



INDIAN LAW REPORTS

HIMACHAL SERIES

(October, 2014)

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## SUBJECT INDEX

**Code of Criminal Procedure, 1973- Section 162** - Testimony of PW-12 an eye witness was contradictory and suffered from improvement as he had omitted to disclose to the police that he had received the telephonic call on which he had gone to the spot, that the deceased had assaulted the accused on his face and had subsequently tendered apology to the accused, that the accused were leading a crowd of 30 to 35 persons including the family members of the accused, accused 'M' was carrying Danda and accused 'Y' was wielding Sickle, which would show that his testimony was false and could not be relied upon.

Title: State of Himachal Pradesh Vs. Ajay Kumar and others.

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**Code of Criminal Procedure, 1973- Section 438**- At the time of granting bail, the Court has to see the nature of seriousness of offences, nature of evidence, circumstances peculiar to the accused, presence of the accused in the trial or investigation, reasonable apprehension to witnesses, and larger interests of the State- Grant of bail is the rule and committal to jail is an exception- Since the investigation was complete and the conclusion of the Trial would take some time-hence, bail granted.

Title: Daya Thakur wife of Sh. Dina Ram Thakur Vs. State of H.P.

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**Code of Criminal Procedure, 1973- Section 438**- At the time of granting bail, the Court has to see the nature of seriousness of offences, nature of evidence, circumstances peculiar to the accused, presence of the accused in the trial or investigation, reasonable apprehension to witnesses, and larger interests of the State- Grant of bail is the rule and committal to jail is an exception- Since the investigation was complete and the conclusion of the Trial would take some time-hence, bail granted.

Title: Sushil Thakur son of Sh. Dina Ram Thakur Vs. State of H.P.

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**Constitution of India, 1950- Article 226**- The petitioner was engaged as a language teacher as per resolution dated 16.06.2004-After sometimes, she was asked not to come to the school- Respondents contended that the appointment of the petitioner was not in accordance with the recruitment and promotion rules and was merely a stop gap arrangement on temporary basis- it was further contended that she was not appointed as per the procedure and as per the Recruitment and Promotion Rules and her services were rightly terminated- Held, that there was no recital in the resolution dated 16.06.2004 that the applications were invited for the post of language teacher or any advertisement was issued-

Appointment to any public post without any notice to the general public is contrary to the Recruitment and Promotion Rules- Appointment of the petitioner to the post of language teacher was a stop gap arrangement which would not confer any right upon the petitioner to continue in the post-petition dismissed.

Title: Kiran Mai wife of Shri Nand Kishore Vs. State of H.P. and others

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**Constitution of India, 1950- Article 226-** Petitioner, a member of Child Welfare Committee, was removed from the office on the ground that she had failed to attend the meeting and to put her signatures on the attendance and proceedings register- Petitioner contended that she had passed orders and the removal was unjustified- Held, that the petitioner had issued the orders for age determination of a child in her individual capacity which is against the Constitution of District Child Welfare Committee- She was to work with the Chairperson and other members of the District Child Welfare Committee and not individually-she had not attended the meetings and had not put her signatures on the registers-hence, her removal was justified.

Title: Monika Singh vs. State of H.P. and Others

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**Constitution of India, 1950- Article 226 –** The petitioner had filed a civil suit before the learned Sub Judge, which was decreed- State preferred an appeal before the learned District Judge, Kangra, who set aside the judgment and decree and transferred the matter to the District Collector, Kangra, to decide the suit in accordance with Sections 3 & 4 of the H.P. Village Common Land (Vesting and Utilization) Act, 1974- The Collector held that the respondents had become the owners of the land under Section 104 of the H.P. Tenancy and Land Reforms Act, 1972- A Review petition was filed before the Sub-Divisional Officers exercising the powers of Collector which was beyond limitation- However, the Sub Divisional Officer reviewed the order- Petitioner filed an appeal before the Divisional Commissioner who dismissed the same- Held, that the earlier order was passed by the Sub Divisional Officer exercising the powers of the Collector on 1.6.1999, Review petition was filed in the year 2005- Limitation prescribed under Section 9-A of the H.P. Village Common Lands (Vesting and Utilization) Amendment Act, 2001 is 90 days- No Notice was issued prior to the review of the order, therefore, the earlier order was a nullity which could not be cured by the subsequent orders.

Title: Khushi Ram & ors. Vs. State of H.P. & anr.

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**Indian Evidence Act, 1872- Section 3-** Appreciation of evidence- PW-5 'Y' omitting to disclose that he had recognized the accused 'Y' and 'M' in the crowd, his statement is in contradiction to the testimony of PW-12 which would show that PW-5 and PW-12 were not together at the spot and had given the manufactured version qua the incident.

Title: State of Himachal Pradesh Vs. Ajay Kumar and others.

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**Indian Evidence Act, 1872- Section 3-** Appreciation of evidence- Medical Officer stated that the weapons of offence shown to him had broken edges and were not sharp enough to cause injuries noticed by him in dead body, which would suggest that the prosecution version that injuries were caused by the accused by these weapons could not be relied upon.

Title: State of Himachal Pradesh Vs. Ajay Kumar and others.

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**Indian Evidence Act, 1872- Section 3-** Appreciation of evidence- Deceased was found dead in her home- Father of the deceased had made a generalized statement about the ill-treatment and mal-treatment meted out to her by the accused- Father of the deceased had not attributed any specific role to the accused- No date, month or year regarding beatings was given- No complaint was made by the father on receiving this information from his daughter- No medical examination of the deceased was got conducted regarding injuries suffered by the deceased- The letters stated to have been written by the deceased to her father were not produced, which shows that the version of his father regarding ill-treatment and maltreatment was a concoction- Further his version that the deceased had told him about imminent threat to her life was also not acceptable as she had left for her matrimonial home subsequent to this disclosure.

Title: State of Himachal Pradesh Vs. Prem Chand & Others.

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**Indian Evidence Act, 1872- Section 27-** Search of house of 'P' was conducted during which one Kudali was recovered- Medical Officer stated that the injury noticed by him could have been caused by Darati- Held, that the recovery of Kudali was not effected pursuant to the disclosure statement or a recovery memo, therefore, the introduction of Kudali had no value in the prosecution case.

Title: State of Himachal Pradesh Vs. Ajay Kumar and others.

(Page-53)

**Indian Penal Code, 1860- Section 84-** In order to take the benefit of Section 84, the accused has to prove that at the time of commission of offence, the accused by reason of unsoundness his mind was incapable of knowing the nature of act or that he was doing what was either wrong or contrary to law- In the present case,

the Medical Officer had admitted that he had not seen the old record of the accused pertaining the period when the offence was committed by the accused- No eye witness had deposed about the mental condition of the accused- The evidence showed that the accused had committed the offence without any provocation and he was fully aware of the consequences, hence the accused was rightly convicted.

Title: Balwant Singh vs. State of H.P.

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**Indian Penal Code, 1860- Section 100** - Right of Private Defence- The suggestions were put to the prosecution witnesses that the deceased had assaulted the accused with the Darat/ Danda and the accused had shot the deceased- Held, that the right of private defence can be established if there was face to face duel between the accused and the deceased- in the present case, no witness had deposed that the accused and deceased were engaged in a duel, deceased was within a striking distance and had struck a blow on the person of the accused that would suggest that the accused and deceased were not engaged in a duel and there was no reason for the accused to fire a gunshot, therefore, the right of private defence was not available to the accused.

Title: Jagdev Ram Vs. State of Himachal Pradesh

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**Indian Penal Code, 1860- Section 302** - The complainant, deceased, his wife and his brother were grazing cattle- The accused came with the gun and abused the complainant and the deceased- Co-accused also appeared and started abusing the complainant and the deceased and rushed towards the fields where he was shot by the accused- Held, that mere omission to state that the accused had commanded the remaining accused to pelt stones at her and that the accused had asked her husband to compromise the previous dispute is not sufficient to doubt the testimony of the complainant, especially when the accused had admitted in his statement that he had killed the accused with the gun.

Title: Jagdev Ram Vs. State of Himachal Pradesh

(Page-77)

**Indian Penal Code, 1860- Section 498-A, 306**- Deceased was married to accused- He demanded dowry of Rs.50,000/-, he also used to beat her- Deceased committed suicide- Held that, the version of the prosecution that accused had subjected the deceased to cruelty was duly corroborated by the testimonies of prosecution witnesses as well as the fact that the accused had tendered apology and had assured not to repeat these acts-the Prosecution case cannot be doubted due to the fact that no independent witness from locality was examined- generally, married women are subjected to cruelty inside the house and they narrate these



facts to their relatives, therefore, the relatives are the best witnesses - The fact that the matter was not reported to the Police or Panchayat will not make the prosecution case doubtful as efforts are made by the relatives of a woman to keep the matrimonial life intact - However, it was not proved that the accused had abetted the deceased to commit suicide- No immediate nexus between the abetment and suicide was proved on record- The accused convicted for commission of offences punishable under Section 498-A IPC and sentenced to undergo simple imprisonment for one year and to pay fine of Rs.10,000/-- The accused acquitted of the commission of offences punishable under Section 306 IPA.

Title: State of H.P.Vs. Rakesh Kumar and others.

(Page- 1)

**Indian Penal Code, 1860- Section 498-A** - The prosecution witnesses made generalized and vague statement regarding ill-treatment- No facts which would constitute an instigation to the deceased to take her life were deposed by the witnesses- Held, that the generalized statements are not sufficient to prove that the deceased was subjected to ill-treatment and maltreatment or she was instigated to commit suicide by the accused- Accused acquitted.

Title: State of Himachal Pradesh Vs. Prem Chand & Others.

(Page-45)

**Juvenile Justice (Care and Protection of Children) Rules, 2007-** Rule, 26- Rules provide that the order of the Committee shall be signed by at least two members thus, signing the minute register is impliedly necessitated by the rules.

