. .....Respondent.

Criminal Revision No. 121 of 2007
Date of Decision :2nd March, 2015.

Indian Penal Code, 1860- Sections 147, 148, 341, 323, 326 and 506 – Accused formed an unlawful assembly- they wrongfully restrained the complainant and abused him- Accused 'J' and 'M' caused injury on the arm of the complainant with sharp edged weapon- complainant raised alarm on which his father arrived at the spot- accused also administered beating to him- some people gathered at the spot who rescued the complainant- there were contradictions regarding the person who had handed over the darat to the police- no disclosure statement was made by the accused prior to the handing over the darat to the police- these facts lead to an inference that accused was unaware of the place of hiding or that the darat was not recovered at the instance of the accused but was planted by Investigating Officer- Investigating Officer had omitted to collect the blood stained earth bearing the blood stains of the victim - eye-witness deposed that Darat was blunt at the time of recovery but was found sharp in the court, which shows that it was sharpened subsequently- all these circumstances make the prosecution case doubtful- accused acquitted. (Para-11 to 14)

For the Petitioners: Mr. Ajay Sharma, Advocate
For the Respondent: Mr. R.S. Thakur, Addl. A.G. and Mr. Vivek Singh Attri,Deputy Advocate General.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge (Oral).

The instant criminal revision is directed against the impugned judgment rendered on 7.7.2007 by the learned Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala, H.P in Cr. Appeal No. 9-D/2005/2003, whereby, the learned Additional Sessions Judge affirmed the conclusions/findings recorded by the learned Judicial Magistrate, 1st Class, Dharamshala, H.P. in Criminal Case No.36-II/02, of 01.02.2003, whereby the petitioners/accused were convicted and sentenced accordingly.

2. Brief facts of the case are that on 10.05.2002 at about 8.30 P.M., Naveen Kumar was returning home after snapping photographs in some marriage at Bhanala. When he reached at his Village Goju and was at a distance of about 80 meters from his house, the accused after forming an unlawful assembly wrongfully restrained him and used abusive language against him. The accused did this after forming unlawful assembly in prosecution of their common object and accused Jasbir Singh attacked Naveen Kumar with sharp edged weapon and caused injury on his arm. The injured raised alarm on which his father Dalip Singh rushed to the spot. When Dalip Singh tried to rescue Naveen Kumar, he was also administered beatings by the accused. Some people also assembled on the spot and Naveen Kumar and his father were rescued from the clutches of the accused by them. All the accused have been alleged to have been armed. The accused while leaving the spot also raised threats to the lives of the injured Naveen Kumar as well as his father Dalip

Singh. The matter was reported to the police and FIR was registered. The investigation in the matter was conducted. During the investigation darat with which the injury was allegedly caused on the person of Naveen Kumar was taken into possession in presence of witnesses in the police station. The shirt of Naveen Kumar was also taken into possession. Both the injured were got medically examined. Naveen Kumar was found having suffered simple as well as grievous injuries whereas his father Dalip Singh was found having suffered simple injury. The statements of the witnesses were also recorded.

3. On conclusion of the investigation, into the offence, allegedly committed by the accused, report under Section 173 of the Code of Criminal Procedure was prepared and filed in the Court.

4. Accused were charged for theirs having committed offences punishable under Sections 147, 148, 341, 323, 326 and 506 of the IPC by the learned trial Court to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined 11 witnesses. On closure of prosecution evidence, the statements of the accused under Section 313 of the Code of Criminal Procedure were recorded in which they pleaded innocence and no evidence was led by them in defence.

6. On appraisal of the evidence on record the learned trial Court returned findings of conviction against the accused/petitioners. In appeal preferred by the accused/petitioners, the learned Additional Sessions Judge affirmed the findings/conclusions recorded by the learned trial Court.

7. The accused/petitioners are aggrieved by the judgment of conviction recorded by the learned trial Court and affirmed by the learned Additional Sessions Judge. The learned defence counsel has concertedly and vigorously contended that the findings of conviction recorded by the learned trial Court and affirmed by the learned Additional Sessions Judge are not based on a proper appreciation of the evidence on record, rather, they are sequelled by gross mis-appreciation and non appreciation of the material on record. Hence, he contends that the findings of conviction be reversed by this Court in the exercise of its revisional jurisdiction and be replaced by findings of acquittal.

8. On the other hand, the learned Deputy Advocate General has with considerable force and vigour, contended that the findings of conviction recorded by the learned trial Court below and affirmed by the learned Additional Sessions Judge are based on a mature and balanced appreciation of evidence on record and do not necessitate interference, rather merit vindication.

9. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

10. The overwhelming factor which predominated both the learned Court below to record findings of conviction against the accused was the factum of the purported eye witnesses to the occurrence, PW-2 and PW-3 having both deposed in harmony and in tandem qua the incident, besides the factum of the alleged weapon of offence darat Ex.P-1 efficaciously proved to be recovered under seizure memo Ex.PW6/A also weighed with both the learned Court below in recording findings of conviction against the accused/petitioners. The learned counsel for the petitioners/accused has contended with force that the implicit reliance placed by the learned Court below on the existing material on record is ridden with infirmity and frailty. However, on the other hand the learned Additional Advocate General

has with equal fervor argued that the prosecution has been able to prove the guilt of the accused/petitioners by adducing clinching evidence on record comprised in the material tenably relied upon by both the learned Courts below.

11. I have perused the records with incisive care and caution. It is apparent that though the weapon of offence darat Ex.P-1 recovered under memo Ex.PW6/A has been purportedly proved to have been efficaciously recovered by the recorded deposition of witnesses to it, who have stepped into the witness box as PW-6 and PW-9 respectively, yet an incisive scanning of the deposition of PW-6 underscores the legal frailty with which it stands gripped. PW-6 in his deposition comprised in his examination-in-chief has deposed that the darat Ex.P-1 was handed over by accused Jasbir Singh. However, in his cross-examination he has proceeded to name one Harnam Singh to be the person, who 10-15 days after the occurrence produced Ex.P-1 in the police station. In the next breath he vacillates and deposes that one Hem Raj had handed over darat Ex. P-1 to the police. Obviously, hence, on a close reading of his deposition comprised both in his examination-in-chief and cross-examination, portrays the factum that there has been lack of an unflinching portrayal therein of whether accused Jasbir Singh was the person, who had handed over darat Ex.P-1 to the police, that too 10/15 days after the occurrence or whether one Harnam or Hem Raj had handed over the darat Ex.P-1 to the police. The vacillation existing in his testimony recorded on oath obviously has not been able to unveil the categorical factum whether accused Jasbir Singh or whether Harnam or Hem Raj is the person, who had handed over the darat Ex.P-1 to the police. The existence of vacillation therein and lack of an accurate and unwavering revelation of the identity of accused Jasbir Singh being the person at whose instance darat Ex.P-1 was recovered, prods this Court to conclude that the testimony of this witness is ridden with the frailty of disharmony inter se in his deposition in his examination-in-chief and in his cross-examination, for constraining this Court to draw a conclusion that as a matter of fact accused Jasbir Singh had under memo Ex.PW6/A handed over darat Ex.P-1 to the police in his presence. Pre-eminently, the factum existing in his cross-examination, of Harnam Singh having produced darat Ex.P-1 to the police 10-15 days after the occurrence and which deposition stand equivocated by him, inasmuch as he proceeded to depose that one Hem Raj did so and that too in the police station, fillips an inference that the factum as displayed in Ex.PW6/A of Ex.P-1 (darat) having been recovered at the instance of accused Jasbir Singh in the manner disclosed therein is ridden with falsity. Consequently, it appears that both the learned Courts below have misread and mis-appraised the testimony of PW-6 even when it displayed lack of an accurate depiction of the identity of the accused and his being the person who begot an efficacious recovery of darat Ex.P-1 under recovery memo Ex.PW6/A. In sequel, it appears that, hence, there was dearth of or scanty evidence existing on record for both the learned Courts below to conclude that accused Jasbir Singh had enabled the effectuation of recovery of darat Ex.P-1 in a legally efficacious manner.

12. In aftermath, the factum of recovery of darat Ex.P-1 under memo Ex.PW6/A falls apart. Dehors the fact that the evidence on record omits to disclose the factum of accused Jasbir Singh having enabled the effectuation of recovery of darat Ex.P-1 at his instance, the factum that recovery memo Ex.PW6/A has remained unpreceded by a disclosure statement, leaves this Court to draw the following inferences, especially coupled with the fact that the deposition of PW-6 upsurges an inference qua the frailties and infirmities gripping its recovery (a) accused Jasbir Singh was unaware of its place of keeping and hiding; (b) darat, Ex.P-1 being recovered 10/15 days after the occurrence, hence, was not recovered at his instance rather was planted by the Investigating Officer and that the accused was led to the place of its keeping and hiding, which was not in the exclusive knowledge of the accused rather was within the knowledge of the Investigating Officer.

Consequently, it appears that even on that score the recovery of Ex.P-1 under recovery memo Ex.PW6/A having remained unpreceded by a disclosure statement made by the accused/revisionist Jasbir Singh before the Investigating Officer divulging therein the factum of the accused exclusively knowing the place of its concealment, keeping and hiding, boosts an inference that its recovery has not been effected in a legally efficacious manner. In sequel, its recovery looses its potency and legal vigour.

13. Besides, the testimonies of PW-2 and PW-3, the purported eye witnesses to the occurrence, though unveil the factum of the presence of the accused at the site of occurrence, nonetheless, their testimonies cannot ipso facto constrain this Court to nail the guilt of the accused, especially when the weapon of offence as purportedly attributed to the accused and witnessed to have been used by them, hence, for the reasons recorded hereinabove, having not been proved to have been efficaciously recovered at the instance of the accused. Moreover, what tears apart the probative value of their testimonies is the fact that the Investigating Officer has omitted to collect the blood stained earth purportedly bearing the blood stains of the victim, for examination by the FSL. Omission on the part of the Investigating Officer to do so and consequently, the non rendition of an opinion by the FSL revealing the fact that the blood stained earth contained the blood group of the complainant/victim, hence, was the best evidence to conclude qua the presence of the accused at the site of occurrence, renders open a concomitant deduction that the aforesaid omission on the part of the Investigating Officer leaves the testimonies of the eye witnesses to the occurrence to be discardable.

14. Even when PW-6 in his deposition on oath comprised in his cross-examination deposes that Ex.P-1 was blunt at the time of its recovery and now it appears to be subsequently sharpened, as a corollary, given the deposition of PW-6, witness to the recovery of weapon of offence, darat Ex.P-1, inasmuch as, its being blunt at the time of its recovery and it being, hence, not capable to inflict a deep incised wound as occurring on the body of the victim/complaint does also give leeway to the inference that, hence, the purported weapon of offence was blunt and it was not capable of causing injuries as noticed on the person of the victim, more so, when qua the aforesaid fact the learned APP has omitted to cross-examine this witness. In aftermath, the invincible conclusion is that even the eye witnesses to the occurrence have to be disbelieved qua the factum of accused/revisionists having been seen by them to have used the sharp edged weapon of offence to inflict the incised wound on the person of the victim. For the reasons stated hereinabove the impugned judgments of the learned Courts below are gripped with the affliction of theirs carrying the taint of omitting to appreciate the relevant and admissible material on record, concomitantly, such omissions constitute them to be also ingrained with the vice of material irregularity and legal impropriety.

15. For the foregoing reasons, the revision petition is allowed and the judgments of the learned Courts below are set-aside. Accused/revisionists are acquitted of the offences charged. Fine amount, if any, deposited by the accused/revisionists, be refunded to them. The case property i.e. darat, Ex.P-1 be destroyed after the expiry of the period of limitation. Bail bonds furnished by the accused/revisionists stand discharged. Records be sent back forthwith.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

State of Himachal Pradesh .....Appellant.
Versus
Kalu Ram & Others .....Respondents.

Cr. Appeal No. 282 of 2009
Reserved on: 27.2.2015
Decided on : 4/03/2015

Indian Penal Code, 1860- Sections 306 and 498-A read with Section 34- Deceased disclosed to the complainant one month prior to her death that she was maltreated and harassed by the accused persons because of her inability to bear a child – subsequently she committed suicide by consuming poison – marriage of the deceased with the accused subsisted for about 8 years- no child was born out of wedlock- complainant stated that her statement was only recorded on 4.5.2007 whereas FIR was recorded on 1.5.2007- this makes prosecution case highly suspect- she admitted in her cross-examination that she had told the police that deceased used to remain disturbed for not bearing the child which shows that the agony suffered by the deceased was self engineered- PW-2 had not disclosed to any person that deceased had complained about the harassment to her which makes her testimony suspect- therefore, in these circumstances, conclusion of the Trial Court that prosecution case was not proved was reasonable. (Para-11 to 14)

For the Appellant: Mr. M.A Khan, Additional Advocate General.
For the Respondents: Mr. B.S Attri, Advocate.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge

The instant appeal is directed against the judgment, rendered on 21.11.2008 by the learned Additional Sessions Judge, Fast Track Court, Kullu, H.P., in Sessions Trial No.18 of 2008 whereby the respondents have been acquitted of the offence punishable under Sections 306 and 498A read with Section 34 of the Indian Penal Code.

2. The facts, in brief, are that complainant Vidya Devi is resident of village Chanoun. Her husband Dile Ram was having two wives. Second wife of Dile Ram, namely, Smt. Ayodhya had died about ten years back. One son and one daughter Pushpa were born to Ayodhya. The marriage of Pushpa Devi was solemnized with Kalu Ram about seven years back as per Hindu rites and rituals. Pushpa Devi used to remain perturbed as she was unable to bear child. She used to visit her parental house from time to time. She disclosed the complainant one month prior to the incident that she was subjected to maltreatment and harassment by the accused persons, because she was unable to bear child. On 30.4.2007, a telephonic message was received by the complainant that Pushpa had taken ill and as such she should visit her house at village Leegan. She, along with her relatives, went to the house of Pushpa Devi. A number of villagers and relatives had assembled there. Pushpa Devi was lying dead in the verandah of the house. She enquired about the cause of death on which she was told that Pushpa had consumed poisonous substance and resultantly, she died. Pushpa Devi had committed suicide on account of hers being maltreated and harassed by the accused persons. This incident was reported by her at

Police Post, Patlikuhl on 30.4.2007 on which her statement under Section 154 Cr. P.C. was recorded. Statement of complainant was sent to Police Station, Kullu, on which F.I.R. was registered and investigation in the case started. One bottle of "Nuvan, Salwar, Kameej and Kotti" of deceased were taken into possession by the police in the presence of witnesses Ram Dei and Anup Ram from the spot. Inquest report was prepared by SI Sarwan Singh. Dead body was brought to Regional Hospital, Kullu, for conducting postmortem examination. Dr. Om Pal, Medical Officer, RH, Kullu conducted postmortem examination of deceased Pushpa alongwith Dr. Sushil Chander. A detailed postmortem examination report was prepared according to which deceased died owing to consumption of poison. Viscera was handed over to the police by Dr. Om Pal. Site plan of occurrence was also prepared. Viscera and clothes of deceased were sent to FSL, Junga for the purpose of examination. Organo phosphorous insecticide was detected in viscera.

3. On conclusion of investigation into the offence, allegedly committed by the accused/respondents, challan was filed under Section 173 of the Code of Criminal Procedure.

4. The accused were charged for theirs having committed offences punishable under Sections 306, 498A read with Section 34 of the IPC by the learned trial Court, to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined as many as 12 witnesses. On closure of the prosecution evidence, the statements of the accused under Section 313 Cr.P.C., were recorded, in which they pleaded innocence. On closure of proceedings under Section 313 Cr.P.C., the accused were given an opportunity to adduce evidence in defence, and they chose not to adduce any evidence in defence.

6. On appraisal of the evidence on record, the learned trial Court, returned findings of acquittal in favour of the accused/respondents.

7. The State of H.P. is aggrieved by the judgment of acquittal, recorded by the learned trial Court. Shri M.A Khan, learned Additional Advocate General, has concertedly and vigorously contended that the findings of acquittal, recorded by the learned trial Court, are not based on a proper appreciation of the evidence on record, rather, they are sequelled by gross mis-appreciation of the material on record. Hence, he contends that the findings of acquittal be reversed by this Court, in the exercise of its appellate jurisdiction and be replaced by findings of conviction and concomitantly, an appropriate sentence be imposed upon the accused/respondents.

8. On the other hand, the learned counsel, appearing for the respondents-accused, has, with considerable force and vigour, contended that the findings of acquittal, recorded by the Court below, are based on a mature and balanced appreciation of evidence on record and do not necessitate interference, rather merit vindication.

9. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

10. The marriage of deceased Pushpa Devi with accused Kalu Ram subsisted for about 8 years. No child was born out of the wedlock of deceased Pushpa with the accused Kalu Ram. The prosecution story is of the accused having actuated, instigated and fomented the commission of suicide by the deceased, hence abetted it, arising from their penal act of harassing the deceased for not bearing a child as also arising from the fact of threats meted out by accused Kalu Ram to the deceased to solemnize a second marriage. The purported instigation arising from the facts aforesaid led the deceased to consume

Organo Phosphorous insecticide. A perusal of Post Mortem Report comprised in Ex. PH underscores the factum of the demise of the deceased having been begotten on account of consumption by her of Organo Phosphorus insecticide as detected to be occurring in her viscera. The prosecution case would attain sanctity only in the event of an incisive evaluation of testimonies of the prosecution witnesses underlining the factum of theirs having not indulged in a bout of either inter-se or intra-se contradictions comprised respectively in their examinations-in-chief and cross-examinations, as also in their respective testimonies deposed on oath.

11. Primarily the foundational fact hence constituting the anvil of the prosecution case is the statement of PW-1 comprised in Ex. PA on strength whereof FIR qua the occurrence was lodged. The FIR is of 1.5.2007. Consequently, the complainant PW-1 was enjoined to depose on oath events in tandem with those purportedly attributed to her in her statement comprised in Ex. PA. Besides she was hence, obliged to depose on oath that she had reported the incident to the police on 30.4.2007 in quick succession whereto an FIR qua the incident attributing an inculpatory role to the accused was lodged. However, in her deposition on oath comprised in her cross-examination she has deposed that her statement was recorded only on 4.5.2007. Consequently, she has omitted to lend credence, rather has controverted the factum of any disclosure by her to the police in her purported statement comprised in Ex. PA. Hers hence, contradicting the factum of hers having made a statement comprised in Ex. PA, fillips an inference that the contents of the FIR lodged qua the occurrence in quick succession to Ex. PA stands both belied as well as contradicted. As a corollary then the anvil of the prosecution case stands dismantled. Even otherwise, even if, her deposition comprised in her examination-in-chief is may be in tandem with the prosecution version of the accused meeting ill-treatment or maltreatment to the deceased on account of hers suffering from sterility as also on account of threats having been meted to her by accused Kalu Ram to hence solemnize a second marriage, as such, then theirs constituting instigatory facts for the deceased to consume poison. Nonetheless, when in her deposition comprised in her examination-in-chief she has deposed that she had not disclosed to the police the fact of the deceased having come to be harassed by the accused for not bearing a child rather when she has in her deposition comprised in her cross-examination communicated therein that she had disclosed to the police that the deceased used to remain perturbed for not bearing a child without having proceeded to also depose that hers lack of mental poise and equanimity was begotten on account of hers being put to a trauma at the instance of the accused for hers not begetting a child, constrains an apt conclusion that in the deceased remaining perturbed and loosing her equanimity arose not on account of hers being harassed, humiliated or maltreated by any of the accused. Sequelly, hers being perturbed is to be attributed entirely to self abnegation or the mental trauma which beset her was self engineered.

12. Moreover, the prosecution has also relied upon the deposition of PW-2. Though, she in her examination in chief has lent corroboration to the prosecution version. However her deposition comprised in her examination-in-chief wherein she has in tandem with the prosecution version attributed an inculpatory role to the accused is not either got to be read in isolation or fragmentarily, rather it has to be read in entwinement with and in conjunction with her deposition comprised in her cross-examination. Only a combined reading of her deposition comprised in her examination-in-chief and cross-examination would enable this Court to disinter her veracity. However, when the fact of attribution by PW-2 in her examination-in-chief of an inculpatory role to the accused stands in her deposition comprised in her cross examination eroded, comprised in the factum of hers having deposed therein qua the deceased having one year prior to the incident divulged to her the fact of hers having been meted harassment by the accused for not bearing a child

results in the upsurging of an inference, that her omission to disclose the fact earlier to either the Panchayat or to report the matter to the police, per-se conveys her reticence, which prolonged reticence on her part gives play to the deduction that PW-2 has in her deposition in her cross-examination indulged in a bout of invention and concoction while attributing an inculpatory role to the accused. Even otherwise, even if, assuming that the deposition of PW-2 acquires tenacity, nonetheless in the face of the purported disclosure by the deceased to her qua the purported instigatory fact attributed to the accused having occurred one year prior to the occurrence, consequently given the remoteness inter-se the initial disclosure qua the germination or arising of the purported actuatory cause for the deceased to commit suicide and its consummation, the prime and preeminent element of proximity inter-se the purported instigatory facts and the occurrence stands unsubstantiated. In face thereof the effect if any, of her deposition comprised in her examination-in-chief stands effaced. Even the deposition of PW-3 looses its credibility in the face of hers having in her cross-examination deposed that the disclosure qua the incident had come to be unraveled or unfolded by her for the first time in the Court. As such, the disclosure qua the incident by her only in Court constitutes the disclosure to be acquiring the taint of embellishment and improvement. Besides, when she in her cross-examination has also proceeded to depose that her deposition comprised in her examination-in-chief wherein she has attributed an inculpatory role to the accused has been made at the behest of PW-1, renders it to be a wholly concocted and tutored version leaving it bereft of naturalness. Consequently, it cannot be imbued any credibility.

13. The aforesaid discussion brings to the fore the fact that the prosecution evidence is highly discrepant and has abysmally failed to prove the charge to which the accused were subjected to trial.

14. A wholesome analysis of the evidence on record portrays that the appreciation of evidence as done by the learned trial Court does not suffer from any perversity and absurdity nor it can be said that the learned trial Court in recording findings of acquittal has committed any legal misdemeanor, in as much, as, it having mis-appreciated the evidence on record or omitted to appreciate relevant and admissible evidence. In aftermath this Court does not deem it fit and appropriate that the findings of acquittal recorded by the learned trial Court merit inference.

15. In view of above discussion, we find no merit in this appeal, which is accordingly dismissed, and, the judgment of the learned trial Court is affirmed. Record of the learned trial Court be sent back forthwith.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Pritam Chand & another .....Appellants.

Versus

State of Himachal Pradesh .....Respondent.

Cr. Appeal No.552 of 2008
Reserved on: March 04, 2015.
Decided on: March 05, 2015.

Indian Penal Code, 1860- Section 302 read with Section 34- Complainant saw the accused digging a water channel to divert the flow of water towards his house- complainant asked

the accused not to do so and to convene a Panchayat to resolve the matter- Panchayat asked the parties to allow the water to pass as before but the accused did not agree to the suggestion of the Panchayat - accused 'S' picked up a danda and gave 2-3 blows on the shoulder and back of 'L'- accused 'P' picked up a stone and threw it on the chest of 'L'- 'L' collapsed on the spot and was taken to the home- 'L' succumbed to the injury – Medical Officer had not noticed any penetrative injury on the chest wall- no fracture of ribs was noticed- there was no injury to lungs and heart and no wound was detected on the pulmonary artery- no internal bleeding was noticed from the vital organs- held, that severe injury would be caused by a stone if it is thrown from a distance with force – in these circumstances, prosecution was not proved- accused acquitted. (Para-23 to 25)

For the appellants: Mr. N.S.Chandel, Advocate.
For the respondent: Mr. J.S.Guleria, Asstt. AG.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This appeal is instituted against the judgment dated 18.8.2008, and consequent order dated 25.8.2008, rendered by the learned Addl. Sessions Judge (I), Kangra at Dharamshala, H.P. in Sessions Case No. 9-P/2006, whereby the appellants-accused (hereinafter referred to as the accused), who were charged with and tried for offences punishable under Sections 302/34 of the IPC, have been convicted and sentenced to undergo life imprisonment and to pay a fine of Rs. 25,000/- each for commission of the offence punishable under Section 302 IPC read with Section 34 IPC. In default of the payment of fine, the convicts were ordered to undergo simple imprisonment for a period of two years each, separately. Out of the amount, an amount of Rs. 40,000/- was ordered to be paid as compensation to the children of the deceased.