Title: Monika Singh vs. State of H.P. and Others

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**Motor Vehicle Act, 1988 - Section 149-** Tribunal had found that the owner had employed the driver after taking his driving test and after perusing the driving licence- Driving license was also renewed by the Registration and Licencing Authority, Paonta Sahib- Held, that the owner had not committed any willful breach – The owner is not required to make enquiries and investigation regarding genuineness of the driving licence.

Title: Oriental Insurance Company Ltd. Vs. Smt.Pratibha Devi and others.

(Page-90)

**Motor Vehicle Act, 1988 – Section 166-** The driver had a valid driving licence to drive the light motor vehicle with TPT endorsement-held, that the driver had a

valid and effective licence and the Insurance Company is liable to indemnify the insured.

Title: Oriental Insurance Company Vs. Smt. Anita Sharma & others

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**Motor Vehicle Act, 1988 –Section 166-** Owner-cum-Driver had passed away on the date of accident- Held that, the widow of the deceased had the remedy under the Workmen Compensation Act- No period of limitation has been prescribed for filing the claim petition, therefore, liberty granted to the claimant to withdraw the claim petition with a liberty to seek appropriate remedy- It was further ordered that the time period spent for prosecuting the claim petition and the appeal shall not come in the way of the claimant for seeking appropriate remedy.

Title: Seema Devi d/o Sh. Bhagwan Dass Vs. Som Raj and others.

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**N.D.P.S. Act, 1985- Section 20-** Search of vehicle being driven by the accused led to recovery of one bag containing 10 Kg. Charas and other bag containing 9 Kgs. Charas- One person ran away from the vehicle prior to its search- Held, that the police had not made any efforts to associate independent witness - Testimonies of the police officials regarding topography of the area was falsified by the photographs -Testimonies of the police officials that they tried to locate the independent witnesses but could not succeed was not acceptable- therefore, the accused acquitted.

Title: Shyam Singh vs. State of H.P.

(Page-38 )

**NDPS Act, 1985- Section 20-** Accused were found riding a motorcycle- On search of motorcycle one bag containing 3 Kgs. and other bag containing 2 Kgs. of Charas were recovered- Held, that the Investigating Officer had failed to collect the documents revealing the ownership of motorcycle, which shows that the accused had never acquired the possession of motorcycle- Investigation was tainted and the accused were falsely implicated – Further, as per the prosecution case the police party was checking the vehicles, however no vehicle was associated with the recovery-Accused acquitted.

Title: State of H.P. vs. Lal Chand & Anr.

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**NDPS Act, 1985- Section 20 and 22-** Accused was driving the vehicle- On checking the vehicle, 9 strips of Nitrosun and 800 gms. of charas were recovered- Held, that the NCB form regarding tablet was not filled at the spot which shows that the prosecution version regarding completion of investigation at the spot was doubtful- The seal impression "I" used for sealing the parcel; as well as the parcel containing bulk quantity was previously used by the Investigating Officer which shows S.H.O. had not re-sealed the sample and bulk parcel- Further, the entire proceedings relating to search were carried out at the place of occurrence but the personal search memo was witnessed by two independent witnesses who were not the members of raiding party- This shows that the memo of personal search was not prepared on the spot, but was prepared somewhere else- therefore, in these circumstances, the prosecution version becomes doubtful-consequently, the accused acquitted.

Title: State of H.P. vs. Vikram Kuthiala

(Page- 27)

**Workmen Compensation Act, 1923 - Section 22-** Insurance Company is liable to pay the amount as per the schedule appended to the Act with interest- Remaining amount including funeral charges is to be paid by the owner.

Title: Oriental Insurance Company Ltd. Vs. Smt.Biasa Devi and others

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**TABLE OF CASES CITED**

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**‘B’**

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Bapu alias Gujraj Singh v. State of Rajasthan, (2007) 8 SCC 66

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**‘D’**

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**‘E’**

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**‘H’**

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**‘I’**

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**‘J’**

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**‘M’**

Mariappan v. State of Tamil Nadu, (2013) 12 SCC 270

**‘N’**

National Insurance Co. Ltd. versus Swaran Singh & others, AIR 2004 Supreme Court 1531

**‘O’**

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**‘P’**

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**‘T’**

The State Vs. Captain Jagjit Singh, AIR 1962 SC 253

T.N. Lakshmaiah v. State of Karnataka, (2002) 1 SCC 219

**‘V’**

Vijayee Singh and others v. State of U.P., (1990) 3 SCC 190



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

State of H.P. ....Appellant.

Vs.

Rakesh Kumar and others. ....Respondents.

Cr. Appeal No.584 of 2008.

Judgment reserved on:23.7.2014

Date of Decision: September 10,2014,

**Indian Penal Code, 1860- Section 498-A, 306-** Deceased was married to accused- He demanded dowry of Rs.50,000/-, he also used to beat her- Deceased committed suicide- Held that, the version of the prosecution that accused had subjected the deceased to cruelty was duly corroborated by the testimonies of prosecution witnesses as well as the fact that the accused had tendered apology and had assured not to repeat these acts-the Prosecution case cannot be doubted due to the fact that no independent witness from locality was examined- generally, married women are subjected to cruelty inside the house and they narrate these facts to their relatives, therefore, the relatives are the best witnesses - The fact that the matter was not reported to the Police or Panchayat will not make the prosecution case doubtful as efforts are made by the relatives of a woman to keep the matrimonial life intact - However, it was not proved that the accused had abetted the deceased to commit suicide- No immediate nexus between the abetment and suicide was proved on record- The accused convicted for commission of offences punishable under Section 498-A IPC and sentenced to undergo simple imprisonment for one year and to pay fine of Rs.10,000/-- The accused acquitted of the commission of offences punishable under Section 306 IPA.

(Para-9 to 23)

For the appellant: Mr.B.S.Parmar and Mr.Ashok Chaudhary,  
Addl.Advocates General with Mr.Vikram Thakur,  
Deputy Advocate General & Mr. J.S.Guleria, Assistant  
Advocate General.

For the respondents: Mr Pankaj Sharma, Advocate.

The following judgment of the Court was delivered:

**P.S.Rana, J.**

**JUDGMENT:** The present appeal filed against the judgment passed by learned Additional Sessions Judge Fast Track Court Una District Una in Sessions Case No. 27 of 2007 titled State Vs. Rakesh Kumar and others.

**BRIEF FACTS OF THE PROSECUTION CASE:**

2. Brief facts of the case as alleged by the prosecution are that co-accused Rakesh Kumar is the husband of deceased Raman Jot, co-accused Jagdish Chand is the father-in-law of deceased, co-accused Ashok Kumar is brother-in-law of deceased and co-accused Asha Devi is the mother-in-law of deceased Raman Jot. It is further alleged by prosecution that all accused persons committed cruelty upon deceased Raman Jot in her matrimonial house. It is further alleged by prosecution that on dated 4.7.2006 at about 10.15 AM at place Behdala accused persons abetted deceased Raman Jot to commit suicide. It is further alleged by prosecution that marriage was solemnized on dated 28.11.2005 as per Hindu rites and customs between deceased Raman Jot and co-accused Rakesh Kumar. It is further alleged by prosecution that after marriage the accused persons harassed deceased Raman Jot and demanded dowry by way of Rs.50,000/- (Fifty thousand) from deceased Raman Jot when she was alive. It is further alleged by prosecution that accused persons have also used to beat deceased Raman Jot in her matrimonial home. It is further alleged by prosecution that the parents of deceased Raman Jot came to Behdala when deceased was alive and accused persons tendered an apology and undertaken not to repeat the same action in future. It is further alleged by prosecution that again deceased Raman Jot rang up her father and asked her father to bring deceased to her parental house as deceased was subjected to cruelty in her matrimonial house. It is further alleged by prosecution that relatives of deceased came to meet the deceased Raman Jot in her matrimonial house but accused persons did not allow them to meet the deceased. It is further alleged by prosecution that ultimately on dated 4.7.2006 deceased Raman Jot committed suicide by way of jumping into the well in village Behdala. It is further alleged by prosecution that thereafter Pradhan Gram Panchayat Behdala informed the parents of deceased Raman Jot by way of telephone about the death of deceased Raman Jot. It is further alleged by prosecution that photographs of dead body are Ext. PW9/A to PW9/G. It is further alleged by prosecution that police officials recorded the statement of complainant Ext.PW1/A under Section 154 Cr.PC and thereafter FIR Ext PW13/A was recorded. It is further alleged by prosecution that post mortem of the dead body of deceased Raman Jot was conducted in District hospital Una. It is further alleged by prosecution that as per post mortem report deceased Raman Jot died due to drowning leading to asphyxia. It is further alleged by prosecution that site plan Ext PW15/B was prepared. The accused persons did not plead guilty and claimed tried. Charge was framed against the accused persons under Sections 498-A IPC and 306 IPC on dated 16.1.2008.

3. The prosecution examined fifteen witnesses in support of its case:-

Sr.No.	Name of Witness
PW1	Shri Kamaljit Singh
PW2	Shri Gurmeet Singh
PW3	Shri Juggar Singh
PW4	Shri Lakhvir Singh
PW5	Smt.Sonia Rana



PW6	Smt.Parminder Kaur
PW7	Ms.Jasbir Kaur
PW8	C. Poonam Devi
PW9	HC. Shahi Kumar
PW10	Dr.M.K. Pathak
PW11	HC. Ram Avtar
PW12	Harbhajan Dass
PW13	H.C. Sukhdev Singh
PW14	Jagdish Ram
PW15	Inspector Ajay Rana

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

Sr.No.	Description.
Ex.PW 1/A	Statement of Kamaljeet Singh.
Ex.PW 9/A to 9/G	Photographs of deceased
Ex.PW 9/H	Negatives
Ex.PW 10/A	Request from S.H.O. for Post mortem
Ex.PW 10/B	Report of Chemical examination
Ex.PW 10/C	Post mortem Report
Ex.PW 11/A	Report No.6
Ex.PW 11/B	Report No.5
Ex.PW 13/A	F.I.R.
Ex.PW 15/A	Form 25/35 A
Ex.PW 15/B	Site Plan
Ex.PW 15/C	Statement of Gurmeet Singh.
Ex.PW 15/D	Statement of Lakhbir Singh.
Ex.PW 15/E	Statement of Jasbir Kaur.

5. We have considered the submissions of the learned Additional Advocate General appearing on behalf of the appellant and learned Advocate appearing on behalf of the respondents.

6. Question that arises for determination before us in this appeal is whether learned trial Court on the basis of material on record was justified in acquitting the accused persons.

**ORAL EVIDENCE ADDUCED BY PROSECUTION:**

7. PW1 Kamal Jit Singh has stated that he was posted as ward servant in BBMB Hospital Nangal. He has stated that he had three children i.e. one son and two daughters. He has stated that deceased Raman Jot was his elder daughter and she was married to co-accused Rakesh Kumar of village Behdala on dated 28.11.2005. He has stated that the marriage of deceased Raman jot was solemnized according to Hindu rites and customs. He has stated that he had given dowry to his deceased daughter as per his capacity. He has stated that for about 2 ½ months the relations of his daughter remained normal with her in-laws and thereafter they started harassing her by demanding dowry and used to give beatings to her. He has stated that deceased Raman Jot had complained to him that accused persons have demanded dowry and have also beaten the deceased in her matrimonial house. He has stated that thereafter he and his wife, younger daughter and 2/3 other persons of the village went to Behdala and talked with the accused persons and they tendered an apology and stated that they would not repeat the same act in future. He has stated that thereafter about one month later deceased Raman Jot rang him at night and told him that the accused persons were subjecting her with cruelty without any reason. He has stated that deceased told him that he should come to take deceased Raman Jot from her matrimonial house. He has stated that thereafter he went to village Behdala on his scooter and brought deceased Raman Jot to her parental house at Nangal. He has stated that after about 15 days accused persons along with their relatives came to his house at Nangal and again tendered an apology and thereafter on the next day he sent deceased Raman Jot with the accused persons to her matrimonial house. He has stated that after about 15/20 days he and his brother-in-law went to the matrimonial house of deceased to meet her but the accused persons did not allow them to meet deceased and after sitting for about two hours in the matrimonial house of deceased they came back to Nangal. He has stated that when they were leaving the house of accused persons deceased Raman Jot came in a weeping situation. He has stated that on dated 4.7.2006 Smt Sonia Rana Pradhan Gram panchayat Behdala informed one Bhajan Lal telephonically that deceased Raman Jot had jumped into the well and committed suicide. He has stated that thereafter he along with the villagers and members of the Panchayat went to village Behdala and found that the police and fire brigade personnel were present and were trying to take out the dead body from the well. He has stated that as the well was quite deep they could not take out the dead body on dated 4.7.2006. He has stated that dead body was taken out on dated 5.7.2006 in the morning from the well. He has stated that thereafter he gave his statement Ext.PW1/A under Section 154 Cr PC to the police official. He has stated that Ext PW1/A bears his signatures. He denied suggestion that accused persons did not harass deceased Raman Jot. He denied suggestion that he made a false report to the police regarding cruelty and demand of dowry to deceased Raman Jot. He denied suggestion that accused persons did not demand any dowry. He has denied suggestion that accused persons have not beaten the deceased in her matrimonial home.

7.1 PW2 Gurmeet Singh has stated that he is running a khokha of cigarettes near the well at Behdala. He has stated that on dated 4.7.2006 at about 9.15 AM when he was in his shop along with Vipran Kumar he heard a noise from the well and on hearing the sound he along with other persons of village went to the well and found that somebody had jumped into the well. He has stated that thereafter he informed Pradhan Smt Sonia Rana. He denied suggestion that he warned deceased Raman Jot not to jump into well. He denied suggestion that co-accused Rakesh Kumar and Asha Devi were running behind the deceased and were stopping her from jumping into well. He has stated that the police took the photographs of the dead body and completed other formalities.

7.2 PW3 Juggar Singh has stated that he is a meson by profession. He has stated that on dated 4.7.2006 he heard noise from the side of well and went there where he came to know that the wife of co-accused Rakesh Kumar had jumped into the well. He has stated that the police and fire brigade personnel had reached at the spot. He has stated that he assisted the police in retrieving deceased Raman Jot from the well for which he went into the well but he could not succeed as the well was quite deep. He has stated that on the next day he along with Jagdish Ram and Rajinder Parshad were able to retrieve the dead body of the deceased from well.

7.3 PW4 Lakhvir Singh has stated that he is driver by profession. He has stated that he has two sisters. He has stated that deceased Raman Jot was his elder sister who was married with co-accused Rakesh Kumar of Behdala on dated 28.11.2005. He has stated that for about 2 ½ months after the marriage the relation of his sister remained normal with her in-laws and thereafter they started ill-treating her by way of demanding dowry and by way of giving beatings to deceased. He has stated that accused persons were also demanding Rs.50,000/- (fifty thousand). He has stated that thereafter his father went to village Behdala and he brought back the deceased to Nangal. He has stated that after 15 days the accused persons along with their relatives came to the parental house of deceased at Nangal and assured that they would not repeat the same act in future. He has stated that after tendering the apology the accused persons took the deceased back to Behdala. He has stated that on dated 4.7.2006 when he was in the transport union his father intimated him on telephone that he should go immediately to Behdala. He has stated that thereafter he accompanied with his father, sarpanch and other panchayat members went to Behdala and when they reached at Behdala the deceased Raman Jot had already jumped into the well. He has stated that police tried to retrieve the dead body from the well but since the well was quite deep the dead body could not be taken out on dated 4.7.2006. He has stated that the dead body was taken out from the well on dated 5.7.2006. He denied suggestion that accused persons did not demand any dowry from the deceased. He denied suggestion that accused persons have not committed any cruelty upon deceased in her matrimonial house.

7.4 PW5 Smt Sonia Rana has stated that on dated 4.7.2006 when she was in her house at about 9.30 AM one Gurmit Singh intimated her on telephone that deceased Raman Jot had jumped into the well. She has stated that on receiving said information she went to the well where many people had already gathered around the well. She has stated that thereafter she intimated the police and fire brigade on telephone. She has stated that thereafter she intimated one

Bhajan Lal on telephone about the incident and asked him to inform the parents of deceased Raman Jot. She has stated that after some time her parents reached at the spot. She has stated that on dated 4.7.2006 the police and other persons present at the spot could not succeed in retrieving the dead body of deceased Raman Jot as the well was quite deep. She has stated that on dated 5.7.2006 the police retrieved the dead body of deceased with the help of fire brigade officials. She has stated that thereafter the police conducted its proceeding and took the photographs and identified the dead body.

7.5 PW6 Smt Parminder kaur has stated that she is a house wife. She has stated that deceased Raman Jot was her elder daughter. She has stated that deceased was married to co-accused Rakesh Kumar of Behdala on dated 28.11.2005. She has stated that for about 2 ½ months the relations of her daughter remained normal with the accused persons. She has stated that thereafter the accused persons started harassing the deceased. She has stated that accused persons started demanding money and also beaten the deceased. She has stated that this fact was told to her by her daughter when she came to her parental house. She has stated that after few days the accused persons came to the parental house of deceased Raman jot and tendered an apology and thereafter the deceased was sent back to her matrimonial house. She has stated that on dated 4.7.2006 in the evening her husband told her that deceased Raman Jot had jumped into the well and her dead body could not be retrieved. She has stated that dead body of deceased Raman Jot was retrieved on 5.7.2006 and thereafter her last ceremony was performed. She has denied suggestion that deceased did not make any complaint to her against accused persons. She denied suggestion that accused persons have not harassed deceased in her matrimonial house.

7.6 PW7 Ms Jasbir Kaur has stated that deceased was her elder sister. She has stated that deceased Raman Jot was married to co-accused Rakesh Kumar on dated 28.11.2005 as per Hindu rites at village Behdala. She has stated that deceased was kept properly for about 2 ½ months and thereafter she was harassed and dowry was demanded. She has stated that accused persons demanded Rs.50,000/- (Fifty thousand) from her deceased sister as dowry. She has stated that above stated facts were narrated to her by her deceased sister personally. She has stated that her sister had informed on telephone that she was harassed by accused persons in her matrimonial house and thereafter deceased was brought to her parental house. She has stated that thereafter accused persons came to the parental house of deceased and tendered an apology and thereafter her deceased sister was sent to matrimonial house with accused persons. She has stated that on dated 4.7.2006 her father and brother along with other persons of village had gone to Behdala and came to know that deceased had committed suicide by way of jumping into well. She denied suggestion that accused persons have not harassed the deceased in any manner in her matrimonial house. She denied suggestion that accused persons had not demanded any dowry from deceased in her matrimonial house. She denied suggestion that accused persons have not tendered any apology to the parents of deceased.

7.7 PW8 Constable Poonam Devi has stated that she was posted as Constable general duty in Police Station Sadar Una for the last two years. She has

stated that she remained associated in the investigation of the present case. She has stated that on dated 5.7.2006 the dead body of deceased Raman Jot was took out from the well with the help of rope and hooks. She has stated that as per direction of Investigating Officer she inspected the body of deceased Raman Jot with the help of camera and it was found that there was one injury on right hip and one injury on the left ankle. She has stated that Investigating Officer got the dead body identified from the father of deceased Raman Jot and thereafter the dead body was sent for post mortem. She has stated that she does not know how the deceased sustained injuries.

7.8 PW9 HC Shashi Kumar has stated that he was posted as photographer in Police Line Una. He has stated that on dated 5.7.2006 on the direction of Investigating Officer he had taken the photographs of deceased Raman Jot from various angle which are Ext PW9/A to PW9/G and negatives are Ext PW9/H.