2. The case of the prosecution, in a nut shell, is that on 22.9.2005, the complainant Trilok Chand (PW-2) reached his house in Village Badehar at about 6:30 PM from Palampur. He saw the accused Pritam Chand digging a water channel with a view to divert the flow of water towards his house. He asked him not to do so. He also requested him to place the matter before the Local Panchayat. On 23.2.2005, local Panchayat was convened at 8:00 AM. It comprised of Smt. Ishwari Devi (PW-3), Prem Chand (PW-4), Mehar Singh and Bhagi Rath. The accused persons also reached the spot. One Lalman (deceased) the elder brother of the complainant, his family members and the complainant were also present on the spot. The Panchayat persons impressed upon the parties to allow the water to pass as before, but the accused Pritam Chand did not agree to it and told the Panchayat that the water would go as per his wish. Lalman told Pritam Chand that he being elder in age is in a better position to tell as to how the water used to flow earlier. Thereafter, there was exchange of hot words in between Lalman and accused Pritam Chand. When the heated arguments were going on between them, the accused Santosh Kumar picked up a bamboo '*danda*' and gave 2/3 blows on the shoulder and back of Lalman. Accused Pritam Chand picked up a stone weighing about 2-2 ½ kgs. and threw it on the chest of Lalman. Lalman collapsed on the spot. He was taken inside the house. The accused ran away from the spot. One Kehar Singh in between went to Police Post Panchrukhi. He got rapat No. 6 entered in rapat roznamcha vide Ext. PW-1/A. ASI Onkar Singh, HC Kushal Kumar, HC Subhash Chand, HHC Madan Singh, Trilok Raj and Const. Gopal Dass proceeded towards the spot. ASI Onkar Singh recorded the statement of the complainant Trilok Chand Ext. PW-2/A. It was sent to the Police Station Palampur and FIR Ext. PW-12/A was registered.

Photographs of the spot were taken. The inquest papers were prepared. Site plan was also prepared. The post mortem examination of the dead body was got conducted. The report of post mortem is Ext. PW-5/C. The police also took into possession '*danda*' Ext. P-1 and stone Ext. P-3. The shoes Ext. P-2 of the deceased were found at the place of occurrence and the same were taken into possession by the police vide memo Ext. PW-2/C. The case property was sent to FSL Junga through HHC Tilak Raj vide RC No. 149/21. The chemical report is Ext. PW-14/B. The statements of 4 witnesses Ishwari Devi, Bhagi Rath, Mehar Chand and Prem Chand were recorded under Section 164 Cr.P.C. before the then ACJM, Palampur. On completion of the investigation, challan was put up after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as 15 witnesses. The accused were also examined under Section 313 Cr.P.C. They have denied the prosecution case. The learned trial Court convicted and sentenced the accused, as noticed hereinabove. Hence, this appeal.

4. Mr. N.S.Chandel, Advocate for the accused has vehemently argued that the prosecution has failed to prove the case against the accused. On the other hand, Mr. J.S.Guleria, learned Asstt. Advocate General, appearing on behalf of the State, has supported the judgment of the learned trial Court dated 18.8.2008.

5. We have heard learned counsel for both the sides and gone through the records of the case carefully.

6. PW-1 Kalyan Chand has proved the rapat roznamcha dated 23.9.2005 vide memo Ext. PW-1/A.

7. PW-2 Trilok Chand, is the brother of the deceased. He reached the house at about 6:30 PM. He had gone back to his house from Palampur. When he reached his house, he saw Pritam Chand accused digging a water channel with a view to divert the water towards his house. He asked him not to do so. He had requested him that they will ask local Panchayat to assemble on the next day so that the matter could be resolved. On 23.9.2005, the local Panchayat assembled at 8:00 AM consisting of Ishwari Devi, Prem Chand, Mehar Singh and Bhagi Rath. Both the accused Pritam Chand and Santosh Kumar were also present on the spot. His elder brother Lalman, his family members were all present on the spot. The Panchayat had insisted that the water should be allowed to pass through as before but the accused Pritam Chand told the Panchayat that he would allow the water to pass through as per his wish. His elder brother Lalman told the accused Pritam Chand that he knew it better as to how the water used to go earlier being elder in age. There was exchange of hot arguments between accused Pritam Chand and his elder brother Lalman. When the arguments were going on between them, by that time accused Santosh picked up a bamboo '*danda*' and gave its 2/3 blows on shoulder and back of his brother Lalman. Accused Pritam Chand picked up a stone weighing about 2 ½ kg and gave its blow to his brother Lalman on his chest. His brother collapsed. He was taken inside the house. The accused ran away. The police visited the spot. The police recorded his statement Ext. PW-2/A. He recognized '*danda*' Ext. P-1 and stone Ext. P-3. In his cross-examination, he admitted that Kehar Singh (PW-10) is his real brother.

8. PW-3 Ishwari Devi is ward Panch of Ward No. 4. According to her, on 23.9.2005, she had been called for spot inspection by Trilok Chand. Bhagi Rath, Mehar Chand and Prem Chand were also with her for the spot inspection. They reached the spot at 8:00 AM. There was dispute about the passage of the water. Trilok Chand, Kehar Singh, Lalman, Pritam and Santosh were present on the spot. The daughters of Lalman were

standing in the courtyard. They impressed upon the parties that the water should be allowed to go as before but Pritam Chand did not agree. On this, Lalman who was standing behind told Pritam Chand that the water was going through the passage and he knew it very well being elder in age. Accused Santosh picked up danda from there and gave its blows to Lalman on his shoulder. Accused Pritam Chand picked up the stone from there and gave its blow to Lalman on his chest on the left side. Lalman collapsed at the spot. The persons present on the spot started rescuing Lalman. In his cross-examination, he admitted that her statement was recorded before the Judicial Magistrate on 27.9.2005. She also admitted that blood had not oozed from the injury but the spot had become red. She denied the suggestion that Lalman was patient of high blood pressure and had fallen on the spot due to this reason.

9. PW-4 Prem Chand also deposed that he was present on the spot alongwith Mehar Singh, Bhagi Rath and Ishwari Devi. The parties were disputing the flow of water. They made them to understand that the flow of water should be allowed as earlier. Lalman told that water to both the parties should be allowed to go as before and he knew better how the water had been flowing being elder in age. The accused did not agree to the views expressed by Lalman. Accused Santosh picked up a danda and gave its 2-3 blows to Lalman. One stone was also lying at the spot which was picked up by accused Pritam and he threw it on Lalman which hit him on the chest. The accused ran away from the spot. His statement was also recorded before the Magistrate, vide memo Ext. PW-4/A. He denied the suggestion in his cross-examination that there were only scratches because of the stone. Volunteered that there was distinct mark on the deceased.

10. PW-5 Dr. Vinay Mahajan, has conducted the post mortem examination. He issued report Ext. PW-5/C. He noticed abrasion reddish brown in colour shape measuring 4 cm in length and 1.5 cm wide at the point of maximum width, on left side of front of chest at the level of left nipple 5 x 5 cm, middle to left nipple. On dissection sub-contaneous blood was present at the margins and underneath. He also noticed abrasion reddish brown in colour 1.5 x 1 cm in size on the lateral aspect of middle right forearm. On dissection subcutaneous, blood was present. According to his opinion, the death has occurred due to shock. He also deposed that due to striking of the stone on the chest, it could lead to shock which could further lead to death. In his cross-examination, he admitted that he has mentioned only two injuries in his post mortem report. These injuries were present which were due to rubbing of upper part of skin. He has not noticed any other damage. The abrasions were simple injuries. He also deposed that the stone shown to him Ext. P-3 weighing 2 ½ kg and if it is hit with force it can cause extensive injury. He also admitted that while giving his opinion on 17.12.2005 vide Ext. PW-5/D, he has opined that injury on the chest mentioned in the post mortem report could be caused by the '*danda*'/stone produced in front of them by the police. However, they cannot comment that the '*danda*'/stone could have caused the death in this case.

11. PW-6 Ved Prakash has taken the photographs vide Ext. PW-6/A to Ext. PW-6/G.

12. PW-7 Anirudh Patwari has prepared the *jamabandi* Ext. PW-7/A and *tatima* Ext. PW-7/B.

13. PW-8 HHC Tarlok Raj deposed that on 23.9.2005, the doctor conducted the post mortem of the deceased and handed over one sealed parcel containing viscera which was sealed with seven seals of CHP. He deposited these articles with MHC PS Palampur in the same condition. On 26.9.2005, MHC PS Palampur had handed over all these articles to

him vide RC No. 149/21 for depositing the same in FSL, Junga. He deposited all these articles at FSL, Junga on 27.9.2005.

14. PW-9 Sumna Devi is the daughter of the deceased. She deposed that on 23.9.2005, at 8:00 AM her uncle Trilok Chand had summoned Panchayat to resolve the water dispute. She alongwith her uncle Trilok Chand, her sister Sudershna Devi, both the accused persons, Kehar Singh etc. were also present at the spot. The Panchayat members were impressing upon the accused persons regarding the flow of water. The accused persons were saying that the water would go as per their will. However, her father was objecting to it. Thereafter, the accused persons started arguments with her father. Accused Santosh Kumar gave four '*danda*' blows on the back of her father. The '*danda*' was of bamboo. Accused Pritam picked up a stone of about 2 ½ kg and threw it on her father which had struck him on his chest. His father became unconscious. He was picked up and taken inside the room. In her cross-examination, she admitted that the entire occurrence has taken place in presence of Kehar Singh. According to her, Keher Singh after about half an hour had gone to police to give information.

15. PW-10 Kehar Singh is the brother of the deceased. According to him, his brother Trilok Chand had summoned the Panchayat on 23.9.2005. Panchayat members Bhagi Rath, Prem Chand, Mehar Singh and Ishwari Devi had reached their house at 8:00 AM. The Panchayat had been summoned to settle the dispute of water channel. He alongwith Lalman, Trilok and accused persons were present on the spot alongwith the Panchayat members. Lalman impressed upon all of them that he being elder in age knew how the water was flowing earlier. The accused did not agree to his request. Trilok Chand and his wife started digging adjacent to the channel. The wife of accused Pritam Chand objected to it. She sustained injury on her hand. Accused Santosh had not done anything. He did not know what accused Pritam had done. His brother Lalman was standing on one side and they were standing on the other side and his brother had a fall and thereafter he was sent to call for the doctor. He was declared hostile. In his cross-examination by the learned Public Prosecutor, he has admitted his signatures on the rapat. He also admitted that Lalman deceased was his real bother and the accused were sons of his Uncle. He has further admitted the suggestion that the deceased had fallen down with his chest on the ground. It was possible that Lalman might have sustained injury on his chest due to the small stones lying on the ground.

16. PW-12 HC Kehar Singh deposed that on 23.9.2005, rukka Ext. PW-2/A was brought at PS Palampur. He recorded the FIR Ext. PW-12/A. The viscera and envelope were sent by him to FSL Junga by HHC Trilok Chand vide RC No. 149/21 dated 26.9.2005.

17. PW 13 Mehar Chand deposed that on 23.9.2005, Trilok Chand had invited him in connection with the dispute relating to flow of water. The other persons invited were Bhagi Rath, Ishwari Devi and Prem Chand. They went to the house of Trilok Chand. The accused were present on the spot alongwith Trilok Chand and Lalman. Kehar Singh was present, the daughters of Lalman were not present. They had impressed upon the parties to behave properly and let the water flow as earlier. The wife of Trilok Chand picked up a '*kassi*' and started digging the '*chala*' which was objected to by the wife of accused Pritam and in this process she sustained injury. Lalman and Kehar Singh were on the other side and the accused persons were standing on the other side. Both the parties did not agree to their suggestion. The accused had not done anything to Lalman. He was declared hostile and cross-examined by the learned Public Prosecutor. He admitted in his cross-examination by the learned Public Prosecutor that Lalman became un-conscious on the spot. He was picked up and taken inside. He did not know that Lalman had sustained injuries on his

chest and back and due to those injuries he had died. He admitted his statement recorded in the Court in Palampur vide Ext. PW-13/A.

18. PW-14 ASI Onkar Singh deposed that one Kehar Singh son of Jagranoo, had visited the Police Post Panchrukhi. Rapat Ext. PW-1/A was recorded. He went to the spot. He recorded the statement of PW-2 Trilok Chand vide Ext. PW-2/A. He prepared the inquest papers. The dead body was sent for post mortem examination. The '*danda'* and stone were taken into possession. The statement of four witnesses was got recorded under Section 164 Cr.P.C. He also admitted that as per his investigation, the wife of Pritam Chand accused had sustained injuries and her MLC was conducted. The case under Section 323 IPC was lodged on her complaint after medical examination.

19. PW-15 Yogesh Jaswal, ACJM Palampur, has recorded the statements of Ishwari Devi, Bhagi Rath, Mehar Chand and Prem Chand under Section 164 Cr.P.C.

20. What emerges from the facts enumerated hereinabove, is that on 22.9.2005, PW-2 Trilok Chand reached his home from Palampur. He saw Pritam Chand, his cousin digging water channel with a view to divert the flow of water. He requested him not to do so. He also requested him that the Panchayat should be convened to resolve the matter. On 23.9.2005, local Panchayat assembled on the spot at 8:00 AM. It consisted of Ishwari Devi (PW-3), Mehar Chand (PW-13), Prem Chand (PW-4) and Bhagi Rath. The parties were requested by the Panchayat to resolve the matter amicably. Lalman (deceased), elder brother of PW-2 Trilok Chand was also present on the spot. He requested the accused not to divert the flow of water and he being elder in age knew the earlier flow of water. There was exchange of hot words. Accused Santosh Kumar picked up the '*danda'* from the spot and gave blows on the shoulder of the deceased Lalman. Pritam Singh hit his chest with a stone weighing 2 ½ kg. Lalman collapsed on the spot. He was taken inside. Thereafter the statement of PW-2 Trilok Chand was recorded vide memo Ext. PW-2/A. According to the contents of Ext. PW-2/A, when Lalman requested the parties to permit the flow of water as it was earlier, the arguments started.

21. PW-2 Trilok Chand has stated that when the arguments were going on between accused Pritam Chand and his elder brother Lalman, by that time, accused Santosh picked up a *bamboo* '*danda'* and gave its 2/3 blows on the shoulder and back of his brother Lalman. Accused Pritam Chand picked up a stone weighing about 2 ½ kg and gave its blow to his brother Lalman on his chest. According to him, there was exchange of hot arguments between accused Pritam Chand and his elder brother Lalman. He has admitted in his cross-examination that Kehar Singh PW-10 is his real brother. PW-3 Ishwari Devi and PW-4 Prem Chand have deposed that accused Santosh Kumar had given '*danda'* blow on the shoulder of Lalman and accused Pritam Chand had hit Lalman on his chest on the left side with stone. According to PW-3 Ishwari Devi, no blood was oozing out of the injury. PW-9 Sumna Devi has supported the case of the prosecution. However, the case of the prosecution has not been supported by the brother of deceased Lalman i.e. PW-10 Kehar Singh. According to PW-10 Kehar Singh, his brother Lalman was standing on one side and they were standing on the other side and his brother had fallen down. Thereafter, he was sent to call for the doctor. Thus, he was on the spot as per the prosecution case. However, he has not seen the accused hitting the deceased Lalman. PW-13 Mehar Chand was also member of the Panchayat who was on the spot on 23.9.2005. According to him, they had impressed upon the parties to behave properly and let the water flow as before but the wife of Trilok Chand picked up a *'kasssi'* and started digging the *'chala'* which was objected to by the wife of accused Pritam and in this process, she sustained injury. Lalman and Kehar Singh were on the one side and the accused persons were standing on the other side. According to him, the accused had not done anything to Lalman. According to PW-10 Kehar

Singh also, the wife of accused Pritam Chand had also sustained injury in her hand. PW-14 ASI Onkar Singh has also admitted in his cross-examination that as per his investigation, the wife of Pritam Chand accused had sustained injuries and her MLC was conducted. The case under Section 323 IPC was lodged on her complaint after medical examination. PW-10 Kehar Singh, being the brother of the deceased Lalman has not supported at all the case of the prosecution. He was present on the spot. Though, he was declared hostile but his statement cannot be brushed aside in entirety, he being the real brother of deceased Lalman. PW-10 Kehar Singh and PW-13 Mehar Singh have given all together new version, the manner in which the incident had taken place. PW-2 Trilok Chand, PW-3 Ishwari Devi, PW-4 Prem Chand and PW-9 Sumna Devi have supported the case of the prosecution.

22. The deceased has died as per the statement of PW-5 Dr. Vinay Mahajan, due to shock. He also noticed two injuries on the deceased. These injuries were abrasions which were due to rubbing of upper skin/portion of skin. He has made the following observations in the post mortem report Ext. PW-5/C:

"III. THORAX

1. Walls ribs and cartilages:	there was nothing significant.
2. Pleurae:	pale otherwise normal.
3. Laynax and trachea:	pale otherwise normal.
4. Right lung:	pale otherwise normal.
5. Left lung:	-do-
6. Pericardium heart and large vessels	-do-
IV. ABDOMEN:	
1.Walls:	NAD.
2.Peritoneum:	pale otherwise normal.
3.Mouth, Pharynx & Oesophagus:	pale otherwise normal.
4.Stomach & its contents	contained semi digested food pale otherwise normal.
5. Small intestine & their contents:	contained chyle, pale otherwise normal.
6. Large intestine & their contents:	contained fical matter pale otherwise normal.
Liver spleen and kidney	pale otherwise normal.
Bladder:	contained around 100 mls. of residual urine.
Organ generation External and internal:	within normal limits.
V. Muscles, bones, joints:	NAD."

23. The statement of PW-5 Dr. Vinay Mahajan is very material. We have already noticed that according to his opinion, the death was caused due to shock. According to him, the hitting of stone on chest could lead to shock which could further lead to death. He has not noticed anything significant in ribs and cartilages. Right lung and left lung, though pale, were otherwise normal. There was no penetrative injury on the chest wall. No fracture of ribs was noticed. There was no injury to lungs and heart. He has not noticed any wounds on the pulmonary artery. He has not noticed any internal bleeding from any of the

vital organs in his report Ext. PW-5/C. According to the prosecution case, the parties were standing on the spot near the water channel. Pritam Chand has lifted the stone weighing 2 ½ kg and thrown on the chest of the Lalman deceased. The distance between the deceased Lalman and the accused Pritam Chand has not been stated by the prosecution. The severe injury would be caused by a stone if it is hit from a distance with force/velocity. There would be minimal injury on the chest if persons are standing close by even if struck by the stone. It is, for this reason, that no injury except abrasions have been noticed on the chest of the deceased which were due to rubbing of upper skin/portion of the skin.

24. Mr. J.S.Guleria, learned Asstt. Advocate General has drawn the attention of the Court to the statements of three witnesses recorded under Section 164 Cr.P.C. The statements recorded under Section 164 Cr.P.C. are not substantive piece of evidence. The statements of the witnesses made in the Court are to be given more weightage.

25. It has come, as noticed hereinabove, in the evidence that hot words were exchanged between the deceased Lalman and the accused. It might have caused stress and excitement to Lalman. The temper was running high on the spot since Lalman was impressing upon the accused that he being elder, his advise should be given due weightage, the manner in which the water used to flow earlier. The stress and excitement could also result in shock leading to death of accused Lalman. It has come on record that the wife of the accused Pritam Chand had also received injuries and she was medically examined and MLC obtained. However, nothing has been placed on record about the outcome of this complaint by the wife of the accused Pritam Chand though case was registered under Section 323 IPC, as per the statement of PW-14 ASI Onkar Singh. The prosecution, thus, has failed to prove the case against the accused persons beyond reasonable doubt.

26. Accordingly, the appeal is allowed. Judgment of conviction and sentence dated 18.8.2008, rendered by the learned Addl. Sessions Judge (I), Kangra at Dharamshala, H.P., in Sessions case No. 9-P/2006, is set aside. The accused are acquitted of the charges framed under Sections 302/34 IPC, by giving them benefit of doubt. Since the sentence was suspended by this Court on 22.12.2008, bail bonds are discharged.

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BEFORE HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

Cr.MMO No. 222 of 2014 along with Cr.MMO No. 206 of 2014
Judgment reserved on: 5.3.2015
Date of decision: 9.3.2015

Cr.MMO No. 222 of 2014
Akshi Thakur ...Petitioner
Versus
Parveen Sharma ...Respondent
Cr.MMO No. 206 of 2014
Akshi Thakur ...Petitioner
Versus
Parveen Sharma ...Respondent

Code of Criminal Procedure, 1973- Section 311- Complainant filed an application under Section 311 of Cr.P.C pleading that due to inadvertent mistake the counsel could not tender

and prove the copies of the statement of account- application was opposed on the ground that it was an attempt to fill up the lacuna in the complainant story- application was dismissed by the Trial Court holding that complainant had not taken any steps to call and examine the additional witnesses after having been permitted to do so earlier- held, that simply because a person had failed to avail benefit of Section 311 of Cr.P.C earlier cannot be a ground to dismiss the application- no prejudice would be caused to the accused by allowing the application. (Para- 7 to 10)

Case referred:
Anil Chauhan Vs. Onam Educational Society, Mandi, Latest Him. L. J. 2014 (H.P) 1080

For the Petitioner(s): Mr. Anup Rattan, Advocate.
For the Respondent(s): Mr. Anoop Chitkara, Advocate.

The following judgment of the Court was delivered:

Tarlok Singh Chauhan, Judge

Since common questions of law and facts are involved in both theses petitions, therefore, they were taken up together for disposal.

2. These petitions under Section 482 of the Code of Criminal Procedure (for short 'Code') has been preferred against the order passed by the learned Additional Sessions Judge, Kullu on 5.9.2014, whereby he set aside the order passed by the Special Judicial Magistrate, Kullu and allowed the application preferred by the respondent under Section 311 of the Code.

3. The respondent is the complainant who instituted a complaint under Section 138 of the Negotiable Instruments Act (for short the 'Act'). The present application under Section 311 of the Code has been moved for the second time by the complainant alleging there in that due to inadvertent mistake the counsel for the complainant could not tender and prove the copies of statements of account of the Jammu and Kashmir Bank Ltd. Kullu Branch at the time of his evidence and therefore, she intends to prove the same by calling the Manager/dealing hand.

4. In reply filed by the petitioner, this application was opposed on the ground that the bank clerk/Manager has already been examined by the complainant on 18.6.2013 as PWS 2 and 3 and furthermore this application was an attempt to fill in lacunas in the complainant story, which would cause prejudice to the petitioner.

5. Learned Magistrate vide order dated 27.5.2014 held the application to be not maintainable by holding that the complainant herself has not taken any steps or care to call and examine the additional witnesses after having been permitted to do so earlier on 31.10.2012.

6. Upon revision being filed before the learned Additional Sessions Judge, Kullu, the application came to be allowed by holding that since the revisionist i.e. respondent herein wants to examine only one witness to prove the payment made by the respondent before the issuance of the cheque by the petitioner in favour of the respondent, the interest of justice demands that the application be allowed.

7. This order of learned Additional Sessions Judge, Kullu has been assailed before this Court on the ground that since the respondent had failed to take the benefit of

the earlier order, whereby her application under Section 311 of the Code of Criminal Procedure had been allowed, therefore, the present application was not maintainable. It was further contended that the respondent could not be permitted to fill in lacuna in the case.

I have heard the learned counsel for the parties and gone through the records of the case.

8. Section 311 of the Code of Criminal Procedure reads thus:-

> ***"311. Power to summon material witness, or examine person present.***
>
> *Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."*

The aforesaid provision has been subject matter of decision of the various High Courts including this Court as also before the Hon'ble Supreme Court and the same were noticed by this Court in ***Anil Chauhan Vs. Onam Educational Society, Mandi,*** Latest Him. L. J. 2014 (H.P) 1080 and after noticing the same, it was held as under:-

> *"10. The learned counsel for the petitioner in support of his arguments regarding nature and scope of Section 311 of the Code has relied upon* ***B.D. Goel*** *versus* ***Ebrahim Haji Husen Sanghani and others 2001 CRI.L.J. 450 Bombay, M/s Dandy Knit Garments and another versus M/s Subiksha Spinners (P) Ltd. 2000 CRI. L.J. 624 Mandras, R.N.Kakkar Versus Hanif Gafoor Naviwala and others 1996 CRI.L.J. 365 Bombay.***
>
> *11. On the other hand, the learned counsel for the respondent has relied upon* ***Iddar & Ors****. versus* ***Aabida & anr. 2007(2) S.L.J. (S.C.) 1311****,* ***State of H.P.*** *Versus* ***Ravi Kumar 2008(3) Shim. LC 412****,* ***Manoj Bali*** *versus* ***Girish Dhingra 2009 (1) Shim. LC 170****,* ***Parveen Dogra and another*** *versus* ***State of Himachal Pradesh 2013 (2) Shim. LC 621*** *and* ***Natasha Singh*** *versus* ***Central Bureau of Investigation (State) (2013) 5 SCC 741****.*
>
> *12. None of the parties has referred to the later judgment of the Hon'ble Supreme Court in* ***Raja Ram Prasad Yadav*** *versus* ***State of Bihar and another (2013) 14 SCC 461*** *wherein the entire law on the subject has been discussed and, therefore, it is not necessary to fall back on the judgments of this Court or the earlier judgment of Hon'ble Supreme Court i n the case of Natasha Singh (supra) heavily relied upon by the learned counsel for the respondent since this judgment also stands considered in Raja Ram's case (supra). The Hon'ble Supreme Court has clearly held that the powers under Section 311 of the Code to summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re examine any person already examined, can be exercised at any*

stage provided that the same is required for the just decision of the case.

13. After discussing in detail the previous judgments of the Hon'ble Supreme Court on the subject, the following principles in Raja Ram's case (supra)were culled out:-

> ***"17.1. Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?***
>
> ***17.2. The exercise of the widest discretionary power under Section 311 Cr.P.C should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.***
>
> ***17.3. If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and reexamine any such person.***
>
> ***17.4. The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.***
>
> ***17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.***
>
> ***17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.***
>
> ***17.7. The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.***
>
> ***17.8. The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.***
>
> ***17.9. The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.***
>
> ***17.10. Exigency of the situation, fair play and good sense should be the safe guard, while exercising the***

discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

17.11. The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

17.12. The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

17.13. The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

17.14. The power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right."

15. The only ground taken by the petitioner is that the complainant under the garb of the order would now fill up the lacuna in his case and create and manipulate the documents. To my mind, this submission is totally ill-founded because the petitioner would always have a right to cross-examine the witnesses. Moreover, in terms of the principles as laid down by the Hon'ble Supreme Court in para 17.5 (supra) the exercise of power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

16. Since the petitioner has a right of cross- examination, therefore, I find that no prejudice much less serious prejudice shall be caused to the petitioner which may result in miscarriage of justice in case the order passed by the learned Magistrate is upheld. This Court is required to bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record

*due to any inadvertence, the Court is required to be magnanimous in permitting such mistakes to be rectified (17.10 of **Raja Ram's** case (supra)."*

9. The factual position in this case is no different from that in Anil Chauhan's case (supra) and merely because the respondent had on earlier occasion failed to avail the benefit of Section 311 of the Code of Criminal Procedure, the same in view of the principles laid down by the Hon'ble Supreme Court in Raja Ram's case (supra), cannot be a ground to deny the present application,.

10. Indisputably, the respondent is the holder of the cheque in whose favour a presumption is envisaged under Section 139 of the Negotiable Instruments Act. Moreover, once the petitioner has right of cross-examination, therefore, it cannot be imagined that prejudice, much less serious prejudice shall be caused to him, which may ultimately result in miscarriage of justice in case the application is allowed. After all no party in a trial can be foreclosed from correcting errors and if proper evidence was not adduced or relevant material was not brought on record due to any inadvertence, the Court is required to be magnanimous in permitting such mistakes to be rectified.

11. The upshot of the aforesaid discussion is that there is no merit in these petitions and therefore, the same are accordingly dismissed, leaving the parties to bear their costs. The parties through their counsel will appear before the learned trial Magistrate on **27th March, 2015** who shall afford no more than one opportunity to the complainant to examine the witness as proposed in the application under Section 311 Cr.P.C. after rendering assistance of the Court.

Since the complaint pertains to the year 2010, the learned Magistrate shall make all endeavor to dispose of the complaint as expeditiously as possible and in no event later than **15th May, 2015**.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

Saurabh Sharma ..... Petitioner.

Vs.

Himachal Pradesh University .... Respondent.

CWP No. 1311 of 2015.
Date of decision: 9.3.2015.

Constitution of India, 1950- Article 226- Petitioner had failed to pass B.Sc 1st year examination held in July, 2011, March 2012, March 2013 and September, 2013- he came across a notification dated 9.9.2014 issued in the Hindi newspaper 'Amar Ujala' stating that University had allowed a golden chance to old students of 2011-2012 batch of undergraduate classes for appearing in compartment/failed papers- he applied by filling in the examination form and by paying the fee of Rs. 3,000/-- he appeared in the examination held in September/October, 2014- result of examination was declared but the result of the petitioner was not declared – petitioner preferred a representation before Controller of Examination but no action was taken- he filed a Writ Petition- University was directed to produce the result- petitioner had scored 85 marks out of 120- respondent/University stated that there was error in the notification in as much as instead of 2012-2013 a reference was made to 2011-2012 and when this fact came to the notice the University

issued a corrigendum to this effect- held, that there was no misrepresentation or the fraud at the instance of petitioner- University had accepted the admission fees and had allowed the petitioner to sit in the examination without any objection- student cannot be punished for the fault of the University- University directed to permit the petitioner to appear in the examination for B.Sc 3rd Year . (Para- 4 to 9)

For the Petitioner : Mr. Radhey Shyam Gautam, Advocate.
For the Respondent : Mr. J.L. Bhardwaj, Advocate.

The following judgment of the Court was delivered:

Tarlok Singh Chauhan, Judge (Oral):

The petitioner by way of present writ petition has prayed for the following substantive reliefs:

(i) That the petitioner be held eligible for appearing in the Examination of B.Sc. 1st year as compartment case under Golden Chance allowed as per advertisement annexure P-3 while issuing writ in the nature of mandamus.

(ii) That the respondent University may be directed to declare the result of the petitioner of B.Sc. 1st year Chemistry paper appeared as compartment case under Roll Number 21212528 in September-October, 2014.

(iii) That the respondent University may be directed to allow the petitioner to appear in the Practical Examination of B.Sc. 3rd year to be held in last week of February, 2015.

2. In nutshell, the case of the petitioner is that he failed to pass B.Sc. (Medical) 1st year examinations held in July, 2011, March, 2012, March, 2013 and thereafter in September, 2013. He came across a notification dated 9.9.2014 published by the respondent-University in the Hindi daily 'Amar Ujala' in its edition dated 10.9.2014, wherein it was mentioned that the University had allowed a golden chance to old students of 2011-12 batch of undergraduate classes for appearing in the examination of compartment/failed papers. He accordingly applied by filling in the examination form and after paying the fee of Rs.3,000/-, admit card was issued. He undertook this examination held in September/October, 2014.

3. Though, the result of the aforesaid examination was declared on 14.1.2015. However, result of the petitioner was not declared. He preferred a representation before the Controller of Examination, but to no avail constraining him to file the present petition. Vide order dated 20.2.2015, this Court directed the University to produce the result of the petitioner in a sealed cover, which was produced and opened by this Court on 28.2.2015 and it was found that the petitioner had qualified the examination by securing 85 marks out of 120 marks.

4. Since the petitioner had passed the examination, therefore, the University was called upon to file its reply. The only defence taken in the reply is that there was an error in the notification dated 9.9.2014 inasmuch as instead of 2012-13 batch, a reference had been made to the batch of 2011-12 and once this fact came to notice, then the University promptly issued a corrigendum to this effect, which was published in 'Amar Ujala'

in its daily edition on 13.9.2014. Since the petitioner belonged to 2011-12 batch he was therefore not entitled to this golden chance.

5. We have heard learned counsel for the parties and have gone through the records of the case carefully.

6. Admittedly, there has been no misrepresentation or fraud at the instance of the petitioner when he applied and thereafter appeared for the examination. The fault if at all is that of the University which not only accepted the admission form alongwith the prescribed fee but thereafter permitted the petitioner to sit in the examination without any demur. It is more than settled that for the fault of the University the students cannot be made to suffer.

7. Now, that the petitioner has cleared his B.Sc 1st year, we see no reason as to why the petitioner should not be permitted to appear in the examination of B.Sc. 3rd year. After all, the petitioner at this stage cannot be left in lurch, particularly when this is the last and final chance for him to appear in this examination in view of the change of education system brought about under Rashtriya Uchchatar Shiksha Abhiyan (RUSA).

8. We are informed that the practical examination of B.Sc. 3rd year have already been held in the last week of February, 2015, but then the petitioner has been prevented for the reasons beyond his control from appearing in this examination because admittedly his result of B.Sc. 1st year came to be declared only on 28.2.2015.

9. Since the petitioner has already availed golden chance and his result has also been declared on 28.2.2015, therefore, the reliefs No. (i) and (ii) have been rendered infructuous. Insofar as relief No. (iii) is concerned, the respondent is directed to conduct a special practical examination for the petitioner and further permit him to sit in the written examination of B.Sc. 3rd year. It is made clear that these directions are being passed taking into consideration the exceptional hardship being faced by the petitioner and we make it clear that this case shall not be cited as a precedent in future.

The petition stands disposed of in the aforesaid terms, so also the pending application. The parties are left to bear their own costs. Copy *dasti*.

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BEFORE HON'BLE MR.JUSTICE MANSOOR AHMAD MIR, C.J.

Amar Chand .....Petitioner.
versus
State of H.P. and another .....Respondents.

CWP No.6252 of 2012
Decided on: March 11, 2015.

Constitution of India, 1950- Article 226- Petitioner had filed a Writ Petition which was disposed of with a direction to examine the case of the petitioner and to grant him similar relief as was granted to similarly situated person- respondent examined the case of the petitioner and rejected it- Contempt Petition was filed by the petitioner in which respondent was asked to examine the case of the petitioner and to pass a fresh order- respondent

passed an order holding that petitioner was entitled to the claim preferred by him but he had approached the Competent Authority at a belated stage and the similarly situated person had approached the authority promptly- held, that respondents are precluded from taking such defences as they were directed to consider the case of the petitioner and to grant him similar relief, which was granted to the similarly situated persons. (Para-2 to 5)

For the Petitioner: Mr.Sanjeev Bhushan, Advocate.
For the Respondents: Mr.Shrawan Dogra, Advocate General, with Mr.Romesh Verma & Mr.Anup Rattan, Addl.A.Gs. and Mr.J.K. Verma, Dy.A.G.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, C.J. (Oral)

The petitioner, by the medium of present writ petition, undertakes third round of litigation. The petitioner had approached this Court by way of writ petition, being CWP No.264 of 2010, titled Amar Chand vs. State of H.P. and another, which came to be disposed of vide judgment dated 4th March, 2010 and the respondents were directed to examine the case of the petitioner and to grant similar relief to the petitioner as was granted in the cases of similarly situated persons. It is apt to reproduce operative portion of the said decision, hereunder:

> "It submitted that in the same department and in the same year, in the case of cases of similarly situated persons, State has already granted extension so as to enable them to complete their minimum required period of 10 years for the minimum pension. Petitioner prays for similar treatment. In case similarly situated persons have been granted the benefit, petitioner cannot be discriminated. Petitioner has filed representation Annexure P-1 before the second respondent. He is directed to look into Annexure P-1 in the light of the observation made in this judgment and pass appropriate orders in accordance with law, within a period of one month from the date of production of this judgment along with copy of the writ petition."

2. Thereafter, respondents examined the case of the petitioner and passed the consideration order on 16th June, 2010, whereby the case of the petitioner stood rejected, constraining him to question the same by filing Contempt Petition, being COPC No.155 of 2010, which came to be granted and the said consideration order, dated 16th June, 2010, was recalled and the respondents were directed to examine the case of the petitioner and pass order afresh.

3. Respondents, again, vide order dated 7th October, 2010, considered the case of the petitioner, though found him entitled, came to the conclusion that the similarly situated persons approached the competent authority well in time and rejected the case of the petitioner on the ground that he approached the competent Authority at a belated stage. The operative portion of the said order reads thus:

> "However, Shri Amar Chand, has since, retired from service, w.e.f. 28.02.2009 and as per information received from Block Development Officer, Pragpur, Shri Amar Chand was given his terminal dues i.e. leave encashment etc. on 07.12.2009. The Director, Rural Development Govt. of H.P., had earlier considered and decided the representation of Shri Amar Chand on

16.06.2010 i.e. more than 15 months after his retirement, much after he had served his links with the Government service by taking terminal dues admissible to him. Therefore, the case of Shri Amar Chand is in no way similar to Shri Krishan Sharma. The perusal of the record reveals that the file of the petitioner was moved to the competent authority by the respondents for the extension of seven months, so as to complete the qualifying service of 10 years, but the same was rejected after the sympathetic consideration. Moreover, extension in service cannot be claimed by any official as a matter of right.

Heard both parties at length. In view of the above, it appears that the case of the petitioner for the extension of 7 months, so as to enable him to complete his minimum required period of 10 years for the minimum pension, cannot be considered at this belated state, since, the petitioner has already retired from government service w.e.f. 28.02.2009."

4. Thereafter, the petitioner filed the present writ petition for quashing the order, dated 7th October, 2010. Respondents resisted the writ petition on the ground that granting of extension in service is not permissible under the Rules, including other grounds also.

5. Respondents are precluded from taking such a defence for the reason that the Division Bench of this Court, vide judgment dated 4th March, 2010, passed in CWP No.264 of 2010, had already directed the respondents to consider the case of the petitioner and grant him similar relief, as granted to the similarly situated persons. Notwithstanding this fact, the respondents again passed a wrong order and rejected the claim of the petitioner on the ground which is not permissible.

6. In view of the above discussion, the impugned order, dated 7th October, 2010, (Annexure P-4), is quashed and set aside, and the respondents are directed to examine the case of the petitioner in light of the decision of this Court in CWP No.264 of 2010 (supra) and pass orders accordingly within a period of four weeks from today.

7. The writ petition stands disposed of, so also the pending CMPs, if any.

Copy dasti.

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BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J. AND HON'BLE MR.JUSTICE P.S.RANA, J.

State of Himachal Pradesh ....Appellant.

Vs.

Mehboob Khan son of Shri Quim Khan ...Respondent.

Cr. Appeal No. 227 of 2008
Judgment reserved on: 3.3.2015
Date of Decision: March 11, 2015

Indian Penal Code, 1860- Sections 307, 326 and 324- Accused hit the complainant with Khukhari on the head and caused grievous and simple injury to the complainant due to which he fell down- accused took mobile phone and cash worth Rs.3,000/- belonging to the complainant- prosecution witnesses did not support the prosecution version- some

witnesses were given up by the prosecution- son of the complainant specifically stated in cross-examination that he had not seen any one inflicting injury on the person of his father and had seen Khukhari for the first time in the Court- medical evidence or recovery of the Khukhari and blood stained shirt are corroborative piece of evidence and do not implicate the accused- Trial Court had taken a reasonable view while acquitting the accused.

(Para- 11 to 20)

Code of Criminal Procedure, 1973- Section 378- Appeal against acquittal- considerations- (i) The appellate Court should not ordinarily set aside a judgment of acquittal in a case where two views are possible though the view of the appellate Court may be more probable. (ii) while dealing with a judgment of acquittal the appellate Court must consider entire evidence on record to arrive at a finding as to whether views of learned trial Court are perverse or otherwise unsustainable (iii) appellate Court is entitled to consider whether in arriving at a finding of fact, trial Court failed to take into consideration any admissible fact (iv) learned trial court took into consideration evidence brought on record contrary to law.

(Par-21)

Cases referred:

Chacko Mathai vs. State of Kerala AIR 1964 Kerala 222
Arun Kumar Banerjee and another vs. The State AIR 1962 Calcutta 504
Sunil Chandra Roy and another vs. the State, AIR 1954 Calcutta 305
Dalbir Kaur and others vs. State of Punjab AIR 1977 SC 472
Dinkar Bandhu Deshmuch and another vs. State AIR 1970 Bombay 438
Anjlus Dungdung Vs. State of Jharkhand (2005) 9 SCC 765
State (Delhi Administration) Vs. Gulzarilal Tandon AIR 1979 SC 1382
Bhugdomal Gangaram and others Vs. The State of Gujarat AIR 1983 SC 906
State of UP Vs. Sukhbasi and others AIR 1985 SC 1224
Sharad Birdhichand Sarda Vs. State of Maharashtra (1984) 4 SCC 116
Charan Singh Vs. The State of Uttar Pradesh AIR 1967 SC 520
Gian Mahtani Vs. State of Maharashtra AIR 1971 SC 1898
Mookkiah and another Vs. State (2013) 2 SCC 89
State of Rajashthan Vs. Talevar and another 2011 (11) SCC 666
Surendra Vs. State of Rajasthan AIR 2012 SC (Supp) 78
State of Rajasthan Vs. Shera Ram @ Vishnu Dutt 2012 (1) SCC 602
Balak Ram and another Vs. State of UP AIR 1974 SC 2165
Allarakha K. Mansuri Vs. State of Gujarat (2002) 3 SCC 57
Raghunath Vs. State of Haryana (2003) 1 SCC 398,
State of U.P Vs. Ram Veer Singh and others AIR 2007 SC 3075
S.Rama Krishna Vs. S. Rami Raddy (D) by his LRs. & others AIR 2008 SC 2066,
Sambhaji Hindurao Deshmukh and others Vs. State of Maharashtra, (2008) 11 SCC 186.
Arulvelu and another Vs. State (2009) 10 SCC 206
Perla Somasekhara Reddy and others Vs. State of A.P, (2009) 16 SCC 98
Ram Singh @ Chhaju Vs. State of Himachal Pradesh (2010) 2 SCC 445
Dilawar Singh and others vs. State of Haryana, (2015)1 SCC 737

For the Appellant: Mr.Ashok Chaudhary and Mr. V.S. Chauhan, Additional Advocates General and Mr.Vikram Thakur, Deputy Advocate General.

For the respondent: Mr.Bimal Gupta Amicus Curiae and Mr. Prashant Chaudhary Legal Aid Counsel.

The following judgment of the Court was delivered:

P.S.Rana, J.

Present appeal is filed against the judgment passed by the learned Sessions Judge, Chamba HP in case No.21 of 2007/06 titled State of HP Vs. Mehboob under Sections 307, 326 and 324 IPC.

BRIEF FACTS OF THE PROSECUTION CASE:

2. It is alleged by prosecution that on dated 14.5.2005 at about 7 PM Shri Pawan Mahajan complainant was present with his son Master Himanshu Mahajan in main market Chamba and was getting the cycle of Master Himanshu repaired. It is alleged by prosecution that when Pawan Mahajan was getting his cycle repaired accused hit him with a sharp edged weapon i.e. Khukhari on his head with the intention and knowledge to cause death of Pawan Mahajan. It is alleged by prosecution that accused also caused grievous and simple injuries on the person of Pawan Mahajan through sharp edged weapon i.e. Khukhari. It is further alleged by prosecution that accused also pushed Master Himanshu Mahajan and he fell down. It is also alleged by prosecution that thereafter accused fled away from the spot and also took mobile phone and cash worth Rs. 9300/- (Rupees nine thousand three hundred only) belonging to Pawan Mahajan. It is alleged by prosecution that thereafter statement of Pawan Mahanjan Ext.PA was recorded under Section 154 Cr.P.C. and FIR Ext.PW10/A was registered in P.S. Sadar Chamba. It is also alleged by prosecution that Khukhari Ext.P1 was recovered as per disclosure statement Ext.PD given by accused. It is alleged by prosecution that Khukhari Ext.P1 took into possession vide seizure memo Ext.PB and sealed. It is alleged by prosecution that weapon of attack was identified by injured and Pawan Mahajan injured also produced his blood stained shirt Ext.P2 and pant Ext.P3 and same took into possession vide seizure memo Ext.PC. It is alleged by prosecution that FSL report is Ext.PX and as per request of police Ext.PW7/A tatima Ext.PW7/B showing the place of incident was prepared. It is also alleged by prosecution that copy of jamabandi is Ext.PW7/C and request for medical examination of injured is Ext.PW10/C. It is alleged by prosecution that site plan Ext.PW10/D was prepared and map showing the place from where Khukhari sharp edged weapon Ext.P1 was recovered is Ext.PW10/F. It is alleged by prosecution that Ext.PW10/D is piece of cloth on which sample of seal 'T' was obtained and sketch of Khukhri sharp edged weapon is Ext.PW10/J. It is alleged by prosecution that police request for obtaining final opinion of medical officer is Ext.PW10/F and Ext.PW11/A is the X-ray form of Shri Pawan Mahajan and Ext.PW11/B to Ext.PW11/D are X-ray films and Ext.PW11/E is X-ray report and Ext.PW12/A is MLC. It is alleged by prosecution that Ext.PW13/A is OPD slip issued by Dr. Avneesh Kumar.

3. Charge was framed by learned Additional Sessions Judge Fast Track Court Chamba against the accused on dated 23.8.2006 under Sections 307, 326 and 324 IPC. Accused did not plead guilty and claimed trial.

4. Prosecution examined as many as thirteen witnesses in support of its case:-

Sr.No.	Name of Witness
PW1	Pawan Kumar

PW2	Dev Dutt
PW3	Himanshu Mahajan
PW4	Ashmeel Mohd.
PW5	Satish Kumar
PW6	Ramesh Chand
PW7	Patwari Bhupinder
PW8	C. Latiff Mohd.
PW9	SHO Jatinder
PW10	ASI Kaur Chand
PW11	Dr. V.K. Pathak
PW12	Dr. Vishal Mahajan
PW13	Dr. Avnish Kumar

5. Prosecution also produced following documentary evidence in support of its case:-

Sr.No.	*Description.*
Ext.PA	*Statement under Section 154 Cr.P.C.*
Ext PB	*Memo of recovery of Khukhari Ext.P1*
Ext PC	*Seizure memo of clothes Ext.P2 and Ext.P3*
Ext.PD	*Disclosure statement under Section 27 of Indian Evidence Act*
Ext.PX	*FSL report*
Ext.PW7/A.	*Application to Tehsildar Chamba (H.P.)*
Ext.PW7/B.	*Tatima*
Ext.PW7/C.	*Jamabandi*
Ext.PW10/A.	*Copy of FIR*
Ext.PW10/C	*Application to M.O. Zonal Hospital Chamba (H.P.)*
Ext.PW10/D	*Site plan*
Ext.PW10/E	*Statement*
Ext.PW10/F	*Application to M.O. Zonal Hospital*

	Chamba (H.P.)
Ext.PW10/G	*Sample of seal impression*
Ext.PW10/H	*Site plan*
Ext.PW10/J	*Sketch of sharp edged weapon i.e. Khukhari.*
Ext.PW11/A.	*Report of Radiologist*
Ext.PW11/B to Ext.PW11/D.	*X-ray films*
Ext.PW12/A.	*MLC of Pawan Mahajan*
Ext.PW13/A	*MLC issued by Dr. Avinash Kumar*
Ext.P1	*Khukhari i.e. sharp edged weapon*
Ext.P2	*Shirt of injured*
Ext.P3	*Pant of injured*

6. Statement of the accused was also recorded under Section 313 Cr.P.C. on dated 06.01.2007. Accused did not lead any defence evidence. Learned trial Court acquitted the accused on dated 29.9.2007 by way of giving him benefit of doubt.