7.9 PW10 Dr M.K Pathak has stated that he was posted as Medical Officer at Una in the year 2006. He has stated that a request Ext PW 10/A was received from Station House Officer for conducting post mortem of deceased Raman Jot along with inquest report. He has stated that he conducted the post mortem and on examination on dated 5.7.2006 at about 4 PM he found that R.M. was well developed and eyes were closed. He has stated that whitish fine leather was coming out of both nostrils and face. He has stated that reddish discharge with froth was coming out from her mouth. He has stated that deceased died due to asphyxia. He has stated that he referred the viscera for chemical examination. He has stated that no poison and alcohol was detected in the viscera. He has stated that the cause of death was due to drowning leading to asphyxia.

7.10 PW11 HC Ram Avtar has stated that he was posted at Constable at Police Station Sadar Una in the year 2006. He has stated that he brought roznamcha register. He has stated that report No.6 dated 4.7.2006 Ext PW11/A is the true copy. He has stated that report No.5 dated 5.7.2006 Ext.PW11/B is also true copy of the original. He has stated that both the reports were in his hand.

7.11 PW12 Harbhajan Dass has stated that on dated 4.7.2006 at about 10.15 AM he received a telephonic call from Smt Sonia Rana Pradhan Behdala that the daughter of Kamal Jit Singh had jumped into the well. He denied suggestion that no telephone call was received.

7.12 PW13 HC Sukh Dev Singh has stated that he was posted as Constable at Police Station Sadar Una in the year 2006. He has stated that on the receipt of rukka Ext PW1/A in Police Station Una he recorded FIR Ext PW13/A.

7.13 PW14 Jagdish Ram has stated that he was working in IPH Department as Beldar. He has stated that on dated 4.7.2006 when he was going for his duty he saw many people had gathered around the well. He has stated that on inquiry he was told that deceased Raman Jot had jumped into the well. He has stated that he assisted the police in retrieving the dead body from the well but the same could not be taken out on dated 4.7.2008 as the well was quite deep. He has stated that dead body was taken out on dated 5.7.2006 in the morning.

7.14 PW15 Inspector Ajay Rana has stated that he remained posted as SHO at Police Station Una in the year 2006. He has stated that on dated 4.7.2006

at about 9.35 AM an information was received on telephone in Police Station Una from Pradhan Gram Panchayat Behdala stating that one lady had jumped into the well and a report in this regard Ext PW11/A was prepared. He has stated that after the receipt of the said information he along with other police officials proceeded to the spot. He has stated that many people had gathered around the well near patwarkhana of village Behdala. He has stated that on inquiry he came to know that one lady Raman Jot wife of co-accused Rakesh Kumar had jumped into the well. He has stated that thereafter they made efforts to retrieve the dead body from the well with the help of local persons and fire brigade officials but they did not succeed despite best efforts as the well was quite deep. He has stated that on the next day in the morning they again tried to take out the dead body and ultimately the dead body was took out from the well. He has stated that dead body was got identified from the father of the deceased. He has stated that photographs of the dead body were taken which are Ext PW9/A to PW9/G. He has stated that thereafter dead body was examined by lady constable Poonam Kumari and two injuries were found on the body of deceased Raman Jot. He has stated that thereafter statement under Section 154 Cr PC Ext PW1/A was recorded and the same was sent to Police Station for registration of FIR through Constable Surinder Kumar upon which FIR Ext PW13/A was recorded. He has stated that he filled form 25/35A Ext PW15/A and sent the dead body to District Hospital Una for post mortem. He has stated that thereafter he prepared site plan Ext PW15/B. He has stated that he recorded the statements of the witnesses. He has stated that thereafter he prepared the challan under Sections 498-A and 306 IPC. He has denied suggestion that he recorded the statement of complainant Kamal Jit at his own. He denied suggestion that he did not prepare site plan at the spot. He denied suggestion that accused persons never demanded any dowry from deceased Raman Jot.

8. The statements of accused persons were also recorded under Section 313 Cr.PC. Accused persons have stated that they are innocent and falsely implicated in present case. Accused persons did not lead any defense evidence.

(A) Mental Cruelty upon deceased Raman Jot aged 19 years proved beyond reasonable doubt as per testimony of PW1 Kamal Jit Singh father of deceased.

9. As per testimony of PW1 Kamal Jit Singh it is proved on record beyond reasonable doubt that for about 2 ½ months the relations of deceased Raman Jot with accused persons remained cordial and thereafter deceased was harassed by accused persons by way of demanding dowry and by way of giving beatings to deceased. As per testimony of PW1 Kamal Jit Singh it is proved on record beyond reasonable doubt that deceased had personally informed PW1 through telephone that accused persons were committing cruelty towards her by way of demanding dowry and by way of giving beatings to deceased. It is proved on record beyond reasonable doubt that thereafter PW1 and his wife and his younger daughter and two other persons of village went to the matrimonial house of deceased Raman Jot and talked with accused persons and ultimately accused persons tendered apology and accused persons stated that they would not repeat the incident of cruelty in future and thereafter they came back. As per testimony of PW1 it is proved beyond reasonable doubt that thereafter about one month later the deceased telephoned him at night and told that accused persons were

subjecting her with cruelty without any reason in the matrimonial house of deceased and deceased told PW1 that she should be brought back from her matrimonial house to her parental house. As per testimony of PW1 it is proved beyond reasonable doubt that thereafter PW1 went to matrimonial house of deceased at village Behdala on his scooter and brought the deceased to her parental house at Nangal. As per testimony of PW1 it is proved beyond reasonable doubt that thereafter for about 15 days accused persons along with their other relatives came to parental house of deceased at Nangal and tendered apology and thereafter deceased Raman Jot was sent to her matrimonial house. As per testimony of PW1 it is proved beyond reasonable doubt that thereafter about 15/20 days PW1 and his brother-in-law went to the matrimonial house of the deceased to meet her but the accused persons did not allow them to meet the deceased and after sitting there for about two hours they came back to their house at Nangal and when they were leaving the matrimonial house of the deceased the deceased Raman Jot came in weeping condition. It is proved on record that thereafter on dated 4.7.2006 deceased aged 19 years committed suicide by way of jumping into well. It is well settled law that testimony of the witness should be read as a whole and should not be read in isolation. It is also proved beyond reasonable doubt as per testimony of PW1 Kamal Jit Singh father of deceased that mental cruelty was caused to the deceased in her matrimonial house. It is also proved beyond reasonable doubt that deceased had died within seven years after her marriage in her matrimonial house. Testimony of PW1 is trustworthy, reliable and inspires confidence of Court.

(B) Mental Cruelty upon deceased Raman Jot aged 19 years proved beyond reasonable doubt as per testimony of PW 4 Lakhvir Singh brother of deceased.

10. It is proved beyond reasonable doubt as per testimony of PW4 that for about 2 ½ months the deceased was kept properly in her matrimonial house and thereafter the behaviour of the accused persons became abnormal and accused persons started ill-treating the deceased by way of demanding dowry and had also given beatings to her. It is proved on record beyond reasonable doubt as per testimony of PW4 that deceased had complained through telephone about demand of dowry from accused persons and beatings to deceased from accused persons in her matrimonial house. It is proved on record beyond reasonable doubt that as per testimony of PW4 that deceased informed directly that accused persons had demanded an amount of Rs.50,000/- (Fifty thousand). It is proved beyond reasonable doubt that thereafter father of deceased went to matrimonial house of deceased at Behdala and brought deceased Raman Jot back to her parental house at Nangal. It is proved beyond reasonable doubt that after fifteen days the accused persons along with their relatives came to parental house of the deceased at Nangal and told that they would not repeat the act of cruelty in future and after tendering an apology they took the deceased back to her matrimonial house at Behdala. It is proved beyond reasonable doubt as per testimony of PW4 that thereafter on dated 4.7.2006 the deceased committed suicide by way of jumping into well. The testimony of PW4 Lakhvir Singh is also trust worthy, reliable and inspires confidence of the Court.

(C) Mental Cruelty upon deceased Raman Jot aged 19 years proved beyond reasonable doubt as per testimony of PW 6 Smt. Parminder Kaur mother of the deceased.

11. It is proved beyond reasonable doubt that for about 2 ½ months the relations of deceased with accused persons were cordial and thereafter they started harassing deceased Raman Jot and demanded money and also gave beatings to deceased Raman Jot in her matrimonial house. Factum of demand of dowry and factum of beatings in matrimonial house was directly disclosed by deceased Raman Jot to her mother PW6. Deceased requested her parents to take her from the matrimonial house and as per request of deceased Raman Jot the deceased was brought to her parental house at Nangal. It is proved beyond reasonable doubt that after few days the accused persons came to the parental house of deceased at Nangal and tendered an apology and told that they would treat the deceased properly in her matrimonial house and thereafter deceased was again sent to her matrimonial house. Thereafter deceased Raman Jot committed suicide by way of jumping into well in her matrimonial house. The testimony of PW6 Parminder Kaur mother of deceased is also trust worthy, reliable and inspires confidence of the Court.

(D) Mental Cruelty upon deceased Raman Jot aged 19 years proved beyond reasonable doubt as per testimony of PW 7 Jasbir kaur sister of deceased.

12. It is proved beyond reasonable doubt as per testimony of PW7 that for about 2 ½ months deceased Raman Jot was kept properly in-laws house and thereafter the accused persons had harassed the deceased by way of demanding dowry and by way of beatings the deceased. It is also proved on record beyond reasonable doubt that accused persons demanded Rs.50,000/- (Fifty thousand) from the deceased and deceased told this fact to PW7 personally when she visited her parental house. It is proved on record beyond reasonable doubt as per testimony of PW7 that deceased telephoned to her parents about cruelty in matrimonial house and thereafter her father came to matrimonial house of deceased and brought the deceased to her parental house. It is proved beyond reasonable doubt that thereafter accused persons came to parental house of deceased and tendered an apology and thereafter the deceased was sent back to her matrimonial house with accused persons. It is proved beyond reasonable doubt as per testimony of PW7 that again deceased reported about mental cruelty in her matrimonial house to her parents and thereafter father and maternal uncle of deceased were gone to the matrimonial house of deceased but the accused persons did not allow them to meet the deceased. It is proved that thereafter the deceased had committed suicide by way of jumping into well in her matrimonial house. The testimony of PW7 Jasbir Kaur is also trust worthy, reliable and inspires confidence of the Court. There is no reason to disbelieve the testimony of PW7 Jasbir Kaur.