7. Feeling aggrieved against the judgment passed by the learned trial Court appellant-State filed present appeal under Section 378 of Code of Criminal Procedure.

8. We have heard learned Additional Advocate General appearing on behalf of the State and learned Advocate appearing on behalf of the respondent and also perused entire record carefully.

9. Point for determination before us is whether learned trial Court did not properly appreciate oral as well as documentary evidence adduced by the parties and whether learned trial Court caused miscarriage of justice.

10. <u>ORAL EVIDENCE ADDUCED BY PROSECUTION:-</u>

10.1. PW1 Pawan Kumar has stated that on dated 14.05.2005 marriage took place in the house of Desh Raj and he had gone to house of Desh Raj to attend the marriage ceremony. He has stated that thereafter he came to Chamba market with his wife Anita Mahajan and son Master Himanshu at about 7 PM. He has stated that he left his wife in the shop of Pardeep Kumar and went with his son to the shop of Inder to get the cycle repaired. He has stated that when he was getting the cycle repaired and was looking towards the mechanic he was hit from back on his head. He has stated that he thought that a cricket ball had hit him and he placed his hand on his head at place where he sustained injury. He has stated that again he was hit on his head and thereafter he looked back and found that accused Mehboob Khan was hitting him. He has stated that accused even tried to hit him on his stomach. He has stated that he suffered injuries on his back and has further stated that accused had also pushed his son. He has stated that accused wanted to kill him. He has stated that his Samsung mobile phone and Rs. 9300/- (Rupees Nine thousand three hundred only) fell down from his pocket and accused picked them and took them with him.

He has stated that mobile number was 94180-91333. He has stated that incident was witnessed by Inder mechanic and Mohinder Singh. He has stated that thereafter he was took to hospital for his medical treatment and his wife also accompanied him to the hospital. He has stated that accused ran towards street which leads towards Laxmi Narayan temple. He has stated that his statement Ext.PA was also recorded before police officials and he was medically examined at Chamba hospital and thereafter he was referred to IGMC Shimla. He has stated that lot of blood was coming out from his body and thereafter his wife took him to Pathankot Sukhsadan hospital. He has stated that clothes which were worn by him at the time of incident also took into possession by police officials. He has stated that Khukhari Ext.P1 is the same and shirt Ext.P2 and pant Ext.P3 are the same. He has stated that same were blood stained and they were handed over by him to police officials. He has stated that fight took place for 4/5 minutes and Mohinder Singh and Inder mechanic were present at the spot. He has stated that Inder is owner of the shop. He has stated that mechanic was present at the shop and he was repairing the cycle. He has denied suggestion that accused did not inflict injuries on his person. He has denied suggestion that his mobile phone and cash were not taken by accused. He has denied suggestion that Khukhari sharp edged weapon was not recovered at the instance of accused.

10.2 PW2 Dev Dutt has stated that he used to live in Chamba town and used to work as cycle mechanic in the shop of Inder. He has stated that Pawan Kumar is known to him and further stated that Pawan Kumar came to his shop to get the cycle repaired. He has stated that he does not remember whether son of Pawan Kumar was with him or not. He has stated that nothing took place in his presence. He has stated that he was sitting and repairing the cycle. He has stated that he had seen the accused for the first time in Court. He has denied suggestion that he is deposing falsely to save the accused. He has denied suggestion that accused inflicted injuries with Khukhari sharp edged weapon on the person of Pawan Kumar. He has stated that he did not see Ext.P1 in hands of accused. He has stated that he did not see the blood coming out from the body of Pawan Kumar.

10.3 PW3 Himanshu Mahajan has stated that he had gone along with his parent to the house of Desh Raj and after marriage ceremony he went to Chamba market to get the cycle repaired. He has stated that his mother was sitting in the shop of Pardeep Kumar and he and his father have gone to get the cycle repaired. He has stated that when they were getting the cycle repaired his father was beaten by accused present in Court. He has stated that his father was hit with Khukhari sharp edged weapon Ext.P1 shown to him in the Court. He has stated that blood came out from the head and hand of his father. He has stated that he had seen Khukhari Ext.P1 for the first time. He has stated that he did not see anyone beating his father. He has stated that he only saw that blood was coming out from the body of his father. He has stated that many cases are pending against his father in the Court. He has stated that dispute also took place between his father and accused on earlier occasion. He has denied suggestion that he has deposed falsely being son of complainant.

10.4 PW4 Ashmeel Mohammed has stated that clothes of Pawan Kumar were took into possession and sealed by police in his presence and memo Ext.PC was prepared. He has stated that shirt Ext.P2 and pant Ext.P3 are the same which were took into possession by police. He has stated that parcels of clothes were prepared and same were signed by him as a witness. He has stated that he could not state with certainty whether clothes Ext.P2 and pant Ext.P3 are the same which were took into possession by police. He has stated that he does not remember as to who produced the clothes before the police officials. He has stated that seal was not handed over to him by police officials.

10.5 PW5 Satish Kumar has stated that he joined the police during investigation and accused was in the custody. He has stated that police officials had inquired about

Khukhari sharp edged weapon from accused and accused told that he had concealed Khukhari sharp edged weapon near the stairs of Sui Mata temple. He has stated that statement of accused Ext.PD was recorded in his presence and Ext.PD bears his signatures as a witness. He has stated that thereafter accused led the police party to the place where he had concealed Khukhari sharp edged weapon and got it recovered at the instance of accused and same was took into possession by police vide memo Ext.PB which bears his signatures. He has stated that Khukhari sharp edged weapon was sealed by police and his signatures were obtained on the parcel. He has stated that another witness Ravinder Singh was also present. He has denied suggestion that he has deposed falsely because his brother-in-law Desh Raj has inimical relations towards the accused. He has denied suggestion that accused did not get Ext.P1 recovered.

10.6 PW6 HC Ramesh Chand has stated that case property relating to the case was deposited with him and entry was recorded in Malkhana register. He has stated that parcels were sent through C. Latif Mohammad to FSL Junga for chemical test vide RC No. 68/05 dated 24.5.2005. He has stated that case property remained intact in his possession. He has stated that he did not bring the Malkhana register and RC register in the Court and he has denied suggestion that he has deposed falsely in Court.

10.7 PW7 Bhupinder Singh Patwari has stated that application Ext.PW7/A was marked to him by Naib Tehsildar Chamba for preparation of tatima and thereafter he prepared tatima Ext.PW7/B and jamabandi Ext.PW7/C and thereafter handed over the same to police officials.

10.8 PW8 C. Latif Mohammad has stated that in the month of May 2005 he was posted in P.S. Sadar Chamba and on dated 24.05.2005 MHC Ramesh Chand handed over two parcels duly sealed with seal impression 'T' to him vide RC No. 68/05. He has stated that he deposited both parcels in FSL Junga and thereafter handed over the RC to MHC and further stated that property remained intact in his possession. He has stated that he has not seen the road certificate in Court and receipt of parcels issued by Laboratory was given on road certificate itself.

10.9 PW9 SHO Jatinder Kumar has stated that chemical analyst report Ext.PX was received in police station and after completion of investigation he prepared challan.

10.10 PW10 ASI Kaur Chand has stated that in the year 2005 he was posted as Incharge P.P. City Chamba and after registration of FIR Ext.PW10/A the case was investigated by him. He has stated that injured Pawan Mahajan had made statement Ext.PA before him and he made endorsement on said statement and thereafter sent the statement to police station for registration of FIR. He has stated that endorsement is Ext.PW10/B and injured was got medically examined vide police docket Ext.PW10/C and further stated that injured was admitted in hospital and was got X-rayed in hospital. He has stated that thereafter injured was referred to IGMC Shimla and on dated 15.5.2005 he inspected the spot and prepared spot map Ext.PW10/D showing the place of incident. He has stated that on the same day he recorded statements of other witnesses under Section 161 Cr.P.C. as per their versions and nothing was added or deleted by him. He has stated that thereafter on dated 17.5.2005 he moved application Ext.PW10/F before medical officer to give his opinion about nature of injuries suffered by injured Pawan Kumar. He has stated that one of the injuries was grievous and Section 326 IPC was added. He has stated that clothes of injured were blood stained and same were took into possession vide seizure memo Ext.PC and sealed. He has stated that disclosure statement Ext.PD was recorded in his presence and further stated that accused disclosed that he had concealed Khukhari sharp edged weapon near the stairs of Sui Mata temple and could get it recovered. He has further stated that thereafter accused

led the police to the place and got Khukhari Ext.P1 recovered from bushes and same was took into possession vide seizure memo Ext.PB in presence of witnesses and sealed. He has further stated that Ext.P1 Khukhari sharp edged weapon was identified by accused and specimen of seal was retained on a piece of cloth which is Ext.PW10/G and seal after use was handed over to Pawan Mahajan and site plan Ext.PW10/H showing the place of recovery was prepared by him and sketch Ext.PW10/J of Khukhari sharp edged weapon was drawn and prepared and took copy of jamabandi from Patwari. He has stated that after completion of investigation he handed over the file to Inspector SHO Jatinder Kumar for preparation of challan. He has stated that Khukhari Ext.P1 is the same which was recovered at the instance of accused. He has stated that Rs. 9300/- (Rupees Nine thousand Three hundred only) and mobile phone could not be recovered from accused because accused told that he had not lift the same. He has denied suggestion that accused was beaten during investigation. He has denied suggestion that accused did not give any disclosure statement before him. He has denied suggestion that accused did not inflict any injury on the person of Pawan Kumar and also denied suggestion that accused was involved in false case in collusion with complainant. He has denied suggestion that Khukhari Ext.P1 was not recovered at the instance of accused.

10.11 PW11 Dr. V.K. Pathak Radiologist Regional Hospital Una has stated that he remained posted as Radiologist in Zonal Hospital Chamba and further stated that Pawan Mahajan was referred by Dr. Vishal Mahajan for X-ray examination. He has stated that X-ray form is Ext.PW11/A and further stated that X-ray of Pawan Kumar was conducted under his supervision and X-ray films are Ext.PW11/B to Ext.PW11/D. He has stated that after going through X-ray films he has given report Ext.PW11/E. He has stated that fracture of third metacarpal of left hand was seen. He has stated that X-ray was conducted by Radiographer and further stated that he does not know the injured personally.

10.12 PW12 Dr. Vishan Mahajan has stated that on dated 14.5.2005 he examined Pawan Mahajan who was brought to hospital with alleged history of beating. He has stated that patient was conscious cooperative and well oriented. He has stated that on examination he found following injures on person of injured. He has further stated that incised wound was found on right side of head with beveling edge 2 cms above right ear 4 Cms in length and 0.5 Cm wide active bleeding. He has stated that incised wound was found on left hand at the base of fingers of left hand 6 Cms. multiply by 1 cm. He has stated that gaping was present and spindle shape 6 Cm x 1.2 Cm bleeding was also present and stated that movement of third and fourth fingers was restricted. He has further stated that linear abrasion on left side of thorax in the middle along the curve of thorax redish in colour was found and similar was on right chest 6 cms in length. He has stated that shirt collar and pant were covered with blood. He has stated that patient was admitted in male ortho ward for further treatment and for surgical and ortho opinion. He has stated that final opinion was reserved by him till the report of X-ray and after receiving the X-ray report as well as reports of surgeon and orthopaedic surgeons he opined that injuries Nos. 1 and 3 were simple in nature and injury No. 2 was found to be grievous and weapon used was sharp. He has stated that probable duration of injuries was less than one hour and has further stated that he issued MLC Ext.PW12/A which is in hand and bears his signatures. He has stated that injuries mentioned in MLC could be caused with Khukhari sharp edged weapon Ext.P1. He has stated that continuous and active bleeding could cause death if same was not controlled. He has admitted that date has been changed from 15.05.2005 to 14.5.2005 in MLC. Self stated that date 15.5.2005 was wrongly written by him which was corrected. He has stated that in MLC register which he has brought in Court probable duration of injuries has not been mentioned.

10.13 PW13 Dr. Avnish Kumar has stated that on dated 15.5.2005 Pawan Kumar Mahajan came to hospital for his medical treatment of injured hand. He has stated that he noted the following injuries. He has stated that extensor expansion of middle and ring finger were cut and there was a fracture of head of fourth metacarpal. He has stated that he repaired his injuries on that very day and he was sent back to his house. He has stated that after that Pawan Kumar kept on attending the hospital as an OPD patient and injuries were found grievous caused with sharp edged weapon. He has stated that probable duration of injuries might be 6 to 8 hours and these injuries could be caused with sharp edged weapon like Khukhari Ext.P1. He has stated that such injury could not cause death but constant bleeding could cause death. He has stated that he did not issue any medico legal certificate. He has stated that injury could be caused if a person falls on sharp edged object like iron sheet.

11. Statement of the accused under Section 313 Cr.PC was recorded. Accused did not lead any defence evidence.

12. Submission of learned Additional Advocate General appearing on behalf of State that learned trial Court did not properly appreciate oral as well as documentary evidence produced by prosecution in present case is rejected being devoid of any force for the reasons hereinafter mentioned. As per challan filed by prosecution and as per list of witnesses furnished by prosecution Dev Dutt, Ravinder Singh, Mohinder Singh, Baldev Singh, Shiv Chopra, Babar, Himanshu and Anita Mahajan were eye witnesses of incident. Shri Dev Dutt PW2 who was alleged eye witness of incident has specifically stated when appeared in witness box that nothing happened in his presence and he had seen the accused for the first time in Court. PW2 Dev Dutt has specifically stated in positive manner that he did not see Khukhari sharp edged weapon in the hands of accused and PW2 Dev Dutt has also stated that he did not see the blood coming from the body of injured Pawan Kumar. We are of the opinion that above stated testimony of PW2 Dev Dutt is hostile to prosecution case. There is no reason to disbelieve the testimony of PW2. There is no evidence on record in order to prove that PW2 has hostile animus against injured at any point of time.

13. We have also carefully perused the testimony of PW3 Himanshu Mahajan. He has specifically stated when appeared in witness box that he had seen the sharp edged weapon i.e. Khukhari in the Court for the first time and has also specifically stated that he did not see anyone inflicting injuries upon his father and further stated that many cases are pending against his father in the Court. We are of the opinion that above stated testimony of PW3 Himanshu is also hostile to prosecution case.

14. Learned Public Prosecutor on dated 26.10.2006 had given up Ravinder Singh, Baldev Singh and Shiv Chopra who were present in Court on the ground that they were won over by accused. On dated 27.10.2006 learned Public Prosecutor had also given up Mohinder Singh, Babar and Ravinder Singh on the ground that above sated prosecution witnesses were won over by accused and learned P.P. also given up Kamal Kishor and Anita Mahajan on dated 27.10.2006 who were present in Court. In present case PW1 injured when appeared in witness box has stated in positive manner that incident was witnessed by Inder mechanic and Mohinder Singh. Prosecution did not examine Inder mechanic and Mohinder Singh eye witnesses in Court. In present case it is proved on record that eye witness Mohinder Singh was present in Court on dated 27.10.2006 but he was not examined by prosecution on the ground that Mohinder Singh was won over by accused. We draw adverse inference against prosecution under Section 114 (g) of Indian Evidence Act for non-examination of material and independent eye witness in Court despite his presence in Court room.

15. Another submission of learned Additional Advocate General appearing on behalf of State that there was no hostile relations of accused with official witnesses and learned trial Court had illegally discarded their evidence and on this ground appeal be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. We are of the opinion that official witnesses are not eye witnesses of incident. Official witnesses came after the incident and they are only corroborative witnesses in present case. It is well settled law that conviction in criminal cases should be given on testimony of positive cogent and reliable eye witnesses.

16. Another submission of learned Additional Advocate General appearing on behalf of State that learned trial Court has not properly appreciated testimony of PW1 Pawan Kumar which is corroborated by PW12 Dr. Vishal Mahajan who conducted MLC of injured and on this ground appeal be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. It is not the case of prosecution that no other independent eye witnesses were present at the time of incident. On the contrary injured has himself stated when appeared in witness box that incident was witnessed by Inder mechanic and Mohinder Singh. But prosecution did not examine independent witnesses namely Inder mechanic and Mohinder Singh in the present case in order to elucidate the truth of prosecution story. We are of the opinion that in view of the fact that independent eye witnesses were present at the spot at the time of incident but they were not examined in Court it is not expedient in the ends of justice to convict the accused solely on testimony of PW1 because it is not case of prosecution that no independent witness was present at the time of alleged incident.

17. Another submission of learned Addl. Advocate General appearing on behalf of the State that learned trial Court has not appreciated the testimony of PW3 Himanshu Mahajan who was son of PW1 in proper manner is also rejected being devoid of any force for the reasons hereinafter mentioned. We have carefully perused the testimony of PW3 Himanshu Mahajan. It is well settled law that statements of witnesses should be read as a whole and should not be read in isolation. It is well settled law that Courts are under legal obligation to take out grain from chaff. PW3 has specifically stated in cross examination that he did not see anyone inflicting injuries on the person of his father. He has further stated that he had seen Khukhari sharp edged weapon Ext.P1 for the first time in Court. Above stated testimony of PW3 eye witness is fatal to prosecution.

18. Another submission of learned Additional Advocate General that as per medical evidence placed on record injured had sustained three injuries out of which injury No. 1 and 2 were incised and injury No. 3 was abrasion and injury No. 2 was grievous and on this ground accused be convicted in present case is rejected being devoid of any force for the reasons hereinafter mentioned. We are of the opinion that opinion of medical officer is only advisory in nature and medical officer is not eye witness of incident. It is not proved on record beyond reasonable doubt that injuries mentioned in MLC Ext.PW12/A were caused by accused upon the injured with sharp edged weapon. We are of the opinion that sole testimony of PW1 injured is not sufficient to convict the accused in present case because as per testimony of injured independent eye witnesses have witnessed the incident and prosecution has examined only PW2 Dev Dutt cycle mechanic and PW3 Himanshu and both of them have not stated in positive manner that injuries were inflicted upon the person of injured by accused with sharp edged weapon in their presence. It was held in case reported in ***AIR 1964 Kerala 222 titled Chacko Mathai vs. State of Kerala*** medical evidence is not an evidence of fact of incident and it is only opinion evidence about injuries. ***(Also see AIR 1962 Calcutta 504 titled Arun Kumar Banerjee and another vs. The State)*** It is well settled law that value of medical evidence is only corroborative in nature qua injuries

sustained by injured person. ***(See AIR 1954 Calcutta 305 titled Sunil Chandra Roy and another vs. the State)***

19. Another submission of learned Additional Advocate General that accused be convicted on the basis of recovery of sharp edged weapon i.e. Khukhari and recovery of blood stained shirt and pant as per Section 27 of Indian Evidence Act is rejected being devoid of any force for the reasons hereinafter mentioned. We are of the opinion that evidence under Section 27 of Indian Evidence Act is not substantive evidence and same is only corroborative evidence. It is well settled law that conviction in criminal cases is given on the basis of substantive evidence. It was held in case reported in ***AIR 1977 SC 472 titled Dalbir Kaur and others vs. State of Punjab and AIR 1970 Bombay 438 titled Dinkar Bandhu Deshmuch and another vs. State*** that discovery under Section 27 of Indian Evidence Act is not substantive evidence and it is only corroborative evidence. Even PW4 Ashmeel Mohammad recovery witness has stated that he could not state with certainty that clothes Ext.P2 and Ext.P3 are same which were took into possession and has stated in positive manner that he does not remember who produced the clothes. He has further stated that seal was not handed over to him.

20. Another submission of learned Additional Advocate General appearing on behalf of the appellant that as per Chemical analyst report Ext.PX placed on record on pant and shirt human blood was found and on this ground appeal be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. We have carefully perused the chemical analyst report Ext.PX placed on record and as per chemical analyst report human blood was found upon pant and shirt but blood group of human being has not been mentioned in chemical analyst report in order to connect blood group of injured upon shirt and pant.

21. Another submission of learned Additional Advocate General appearing on behalf of the State that as per chemical analyst report blood was found upon Khukhari sharp edged weapon used for inflicting injuries upon injured by accused and on this ground appeal be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. We have carefully perused the chemical analyst report Ext.PX placed on record. There is recital in chemical report that although blood was found upon Khukhari sharp edged weapon but same was insufficient for analysis. It was held in case reported ***(2005) 9 SCC 765 titled Anjlus Dungdung Vs. State of Jharkhand*** that suspicion however strong cannot take place of proof. ***See: AIR 1979 SC 1382 State (Delhi Administration) Vs. Gulzarilal Tandon. Also See: AIR 1983 SC 906 titled Bhugdomal Gangaram and others Vs. The State of Gujarat See: AIR 1985 SC 1224 titled State of UP Vs. Sukhbasi and others.Also See: (1984) 4 SCC 116 Sharad Birdhichand Sarda Vs. State of Maharashtra.*** It is well settled law that conjecture or suspicion cannot take place of legal proof. ***See: AIR 1967 SC 520 Charan Singh Vs. The State of Uttar Pradesh. Also See: AIR 1971 SC 1898 Gian Mahtani Vs. State of Maharashtra.*** It is well settled principle of law that vested right accrued in favour of the accused with the judgment of acquittal by learned trial Court. ***(See (2013) 2 SCC 89 titled Mookkiah and another Vs. State. See 2011 (11) SCC 666 titled State of Rajashthan Vs. Talevar and another. See AIR 2012 SC (Supp) 78 titled Surendra Vs. State of Rajasthan. See 2012 (1) SCC 602 titled State of Rajasthan Vs. Shera Ram @ Vishnu Dutt).*** It is well settled principle of law (i) That appellate Court should not ordinarily set aside a judgment of acquittal in a case where two views are possible though the view of the appellate Court may be more probable. (ii) That while dealing with a judgment of acquittal the appellate Court must consider entire evidence on record so as to arrive at a finding as to whether views of learned trial Court are perverse or otherwise unsustainable (iii) That appellate Court is entitled to consider whether

in arriving at a finding of fact, learned trial Court failed to take into consideration any admissible fact (iv) That learned trial court took into consideration evidence brought on record contrary to law. ***(See AIR 1974 SC 2165 titled Balak Ram and another Vs. State of UP, See (2002) 3 SCC 57 titled Allarakha K. Mansuri Vs. State of Gujarat, See (2003) 1 SCC 398 titled Raghunath Vs. State of Haryana, See AIR 2007 SC 3075 State of U.P Vs. Ram Veer Singh and others, See AIR 2008 SC 2066, (2008) 11 SCC 186 S.Rama Krishna Vs. S. Rami Raddy (D) by his LRs. & others. Sambhaji Hindurao Deshmukh and others Vs. State of Maharashtra, See (2009) 10 SCC 206 titled Arulvelu and another Vs. State, See (2009) 16 SCC 98 titled Perla Somasekhara Reddy and others Vs. State of A.P,See:(2010) 2 SCC 445 titled Ram Singh @ Chhaju Vs. State of Himachal Pradesh).*** It was held in case reported in ***(2015)1 SCC 737 titled Dilawar Singh and others vs. State of Haryana*** that appellate Court would not ordinarily interfere with the order of acquittal unless approach of learned trial Court is vitiated by manifest illegality. It was held that appellate Court would not interfere with order of acquittal merely because on evaluation of evidence different plausible view would arise. It was held that appellate Court would interfere only under substantial and compelling reasons in criminal case when findings of learned criminal Court are based upon inadmissible evidence or when findings of learned Criminal Court are based upon material irregularity or when findings of learned Criminal Court are based upon misreading of evidence or when findings of learned Criminal Court are based upon conjecture and surmises.

22. In view of the above stated facts and case law cited supra it is held that learned trial Court has properly appreciated oral as well as documentary evidence placed on record and it is further held that learned trial Court did not commit any miscarriage of justice to the appellant. We affirmed judgment passed by learned trial Court and dismiss the appeal filed by the State of Himachal Pradesh. Bail bonds if any furnished by accused are discharged. Appeal stands disposed of. Pending application(s) if any are also disposed of. Record of learned trial Court along with certified copy of judgment be sent back forthwith.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Narotam Ram .....Appellant.
Versus
State of H.P. .....Respondent.

Cr. Appeal No. 98 of 2010
Reserved on: March 11, 2015.
Decided on: March 12, 2015.

N.D.P.S. Act, 1985- Section 20- Accused was found in possession of 4 kg 200 grams of charas- PW-1 stated that accused was straightway searched and no effort was made to trace any independent witness or to stop any vehicle- PW-8 admitted that there was huge traffic flow at the national highway but he had not asked the Constable to stop the vehicle to associate any witness- no reason was given for non-association of independent witness at the time of recovery- the person who carried ruqqa and the case property to the police station was not examined- Column No. 1 to 11 of NCB Form were filled up by same person- Column No.1 to 8 are supposed to be filled up by the Investigating Officer- Column No. 9 to 11 are to be filled up by SHO at the time of resealing the case property- held, that in these

circumstances, prosecution version is not proved beyond reasonable doubt- accused acquitted. (Para- 13 to 16)

For the appellant: Mr. Ajay Sharma, Advocate.
For the respondent: Mr. Ramesh Thakur, Asstt. AG.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This appeal is instituted against the judgment dated 3.12.2009, rendered by the learned Special Judge, Mandi, H.P, in Sessions Trial No. 33 of 2009, whereby the appellant-accused (hereinafter referred to as the accused), who was charged with and tried for offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the ND & PS Act), has been convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs. 1,00,000/- and in default of payment of fine, he was further ordered to undergo simple imprisonment for one year.

2. The case of the prosecution, in a nut shell, is that on 17.12.2008 at about 5:20 P.M., ASI Amar Nath alongwith HC Satya Parkash, HC Hari Singh and Const. Ashok Kumar were on patrolling at Larji Dam towards Shihli Larji. On reaching about 400 meters beyond Larji Dam, the police noticed the accused with a bag on his back. On seeing the police party, the accused got nervous and tried to flee. The accused was apprehended. The police after intercepting the accused checked the bag in his possession. On checking the bag of the accused, another black bag tied with a polythene was recovered containing charas in the shape of sticks and balls. It weighed 4 kg. 200 gms. Two samples of 25 grams each were separated and sealed in two separate parcels with four seals of "Y". The bulk charas was also sealed in a separate parcel with six seals of impression "Y" and specimen seal impression Ext. PW-7/A was drawn and NCB forms in triplicate Ext. PW-7/B were filled in and seal was handed over to HC Hari Singh. The charas and the specimen seal impression were taken into possession by the police as per memo Ext. PW-1/A. Rukka Ext. PW-8/B was prepared and forwarded through Const. Ashok Kumar to the Police Station, on the basis of which, FIR Ext. PW-2/C was registered. The spot map was prepared. The case property was handed over to SHO Shreshtha Thakur, P.S. Aut by ASI Amar Nath. She resealed the case property with seal "M" and deposited the same with the MHC, PS Aut. The special report Ext. PW-4/A was prepared. Sample was sent for chemical analysis to FSL, Junga. The investigation was completed and the challan was put up after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as 8 witnesses. The accused was also examined under Section 313 Cr.P.C. The accused has denied the prosecution case. The learned trial Court convicted the accused, as noticed hereinabove.

4. Mr. Ajay Sharma, Advocate, appearing on behalf of the accused, has vehemently argued that the prosecution has failed to prove its case against the accused. On the other hand, Mr. Ramesh Thakur, Asstt. AG, for the State has supported the judgment of the learned trial Court dated 3.12.2009.

5. We have heard learned counsel for both the sides and gone through the records of the case carefully.

6. PW-1 HC Hari Singh deposed that at 5:20 PM, when they were about 400 meters away from Dam, accused was seen coming from Shili Larji side carrying bag/pithu on his back. On seeing the police party, accused took U turn and started running. He was apprehended by ASI Amar Nath with their assistance. There was no independent person present at the spot or nearby and as such ASI Amar Nath associated him and HC Satya Parkash in the search proceedings. ASI Amar Nath checked the bag of the accused. On opening bag, another black coloured bag was found inside which was tagged with plastic envelope. On opening it was found to be containing charas in the shape of sticks and round balls. The charas weighed 4 kgs. 200 grams. Out of the recovered charas, two samples of 25 grams each were separated and sealed in separate parcels with seal impression "Y" and marked as A-1 and A-2. The residue charas was put in the bag and sealed in separate parcel with seal impression "Y" and parcel was marked as 'A". The IO filled in the NCB forms in triplicate. The parcels were took into possession vide memo Ext. PW-1/A. I.O signed the rukka and sent the same through Const. Ashok Kumar for registration of the case to the Police Station. In his cross-examination, he admitted that the I.O. did not tell to trace any independent witness or to stop any vehicle for independent witnesses. Police Station Aut is 4 km from the place of occurrence. The I.O. also took personal search of the accused. He did not remember as to how much money and what other articles were found from the possession of the accused. The recovery memo was prepared before Ashok Kumar and thereafter, rukka was prepared by the I.O and Ashok Kumar went to the Police Station.

7. PW-2 HC Dina Nath, deposed that on 17.12.2008, SHO PS Aut deposited with him the case property of this case i.e. one bulk parcel sealed with six seals of "Y" and six seals of "M" impression alleged to be containing 4 kg 150 gms of charas and two sample parcels sealed with four seals of "Y" and "M" each alongwith the NCB forms in triplicate, specimen of seal impressions and copy of FIR. He entered the case property in the malkhana register at page 194 at Sr. No. 512 and kept the same in the safe custody. On 19.12.2008, one sample parcel alongwith the NCB forms in triplicate, copy of seizure memo and specimen of seal impressions "Y" and "M" were handed over by him to HHC Udai Singh vide RC No. 90/08 for depositing the same in FSL Junga. He proved the extract of malkhana register Ext. PW-2/A and copy of R/C Ext. PW-2/B. In his cross-examination, he admitted that he did not remember as to who brought the rukka to him. According to him, rukka was brought. He did not remember that rukka was brought in the evening or at night. He did not remember the exact time.

8. Statements of PW-3 and PW-4 are formal in nature.

9. PW-5 HHC Udai Chand, deposed that on 19.12.2008 MHC Dina Nath handed over to him sample parcels of this case sealed with four seals of "Y" and four seals of "M" each and marked as A-2 alongwith specimen seal impression, NCB form, copy of seizure memo and FIR for depositing the same at FSL, Junga. He deposited the same on 20.12.2008 in safe condition.

10. PW-6 Const. Virender has proved rapat rojnamcha vide memo Ext. PW-6/A. In his cross-examination, he admitted that there was one bus stop at Shilli Jarji. This road is National Highway road and is a busy road.

11. PW-7 SHO Shreshta Thakur, deposed that ASI Amar Nath handed over to her two sample parcels and one bulk parcel of this case alongwith the documents. The bulk parcel was sealed with six seals of mark "Y" and sample parcels were sealed with four seals each of mark "Y". She resealed the bulk parcel with six seals of mark "M" and the sample parcels were sealed with 4 seals each of mark "M". She filled up the columns No. 9 to 12 of the NCB forms Ext. PW-7/B.

12. PW-8 ASI Amar Nath was the I.O. He deposed the manner in which the accused was apprehended and the charas was recovered from the accused weighing 4 kg 200 gms. According to him, rukka Ext. PW-8/B was prepared and sent to the Police Station through Const. Ashok Kumar at about 7:00 PM for recording FIR. In his cross-examination, he admitted that there was huge traffic flow on the national Highway. The Police Station was about 3 kms. from the place of occurrence. The shops were about 3 kms. from the place where the accused was apprehended. The Forest Check Post was situated at Larji. He did not ask the Constables to stop the vehicle to associate witnesses. Volunteered that the vehicles were not crossing the road. He did not notice any guard on the tunnel. According to him, Constable Ashok Kumar carried the case property to the Police Station. He filled up the entire NCB forms at the spot in his own hand writing.

13. What emerges from the statements of PW-1 HC Hari Singh, PW-6 Virender and PW-8 ASI Amar Singh is that the accused was apprehended on a road. It was a busy road. According to PW-1 HC Hari Singh, the accused was straightway searched by the I.O and the I.O. did not told them to trace any independent witness or to stop any vehicle for independent witness. PW-8 ASI Amar Nath has deposed that there was huge traffic flow at the National Highway. The Police Station was about 3 kms. from the place of occurrence. The shops were about 3 kms. from the place where the accused was apprehended. The Forest Check Post was situated at Larji. He did not ask the Constables to stop the vehicle to associate witnesses. It cannot be believed that the vehicles were not crossing on the road at 5:20 PM. The prosecution has not given any cogent explanation why the independent witnesses were not associated at the time of nabbing the accused, recovery, seizure and sealing of the contraband.

14. PW-1 HC Hari Singh has deposed that the recovery memo was prepared by Ashok Kumar and rukka was prepared by the I.O. Thereafter, Constable Ashok Kumar went to the Police Station. PW-8 ASI Amar Singh also deposed that rukka Ext. PW-8/B was prepared by him and sent to the Police Station through Const. Ashok Kumar at 7:00 PM. Constable Ashok Kumar has not been examined by the prosecution. He was important witness since he has taken the case property to the Police Station and also carried the rukka. Surprisingly, in his cross-examination, PW-2 HC Dina Nath stated that he did not remember as to who brought the rukka to him, however, rukka was brought. The rukka, according to him, was brought in the evening or night. He did not remember the exact time. He being the MHC at the Police Station Aut, ought to have remembered the name of the Constable who had brought the rukka.

15. We have also gone through the NCB forms Ext. PW-7/B. PW-8 ASI Amar Nath has stated that he had filled up the NCB forms on the spot. PW-7 SHO Shreshta Thakur has testified that she has filled up the columns No. 9 to 12. It can be seen with the naked eyes that the columns No. 9 to 11 have also been filled up by the same person on the basis of the hand-writing who has filled up columns No. 1 to 8. The columns No. 1 to 8 are supposed to be filled up by the I.O/Seizing Officer and columns No. 9 to 11 are to be filled up by the SHO/Officer re-sealing the case property. The purpose of re-sealing is to ensure that innocent persons are not implicated in false cases. In the present case, the prosecution has not at all made any effort to associate the independent witnesses, though readily available on the road and at Forest Check Post at Larji. The prosecution has not examined Constable Ashok Kumar who had carried out the rukka and case property to the Police Station and the NCB forms have also been filled in the same hand writing.

16. The prosecution has failed to prove that the contraband was recovered from the exclusive and conscious possession of the accused. Thus, the prosecution has failed to

prove the case against the accused beyond reasonable doubt for the commission of offence under Section 20 of the N.D & P.S., Act.

17. Accordingly, in view of the analysis and discussion made hereinabove, the appeal is allowed. Judgment of conviction and sentence dated 3.12.2009, rendered by the learned Special Judge, Mandi, H.P., in Sessions trial No. 33 of 2009, is set aside. Accused is acquitted of the charges framed against him by giving him benefit of doubt. Fine amount, if any, already deposited by the accused is ordered to be refunded to him. Since the accused is in jail, he be released forthwith, if not required in any other case.

18. The Registry is directed to prepare the release warrant of the accused and send the same to the Superintendent of Jail concerned, in conformity with this judgment forthwith.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, J.

Onkar Singh .....Appellant
Versus
Executive Engineer, HPSEB Ltd. & another ....Respondents

LPA No. 4050 of 2013
Decided on : 12.03.2015

Constitution of India, 1950- Article 226- Respondent No.1 was engaged on daily wages in the month of January, 1980 but was dis-engaged on 01.03.1982- he filed a reference petition before Labour Court which set aside the disengagement- a Writ Petition was filed before High Court which was allowed and the case was remanded to the Labour Court- award was passed by the Labour Court on 2007- another Writ Petition was filed - the Labour Court had not granted back wages w.e.f. 01.03.1982 till the date of passing of the award and it had directed that period from 01.03.1982 to 05.08.2000 shall not be counted towards his seniority- held, that writ petitioner was entitled to the back wages as he was wrongfully disengaged- respondent directed to release back wages in favour of the petition within the period of six months. (Para- 3 to 6)

For the Appellant : Mr. P.P. Chauhan, Advocate.
For the Respondents : Mr. Satyen Vaidya, Advocate.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(oral)*

This Letters Patent Appeal is directed against the judgment and order dated 26th September, 2012, passed by the learned Single Judge in CWP No. 1220 of 2008, whereby the writ petition came to be allowed and the writ petitioner-respondent No. 1 herein was directed to re-engage the writ respondent No. 1-appellant herein within a period of three months from the date of the order and the direction made by the writ Court regarding re-engagement of the writ respondent No. 1, was affirmed.

Brief Facts:

2. It appears that the writ respondent No. 1-appellant herein was engaged on daily wage basis in the month of January, 1980 by the writ petitioner-respondent No. 1 herein and was dis-engaged on 01.03.1982.

3. The writ respondent had invoked the jurisdiction of the Labour Court by the medium of Reference No. 118/2001. The Labour Court passed the award on 21.03.2005, whereby the dis-engagement of the writ respondent was set aside and the writ respondent No. 1-appellant herein was held entitled for his reinstatement in his original service on the same terms and conditions in which he was working prior to his dis-engagement.

4. Respondent No. 1 challenged the said award by filing **CWP No. 659 of 2005**, titled as **Executive Engineer vs. Onkar Singh and another** before this Court, which was disposed of vide judgment dated 08.05.2007, whereby the case was remanded to the Labour Court. The matter was decided afresh by the Labour Court on 17.09.2007. It is apt to reproduce operative part of the award herein:

> "In view of my findings on above issues, the disengagement of the petitioner by the respondent w.e.f. 1.3.1982 is in contravention of Section 25-F (a), (b) and (c) of the Act and therefore, is liable to the set aside. The petitioner is entitled for his reinstatement in his original service on the same terms and conditions in which he was working prior to his disengagement.
>
> Having regard to the totality of the facts, circumstances and the evidence of the parties available on the record the intervening period between the disengagement of the petitioner and raising industrial disputes by the petitioner shall only be liable to be counted towards his seniority i.e. from 1.3.1982 to 5.8.2000. Under the peculiar circumstances of the case, the petitioner shall also not be entitled for back wages. The respondent is directed to reengage the petitioner within a period of three months from the date of announcement of this Award."

5. Being aggrieved, the writ petitioner-respondent No. 1 herein questioned the award passed by the Labour Court, by the medium of **CWP No. 1220 of 2008**, titled as **The Executive Engineer versus Onkar Singh & another**. The appellant-writ respondent No. 1 has not questioned the award made by the Labour Court. Thus, it has attained finality, so far as it relates to him.

6. The Labour Court has not granted back wages w.e.f. 01.03.1982 till the date of passing of the award i.e. 17.09.2007 to the appellant-writ respondent No. 1, but directed that the period from 01.03.1982 to 05.08.2000 shall not be counted towards his seniority**.** The order is silent for the period i.e. w.e.f. 05.08.2000 till 17.09.2007.

7. The appellant-writ respondent No. 1 was to be held entitled to back wages from the date of the award passed by the Labour Court i.e. 17.09.2007, for the reason that the writ petitioner was directed to re-engage the appellant-writ respondent No. 1, within a period of three months from the date of the award. He was not allowed to reap the fruits because the writ petitioner-respondent No. 1 herein caused the delay by filing the writ petition.

8. In the given circumstances, the appellant-writ respondent No. 1 is entitled to back wages w.e.f. 17th December, 2007, i.e. after the expiry of three months time frame, as above. Respondent No. 1 is directed to release back wages in favour of the appellant within a period of six months from today. In default, respondent No. 1 to pay interest at the rate of

7.5% per annum from today. The period w.e.f. 05.08.2000 till regularization is to be counted for the purpose of seniority.

9. The appeal is allowed and the impugned judgment is modified, as indicated above.

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BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J.

Vijender Singh ...Appellant.
Versus
State of Himachal Pradesh ...Respondent.

Criminal Appeal No.205 of 2006
Reserved on : 4.3.2015
Date of Decision: March 12, 2015.

Code of Criminal Procedure, 1973- section 386 - When several persons commit an offence in furtherance of their common intention and all except one are acquitted, it is open to the appellate Court to determine whether some of the accused stood wrongly acquitted although it would not interfere with such acquittal in absence of any appeal by the State Government. (Para-8)

Indian Penal Code, 1860- Sections 447, 307, 323, 506, 34- Complainant and her sister were working in their field- accused, owner of the other field, came to cut grass from the common boundary – complainant objected to the same- accused 'S' picked up a danda and tried to beat the complainant unsuccessfully – she asked the other accused to give beating- the accused attacked the complainant party with the stone- one stone thrown by accused 'V' hit 'S'- Medical Officer found multiple injuries which render the prosecution version of 'S' being hit by stone to be doubtful- sister of the complainant was not produced before the Court- accused and the complainant did not have cordial relation – hence, in these circumstances, prosecution version was not established beyond reasonable doubt- accused acquitted. (Para-13 to 23)

Cases referred:

Brathi alias Sukhdev Singh v. State of Punjab, (1991) 1 SCC 519
Madan Pal v. State of Haryana, (2006) 1 SCC (Cri.) 357
Anil s/o Shamrao Sute and another v. State of Maharashtra, (2013) 12 SCC 441
Prithpal Singh and others v. State of Punjab and another, (2012) 1 SCC 10

For the Appellant : Mr. Ramakant Sharma, Advocate.
For the Respondent : Mr. R.S. Verma, Additional Advocate General.

The following judgment of the Court was delivered:

Sanjay Karol, Judge

Appellant-convict Vijender Singh, hereinafter referred to as the accused, has assailed the judgment dated 14.7.2006, passed by Sessions Judge, Solan, Camp at Nalagarh, Himachal Pradesh, in Sessions Trial No.9-NL/7 of 2005/2003, titled as *State of*

Himachal Pradesh v. Satya Devi and others, whereby he stands convicted of the offence punishable under the provisions of Section 304 (second part) and sentenced to undergo rigorous imprisonment for a period of five years and pay fine of Rs.5,000/- and in default thereof to further undergo rigorous imprisonment for a period of one year.

2. It is the case of prosecution that on 17.7.2003, when Neeta Devi (PW-1) and her sister Achhari Devi were working in their fields, accused Ratti Ram, his wife and sons, who own adjoining fields, came to cut grass from the common boundary. Neeta Devi objected to the same, but nevertheless they continued with the same. Also, Satya Devi picked up a danda and unsuccessfully tried to beat Neeta Devi. However, on her asking, accused persons, namely Ratti Ram, Vijender Singh and Ashwani Kumar gave beatings. In the meantime, Sunehru Devi, grandmother of Neeta Devi, also reached the spot. At that, all the accused persons attacked them with stones and one such stone thrown by accused Vijender Singh hit Sunehru Devi, as a result of which she sustained injuries and fell down. Hearing cries, when Man Singh (PW-2) and Ranjit Singh (PW-3) arrived on the spot, accused ran away. Sunehru Devi was taken to the hospital, first at Nalagarh, where she was examined by Dr. M.R. Verma (PW-5) and thereafter to PGI, Chandigarh, where she was examined by Dr. Rahul Gupta (PW-12). Unfortunately, Sunehru Devi succumbed to the injuries and died on 22.7.2003. In the meanwhile, ASI Prakash Chand (PW-8), Incharge of Police Post, Dabhotta reached the spot and recorded statement of Neeta Devi (Ex.PW-1/B), under the provisions of Section 154 of the Code of Criminal Procedure, on the basis of which FIR No.106/03, dated 17.7.2003 (Ex. PW-10/A), under the provisions of Sections 447, 307, 323, 506, 34 of the Indian Penal Code, was registered at Police Station, Nalagarh. SI Balbir Singh, SHO of the concerned Police Station, conducted investigation on the spot. He collected sample of the blood stained soil; took into possession two stones and a danda (Ex.P-1); got the land demarcated from Patwari Gurcharan Dass (PW-4) and took on record the demarcation report; got the postmortem of the dead body conducted from Dr. Dalbir Singh (PW-11). With the completion of investigation, which prima facie revealed complicity of the accused in the alleged crime, challan was presented in the Court for trial.

3. Challan was presented against four accused persons, namely Satya Devi, Vijender Singh, Ashwani Kumar and Ratti Ram. During trial, accused Ratti Ram expired. Hence, appellant-accused Vijender Singh alongwith his co-accused Satya Devi and Ashwani Kumar were charged for having committed offence punishable under the provisions of Sections 302, 447, 323, 506, all read with Section 34 of the Indian Penal Code, to which they did not plead guilty and claimed trial.

4. In order to establish its case, prosecution examined as many as 12 witnesses and statements of the accused persons, under the provisions of Section 313 of the Code of Criminal Procedure were also recorded, in which accused Vijender Singh pleaded false implication and took the following defence:

> "On 16-7-2003, there was a function at the house of Kuber who did not have good relations with Sunehru and Besria her husband. I was passing through the side of the house of Kuber. At that time I heard shouting coming from the house of Kuber. In the meantime Kuber came there and he started scuffling with Sunehru. Thereafter he picked up a Danda and hit her with it. She sustained in jury on the head and fell down. Thereafter, I left the place. We have been falsely implicated on account of enmity. We are innocent."

The witnesses were examined in defence.

5. Based on the testimonies of the witnesses and the material on record, trial Court convicted accused Vijender Singh of the offence, punishable under the provisions of Section 304 (second part), and sentenced him as aforesaid, but however, acquitted all the accused persons, including the accused-appellant, of the offences under Sections 302, 447, 323, 506 all read with Section 34 of the Indian Penal Code. Hence, the present appeal by accused vijrender Singh.

6. Learned Additional Advocate General, under instructions, has clarified that no appeal either stands filed or is sought to be filed against the judgment of acquittal of the other accused persons. Also findings qua acquittal of accused Vijender Singh, with respect to other charges, are also not assailed.

7. Having heard learned counsel for the parties as also perused the record, Court is of the view that the trial Court committed great illegality and irregularity in convicting the accused-appellant in relation to offence punishable under the provisions of Section 304 (second part) of the Indian Penal Code. Trial Court erred in not completely and correctly appreciating the testimonies of the prosecution witnesses and other material on record. Reasoning adopted is perverse.

8. It is a settled principle of law that when allegedly several persons commit an offence in furtherance of common intention and all except one are acquitted, it is open to the appellate court to find out, on reappraisal of evidence whether some of the accused persons stood wrongly acquitted, although it would not interfere with such acquittal in the absence of any appeal by the State Government. The effect of such finding is not to reverse the order of acquittal into one of conviction or visit the acquitted person with criminal liability. The finding is relevant only in invoking against the convicted person his constructive criminality. (*Brathi alias Sukhdev Singh v. State of Punjab,* (1991) 1 SCC 519).

9. For the purpose of Section 34 of the Indian Penal Code, on same set of evidence, it is not open for the Court to acquit one and convict the other. [*Madan Pal v. State of Haryana,* (2006) 1 SCC (Cri.) 357].