(E) Death of deceased proved by way of jumping into well as per corroborative evidence.



13. The death of deceased Raman Jot aged 19 years by way of jumping into well proved beyond reasonable doubt by way of corroborative evidence of PW2 Gurmeet Singh, PW3 Juggar Singh, PW4 Lakhvir Singh, PW8 Poonam Devi and PW9 Shashi Kumar who have stated in positive manner that deceased Raman Jot had committed suicide by way of jumping into well. The factum of suicide by deceased is proved by way of corroborative evidence. No reason has been assigned by the accused persons as to why deceased had committed suicide by way of jumping into well in her matrimonial house. There is no evidence on record in order to prove that deceased Raman Jot was suffering from any mental illness. There is no evidence on record in order to prove that deceased was medically treated somewhere by the Medical Officer for any disease prior to her death. In the present case it is proved beyond reasonable doubt that deceased had died by way of jumping herself into the well and the cause of death was drowning leading to asphyxia.

(F) Abetment to commit suicide under Section 306 IPC not proved beyond reasonable doubt.

14. There is no evidence on record in order to prove that accused persons had abetted the deceased to commit suicide prior to commission of suicide by the deceased by way of jumping into well. On the date when the deceased committed suicide PW1 Kamal Jit Singh, PW4 Lakhvir Singh, PW6 Smt Parminder Kaur and PW7 Jasbir Kaur were not present in the matrimonial house of the deceased when the deceased had committed suicide. There is no evidence on record in order to prove that accused persons had abetted the deceased to commit suicide on dated 4.7.2006. It is well settled law that there should be immediate nexus between the abetment and suicide. In the present case immediate nexus of abetment and suicide is not proved on record beyond reasonable doubt. Hence it is held that learned trial Court has rightly acquitted the accused persons under Section 306 IPC by way of giving them benefit of doubt.

(G) Presumption under Section 113 B of the Indian Evidence Act 1872 is not rebutted by accused persons.

15. Section 113 B of the Indian Evidence Act 1872 was incorporated w.e.f. 19.11.1986 and as per Section 113 B the Courts are under legal obligation to draw the presumption of dowry death. The Court has drawn the presumption as to dowry death under Section 113 B of the Indian Evidence Act 1872 in the present case and the accused persons did not adduce any evidence on record in order to rebut the presumption under Section 113B of the Indian Evidence Act 1872.

16. Submission of learned Advocate appearing on behalf of accused persons that learned trial court has rightly acquitted the accused persons under Section 498-A IPC is rejected being devoid of any force for the reason hereinafter mentioned. As per testimony of PW1 Kamal Jit Singh father of deceased, PW4

Lakhvir Singh brother of deceased, PW6 Smt Parminder Kaur mother of deceased and PW7 Jasbir Kaur sister of deceased it is proved beyond reasonable doubt that accused persons had committed cruelty upon the deceased when deceased was residing in her matrimonial house. It is proved on record beyond reasonable doubt that the deceased had personally complained about the mental cruelty to her relatives i.e. father, mother, brother and sister. It is well settled law that generally the married woman used to inform the factum of cruelty to her relatives only qua matrimonial disputes.

17. Another submission of learned Advocate appearing on behalf of accused persons that no independent witness from the locality has stated that accused persons have committed cruelty upon deceased in her matrimonial house and on this ground present appeal be dismissed is also rejected being devoid of any force for the reason hereinafter mentioned. It is well settled law that offence under Section 498-A is a matrimonial offence. It is well settled law that no independent witness of the locality could be procured in order to prove the matrimonial offence when offence is committed inside the room in matrimonial house. In the present case it is proved beyond reasonable doubt that deceased Raman Jot aged 19 years had committed suicide by way of jumping herself into well in her matrimonial house.

18. Another submission of learned Advocate appearing on behalf of accused persons that the testimony of PW1 Kamal Jit Singh, PW4 Lakhvir Singh, PW6 Smt.Parminder Kaur and PW7 Jasbir Kaur are not sufficient to convict the accused persons under Section 498-A IPC is also rejected being devoid of any force for the reason hereinafter mentioned. It was held in case reported in AIR 1999 SC 2071 titled Arun Vyas and another Vs. Anita Vyas that cruelty as defined in Section 498-A IPC is a continuing offence and on each occasion the woman has cause of action. Cruelty under Section 498-A means harassment of the woman in her matrimonial house with the view to coercing the woman to meet an unlawful demand for any property. It is well settled law that cruelty or harassment is not only physical cruelty but even a mental cruelty is cruelty as per Section 498-A IPC. It is well settled law that offence under Section 306 IPC and Section 498-A IPC are two independent sections. The basic difference between Section 498-A IPC and Section 306 IPC is that of 'intention' only. Under Section 498-A cruelty committed by the husband or his relations drag the woman to commit suicide while under Section 306 IPC suicide is abetted and intended by accused persons.

19. Another submission of learned Advocate appearing on behalf of accused persons that deceased or relatives did not file any complaint in panchayat and on this ground appeal filed by the State be dismissed is also rejected being devoid of any force for the reason hereinafter mentioned. In the present case it is proved on record that when the accused persons committed cruelty upon the deceased in her matrimonial house the parents of the deceased brought the deceased from her matrimonial house and thereafter accused persons again visited to parental house of the deceased and tendered an apology and assured that they would not commit the offence of cruelty upon the deceased in her matrimonial house and thereafter the deceased was sent to her matrimonial house by her parents. It is proved on record that even after giving assurance by the accused persons that they would not commit any cruelty towards deceased in her matrimonial house deceased again informed the factum of cruelty to her

parents, brother and sister by way of telephone and thereafter again the parents of the deceased went to meet the deceased in her matrimonial house but they were not allowed to meet the deceased and they saw the deceased was weeping in her matrimonial house and thereafter the deceased committed suicide in her matrimonial house by way of jumping into well. In the present case it is proved beyond reasonable doubt that accused persons had committed cruelty upon the deceased in her matrimonial house and deceased was dragged to commit suicide by way of jumping herself into well which was situated nearby the matrimonial house of the deceased. Even as per site plan placed on record the place where the deceased committed suicide by way of jumping into well is situated nearby the matrimonial house of the deceased. Court is of the opinion that deceased did not lodge FIR against the accused persons and also did not report the matter in panchayat in order to keep her matrimonial life intact but despite the best efforts on the part of the deceased the cordial relations between the deceased and her in-laws did not remain intact and deceased was dragged to commit suicide in the well which was situated nearby her matrimonial house. The definition of cruelty as defined under Section 498-A IPC consists of two parts. The first part relates to willful conduct which is of such nature as to drive the woman to commit suicide and second part relates to harassment of married woman with a view to coercing her to meet any unlawful demand for any property.

20. Submission of learned Advocate appearing on behalf of accused persons that there are material contradictions between the testimony of PW1 Kamal Jit Singh, PW4 Lakhvir Singh, PW6 Parminder kaur and PW7 Jasbir Kaur and on this ground appeal filed by the State be dismissed is also rejected being devoid of any force for the reason hereinafter mentioned. It is well settled law that oral testimony of the witness should be read as a whole and should not be read in isolation. The Court has carefully perused the testimony of PW1 Kamal Jit Singh, PW4 Lakhvir Singh, PW6 Parminder kaur and PW7 Jasbir Kaur as a whole. There is no material contradiction between the testimony of PW1, PW4, PW6 and PW7 which goes to the root of the case qua offence punishable under Section 498-A IPC. It is well settled law that minor contradictions are bound to come when the statement of the prosecution witness is recorded after the gap of one year and nine months. It is well settled law that conviction can be sustained on the solitary evidence of the witnesses in a criminal case if testimony of the witness is trust worthy, reliable and inspires confidence of the Court. (See AIR 1973 SC 944 titled Jose Vs. the State of Kerala. Also see AIR 1965 SC 202 titled Masalti and others Vs. State of Uttar Pradesh and also see AIR 1957 SC 614 titled Vadivelu Thevar Vs. The State of Madras). It was held in case reported in AIR 1987 SC 1328 Dalbir Singh and others Vs. State of Punjab that there is no hard and fast rule which could be laid down for appreciation of evidence and it was held that each case should be decided as per proved facts. It is well settled law that principle of falsus in uno falsus in omnibus is not applicable in criminal trials. (See AIR 1980 SC 957 titled Bhe Ram Vs. State of Haryana. Also See AIR 1971 SC 2505 titled Rai Singh Vs. State of Haryana). There is no evidence on record in the present case that deceased was suffering from any mental ailment. There is no evidence on record to prove that deceased was having any extra marital relation with some other person. There is no explanation on the part of the accused persons as to why the deceased committed suicide in her matrimonial house by way of jumping into well without any plausible reason. It is well settled law that no person would jump into well

without any plausible reason in her matrimonial house. There is no medical evidence qua mental illness of deceased Raman Jot. Even as per Section 134 of Indian Evidence Act 1872 no particular number of witnesses shall be required for the proof of any fact.

21. Another submission of learned Advocate appearing on behalf of accused persons that PW1, PW4, PW6 and PW7 are relative witnesses and interested witnesses and conviction cannot be given upon their testimonies is rejected being devoid of any force for the reason hereinafter mentioned. It is well settled law that in matrimonial offence relatives are best witnesses. It was held in case reported in AIR 1981 SC 1390 titled State of Rajasthan Vs. Kalki and another that relative witnesses are not equivalent to interested witnesses.

22. In view of the above stated facts we affirmed the acquittal of accused persons passed by learned trial Court qua offence punishable under Section 306 IPC by way of giving them benefit of doubt and we set aside the judgment of learned trial Court qua acquittal of accused persons under Section 498-A IPC and we convict all the accused persons under Section 498-A IPC. We hold that all the accused persons had committed mental cruelty upon deceased in her matrimonial house by way of their willful conduct. Appeal is partly allowed.

23. Now convicted persons will be heard on the quantum of sentence on 7.10.2014 upon the offence punishable under Section 498-A IPC. Convicted persons be produced before us by way ofailable warrant.

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**Cr. Appeal No. 584 of 2008**

**QUANTUM OF SENTENCE**

**07.10.2014**

**Present:-** Mr. B.S. Parmar and Mr. Ashok Chaudhary, Additional Advocate Generals with Mr. Vikram Thakur, Deputy Advocate General, and Mr. J.S. Guleria, Assistant Advocate General, for the appellants.

Mr. Pankaj Sharma, Advocate, for all convicted persons.

Convicted persons namely Jagdish, Asha Devi, Ashok Kumar are in police custody of HC Ravinder Kumar No. 37, C. Vijay Kumar No. 393 P.S. Una HP and Mr. Pankaj Sharma, Advocate, submitted before us that after hearing upon quantum of sentence order upon quantum of sentence be announced today itself qua all convicted persons.

24. We have heard learned Additional Advocate General appearing on behalf of the State and learned defence counsel appearing on behalf of the convicted persons upon quantum of sentence.

25. Learned Additional Advocate General appearing on behalf of the State submitted before us that convicted persons have committed heinous offence under Section 498-A IPC and deterrent punishment be awarded to the convicted persons in order to maintain majesty of law. On the contrary learned defence counsel appearing on behalf of convicted persons submitted before us that convicted persons are first offenders and further submitted that age of convicted Rakesh Kumar is 33 years, age of convicted Jagdish Chand is 57 years, age of convicted Asha Devi is 54 years and age of convicted Ashok Kumar is 30 years and lenient view be taken keeping in view the age of convicted persons.

26. We have considered the submissions of learned Additional Advocate General appearing for the State and learned defence counsel appearing on behalf of convicted persons carefully upon quantum of sentence.

27. In view of the fact that deceased died at the age of 19 years in her matrimonial house by way of jumping into the well due to mental cruelty given by convicted persons we are of the opinion that offence of mental cruelty in matrimonial houses on married women at the young age of 19 years is a stigma on the society. In order to maintain majesty of law and in order to regain the confidence of general public in the judiciary and in view of the facts stated above we sentence all convicted persons as follow:-

Sr. No.	Nature of Offence	Sentence imposed
1.	Offence under Section 498-A IPC	All convicted persons are sentenced to undergo simple imprisonment for one year. All convicted persons are also sentenced to pay fine of Rs. 10,000/- (Rs. Ten thousand only) each. In default of payment of fine, each convicted person shall further undergo simple imprisonment for three months.

28. Period of custody during investigation, inquiry and trial will be set off. Certified copy of this judgment and sentence be also supplied to convicted persons forthwith free of cost by learned Additional Registrar (Judicial). Case property will be confiscated to State of H.P. after the expiry of period of filing further legal proceedings. Warrant of execution of sentence be issued to the Superintendent Jail forthwith for compliance by learned Additional Registrar (Judicial) in accordance with law.

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

Khushi Ram & ors. ....Petitioners.  
Versus  
State of H.P. & anr. ....Respondents.

CWP No. 5033 of 2014.  
Decided on: 19.09.2014.

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**Constitution of India, 1950- Article 226** – The petitioner had filed a civil suit before the learned Sub Judge, which was decreed- State preferred an appeal before the learned District Judge, Kangra, who set aside the judgment and decree and transferred the matter to the District Collector, Kangra, to decide the suit in accordance with Sections 3 & 4 of the H.P. Village Common Land (Vesting and Utilization) Act, 1974- The Collector held that the respondents had become the owners of the land under Section 104 of the H.P. Tenancy and Land Reforms Act, 1972- A Review petition was filed before the Sub-Divisional Officers exercising the powers of Collector which was beyond limitation- However, the Sub Divisional Officer reviewed the order- Petitioner filed an appeal before the Divisional Commissioner who dismissed the same- Held, that the earlier order was passed by the Sub Divisional Officer exercising the powers of the Collector on 1.6.1999, Review petition was filed in the year 2005- Limitation prescribed under Section 9-A of the H.P. Village Common Lands (Vesting and Utilization) Amendment Act, 2001 is 90 days- No Notice was issued prior to the review of the order, therefore, the earlier order was a nullity which could not be cured by the subsequent orders.

(Para-23)

For the petitioners: Mr. R.K.Sharma, Sr. Advocate, with Ms. Vidushi Sharma, Advocate.

For the respondents: Mr. Ashok Chaudhary, Addl. AG with Mr. Ramesh Thakur, Asstt. AG.

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The following judgment of the Court was delivered:

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**Justice Rajiv Sharma, J.**

The petitioner instituted Civil Suit bearing No. 74/86 in the Court of learned Sub Judge (Ist Class), Nurpur for declaration to the effect that they were tenants in equal shares over the suit land comprised in Khata No. 126, Khatauni No. 385, Khasra Nos. at present 1219, 1220, 1221, 1223, 1224, 952, 953, 956, 956/1, 958, 959, 1127, 1147, 1149, measuring 3-74-71 hectares, situated in Tika Baduhi, Mauza Khanni, Tehsil Nurpur, Distt. Kangra, H.P. The suit was decreed by the learned Sub Judge on 25.2.1988.

2. Respondent-State filed an appeal against the judgment and decree dated 25.2.1988 before the learned District Judge, Kangra, bearing Civil Appeal No. 64/1988. The learned District Judge, Kangra, set aside the judgment and decree passed by the learned Sub Judge (Ist Class), Nurpur and transferred the matter to the Collector, Kangra District to decide the suit in accordance with Sections 3 & 4 of the H.P. Village Common Land (Vesting and Utilization) Act, 1974. He passed orders on 1.6.1999. The Collector held that respondents have become owners of the land under Section 104 of the H.P. Tenancy and Land Reforms Act, 1972.

3. The respondents filed the review petition before the Sub Divisional Officer exercising powers of the Collector against the order dated 1.6.1999. The review petition filed by the respondent-State was also beyond limitation i.e. 90 days. The Sub Divisional Collector, Nurpur, reviewed the order dated 1.6.1999 on 19.5.2005. The petitioner filed appeal before the learned Divisional Commissioner, against the order dated 19.5.2005. He dismissed the same on 20.3.2009. The fact of the matter is that the earlier orders were passed by the Sub Divisional Officer (C) exercising the powers of Collector on 1.6.1999. The review petition was filed in the year 2005. The limitation prescribed under Section 9-A of the H.P. Village Common Lands (Vesting and Utilization) Amendment Act, 2001 is 90 days. The petitioner has not been issued even a notice before the order was reviewed on 19.5.2005. Since the earlier order was a nullity, it would not be cured by the subsequent order passed by the learned Divisional Commissioner on 20.3.2009. It is also evident from the order dated 19.5.2005 that the report from the Revenue Officer was called for. The petitioner was not associated during the pendency of enquiry.

4. Accordingly, the Writ petition is allowed. Annexure P-14 dated 19.5.2005 passed by the Sub Divisional Officer and Annexure P-16, order dated 20.3.2009 passed by the learned Divisional Commissioner, Kangra are quashed and set aside. The respondent-State is directed to pay Rs. 5000/- costs to the petitioner. Pending application(s), if any shall stand disposed of.

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

Ms. Monika Singh .... Petitioner.  
Vs.  
State of H.P. and others .... Respondents.

CWP No. 824 of 2014.  
Reserved on: 17.09.2014.  
Date of Decision: 25 .9.2014.

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**Constitution of India, 1950- Article 226-** Petitioner, a member of Child Welfare Committee, was removed from the office on the ground that she had failed to attend the meeting and to put her signatures on the attendance and proceedings

register- Petitioner contended that she had passed orders and the removal was unjustified- Held, that the petitioner had issued the orders for age determination of a child in her individual capacity which is against the Constitution of District Child Welfare Committee- She was to work with the Chairperson and other members of the District Child Welfare Committee and not individually-she had not attended the meetings and had not put her signatures on the registers-hence, her removal was justified.

(Para-4, 5, 6)

**Juvenile Justice (Care and Protection of Children) Rules, 2007-** Rule, 26- Rules provide that the order of the Committee shall be signed by at least two members thus, signing the minute register is impliedly necessitated by the rules.

(Para-8)

**For the petitioner:**

Mr. Bhupinder Singh Kanwar,  
Advocate.

**For the respondents:**

Mr. Anup Rattan, Addl. Advocate General  
for respondents No. 1 to 3.

Mr. Digvijay Singh, counsel, for  
respondent No.6.

The following judgment of the Court was delivered:

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**Per Sureshwar Thakur, J.**

1. The instant petition is directed against the order comprised in, Annexure P-12, whereby the respondents ordered the removal of the petitioner from the office of the Member of Child Welfare Committee, Shimla. The removal of the petitioner from the office of Member of Child Welfare Committee, Shimla was preceded by a detailed inquiry carried out by the State Selection Committee. The petitioner in the writ petition contends that the findings recorded by the State Selection Committee in its inquiry report are infirm, inasmuch as in the absence of standard operating procedures having been formulated and notified by the respondents for adoption by and for regulating the working of the District Child Welfare Committees functioning in the State of Himachal Pradesh, the insistence by the respondents upon the petitioner signing the minutes of the proceedings in the Register as a portrayal of her attending the meeting was uncalled for. She also contends that she had, on 5.8.2013, recorded the statements of the child and the mother along with respondent No.6 hence it was untenably concluded by the State Selection Committee in its report that she was willfully absent on 5.8.2013. Moreover, she contends that on the strength of Annexures P-4 and P-7 a register qua attendance maintained by respondent No.5 no conclusion could be derived qua the factum of hers not attending the sittings of the District Child Welfare Committee from 2.3.2013 to 29.6.2013. Besides, she contends that the entire procedure adopted by the State Selection Committee while it not having afforded her an adequate opportunity to project her stand in defence is hence ingrained with the vice of



infraction of the principle of audi alteram partem, as such, rendering the conclusions and findings arrived at in the inquiry report, to be vitiated.