10. On this issue, with profit, following observations of Hon'ble the Supreme Court in *Anil s/o Shamrao Sute and another v. State of Maharashtra,* (2013) 12 SCC 441, are reproduced:

> "11. It is pertinent to note that learned Sessions Judge acquitted the accused of the offence punishable under Sections 147 and 148 of the IPC and observed that as per the prosecution case there were only three persons at the spot that is A1-Anil, A2-Ashok and A5-Shankar. He observed that the prosecution has failed to prove that all the accused were members of the unlawful assembly and in prosecution of their common object they committed murder of the deceased. All the accused were acquitted of the offence under Section 302 read with Section 149 of the IPC. As no overt act was attributed to A4-Kishor, A5-Shankar and A6-Mayabai, he acquitted them of offence punishable under Section 302 read with Section 34 of the IPC. The appellants A1-Anil and A2-Ashok were convicted for the offence punishable under Section 302 of the IPC with the aid of Section 34 thereof.
>
> 12. Now, the question is whether the version given by PW3-Meena in the FIR that A1-Anil and A2-Ashok assaulted the deceased is to be accepted or whether the version given by her in the examination-in-chief that A1-Anil, A2-Ashok, A4-Kishor and A5-Shankar assaulted the deceased has to be accepted or whether the version given by her in the cross-examination that

A1-Anil and A2-Ashok only dragged the deceased out in the courtyard along with A3-Baba and A3-Baba assaulted the deceased with others is to be accepted. When there is such a great variance in her versions, we find it risky to convict the accused on the basis of such evidence. If her version in the FIR and examination-in-chief is to be accepted, then A5- Shankar could have been convicted with the aid of Section 34 of the IPC. But, he has been acquitted. If the version given in the cross-examination that A1-Anil and A2-Ashok only dragged the deceased out and A3-Baba assaulted the deceased is to be accepted, then, it is necessary to examine whether they shared common intention with A3-Baba to commit murder of the deceased. It is possible that they did share common intention with A3- Baba. It is equally possible that they did not. If A1-Anil and A2-Ashok merely dragged the deceased and they had no intention to kill the deceased, they may be guilty of a lesser offence. It appears that unfortunately, this aspect was not examined properly by learned Sessions Judge because during the pendency of the case, A3-Baba was murdered and could not be tried. At this stage, in the absence of evidence, it is not possible for us to make out a new case. The prosecution case is, therefore, not free from doubt.

13. Undoubtedly, the evidence on record creates a strong suspicion about involvement of A1-Anil and A2-Ashok, but, it is not sufficient to prove their involvement in the offence of murder beyond doubt. It is well settled that suspicion, however strong, cannot take the place of proof. Clear and unimpeachable evidence is necessary to convict a person. We find that such evidence is absent in this case. The prosecution cannot rely on the evidence of discovery of weapons at the instance of A1-Anil and A2- Ashok because the panchas have turned hostile. In order to have the evidence of an independent witness on record, the prosecution examined PW-7 Shashikala, but, she turned hostile. Similarly, another witness PW-4 Ramesh Kale also turned hostile. Therefore, there is no other evidence on record which can support the prosecution case. In any case, there is no question of seeking corroboration to the evidence of PW-3 Meena because her evidence itself does not inspire confidence. It must be remembered that on the same evidence, A4-Kishor, A5-Shankar and A6-Mayabai have been acquitted. In the circumstances, we are of the opinion that benefit of doubt will have to be given to A1-Anil and A2-Ashok."

11. In the present case, out of four accused persons, Ratti Ram expired during trial, and mother and brother of the appellant stood acquitted.

12. It is also a settled principle of law that evidence led by the prosecution has to be weighed and not counted. Test is whether evidence has a ring of truth, is cogent, credible and trustworthy. If the quality of evidence is not satisfactory, Court, in discharge of its duties, would come forward to acquit the accused. (See: *Prithpal Singh and others v. State of Punjab and another,* (2012) 1 SCC 10).

13. From the version of Neeta Devi, it is evidently clear that there were only three persons on the spot, i.e. the witness herself, her sister Achhari Devi and the deceased. Statement of deceased could not be recorded by the police. Deceased was first examined by Dr. M.R. Verma, (PW-5), who states that the deceased, at the time of her first examination, was semi-conscious and disoriented to space, time and place. According to the witness, lady had a history of allegedly being "*hit by stones and sticks by some persons*". Significantly, she was examined by the doctor on 17.3.2003 at 8.10 p.m., by which time her attendants were

aware of the identity of the assailants, yet such fact was not disclosed by them. The doctor does state that on local examination, following injuries were found on the body of the deceased:

> "1 There was haematoma with one c.m. lacerated would over right parietal region just above right ear with fresh bleeding.
>
> 2. Right upper and lower lids were bluish black and swollen. There was bleeding from nose and right ear. The patient was referred to P.G.I. Chandigarh for further management and advice."

With certainty, doctor could not state as to how many blows of sticks or stones were sustained by Sunehru Devi. Medical evidence renders the prosecution case of the deceased having hit by only one stone to be doubtful.

14. It has come on record that the deceased was further examined at PGI, Chandigarh, by Dr. Rahul Gupta (PW-12), who issued MLC (Ex.PW-12/A). Even in this document, there is no reference of either the assailants or the cause of injuries. Only in Court, witness states that daughter-in-law of the deceased had stated that she (deceased) was hit by stones on the head. The deceased expired on 22.7.2003. Postmortem was conducted by Dr. Dalbir Singh (Pw-11), who opined cause of death to be "oedma of brain consequent to fracture of skull, sub-archnoid haemorrhage, laceration of brain parenchyma and extra cerebral haematoma following blunt force, trauma to the head".

15. Noticeably, from the testimony of Prakash Chand (PW-8), it has come on record that immediately after reaching the spot, he recorded statement of Neeta Devi (Ex. PW-1/B) at 7.15 p.m. Witness admits that at that time, apart from the family members of the deceased, villagers were also present. Significantly, it has come on record that Kuber, a nephew of the deceased, is in the Police Department. It is in this backdrop that I find the possibility of the time being wrongly recorded in Ex. PW-1/B not to be ruled out.

16. Also, except for Man Singh (PW-2), who is a neighbour of Neeta Devi, no other person from the village was associated by the Investigating Officer. It is not that none come forward or refused to be associated. We find that the incident took place at about 5.30 p.m. and yet none from the family of the deceased bothered to immediately provide medical aid to the deceased. She was kept bleeding on the spot. Why so? remains unexplained. It is not that there was any fear from the accused. For unexplained reasons, Acchari Devi has not been produced in Court.

17. Version of Neeta Devi that accused Vijender Singh threw stone, which hit the deceased on the right side, to our mind, cannot be said to be inspiring in confidence. Her version that all the accused persons attacked them with stones is also not true. Had all the four assailants thrown stones, then police would not have recovered only two stones, which in any event did not contain any blood stains of the deceased.

18. Version of PW-1 that only deceased was hit with one stone does not appear to be true, for one cannot forget that the assailants were male members and more in number. Had they pelted stones from a close distance of 5-6 feet, all the members of the complainant party would have sustained some injuries. Now, this creates doubt with regard to the genesis of the prosecution story.

19. It has come on record through the testimony of the prosecution witnesses that the accused and the deceased were not having cordial relationship. Already there was a boundary dispute, in relation to which complaints stood lodged with the Pradhan and demarcation of the land conducted prior to the incident.

20. It has also come on record that Kuber, a close relative of the deceased, was having a function at his house on 16.7.2003. Defence of the accused that Besria had gone to attend that function, which was objected to by the deceased, prompting Kuber to beat her somewhat stands probablized by the accused.

21. Version of Man Singh that he saw the accused persons running from the spot, is a mere exaggeration. He did not see any of the accused, either pelting stones or giving blows with sticks. His testimony is only in the nature of hearsay, for according to him, hearing cries, when he ran towards the fields he saw the accused run away and after reaching the spot he was told that the "accused" had hit them with stones. Now, he categorically does not state that the stone with which the deceased was hit was thrown by the present accused-appellant.

22. Doubting the presence of Ranjit Singh (PW-3) on the spot, trial Court could not have relied upon his statement for convicting the accused-appellant. It is a serious error and illegality.

23. Thus, findings of conviction and sentence, returned by the Court below, cannot be said to be on the basis of any clear, cogent, convincing, legal and material piece of evidence, leading to an irresistible conclusion of guilt of the accused.

24. Hence, for all the aforesaid reasons, the appeal is allowed and the judgment of conviction and sentence, dated 14.7.2006, passed by Sessions Judge, Solan, Camp at Nalagarh, Himachal Pradesh, in Sessions Trial No.9-NL/7 of 2005/2003, titled as *State of Himachal Pradesh v. Satya Devi and others,* is set aside and the accused-appellant Vajinder Singh is acquitted. Amount of fine, if deposited by the accused, be refunded to him accordingly. Appeal stands disposed of, so also pending application(s), if any.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Harpal Singh and others .....Appellants

Versus

Ram Pal @ Sanju and others ...Respondents

FAO (MVA) No. 211 of 2007
Date of decision: 13th March, 2015.

Motor Vehicle Act, 1988- Section 166- Deceased was a Government servant and his gross pay was Rs.7,535/- Tribunal had deducted subscription which is not permissible and the income of the deceased was to be taken as Rs.7,535/-- Tribunal had deducted ½ as loss of dependency whereas 1/3rd was to be deducted towards the loss of dependency - taking loss of dependency as Rs.5,000/-, claimant is entitled for the compensation of Rs. 6,60,000/-.

(Para-7 and 8)

Cases referred:

Sarla Verma and others versus Delhi Transport Corporation and another AIR 2009 SC 3104
Reshma Kumari and others versus Madan Mohan and another, 2013 AIR SCW 3120

For the appellants: Mr. Ajay Sharma, Advocate.

For the respondents: Mr. Tara Singh Chauhan, Advocate, for respondents No. 1 and 2.

Mr. G.D. Sharma, Advocate, for respondent No.3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

This appeal is directed against the judgment and award dated 28.02.2007, made by the Motor Accident Claims Tribunal, Una in MAC Petition No. 15 of 2006, titled *Harpal Singh versus Ram Pal @ Sanju and others,* whereby compensation to the tune of Rs.4,90,320/- came to be awarded in favour of the claimant/ appellants herein, hereinafter referred to as "the impugned award", for short, on the grounds taken in the memo of appeal.

2. The claimant had filed claim petition before the Motor Accident Claims Tribunal for the grant of compensation, as per the break-ups given in the claim petition, being the victim of vehicular accident on the ground that driver namely, Ram Pal has driven Mohindra Pick-up bearing registration No. HP36-4320 rashly and negligently at Kotla Kalan and hit scooter bearing registration No. HP-20A-8077, on which deceased was travelling, at about 6.40 p.m. near Arnila Bazar, sustained injuries and succumbed to the injuries.

3. Respondents resisted and contested the claim petition and following issues came to be framed.

(i) *Whether Kanta Devi died in a motor accident caused by rash and negligent driving of a Jeep (No.HP-36-4320) by Ram Pal (respondent 1) on January 21, 2006? OPP.*

(ii) Whether petitioners are entitled to compensation. If so, to what amount and from whom? OPP.

(iii) Whether the accident was attributable to rashness and negligence of the deceased. If so, tow hat effect. OPP

(iv) Whether the petition is bad for non-joinder of the owner and the insurer of the scooter (No. HP-20A-8077) OPR

(v) Whether the respondent No. 1 was not holding a valid and effective driving licence at the time of accident. OPR-3

(vi) Whether the jeep in question was being driven in violation of the terms and conditions of the insurance policy. OPR.

(vii) Relief.

4. Parties led evidence. All issues were decided against the respondents and in favour of the claimant.

5. Respondents have not questioned the impugned award on any ground, thus, it has attained finality so far it relates to them. The claimants have questioned the impugned award only on the ground of adequacy of compensation. Thus, the only question to be determined in this appeal is whether the compensation awarded is adequate or otherwise.

6. I am of the considered view that the Tribunal has fallen in an error in awarding the compensation, which, on the face of it, is illegal for the following reasons.

7. Admittedly, deceased was a government employee and his gross pay was Rs.7535/- as per Ext. PW2/A, salary certificate, but the Tribunal has deducted subscriptions which is not permissible. The Tribunal has also fallen in an error in assessing the loss of dependency. The income of the deceased was to be taken as Rs.7535/- at that point of time.

8. Keeping in view the 2nd Schedule of the Motor Vehicles Act and the mandate rendered by the apex Court in the case ***Sarla Verma and others versus Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104*** and upheld in ***Reshma Kumari and others versus Madan Mohan and another***, reported in ***2013 AIR SCW 3120***, 1/3rd was to be deducted. But the Tribunal has deducted one half. Therefore, it is held that the claimant/appellants have lost source of dependency to the tune of Rs.5000/- per month, i.e. 5000x12=Rs. 60,000/- per annum. The Tribunal has applied the just and appropriate multiplier of "11", is upheld. Viewed thus, claimants are held entitled to Rs.60,000x11=Rs.6,60,000/- as compensation.

9. The insurer is directed to deposit the enhanced amount with interest @ 7.5% per annum from today, within six weeks from today. On deposit, the same be released to the claimants, strictly, in terms of the conditions contained in the impugned award.

10. Accordingly, the appeal is disposed of. The impugned award is modified, as indicated above. Send down the record forthwith.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Laxmi Nand Sharma .....Appellant

Versus

Sunil Kumar and others ....Respondents

FAO (MVA) No. 249 of 2007
Date of decision: 13th March, 2015.

Motor Vehicle Act, 1988- Section 166- Tribunal had awarded Rs. 50,000/- under the head "pain and suffering" and Rs. 50,000/- under the head "loss of amenities of life" which is meager- claimant had suffered 50% disability- thus, an additional amount of Rs. 25,000/- awarded under the head "pain and suffering". (Para- 3 and 4)

Cases referred:

R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others, AIR 1995 SC 755
Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another, 2010 AIR SCW 6085
Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited, 2011 AIR SCW 4787
Kavita versus Deepak and others, 2012 AIR SCW 4771

For the appellant: Mr. Virender Singh Chauhan, Advocate.
For the respondents: Nemo for respondent No.1.
Mr. Vikas Rathore, Advocate, for respondent No.2.
Ms. Devyani Sharma, Advocate, for respondent No.3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

This appeal is directed against the judgment and award dated 16.03.2007, made by the Motor Accident Claims Tribunal, (Presiding Officer Fast Track Court), Solan in MAC Petition No. 56FT/2 of 2005, titled *Laxmi Nand Sharma vs. Shri Sunil Kumar and others,* whereby compensation to the tune of Rs.2,13,473/- came to be awarded in favour of the claimant/ appellant herein, hereinafter referred to as "the impugned award", for short, on the grounds taken in the memo of appeal.

2. The insurer, driver and owner have not questioned the impugned award on any ground, thus it has attained finality so far it relates to them. The claimant/appellant has questioned the impugned award only on the ground of adequacy of compensation. Thus, the only question to be determined in this appeal is whether the compensation awarded is adequate or otherwise.

3. I have gone through para-18 of the impugned award. It appears that the Tribunal has awarded Rs.50,000/- under the head "pain and suffering" and Rs.50,000/- under the head "loss of amenities of life" which, on the face of it, is meager, in view of the fact that the claimant/appellant has suffered 50% disability. While making guess work, read with the mandate of Motor Vehicles Act, the Schedule appended to the Act, the judgments made by this Court right from 1975 till today and of the apex Court in ***R.D. Hattangadi*** versus ***M/s Pest Control (India) Pvt. Ltd. & others,*** reported in ***AIR 1995 SC 755, Arvind Kumar Mishra*** versus ***New India Assurance Co. Ltd. & another,*** reported in ***2010 AIR SCW 6085, Ramchandrappa*** versus ***The Manager, Royal Sundaram Aliance Insurance Company Limited,*** reported in ***2011 AIR SCW 4787, Kavita*** versus ***Deepak and others*** reported in ***2012 AIR SCW 4771,*** the amount is to be enhanced under the head "pain and suffering."

4. Viewed thus, the claimant is held entitled to Rs.25,000/-, under the head "pain and suffering" in addition to the amount already awarded. The insurer is directed to deposit the enhanced amount within six weeks from today. On deposit, the same be released to the claimant, strictly, in terms of the conditions contained in the impugned award.

5. Accordingly, the appeal is disposed of. The impugned award is modified, as indicated above. Send down the record forthwith.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Smt. Leela & others ...Appellants.

Versus

The Oriental Insurance Company & others ...Respondents.

FAO No. 158 of 2007
Decided on: 13.03.2015

Motor Vehicle Act, 1988- Section 166- Tribunal had taken the income of the deceased as Rs. 2,100/- per month and had deducted Rs.1,100/- per month towards personal expenses-held, that deduction was not in accordance with law- 1/4th amount was to be deducted-

hence, loss of dependency is taken to Rs. 1,600/- per month and applied multiplier of '15'- claimants are entitled for the compensation of Rs. 2,88,000/-. (Para- 4 to 6)

Cases referred:
Sarla Verma (Smt) and others versus Delhi Transport Corporation and another, (2009) 6 Supreme Court Cases 121
Reshma Kumari & Ors. versus Madan Mohan & Anr., 2013 AIR SCW 3120

For the appellants:	Mr. R.K. Sharma, Senior Advocate, with Ms. Anita Parmar, Advocate.
For the respondents:	Nemo for respondents No. 1 and 2. Ms. Kiran Dhiman, Advocate, vice Mr. Onkar Jairath, Advocate, for respondent No. 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

By the medium of this appeal, the appellant-insurer has called in question the award dated, 26th June, 2006, made by the Motor Accident Claims Tribunal, Chamba Division, Chamba, H.P.(for short "the Tribunal") in Claim Petition No. 81 of 2004, titled as Smt. Leela & others versus Prem Bhardwaj & another, whereby compensation to the tune of Rs.2,57,000/- came to be awarded in favour of the appellants-claimants, as per the apportionment made in the award and against the respondents and the insurer was saddled with liability (for short "the impugned award").

2. The owner-insured and the insurer have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. The appellants-claimants have questioned the impugned award only on the ground of adequacy of compensation, which appears to be forceful for the following reason:

4. The Tribunal has taken the income of the deceased, Shri Kanth, as Rs.2100/- per month, which is meager and has deducted Rs.1100/- towards his personal expenses, which is also not in accordance with the mandate of granting compensation read with the law laid down by the Apex Court in **Sarla Verma (Smt) and others versus Delhi Transport Corporation and another,** reported in **(2009) 6 Supreme Court Cases 121,** which was upheld by a larger Bench of the Apex Court in **Reshma Kumari & Ors. versus Madan Mohan & Anr.,** reported in **2013 AIR SCW 3120,** in terms of which one fourth was to be deducted.

5. Thus, after deducting one fourth, it is held that the appellants-claimants have lost their source of dependency to the tune of Rs. 1600/- per month. The multiplier of '15', as applied by the Tribunal, is just and appropriate.

6. Having said so, the appellants-claimants are held entitled to compensation to the tune of Rs. 2,88,000/- (i.e. Rs. 1600/- x 12 x 15) with interest @ 7.5 % per annum from the date of award till its finalization.

7. Accordingly, the appeal is allowed and the impugned award is modified, as indicated hereinabove.

8. The insurer is directed to deposit the enhanced amount before this Registry within six weeks.

9. Registry to release the enhanced awarded amount in favour of the appellants-claimants strictly as per the terms and conditions contained in the impugned award after proper identification.

10. Send down the record after placing copy of the judgment on Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Magni Devi & others ...Appellant.
Versus
Suneel Kumar & others ...Respondents.

FAO No. 4248 of 2013
Reserved on: 27.02.2015
Decided on: 13.03.2015

Motor Vehicle Act, 1988- Section 169- Claimants are not to prove their case beyond reasonable doubt but they have to prove their case prima facie by adopting summary procedure- granting of compensation is just to ameliorate the woes of the victims of the vehicular accidents and to save them from succumbing to the social evils-granting of compensation is a welfare legislation and the hyper technicalities, mystic maybes, procedural wrangles and tangles have no role to play and cannot be made ground to defeat the claim petitions and social purpose of granting compensation. (Para-9 to 15)

Motor Vehicle Act, 1988- Section 166- FIR was lodged against the driver- final report was presented against him before the Court- he was acquitted on the ground that identity of the vehicle was not established- it was admitted in the reply that accident was caused but it was stated that it was caused due to negligence of the deceased and not of driver which shows that identity of the driver and the vehicle was not disputed, therefore, it was not appropriate for the Tribunal to dismiss the petition on the ground that identity of the driver had not been established. (Para-17 to 19)

Cases referred:

N.K.V. Bros. (P.) Ltd. versus M. Karumai Ammal and others etc., AIR 1980 Supreme Court 1354

Oriental Insurance Co. versus Mst. Zarifa and others, AIR 1995 Jammu and Kashmir 81

Sohan Lal Passi versus P. Sesh Reddy and others, AIR 1996 Supreme Court 2627

Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another, (2013) 10 Supreme Court Cases 646

For the appellants: Mr. Ashok K. Tyagi, Advocate.

For the respondents: Ms. Jyotsna Rewal Dua, Advocate, for respondents No. 1 and 2.
Mr. Jagdish Thakur, Advocate, for respondent No. 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice

By the medium of this appeal, the appellants-claimants have called in question the award, dated 1st November, 2013, made by the Motor Accident Claims Tribunal-I, Sirmaur District at Nahan, H.P. (hereinafter referred to as "the Tribunal") in MAC Petition No. 41-MAC/2 of 2010, titled as Smt. Magni Devi and others versus Suneel Kumar and others, whereby the claim petition filed by the appellants-claimants came to be dismissed (hereinafter referred to as "the impugned award) on the grounds taken in the memo of appeal.

2. It is profitable to give a brief resume of the facts of the case herein.

Brief facts:

3. The claimants invoked the jurisdiction of the Tribunal in terms of Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act") for grant of compensation to the tune of Rs. 25,00,000/-, as per the break-ups given in the claim petition, on the ground that their sole bread earner, Shri Mansha Ram, became the victim of the vehicular accident which was caused by driver-respondent No. 2, namely Shri Ravinder, who had driven the vehicle, bearing registration No. HP-16A-1175, rashly and negligently on 17th August, 2010, at about 5.15 p.m., near Village Bandhala, District Sirmaur, H.P. He was taken to Hospital at Dadahu, was referred to Zonal Hospital, Nahan, where he succumbed to the injuries. The claimants have also claimed, rather pleaded, in the claim petition that the deceased was a government employee, was working as a Beldar in H.P.P.W.D. and his monthly salary was Rs.13,000/-, was also earning Rs.5,000/- from agricultural vocations.

4. The respondents have resisted the claim petition on the grounds taken in the respective memo of objections.

5. Following issues came to be framed by the Tribunal on 2nd September, 2011:

> *"1. Whether Mansha Ram died on account of rash and negligent driving of offending vehicle No. HP-16A-1175 by respondent No. 2 Ravinder on 17-8-2010, at about 5:15 PM, near place Bandala, as alleged? OPP*
>
> *2. In case issue No. 1 is determined in affirmative, to what amount of compensation, the petitioners are entitled to and from whom? OPP*
>
> *3. Whether the petition is not maintainable in the present form, as alleged? OPR-3*
>
> *4. Whether the driver of the offending vehicle did not possess a valid and effective driving licence and that the vehicle was being plied in violation of the terms and conditions of the insurance policy, as alleged? OPR-3*
>
> *5. Whether the petition has been filed in collusion with respondents No. 1 and 2, as alleged? OPR-3*

6. Whether the deceased was travelling in the vehicle in question as an unauthorised passenger, as alleged? OPR-3

7. Relief."

6. The claimants have examined Shri Madan Lal, Junior Assistant, HPPWD Sub Division Dadahu, as PW-1; Shri Mata Ram as PW-3 and one of the claimants, Smt. Magni Devi, herself appeared in the witness box as PW-2. The claimants have also placed on record salary certificate as Ext. PW-1/A, affidavit of Smt. Magni Devi as Ext. PW-2/A, copies of FIR, post mortem report, Pariwar register & death certificate as Ext. PW-2/B, Ext. PW-2/C, Ext. PW-2/D & Ext. PW-2/E, respectively; affidavit of Shri Mata Ram as Ext. PW-3/A and copy of report under Section 173 of the Code of Criminal Procedure (hereinafter referred to as "the CrPC") as Ext. PX. The respondents have not led any evidence and has placed on record copy of the driving licence as Ext. RX.