2. Detailed replies have been filed by the respondents to the writ petition wherein a focused stand has been portrayed qua the findings and conclusions arrived at by the State Selection Committee in its inquiry report being both vindicable as well as not warranting interference. The allegations against the petitioner fall within the ambit of the provisions of Section 29(4)(iii) of the Juvenile Justice (Care & Protection of Children) Act, 2000, inasmuch, as, she purportedly failed to, for consecutive three months without any valid reason, attend the meetings of the Committee. Also the State Selection Committee before commencing the inquiry qua the aforesaid allegations against the petitioner had served notice upon the petitioner. She in consequence appeared before the State Selection Committee. She even had projected her stand before the State Selection Committee. Consequently, she having been afforded full and adequate opportunity by the State Selection Committee to project her stand in defence disables her to contend that she was condemned unheard by the State Selection Committee. A perusal of the findings and conclusions recorded by the State Selection Committee in its inquiry divulge that they are both intensive and ad nauseam vis-à-vis enunciative upon the material on record in support of the allegations against the petitioner. A portrayal is made in it of each of the defences canvassed by the petitioner before the State Selection Committee as also the defence canvassed before this Court by the petitioner having been taken into account and it having been construed to be unsustainable. The portrayal aforesaid does not appear for lack of emergence of any perversity or absurdity to be unwarranted. A perusal of paragraph 21 of the inquiry report discloses the fact of the petitioner having admitted the factum of a register having been maintained by one of the members of Child Welfare Committee. However, on a perusal of pages 47, 54, 57, 58, 62 and 64 to 69 of the register, by the State Selection Committee unearthed the fact of the pages aforesaid having been omitted to be signed by the petitioner. The factum of the register acquiring credibility is manifested by the fact of the minutes of the meeting being scribed by the petitioner alongwith Mr. B.P.Adhikari. Consequently, with credibility having hence come to be foisted to the attendance register, absence of signatures of the petitioner as well as of Mr. B.P.Adhikari on pages aforesaid, marks the fact of the absence of the petitioner on the apposite dates. Therefore, leaves the allegation against the petitioner of hers without any valid reason absenting herself from the meetings of the District Child Welfare Committee to be sustainable.

3. While hence imputing credibility to the register maintained by Ms. Sapna Banta, one of the members of the District Child Welfare Committee, the State Selection Committee while singling out 25.4.2013 as a test check date for determining the truth

of the contention of the petitioner of her being present on the said date, it construed that in the face of the petitioner in her individual capacity having issued orders for age determination of a child portrays the fact that there was lack of satisfaction of the enjoined statutory coram for constituting the meeting of the District Child Welfare Committee valid and tenable. The petitioner in hers individually rendering orders of 25.4.2013, which individualistic act did not constitute the factum of a valid meeting of the District Child Welfare Committee, Shimla having been convened, sequently it was aptly determined that the petitioner in individually and unilaterally convening meetings of the District Child Welfare Committee, did not render her empowered to contend that she either participated in it or was present therein. In the said Selection Committee dispelling the factum of the presence of the petitioner on 25.4.2013 had anvilled its conclusion on well founded facts. Also then it having construed the maintenance of a file CNCP No. 107 of 2013 produced by the petitioner before it for communicating the factum of her presence in personification of her attendance to be depreciable, especially when the maintenance of the file by the petitioner is not in consonance with the office decorum nor also when it has not been concluded by the State Selection Committee that the proceedings of the District Child Welfare Committee as comprised in it were valid and tenable, theirs having been signed by the coram prescribed under the norms, does not obviously give any leverage to the petitioner to contend that with hers having maintained files of certain cases which purportedly demonstrate the factum of hers diligently performing her job, as well, as hers too maintaining the records of the proceedings, she was falsely implicated.

4. Even otherwise the petitioner taking to individually maintain case files portrays the fact of hers not working in collaboration with the Chairperson and other members of the District Child Welfare Committee, obviously when the proceedings of the District Child Welfare Committees are collaborative, joint and not individualistic, hers individualistic approach is antithetical to the very purpose of the constitution of the District Child Welfare Committee whose proceedings are valid only in case the enjoined coram attends them and not when as the petitioner has taken to individually record statements on 5.8.2013 of a child and mother and not obtained signatures of the members which would have rendered the enjoined coram to be tenably and validly convened on 5.8.2013 and its hence portraying the factum of hers diligently performing her duties inasmuch as she having attended the meeting on 5.8.2013.

5. For reiteration, she was enjoined to work in tandem with the chairperson and other members of the District Child Welfare Committee and not individually. The proceedings of the Child Welfare Committee were collaborative, joint and not individualistic. Even if she has contended before this Court that she on 5.8.2013 had recorded the statements of child and mother and obtained the signatures of a member present, in personification of hers attending

the meeting nonetheless besides also the said factum does not enjoy any sanctity in the absence of the coram prescribed under Rule 26 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 for a meeting of the District Child Welfare Committee being construed to be valid, being of three members, having remained fulfilled inasmuch, as, on 5.8.2013 she had alongwith a co-member signed the proceedings whereas the said factum did not constitute the holding of a valid meeting of the District Child Welfare Committee within the ambit of Rule 26 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Hence, her presence then, if any, is of no consequence.

6. Moreover, each of the reasons as propounded by the writ petitioner before this Court for rendering untenable the conclusion and findings arrived by the State Selection Committee have been both intensively and extensively discussed and adverted to by the State Selection Committee in its report. A preponderant emphasis has been laid by the State Selection Committee while considering the defence portrayed by her anchored upon the factum of the petitioner as contended by her before it taking to maintain individualistic files of proceedings, as also, of the ratification of the proceedings of the District Child Welfare Committee by the coram which hence purportedly foisted it with tenability. Nonetheless with the factum of hers having omitted to sign the minutes register whose credibility remained uneroded as tenably concluded by the State Selection Committee pronounces upon any such ratification being entirely fictitious. Consequently, the allegation against the petitioner stood proved by a reasoned order rendered by the State Selection Committee. The order of removal of the petitioner from the office of the Member of the District Child Welfare Committee while harbored upon a well reasoned inquiry report which is neither perverse nor absurd, hence does not require any interference.

7. Lastly, the learned counsel for the petitioner contends that in the absence of the respondent having formulated a standard operating procedure for adoption by the District Child Welfare Committee for regulating their meetings the respondent untenably insisted upon the factum of recording and signing of minutes register in personification of hers having attended the meetings of the District Child Welfare Committee. However, the said contention gets disempowered as well as rudderless in the face of Rule 26(4), of the Juvenile Justice (Care and Protection of Children) Rules, 2007 which is extracted hereinafter:

“26(4). For final disposal of a case, the order of the Committees shall be signed by at least two members, including the Chairperson.”

8. Prescribing the statutory necessity of the orders of the Committee being signed by atleast two members. Besides, the said

statutory requirement fastened upon the District Child Welfare Committee, the maintenance and signing of the minutes register in corroboration to and in support of the factum of the members of the Committee while comprising a valid coram holding sittings of the District Child Welfare Committees wherein decisions were arrived at, is also impliedly necessitated. Therefore, with their being a statutory prescription in the Juvenile Justice (Care and Protection of Children) Rules, 2007 qua the regulatory procedure to be adopted by the District Child Welfare Committee for the holding of their meetings, there was no necessity enjoined upon the respondents to either formulate or to circulate for adoption by the District Child Welfare committee any standard operating procedure for governing the manner of theirs holding meetings or qua the manner in which their presence therein is to be established.

9. The sumon bonum of the above discussion is that when each of the stances projected by the writ petitioner before this Court for falsifying the allegations though concluded to be truthful by the State Selection Committee have been meted out with tenable, sound and cogent reasoning by the State Selection Committee that too on an intensive analysis of the material placed before it. As also when the said findings as arrived at by the State Selection Committee having not been displayed by any cogent material to the contrary adduced by the petitioner to be nugatory, hence, the findings and conclusions are both reasonable and tenable. Accordingly, the impugned order Annexure P-12 is affirmed and maintained. The writ petition is dismissed. No costs. All pending applications are also disposed of accordingly.

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

State of H.P. ....Appellant.

Versus

Lal Chand & Anr. ...Respondents.

Cr.Appeal No.327 of 2008.

Reserved on: 05/09/2014.

Date of Decision : 25.09.2014.

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**NDPS Act, 1985- Section 20-** Accused were found riding a motorcycle- On search of motorcycle one bag containing 3 Kgs. and other bag containing 2 Kgs. of Charas were recovered- Held, that the Investigating Officer had failed to collect the documents revealing the ownership of motorcycle, which shows that the accused had never acquired the possession of motorcycle- Investigation was tainted and the accused were falsely implicated – Further, as per the prosecution case the

police party was checking the vehicles, however no vehicle was associated with the recovery-Accused acquitted.

(Para-17)

For the Appellant: Mr.Ramesh Thakur, Assistant Advocate General.

For the respondents: Mr.N.S.Chandel, Advocate.

The following judgment of the Court was delivered:

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**Per Sureshwar Thakur, Judge**

1. The instant appeal is directed against the judgement of acquittal, rendered on 4.12.2007, by the learned Additional Sessions Judge, Fast Track Court, Dharamshala, District Kangra, H.P., in Sessions Trial No.31/07, whereby the respondents have been acquitted for theirs having committed offence punishable under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (herein-after referred to as 'NDPS Act').