7. The Tribunal, after scanning the evidence, oral as well as documentary, held that the claimants have failed to prove that the driver had caused the accident and the vehicle was involved in the accident. Accordingly, issue No. 1 came to be decided against the claimants and in favour of the respondents and consequently, the claim petition also came to be dismissed.

8. I have heard the learned counsel for the parties and have gone through the record.

9. I am of the considered opinion that the Tribunal has fallen in an error in deciding issue No. 1 for a simple reason that the claimants have not to prove their case beyond reasonable doubt, but have to, *prima facie,* prove their case by adopting summary procedure and strict proof is not required.

10. Granting of compensation is just to ameliorate the woes of the victims of the vehicular accidents and to save them from succumbing to the social evils. It is just a source of help to the victims/claimants/affected parties, who have lost their bread earner.

11. It is beaten law of land that granting of compensation is a welfare legislation and the hypertechnicalities, mystic maybes, procedural wrangles and tangles have no role to play and cannot be made ground to defeat the claim petitions and to defeat the social purpose of granting compensation.

12. My this view is fortified by the judgment of the Apex Court in the case titled as **N.K.V. Bros. (P.) Ltd. versus M. Karumai Ammal and others etc.,** reported in **AIR 1980 Supreme Court 1354.** It is apt to reproduce relevant portion of para 3 of the judgment herein:

"3. Road accidents are one of the top killers in our country, specifically when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accident Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this

> *aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their "neighbour". Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parcimony practised by tribunals. We must remember that judicial tribunals are State organs and Art. 41 of the Constitution lays the jurisprudential foundation for state relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Court should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.*
>
> *Emphasis supplied"*

13. The Jammu and Kashmir High Court in the case titled as **Oriental Insurance Co. versus Mst. Zarifa and others,** reported in **AIR 1995 Jammu and Kashmir 81,** held that the MV Act is Social Welfare Legislation and the procedural technicalities cannot be allowed to defeat the purpose of the Act. It is profitable to reproduce para 20 of the judgment herein:

> *"20. Before concluding, it is also observed that it is a social welfare legislation under which the compensation is provided by way of Award to the people who sustain bodily injuries or get killed in the vehicular accident. These people who sustain injuries or whose kith and kins are killed, are necessarily to be provided such relief in a short span of time and the procedural technicalities cannot be allowed to defeat the just purpose of the Act, under which such compensation is to be paid to such claimants."*

14. It is also apt to reproduce relevant portion of para 12 of the judgment of the Apex Court in the case titled as **Sohan Lal Passi versus P. Sesh Reddy and others,** reported in **AIR 1996 Supreme Court 2627,** herein:

> *"12. .....While interpreting the contract of insurance, the Tribunals and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of sub-section (1) of Section 96*

> *of the Act. It need not be pointed out that the whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Accident Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known."*

15. The Apex Court in a case titled **Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another**, reported in (**2013) 10 Supreme Court Cases 646** has laid down the same principle and held that strict proof and strict links are not required.

16. Admittedly, FIR was lodged against the driver, i.e. respondent No. 2, investigation was conducted and final report was presented against him before the Court of competent jurisdiction, i.e. Judicial Magistrate, Ist Class, Nahan, District Sirmaur, Himachal Pradesh (hereinafter referred to as "the trial Court"), who has dismissed the challan and acquitted the accused/driver-respondent No. 2 on the grounds that the identity of the vehicle was not established by the prosecution and it has failed to bring home the guilt to the accused.

17. It is apt to mention herein that the learned counsel for respondents No. 1 and 2 has made available the certified copy of the judgment made by the trial Court in the criminal proceedings, which was made part of the file. It is apt to reproduce paras 29 and 30 of the judgment herein:

> *"29. Likewise, ASI Ranjeet Singh, who investigated the matter has been examined as PW11, who has simply stated about the various steps having been taken by him in the investigation of the case but on the basis of his statement also, it cannot be said that identity of the offending pick-up as well as the accused have been proved in the commission of crime. Moreover, he has no where stated that at the time of accident, accused was not having a valid driving licence to drive the offending pick-up. Had such evidence been led by him that accused was possessing a driving licence of light motor vehicles and not of light goods vehicle, even then, when it has not been proved, on record, that he was driving the offending pick-up at the time of accident, prosecution cannot be said to have succeeded in proving even the ingredients of offence punishable under Section 181 of the Act.*
>
> *30. Likewise, when it has not been proved, on record, that accused was driving the offending pick-up and the offending pick-up was involved in the commission of crime, I am of the view that accused cannot be held liable for commission of offences punishable under Sections 279, 304-A and 201 of the Code as well as under Section 187 of the Act. Thus, all the points under discussion are held against the prosecution."*

18. Respondents No. 1 and 2 have filed reply in the claim petition and have admitted that the accident was caused, but have stated that it was caused due to the negligence of the deceased and not of the driver. It is apt to reproduce paras 1, 8 to 13 and last three lines of para 22 of their reply herein:

> *"1. That introductory para No. 1 of the petition as laid is not admitted. The deceased was not travelling in the vehicle owned by the respondent No. 1 and driven by respondent No. 2. Rather the deceased attempted to board the moving vehicle, un-noticed by the respondent No. 2 and fell on the ground in this process.*
>
> *.....*
>
> *8 to 13. That paras 8 to 13 of the petition as stated, are not admitted. the deceased attempted to board the moving vehicle bearing Registration No. HP-16-A-1175 without the consent, permission or knowledge of the respondent No. 2 and probably fell down, while climbing and boarding the same. He might have received injuries, but the treatment given in R.H. Nahan is free of charge, therefore the averment that a sum of Rs. 15000/- were spent on his treatment is categorically denied.*
>
> *.....*
>
> *22. .....The manner in which the deceased tried to board the aforesaid vehicle in an illigal and irresponsible manner reflects that the deceased himself and non else has to be blamed for the alleged accident. The amount claimed in highly exaggerated and disproportionated."*

19. Thus, the identity of the driver as well as the vehicle was established. The only point to be determined was - whether the deceased, of his own, attempted to board the moving vehicle? The Tribunal has not returned any finding on this issue. This issue could have been determined by examining the Investigating Officer of the said criminal case, but he has not been examined.

20. The appellants-claimants have also moved an application under Order 41 Rule 27 of the Code of Civil Procedure (hereinafter referred to as "the CPC") and have sought leave of this Court to lead additional evidence and also to examine the Investigating Officer.

21. In the given circumstances, the impugned award is set aside and the case is remanded with a direction to the Tribunal to provide opportunity to the claimants to examine the Investigating Officer or any other police official or witnesses, who have participated in the investigation of the case or whose statements have been recorded during investigation in terms of Section 161 CrPC and to bring on record any evidence. The claimants can also apply for procuring the attendance of the witnesses through Court process. The respondents are also at liberty to lead evidence in rebuttal. The Tribunal is directed to conclude the claim petition within six months with effect from 23rd March, 2015.

22. Parties are directed to cause appearance before the Tribunal on **23rd March, 2015.**

23. Registry to send the record alongwith copy of this judgment to the Tribunal by or before 23rd March, 2015.

24. The appeal is disposed of, as indicated hereinabove, alongwith all pending applications, if any.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Man Singh .....Appellant.
Versus
State of Himachal Pradesh .....Respondent.

Cr. Appeal No. 31 of 2012
Reserved on: March 12, 2015.
Decided on: March 13, 2015.

Indian Penal Code, 1860- Sections 320 and 323- Accused inflicted a darat blow on the head of the deceased – when 'C' tried to snatch the darat, she also sustained injuries on the right hand- accused jumped from the veranda and ran away- PW-14 stated that a telephonic information was received from the Pardhan, Gram Panchayat, Melandi that accused had killed his brother, on the basis of which a rapat was entered- it was not explained as to who had informed the Pardhan about the incident- PW-1 and PW-2 did not state that they had informed the Pardhan- Pardhan was not examined- wife of the deceased was present on the spot but was not examined by the Prosecution- no independent witness was associated from the Village- accused had not made any disclosure statement but he had simply produced darat at the time of his arrest- it is difficult to believe that he would be carrying darat with him from the date of commission of offence till the time of arrest- held, that in these circumstances, prosecution version is not proved- accused acquitted. (Para-17 to 21)

For the appellant: Mr. Jagdish Thakur, Advocate.
For the respondent: Mr. Ramesh Thakur, Asstt. AG.

The following judgment of the Court was deliveredK

Justice Rajiv Sharma, J.

This appeal is instituted against the judgment dated 24.9.2011, rendered by the learned Sessions Judge, Kinnaur at Rampur Bhushar, H.P. in Sessions Trial No. 51 of 2010, whereby the appellant-accused (hereinafter referred to as the accused), who was charged with and tried for offence punishable under Sections 302 & 323 IPC, has been convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5000/- and in default of payment of fine to further undergo simple imprisonment for four months under Section 302 IPC. The accused was further sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs. 3000/- and in default to further undergo simple imprisonment for 3 months under Section 323 IPC.

2. The case of the prosecution, in a nut shell, is that on 6.7.2010 complainant Sanju Devi (PW-1) alongwith Bhishma and Suchi, daughter of her Jeth (deceased), was sleeping in the room on the upper storey. The deceased had slept in the room located in the lower storey. The accused had consumed liquor and slept in the room where his mother was sleeping. Since the accused was of violent nature, he used to keep Darat with him. On the intervening night of 6/7-7-2010, at about 2:00 AM, he knocked at the door of her room

and started hurling abuses at his mother and brother. At about 9:00 AM, when she heard the sound of someone moving in the verandah, she opened the door and saw the deceased trying to make the accused understand by standing in the verandah, in front of the door of the room in which her mother-in-law was sleeping. In the process, the accused, brought a Darat and gave its blows on the head of the deceased. When Chhotu tried to snatch the Darat, she also sustained injuries on the right hand. On hearing the noise, Smt. Surendra, her jethani, also came out. In the meantime, the accused jumped from the verandah and ran away. The deceased died to the injuries. The site plan was prepared and photographs of the dead body were taken. The post mortem was got conducted. The viscera was sent to FSL and report was obtained. On completion of the investigation, challan was put up after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as 14 witnesses. The accused was also examined under Section 313 Cr.P.C. He has denied the prosecution case. The learned trial Court convicted and sentenced the accused, as noticed hereinabove. Hence, this appeal.

4. Mr. Jagdish Thakur, Advocate for the accused has vehemently argued that the prosecution has failed to prove the case against the accused. On the other hand, Mr. Ramesh Thakur, learned Asstt. Advocate General, appearing on behalf of the State, has supported the judgment of the learned trial Court dated 24.9.2011.

5. We have heard learned counsel for both the sides and gone through the records of the case carefully.

6. PW-1 Sanju Devi testified that she is the wife of Vipan Singh. Vipan Singh had two brothers including Sher Singh deceased. The accused was brother of her husband. Sher Singh was married and accused Man Singh was not married. Her mother-in-law Leela Devi was suffering from cancer for the last 5/6 months. Her Bhanji Chhotu (Bhishma) had come to their house. Her husband and her Dever were residing in the same house. On 7.7.2010, she alongwith her Bhanji Chhotu (Bhishma) and Suchi (her Jeth's daughter) were sleeping in separate room on the upper storey. In the lower storey, her Jeth Sher Singh was sleeping alongwith his two daughters. Accused was sleeping in a room in the same storey/floor where she alongwith the girls was sleeping. The accused had consumed liquor and was having a Darat. At about 4:00 AM (during night), accused started knocking at the door of the room in which she was sleeping by proclaiming that he would kill them. Thereafter, he went to his room and later on started troubling her mother-in-law. On hearing the noise, she came out from her room and saw accused giving Darat blow to her Jeth Sher Singh. He had given 4/5 Darat blows to him on different parts of the body. When they tried to intervene, the accused also gave a Darat blow to her Bhanji Bhishm, as a result of which, she sustained injury on her hand. When they raised an alarm, her Jethani Surindra also reached at the spot. The accused managed to run away alongwith the Darat. Sh. Sher Singh died on the spot. The police came in the morning and recorded her statement Ext. PW-1/A. She identified Darat Ext. P-2. She has denied the suggestion in her cross-examination that the accused used to demand his share in the orchard/land but they did not allow him to get the same. She admitted that the accused had a separate kitchen alongwith his mother from her husband as well as deceased Sher Singh. She admitted that nearby their house, other houses are situated and it is a thickly populated locality. She also admitted that in case, some noise takes place in their house, it is audible in the near houses.

7. PW-2 Bhishma Kanwar deposed that on 7.7.2010, she was sleeping in a room where her maternal aunt Sanju and Suchi were also sleeping. Her maternal uncle (Sher Singh) was sleeping in a room in the lower storey. The accused was sleeping in the adjacent room, where they were sleeping alongwith her maternal grandmother (Nani). For the last 5-6 months, her Nani was ill. At about 2/3 AM (night), accused firstly knocked at the door of their room and hurled abuses. He was asking them to come out. They called Sher Singh. Then, accused started troubling her Nani. Thereafter, when Sher Singh came, accused having Darat in his hand started giving its blows to Sher Singh. Firstly, Darat blows were given on the back and thereafter its blow was given on the side of the head. When they tried to intervene, one Darat blow also hit her hand and she sustained injuries. On hearing noise, her another maternal aunt Surindra also came on the spot and she also saw the incident. Due to the injuries sustained, her Mama (Sher Singh), fell on the floor and died. The police got her medically examined and MLC was issued. She also admitted in her cross-examination that accused had separate big orchard with good produce. She denied that all the affairs of the orchard were being managed by Sher Singh. She also admitted that nearby the house of her maternal uncles, there is a thick population. She also admitted that the noise from the house of her Mamas could be audible in the nearby houses of the Village.

8. The statement of PW-3 Kehar Singh is formal in nature.

9. PW-4 Manjit Singh deposed that he came to know that accused Man Singh had killed his brother Sher Singh by giving Darat blows on his body and ran away from the spot. On 8.7.2010, he was apprehended by the police in his presence and Daler Singh. He produced Ext. P-2 Darat which was measured by the police and the sketch of the Darat was prepared vide Ext. PW-4/A. The Darat was taken into possession vide memo Ext. PW-4/C. The accused produced his clothes before the police and taken into possession vide memo Ext. PW-4/D.

10. Statements of PW-5 to PW-7 are formal in nature.

11. PW-8 Dr. Piyush Kapila, has conducted the post mortem alongwith Dr. H.S.Sekhon, Professor and Head including Dr. Piyush Kapila and Dr. Rahul Gupta. The post mortem report is Ext. PW-8/C. According to the opinion of the Board, the deceased died due to chopped wound to head and brain. However, the final opinion was kept pending for want of chemical examiner report. The opinion of the Board after seeing the chemical examiner report Ext. PW-8/D, remained the same since no poison or alcohol was found in the viscera. The probable time that might have elapsed between injuries and death was immediate and that between death and post mortem was opined to be around 12 hours.

12. PW-9 Dr. D.K.Bhaglani, has examined PW-2 Bhishma Kanwar and MLC Ext. PW-9/C was issued. He deposed that the weapon used was blunt. The injury was simple and the probable duration of injury was within 6 to 12 hours.

13. Statement of PW-10 Ishwar Sharma, is formal in nature.

14. PW-11 HC Vinod Kumar, deposed that on 7.7.2010, at 8:10 AM, Const. Gulab Singh brought a rukka Ext. PW-1/A in the Police Station. He made endorsement Ext. PW-11/A on the rukka and on the basis of the same FIR Ext. PW-11/B was recorded. On the same date, SHO Purshotam Dutt deposited one sealed parcel sealed with 3 seals of seal impression “K” in which the blood of the deceased in plastic vial alongwith blood lifted on cotton from the spot was stored alongwith specimen of seal impression “K”. He entered the same in Malkhana register at Sr. No. 337. He sent all the parcels to FSL, Junga on 12.7.2010 through Constable Sat Pal. Constable Sat Pal after depositing the parcels obtained the receipt on the RC itself and deposited the same with him.

15. PW-12 Constable Sat Pal deposed that on 12.7.2010, he deposited the blood sample, Drat, clothes and viscera of the deceased sealed alongwith specimen of seal impression vide RC No. 37/2010 dated 12.7.2010 at FSL, Junga and obtained the receipt in RC itself.

16. Statement of PW-13 Raj Kumar, Patwari, is formal in nature.

17. PW-14 SI Purshottam Dutt, deposed that on 7.7.2010, Pradhan Gram Panchayat Melandi informed on telephone that the accused had killed his brother Sher Singh on the basis of which, rapat No. 4A dated 7.7.2010 Ext. PW-14/A was entered. He alongwith other police officials left for the spot for verification. On the spot, the statement of complainant Sanju Devi was recorded under Section 154 Cr.P.C. Ext. PW-1/A. He took photographs of the dead body. He also collected the blood stains lying on the spot in a vial and the same were put into parcel sealed with seal impression "K" and then taken into possession vide memo Ext. PW-3/B. He filled in the inquest forms. The dead body was sent for post mortem examination to IGMC, Shimla. On 8.7.2010, accused got recovered Darat Ext. P-2. Sketch map Ext. PW-4/A of Darat Ext. P-2 was prepared and the same was put into a parcel and sealed with seal impression "K" and taken into possession as per seizure memo Ext. PW-4/C in the presence of witnesses Manjit Singh and Daler Singh. The clothes i.e. shirt Ext. P-4, jacket Ext. P-5, lower Ext. P-6 and inner Ext. P-7 were put into a parcel and sealed with seal impression "K" and taken into possession vide seizure memo Ext. PW-4/D. The case property was deposited with MHC. In his cross-examination, he has admitted that the house of the deceased is situated in the middle of the village. He also admitted that in village Ghaiti, there are about 10 to 15 houses. He also admitted that there are 2-3 houses adjacent to the house of the deceased. He also admitted that a sound from one house can be heard in another house. Volunteered that there were minor injuries on the person of the accused. He also admitted that the accused was also got medically examined. He further admitted that Darat Ext. P-2 was taken into possession on the next date of occurrence.

18. According to the statement of PW-14, SI Purshottam Dutt, on 7.7.2010, a telephonic information was received from Pradhan Gram Panchayat, Melandi, that the accused had killed his brother Sher Singh on the basis of which, rapat No. 4A dated 7.7.2010 Ext. PW-14/A, was entered. The statement of PW-1 Sanju Devi was recorded under Section 154 Cr.P.C. and thereafter FIR was registered. It has not come on record as to who had informed the Pradhan, Gram Panchayat, Melandi, about the incident. It has not come in the statements of PW-1 Sanju Devi or PW-2 Bhishma Kanwar that they have informed the Pradhan, Gram Panchayat, Melandi. Rapat No. 4A dated 7.7.2010 Ext. PW-14/A was entered at 3:30 PM on the basis of the report of Sohan Singh, Pradhan, Gram Panchayat, Melandi on telephone. Sh. Sohan Singh, though a material witness, has not been examined by the prosecution. The prosecution has not attributed any motive in the instant case. The accused was the younger brother of the deceased. Mr. Ramesh Thakur, Asstt. Advocate General, has vehemently argued that the accused was seeking partition of the land. However, PW-2 Bhishma Kanwar (Chhotu), in her cross-examination has admitted that the accused had a separate big orchard having good produce. PW-1 Sanju Kumari in her cross-examination has denied the suggestion that the accused used to demand his share in the orchard but they did not allow to give the same.

19. According to the prosecution, the wife of the deceased Sher Singh was also present on the spot. She has not been examined by the prosecution, though material witness in the case. The prosecution has not examined the mother of the deceased and three daughters of deceased who were in the house at the relevant time on 7.7.2010. The prosecution has also not associated any independent witness from the village. PW-1 Sanju

Devi has categorically admitted that nearby their house, other houses are situated and it is a thickly populated locality. She also admitted that in case, some noise takes place in their house, it is audible in the near houses. To the same effect is the statement of PW-2 Bhishma Kanwar, who deposed that nearby the house of her maternal uncles, there is a thick population. She also admitted that the noise from the house of her Mamas could be audible in the nearby houses of the Village. In case, the incident had taken place in the manner in which the prosecution has projected, it was bound to attract the attention of the occupants of the houses nearby the house of the deceased.

20. The case of the prosecution is that the accused ran away from the spot after committing the crime and he was apprehended on 8.7.2010. In the presence of PW-4 Manjit Singh and Daler Singh, he produced the Darat Ext. P-2. He has not made any disclosure statement. It is not believable that accused was carrying the Darat Ext. P-2 with him from 7.7.2010 till 8.7.2010. The first reaction of the accused would have been to conceal the weapon of offence instead of carrying it and producing the same before the police. PW-1 Sanju Devi deposed that the accused used to keep Darat with him. In her cross-examination, she deposed that regarding keeping of Darat by the accused, they had lodged report with the police several times but they did not pay any heed. There is no contemporaneous record to suggest that at any given point of time, the report was lodged with the police of keeping the darat by the accused. The accused had also received injuries as per the statement of PW-14 SI Purshotam Dass. He was medically examined but his medical report has not been produced on record. One Dr. C.L. Sharma, present in the Court was given up being unnecessary. The police should have placed on record the copy of the MLC of the accused, more particularly, when he was examined by the doctor and as per PW-1 Sanju Devi, the accused had consumed alcohol. In case the MLC had been produced on record, it would have shown the nature of the injury sustained by the accused or if any ethyl alcohol found in his blood/urine.

21. Mr. Ramesh Thakur, Asstt. Advocate General, has vehemently argued that as per the post mortem report, the deceased had died due to chopped wound to head and brain. Though the deceased has died due to the injuries but the prosecution has conclusively failed to prove that the injuries were inflicted by the accused. Mr. Ramesh Thakur, Asstt. Advocate General has also argued that PW-2 Bhishma Kanwar had tried to intervene but she also received injuries. The injuries received by PW-2 Bhishma Kanwar as per the statement of PW-9 Dr. D.K.Bhaglani were simple in nature and the weapon used was blunt. There was no fracture, whatsoever. In case the accused had hit PW-2 Bhishma Kanwar, with Darat Ext. P-2, she would have received serious injuries. Thus, the prosecution has failed to prove the case against the accused beyond reasonable doubt.

22. Accordingly, the appeal is allowed. Judgment of conviction and sentence dated 24.9.2011, rendered by the learned Sessions Judge, Kinnaur at Rampur Bushahr, H.P., in Sessions trial No. 51 of 2010, is set aside. The accused is acquitted of the charges framed under Sections 302 and 323 IPC, by giving him benefit of doubt. Fine amount, if any, already deposited by the accused is ordered to be refunded to him. Since the accused is in jail, he be released forthwith, if not required in any other case.

23. The Registry is directed to prepare the release warrant of the accused and send the same to the Superintendent of Jail concerned, in conformity with this judgment forthwith.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

National Insurance Company Ltd. ...Appellant.
Versus
Sandeep Chauhan & another ...Respondents.

FAO No. 200 of 2007
Decided on: 13.03.2015

Motor Vehicle Act, 1988- Section 173- Tribunal had awarded amount of Rs.55,000/- as compensation- Insurance Company filed an appeal questioning the award- held, that reputed Insurance Company should not have questioned the award on the ground of inadequacy of awarded amount – award is reasonable and needs no interference.

(Para-1 to 3)

For the appellant: Mr. Sandeep Sharma, Senior Advocate, with Mr. Ajit Sharma, Advocate.
For the respondents: Mr. Anil Jaswal, Advocate, for respondent No. 1.
Mr. Naresh K. Gupta, Advocate, for respondent No. 2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

Only a meager amount of Rs. 55,000/- came to be awarded to the claimant-injured in terms of award, dated 31.08.2006, made by the Motor Accident Claims Tribunal, Hamirpur, H.P. (for short "the Tribunal") in Claim Petition No. 52 of 2005, titled as Khem Raj versus Sh. Sandeep Chauhan and another (for short "the impugned award").

2. It is shocking that such a reputed Insurance Company has questioned the impugned award on the ground of adequacy of awarded amount, which is trivial.

3. However, I have gone through the award, which is reasonable and needs no interference. Accordingly, the impugned award is upheld and the appeal is dismissed.

4. Registry is directed to release the deposited amount in favour of the claimant strictly as per the terms and conditions contained in the impugned award through payee's account cheque.

5. Send down the record after placing copy of the judgment on Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

National Insurance Company Ltd. ...Appellant.
Versus
Sandeep Chauhan & another ...Respondents.

FAO No. 201 of 2007
Decided on: 13.03.2015

Motor Vehicle Act, 1988- Section 171- Tribunal had awarded 9% interest from the date of the Claim Petition- held, that Tribunal had fallen in error while awarding interest @ 9% from the date of the Claim Petition- no amount was to be awarded from the date of the award- award modified and the claimant held entitled to interest @ 7.5% per annum from the date of award till the deposit. (Para-24 and 25)

Cases referred:

R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others, AIR 1995 SC 755
Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another, 2010 AIR SCW 6085
Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited, 2011 AIR SCW 4787
Kavita versus Deepak and others, 2012 AIR SCW 4771

For the appellant:	Mr. Sandeep Sharma, Senior Advocate, with Mr. Ajit Sharma, Advocate.
For the respondents:	Mr. Anil Jaswal, Advocate, for respondent No. 1. Mr. Naresh K. Gupta, Advocate, for respondent No. 2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

Subject matter of this appeal is award, dated 31st August, 2006, made by the Motor Accident Claims Tribunal, Hamirpur, H.P. (for short "the Tribunal") in Claim Petition No. 54 of 2005, titled as Desh Raj versus Sh. Sandeep Chauhan and another, whereby compensation to the tune of Rs. 3,30,000/- with interest @ 9% per annum from the date of filing of the petition till its deposition came to be awarded in favour of the claimant and against the respondents (for short "the impugned award").

Brief facts:

2. Shri Desh Raj being the victim of vehicular accident filed a claim petition for grant of compensation to the tune of Rs. 6,50,000/-, as per the break-ups given in para 21 of the claim petition.

3. The case put forth by the claimant-injured in the claim petition is that the driver, namely Shri Sandeep Chauhan had driven the bus, bearing registration No. HP-67-7510, rashly and negligently on 11th May, 2005, at about 2.30 p.m. near Village Ukhali, District Hamirpur on Hamirpur-Bilaspur Highway, lost control and the offending vehicle rolled down. The claimant-injured, who had boarded the bus, sustained injuries, which have rendered him permanently disabled.

4. It is also averred in para 12 of the claim petition that he remained admitted in Regional Hospital on 11th May, 2005 to 7th June, 2005, and was under treatment till the time of filing of the claim petition.

5. The respondents, i.e. the owner-cum-driver and the insurer resisted the claim petition on the grounds taken in the respective memo of objections.

6. Following issues came to be framed by the Tribunal on 28th December, 2005:

"1. Whether the petitioner suffered injuries on account of rash and negligent driving of respondent No. 1 of Bus No. HP-67-7510? OPP

2. If point No. 1 is proved, to what amount and from whom the petitioner is entitled for compensation? OPR

3. Whether the respondent has not been in possession of a valid and effective driving licence at the time of accident, if so to what effect? OPR

4. Relief."

7. The claimant-injured has examined Dr. Dinesh Thakur as PW-1, HHC Jagat Ram as PW-2, Shri Khem Singh as PW-4, Shri Amar Nath as PW-5 and himself appeared in the witness box as PW-3. The owner-cum-driver has himself appeared in the witness box as RW-1 and the insurer has not led any evidence in support of its case.

8. The Tribunal, after scanning the evidence, oral as well as documentary, held that the claimant-injured has proved that the driver, namely Shri Sandeep Chauhan, has driven the offending vehicle rashly and negligently at the relevant point of time and the claimant-injured has sustained injuries.

9. The Tribunal, while assessing compensation, has also held the claimant-injured entitled to compensation to the tune of Rs. 3,30,000/-, while taking his loss of earning capacity to the extent of 40%. It was also held that the driver of the offending vehicle was having valid and effective driving licence. All the three issues came to be decided in favour of the claimant-injured and against the driver-cum-owner and the appellant-insurer.

10. Appellant-insurer has questioned the impugned award on the grounds of adequacy of compensation and that the driver of the offending vehicle was not having a valid and effective driving licence.

11. The claimant-injured and the driver-cum-owner have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

12. Having said so, the following two points are to be determined in this appeal:

(i) whether the amount awarded is excessive?

(ii) whether the driver of the offending vehicle was not having a valid and effective driving licence?

13. Before I deal with issues No. 1 and 2, I deem it proper to decide whether the driver of the offending vehicle was having the valid and effective driving licence, which covers issue No. 3.

Issue No. 3:

14. The owner-cum-driver, i.e. respondent No. 1 has produced the driving licence before the Tribunal, came to be exhibited as Ext. R-2, which was not rebutted or questioned by the appellant-insurer.

15. The Tribunal, after examining the evidence, oral as well as documentary, held that the driver of the offending vehicle was having a valid and effective driving licence and insured/owner-cum-driver has not committed any breach. Thus, the findings returned by the Tribunal on issue No. 3 are upheld.

Issues No. 1 and 2:

16. The claimant-injured has examined Dr. Dinesh Thakur as PW-1, who has deposed that the claimant-injured was admitted in hospital on 11th May, 2005, was operated on 28th May, 2005 and discharged on 7th June, 2005. He has proved the contents of discharge certificate, Ext. PW-1/A and the disability certificate, Ext. PW-1/B.

17. While going through Exhibits PW-1/A and PW-1/B, one comes to an inescapable conclusion that the claimant-injured has sustained injuries, but he has not suffered permanent disability for the reason that the doctor has said that it is recoverable within three to five years. However, he has stated that chances of recovery are bleak.

18. In Ext. PW-1/B, the disability has been shown to be 20%. The claimant-injured has failed to prove that he is not in a position to perform the job of a driver nor there is any evidence to that extent, as held by the Tribunal.

19. The Tribunal has granted Rs.16,000/- under the head 'loss of total income for a period of four months', Rs.25,000/- under the head 'expenses on treatment, attendant, transportation and special diet' and Rs. 20,000/- under the head 'pain and sufferings and loss of amenities etc.', is too meager, cannot be said to be excessive in any way.

20. Even otherwise, there is proof on the file that the claimant-injured has incurred a huge amount for his treatment and was in hospital with effect from 11th May, 2005 to 7th June, 2005, at least for one month, was on bed rest and his disability was to be assessed every after five years.

21. The Tribunal has held that the income of the claimant-injured was Rs. 4,000/- per month at that point of time and he has lost source of income to the tune of Rs.19,200/- per annum while taking the disability of the claimant-injured to the extant of 40%.

22. Admittedly, the claimant-injured is a driver by profession and would have been earning not less than Rs.4,000/- per month as a driver at the relevant point of time and by efflux of time, he would have been earning more. Thus, the Tribunal had to exercise the guess work while awarding compensation.

23. In view of the judgments rendered by the Apex Court in the cases titled as **R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others,** reported in **AIR 1995 SC 755**; **Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another,** reported in **2010 AIR SCW 6085; Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited,** reported in **2011 AIR SCW 4787;** and **Kavita versus Deepak and others,** reported in **2012 AIR SCW 4771,** the amount awarded cannot be said to be excessive.

24. The Tribunal has rightly awarded Rs. 2,68,800/- under the head 'loss of future income', but has fallen in error while awarding 9% interest from the date of claim petition, was to be awarded from the date of award.

25. Accordingly, I deem it proper to modify the impugned award by holding that the claimant-injured is entitled to interest @ 7.5% from the date of award till its deposition.

26. Viewed thus, the appeal deserves to be allowed. Accordingly, the appeal is allowed and the impugned award is modified, as indicated hereinabove.

27. Registry is directed to release the awarded amount in favour of the claimant-injured strictly as per the terms and conditions contained in the impugned award after proper identification. Excess amount, if any, be released to the appellant-insurer through payee's account cheque.

28. Send down the record after placing copy of the judgment on Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

National Insurance Company Ltd. ...Appellant.
Versus
Smt. Santoshi Devi & others ...Respondents.

FAO No. 207 of 2007
Decided on: 13.03.2015

Motor Vehicle Act, 1988- Section 157- Registered owner had sold the offending vehicle- it was contended that the insurance agreement was not in force after the sale- held that transfer of vehicle cannot absolve the insurer from the third party liability. (Para- 9 and 10)

Motor Vehicle Act, 1988- Section 146- Deceased was a gratuitous passenger- owner had committed willful breach- held, that right of the third party cannot be defeated even if owner had committed breach and the insurer has to satisfy the award. (Para-11 to 16)

Case referred:
S. Iyyapan versus United India Insurance Company Limited and another, (2013) 7 Supreme Court Cases 62

For the appellant: Ms. Devyani Sharma, Advocate.
For the respondents: Ms. Vandana Panta, Advocate, vice Mr. B.N. Misra, Advocate, for respondents No. 1 to 10.
Mr. B.C. Verma, Advocate, for respondent No. 11.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

Appellant-National Insurance Company has called in question the award, dated 7th March, 2007, made by the Motor Accident Claims Tribunal (II), Shimla, H.P. (for short "the Tribunal") in M.A.C. Petition No. 44-S/2 of 1996, titled as Smt. Santoshi Devi and others versus Sh. Sohan Lal Darfreik and others, whereby compensation to the tune of Rs. 12,00,000/- with interest @ 7.5% per annum from the date of the petition came to be awarded in favour of the claimants (for short "the impugned award").

Brief facts:

2. The claimants invoked the jurisdiction of the Tribunal in the year 1996 for grant of compensation to the tune of Rs. 15,00,000/-, as per the break-ups given in the

claim petition on the ground that their sole bread earner became the victim of motor vehicular accident which was allegedly caused by the driver, namely Shri Jagdish Chand, while driving truck bearing registration No. HPS-4766, rashly and negligently on 14th April, 1996 near Balghar, Tehsil Theog.

3. The respondents appeared and resisted the claim petition on the grounds taken in the respective memo of objections. Issues were framed on 29th August, 2000. Thereafter an application under Order 1 Rule 10 of the Code of Civil Procedure (for short "CPC") was moved by the claimants for impleading the National Insurance Company Limited as respondent No. 5 in the array of respondents, which was allowed vide order, dated 22nd July, 2002. Additional issues came to be framed vide order, dated 21st February, 2003.

4. Parties have led evidence in support of their case. The Tribunal, after examining the pleadings, oral as well as documentary evidence, held that the claimants are entitled to compensation and accordingly granted the compensation vide the impugned award.

5. The claimants, the driver, the owner-insured and the other respondents in the claim petition, except the appellant herein, have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

6. Learned counsel for the appellant argued that the Tribunal has fallen in error in saddling the appellant-insurer with liability on the following three grounds:

> (i) That the offending vehicle was not in the possession of the registered owner at the relevant point of time, i.e. on the date of accident, and he had committed breach.
>
> (ii) That the deceased was a gratuitous passenger, so, the appellant-insurer was not to be asked to satisfy the award and then to effect recovery.
>
> (iii) That the appellant-National Insurance Company came to be arrayed as party-respondent in the claim petition in the year 2002, but the interest has been awarded from the date of the claim petition i.e. from the year 1996, should have been awarded from the year 2002.

7. The appellant has not questioned the impugned award on any other ground.

8. I have gone through the pleadings and the issues framed. The appellant has averred that the registered owner has sold the offending vehicle, thus, the insurance agreement was not in force; the deceased was a gratuitous passenger and the owner has committed willful breach, thus, the appellant is not liable.

9. I, while dealing with the issue of the same and similar nature in **FAO No. 7 of 2007** titled **Ashok Kumar & another versus Smt. Kamla Devi & others,** decided on 5.9.2014, in terms of the Apex Court judgments, have held that transfer of a vehicle cannot absolve the insurer from third party liability. It is apt to reproduce paras 15 to 19 of the said judgment herein:

> "15. Section 157 of the Act reads as under:
>
> ***"Transfer of certificate of insurance.***

> *(1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.*
>
> *[Explanation.—For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.]*
>
> *(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance."*

While going through the aforesaid provision, one comes to an inescapable conclusion that transfer of a vehicle cannot absolve insurer from third party liability and the insurer has to satisfy the award.

16. Admittedly, on the date of accident, i.e. 05.06.2000, the offending vehicle was not transferred in the name of appellant-Ashok Kumar. It was transferred in his name w.e.f. 17.06.2000. Thereafter, the appellant-respondent No. 1 Ashok Kumar was supposed to give information regarding transfer of the vehicle to the insurer-Insurance Company. The vehicle was not transferred on the date of accident, thus the question of informing the insurer about the transfer of the vehicle does not arise, at all. If the offending vehicle would have been transferred on the date of accident, i.e. 5th June, 2000, that can not be a ground to defeat the rights of the third party. As per the mandate of the Section (supra), the insurance policy shall be deemed to have been issued in favour of the transferee.

17. My this view is fortified by the Apex Court Judgment in case titled as **G. Govindan versus New India Assurance Company Ltd. and others,** reported in **AIR 1999 SC 1398**. It is apt to reproduce paras-10, 13 & 15 of the aforesaid judgment herein:

> *"10. This Court in the said judgment held that the provisions under the new Act and the old Act are substantially the same in relation to liability in regard*

to third party. This Court also recognised the view taken in the separate judgment in Kondaiah's case that the transferee-insured could not be said to be a third party qua the vehicle in question. In other words, a victim or the legal representatives of the victim cannot be denied the compensation by the insurer on the ground that the policy was not transferred in the name of the transferee.

11. .....

12. .....

13. In our opinion that both under the old Act and under the new Act the Legislature was anxious to protect the third party (victim) interest. It appears that what was implicit in the provisions of the old Act is now made explicit, presumably in view of the conflicting decisions on this aspect among the various High Courts.

14. .....

15. As between the two conflicting views of the Full Bench judgments noticed above, we prefer to approve the ratio laid down by the Andhra Pradesh High Court in Kondaiah's case (AIR 1986 Andh Pra 62) as it advances the object of the Legislature to protect the third party interest. We hasten to add that the third party here will not include a transferee whose transferor has not followed procedure for transfer of policy. In other words in accord with the well-settled rule of interpretation of statutes we are inclined to hold that the view taken by the Andhra Pradesh High Court in Kondaiah's case is preferable to the contrary views taken by the Karnataka and Delhi High Courts (supra) even assuming that two views are possible on the interpretation of relevant sections as it promotes the object of the Legislature in protecting the third party (victim) interest. The ratio laid down in the judgment of Karnataka and Delhi High Courts (AIR 1990 Kant 166 (FB) and AIR 1989 Delhi 88) (FB) (supra) differing from Andhra Pradesh High Court is not the correct one."

18. The Apex Court in case titled as **Rikhi Ram and another versus Smt. Sukhrania and others**, reported in ***AIR 2003 SC 1446*** held that in absence of intimation of transfer to Insurance Company, the liability of Insurance Company does not cease. It is apt to reproduce paras 5, 6 & 7 of the judgment, supra, herein:-

"5. The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on

a contract; and secondly, that a person who has no interest in the subject matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

6. On an analysis of Ss. 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.

7. For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not ceases so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act."

19. The Apex Court in latest judgment titled as **United India Insurance Co. Ltd., Shimla versus Tilak Singh and others**, reported in **(2006) 4 SCC 404** has held the same principle. It is apt to reproduce paras- 12 & 13 of the said judgment herein:

"12. In Rikhi Ram v. Sukhrania [(2003) 3 SCC 97 : 2003 SCC (Cri) 735] a Bench of three learned Judges of this Court had occasion to consider Section 103-A of the 1939 Act. This Court reaffirmed the decision in G. Govindan case and added that the liability of an insurer does not cease even if the owner or purchaser fails to give intimation of transfer to the Insurance Company, as the purpose of the legislation was to protect the rights and interests of the third party.

13. Thus, in our view, the situation in law which arises from the failure of the transferor to notify the insurer of the fact of transfer of ownership of the insured vehicle is no different, whether under Section 103-A of the 1939 Act or under Section 157 of the 1988 Act insofar as the liability towards a third party is concerned. Thus, whether the old Act applies to the facts before us, or the new Act applies, as far as the deceased third party was concerned, the result would not be different.

> *Hence, the contention of the appellant on the second issue must fail, either way, making a decision on the first contention unnecessary, for deciding the second issue. However, it may be necessary to decide which Act applies for deciding the third contention. In our view, it is not the transfer of the vehicle but the accident which furnishes the cause of action for the application before the Tribunal. Undoubtedly, the accident took place after the 1988 Act had come into force. Hence it is the 1988 Act which would govern the situation."*

10. The same principle has been laid down by this Court in **FAO No. 164 of 2007,** titled as **Sh. Vipan Kumar versus Naushad Ahmed and another,** decided on 28.11.2014.

11. The claimants are third party. It is a fact that the deceased was a gratuitous passenger and the owner-insured has committed a willful breach, that is why right of recovery has been granted to the appellant-insurer.

12. It is beaten law of land that right of third party cannot be defeated and even if owner has committed breach, the insurer has to satisfy the award.

13. Section 146 of the Motor Vehicles Act, 1988 (for short "the MV Act") reads as under:

> "**146. Necessity for insurance against third party risk. -** (1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter :
>
> Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).
>
> *Explanation.* - A person driving a motor vehicle merely as a paid employee, while there is in force in relation t the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.
>
> (2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.
>
> (3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely:-

> (a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;
>
> (b) any local authority;
>
> (c) any State transport undertaking:
>
> Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.
>
> *Explanation*. - For the purposes of this sub-section, "appropriate Government" means the Central Government or a State Government, as the case may be, and -
>
> (i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;
>
> (ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;
>
> (iii) in relation to any other State transport undertaking or any local authority, means that Government which has control over that undertaking or authority."

14. The mandate of Sections 146, 147 and 149 of the MV Act is to protect the rights of third parties and that is why, compulsory duty has been imposed on the owners to get the vehicles insured and claim of third parties cannot be defeated.

15. The same question arose before the Apex Court in a case titled as **S. Iyyapan versus United India Insurance Company Limited and another,** reported in **(2013) 7 Supreme Court Cases 62.** It is apt to reproduce para 16 of the judgment herein:

> *" 16. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force."*

16. Viewed thus, the Tribunal has rightly held that the owner has committed breach and directed the insurer to satisfy the award with right of recovery.

17. The argument of the learned counsel for the appellant that the interest was to be awarded from the date when the insurer came to be arrayed as party-respondent in the claim petition is devoid of any force for the reason that cause of action accrued to the claimants on the date of accident. Section 171 of the MV Act deals with the issue.

18. The claimants have been dragged to lis because of the rash and negligent driving of the driver of the offending vehicle. Thus, the Tribunal has rightly awarded interest from the date of the claim petition, as per the mandate of Section 171 of the MV Act.

19. Having said so, I am of the considered view that the Tribunal has not committed any illegality, has not fallen in an error and the impugned award is legal one.

20. Viewed thus, the appeal deserves to be dismissed. Accordingly, the appeal is dismissed and the impugned award is upheld, as indicated hereinabove.

21. Registry is directed to release the awarded amount in favour of the claimants strictly as per the terms and conditions contained in the impugned award after proper identification.

22. Send down the record after placing copy of the judgment on Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Smt. Tara Kaundal and others .....Appellants
Versus
Krishan Kumar and others ....Respondents

FAO (MVA) No. 257 of 2007
Date of decision: 13th March, 2015.

Motor Vehicle Act, 1988- Section 166- Deceased was earning Rs. 3,500/- per month- Tribunal had taken his income as Rs. 3,000/-- held, that Tribunal had wrongly taken the income of the deceased as Rs. 3,000/- per month- income of the deceased cannot be less than Rs. 4,000/-- 1/3rd was to be deducted towards personal expenses- claimants had lost source of dependency to the tune of Rs. 2,800/- per month and applying the multiplier of '16', claimants are entitled to the compensation of Rs. 5,37,600/-. (Para- 4 and 5)

Cases referred:
Sarla Verma and others versus Delhi Transport Corporation and another AIR 2009 SC 3104
Reshma Kumari and others versus Madan Mohan and another, 2013 AIR SCW 3120,

For the appellant: Mr. Suneet Goel, Advocate.
For the respondents: Mr. Romesh Verma, Advocate, for respondent No. 1.
Mr. J.L. Kashyap, Advocate, for respondents No. 2 and 3.

The following judgment of the Court was deliveredk

Mansoor Ahmad Mir, Chief Justice *(Oral)*

Challenge in this appeal is to the judgment and award dated 28.02.2007, made by the Motor Accident Claims Tribunal-II, Solan in Claim Petition No. 9-S/2 of 2006, titled *Smt. Tara Kaundal and others versus Sh. Krishan Kumar and others,* whereby compensation to the tune of Rs.3,98,000/- with interest @ 7.5 % per annum came to be awarded in favour of the claimants/ appellants herein and insurer came to be saddled with the liability, hereinafter referred to as "the impugned award", for short, on the grounds taken in the memo of appeal.

2. The insurer, driver and owner have not questioned the impugned award on any ground, thus it has attained finality so far it relates to them. The claimants/appellants have questioned the impugned award only on the ground of adequacy of compensation. Thus, the only question to be determined in this appeal is whether the compensation awarded is adequate or otherwise.

3. It is necessary to give brief resume of the relevant facts.

4. The claimants being the victim of vehicular accident filed claim petition before the Motor Accident Claims Tribunal on the ground that they have lost source of dependency because of death of Ajay Kaundal in a road accident, which was caused by respondent No.2 Nand Lal, while driving truck bearing registration No.HP62-0465, rashly and negligently. The claimants have specifically averred that deceased was 26 years of age and earning Rs.5500/- per month as labourer. The claimants have led evidence and proved that deceased was earning Rs.2000/- per month and besides this, he was earning Rs.50/- as daily expenses. Thus, the deceased was earning salary to the tune of Rs.3500/- per month. The Tribunal has held it as Rs.3000/- per month, has fallen in an error in holding that the deceased was earning Rs.3000/- per month. The proved fact of the matter is that he was earning Rs.3500/- per month. Even otherwise, by guesswork, it can be safely held that the income of the deceased was not less than Rs.4000/- per month. The apex Court has laid down in ***Sarla Verma and others versus Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104*** and upheld in ***Reshma Kumari and others versus Madan Mohan and another***, reported in ***2013 AIR SCW 3120***, that 1/3rd was to be deducted towards personal expenses. Thus, it can be safely held that the claimants have lost source of dependency to the tune of Rs.2800/- per month. The Tribunal has also fallen in an error by applying the multiplier of "15" whereas, the multiplier of "16" was applicable, in view of the Supreme Court judgments, supra read with the 2nd Schedule of the Motor Vehicles Act.

5. Having said so, the claimants are entitled to Rs.2800 x 12 = 33600 x 16 = Rs.5,37,600/-.

6. The insurer is directed to deposit the enhanced amount with 7.5% interest from today, within six weeks. On deposit, the same be released to the claimant, strictly, in terms of the conditions contained in the impugned award.

7. Accordingly, the appeal is disposed of. The impugned award is modified, as indicated above. Send down the record forthwith.

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