2. The prosecution story, in brief, is that on 3.6.2007, a police party, headed by SI Gulzari Lal, proceeded on patrol duty and laid Naka near Chamunda, at place known as Eco Khad. While conducting checking of the vehicles, passing from there at about 3.10 a.m., they noticed one motor-cycle coming from the side of Chamunda, which was being plied by Lal Chand and Ghambir Chand was the pillion rider. On being signaled, the motor-cycle was stopped and thereafter checking of the same was conducted. On checking the dickey of the motorcycle, two plastic bags were found, which were suspected to be containing Charas. On weighing, one bag was found containing three Kilograms and the other bag, two Kilograms of Charas, respectively. Out of the aforesaid bags, two samples of 25 grams each were taken. The samples as well as the bulk of the Charas were packed separately. In total, six parcels were prepared and sealed on the spot. Seizure memo, as well as NCB Forms, were prepared. Thereafter, the accused as well as the case property, along with motor-cycle, were taken to the Police Station, Dharamshala, where the case property, along with motor-cycle, was deposited with the MHC. The MHC sent two samples for test to be chemically analyzed at FSL, Junga, which were reported to be containing Charas.

3. After completion of the investigation, challan, under Section 173 of the Cr.P.C., was prepared and filed in the Court. The trial court charged the accused for theirs having committed offence punishable under Section 20 of the NDPS Act, to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 10 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.

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

6. The State of H.P. is aggrieved by the judgment of acquittal, recorded by the learned trial Court. Shri Ramesh Thakur, learned Assistant 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/respondent.

7. 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.

8. 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.

9. The first witness, who, stepped into the witness box to prove the prosecution case, is, PW-1 (Joginder Singh), who deposes that on 25.6.2007, two parcels were handed over to him by MHC Anil Kumar, which were duly sealed and he deposited the same with FSL, Junga, along with seal impressions of T and A on cloth pieces and three NCB forms on 26.6.2007. He continues to depose that he handed over the receipt to MHC on return.

10. PW-2 (HHC Shyam Lal) deposes that on 5.6.2007, one sealed envelope was handed over to him by SI Gulzari, which he deposited in the office of SP with Reader to S.P.

11. PW-3 (MHC Anil Kumar) deposes that on 3.6.2007, SHO R.P.Jaswal handed over to him six parcels, out of which four parcels were containing samples of 25 grams each and the remaining two were carrying the remaining bulk Charas. All these parcels were sealed with seal A at four places each and resealed with seal T at three places each. He further deposes that seal impressions of A and T on cloth pieces as well as NCB form in triplicate were deposited with him and entry in this regard was made in the Malkhana Register. He continues to depose that two parcels of samples were sent to FSL along with NCB forms and docat through Constable Joginder Singh and he handed over the receipt to him.

12. PW-4 (HC Vinod Singh) deposes that on 3.6.2007, he was accompanying S.I. Gulzari Lal, along with other Police officials, in connection with traffic checking at Ghurlu Pul. He further clarified that they had laid Naka at Ikku Pul. He further deposes that at about 3.10 a.m., a motor-cycle came from Chamunda side, which was being driven by Lal Chand and Gambir Chand was the pillion rider. He continues to depose that on search of the dickeys of the motor-cycle, two polythene bags containing Charas were found. Two samples, 25 grams each, were drawn from both the recovered packets. All the samples and remaining bulk of charas were packed and sealed with seal A at four places. He further deposes that Ruka comprised in Ext.PW-4/A was handed over to him,

which he took to Police Station and on the basis of which, F.I.R. Ext.PW-4/B was registered by R.P.Jaswal.

13. PW-5 (ASI Ashwani Kumar Sharma) proved the F.I.R No. 109/2007.

14. PW-6 (HC Kuldeep Chand) deposes that on 3.6.2007, he, along with HC Amarik Singh, HC Vinod, was accompanying S.I. Gulzari Lal. Naka was laid at Ikku Pul from 2.00 a.m. onwards and at about 3.00 a.m., two persons were noticed riding the Motor Cycle which was stopped by SI Gulzari Lal. Search of the Motor-cycle was conducted by SI Gulzari Lal. He further deposes that in two dickeys, Charas was found in two polythene bags, out of which two samples, 25 grams each, were drawn from each packet. All the four samples and bulk Charas of two bags were packed and sealed with seal Mark-A at four places. NCB forms, in triplicate, were also prepared. All the six parcels, duly sealed and packed with seal 'A', were taken into possession vide seizure memo Ext.PW-6/C. He deposes that a copy of seizure memo was supplied to the accused, who is deposed to have appended his signatures on it. He proceeds to depose that the motor-cycle bearing R.C. No.HP-39-3208 was also taken into possession vide seizure memo Ext.PW-6/D on which he, along with HC Amrik Singh, appended their signatures being without documents. He further deposes that Gulzari Lal prepared Rukka Ext.PW-4/A in his presence and the same was sent to Police Station through HC Vinod Kumar for registration of the case.

15. PW-7 Constable Gopal Dass and PW-8 SI Om Parkash are formal witnesses. PW-9 S.I. Gulzari Lal, deposes that he alongwith other police officials proceeded on Patrol and laid a Naka, etc. at Chamunda, near Ikku Khad. He continues to depose that while checking the vehicles at about 3.10 a.m on 3.6.2007 one motor cycle came from Chamunda side which was being driven by accused Lal Chand and Gambhir Chand was the pillion rider. Dickeys of the vehicle were checked by him and during search, two polythene bags Ext.P-2 and Ex.P-6 were found containing some black object. Out of the two bags, two samples each of 25 grams each were taken out. NCB form in triplicate was filled in. He further deposes that motor-cycle, along with its keys, was taken into possession vide seizure memo Ext.PW-6/D in the presence of Kuldeep and Amrik Singh. He further deposes that no documents of motor-cycle were produced by accused persons. He further deposes that he had carried out the further investigation in the case.

16. PW-10 (Inspector R.P.Jaswal) deposes that on 3.6.2007, Rukka comprised in Ext.PW-4/A, written by S.I. Gulzari Lal, was received through HC Vinod Singh in police station and FIR was written as per his instructions. He deposes to have signed the F.I.R. He further deposes that copy of the F.I.R was sent to Special Judge, SP Kangra and also to ASP Kangra. He further deposes that he has resealed the case property with seal impression T and thereafter he deposited the same alongwith NCB forms in triplicate with MHC.

17. On 3.6.2007, at 3.10 a.m., when accused Lal Chand was allegedly plying motor-cycle and accused Ghambir Chand was atop it as pillion rider, then on their arrival near Chamunda, at place known as Eco Khad, on theirs being stopped by the police party headed by S.I. Gulzari Lal and on consequent checking of the dickey of the motor-cycle, Charas comprised in Ext.P-2 and Ext.P-6 was allegedly recovered there-from. In proof of the prosecution case, it has relied upon

the testimonies of the official witnesses. The testimonies of the official witnesses do not suffer from the taint of theirs being imbued with any inter-se or intra-se contradictions. Obviously, when they do not acquire any blemish, they do attain credibility. Nonetheless, the prosecution case is susceptible to skepticism arising from (a) the omission on the part of the Investigating Officer to obtain or collect documents revealing the ownership of the motor-cycle on which both the accused were atop respectively as driver and pillion rider, omission thereof, has constrained the Investigating Officer to locate its owner. Lack of ascertainment of ownership of the motor-cycle would have upsurged an inference qua the valid possession of the motor cycle at the instance of both the accused. Consequently, for lack of ascertainment by the Investigating Officer of the ownership of the motor-cycle as also it not having been hence established by the prosecution that the accused had ever acquired possession of the motor-cycle, concomitantly spurs the conclusion that the Investigating Officer carried out a tainted and slanted investigation, which hence stains the prosecution version of the accused occupying the motorcycle, at the apposite stage with the blemish of untruthfulness. In aftermath, it has to be invincibly concluded that the respondents/accused were never occupying the motorcycle at the apposite stage and they have been falsely implicated by the Investigating Officer. (b) It is the case of the prosecution that a Naka was laid by a team headed by SI Gulzari Lal near Eco Khad commenced at 2 a.m. and that the Naka party had prior to the purported arrival of the motorcycle had carried out checking of the vehicles which passed there-from. If it be so, then the prosecution sustains the projection that even at that time, there was a flow of traffic at the site of occurrence, hence given the factum of flow of traffic at the site of occurrence then any of the passengers, occupying the vehicles, which passed through the Naka point, could have been associated by the Investigating Officer in the proceedings relating to search, seizure and recovery of contraband from the purported conscious and exclusive possession of the accused so as to imbue the proceedings with the virtue of fairness and impartiality, omission thereof by the Investigating Officer leads to no other inference than that of his taking to carry out a biased as well as a tainted investigation for smothering the truth qua the occurrence. As such, then the version as propounded by the prosecution cannot acquire credence. Also, then the version as propounded by the prosecution of a Naka having been laid at 2.00 a.m. near Eco Khad by the police party headed by ASI Gulzari Lal, does not also acquire any truth. In sequel, it has to be also concluded that the proceedings relating to search, seizure and recovery of contraband from the exclusive and conscious possession of the accused were carried out at a place other than the place as projected by the prosecution. As a corollary, then the genesis of the prosecution case of the proceedings having been carried out at Eco Khad staggers.

18. The learned trial Court has appreciated the evidence in a mature and balanced manner and its findings, hence, do not necessitate interference. The appeal is dismissed being devoid of any merit and the findings rendered by the learned trial Court are affirmed and maintained. Records of the learned trial Court be sent down forthwith.

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

State of H.P. ....Appellant.

Versus

Vikram Kuthiala ...Respondent.

Cr.Appeal No.418 of 2008.

Reserved on: 18/09/2014.

Date of Decision :26/09/2014.

**NDPS Act, 1985- Section 20 and 22-** Accused was driving the vehicle- On checking the vehicle, 9 strips of Nitrosun and 800 gms. of charas were recovered- Held, that the NCB form regarding tablet was not filled at the spot which shows that the prosecution version regarding completion of investigation at the spot was doubtful- The seal impression "I" used for sealing the parcel; as well as the parcel containing bulk quantity was previously used by the Investigating Officer which shows S.H.O. had not re-sealed the sample and bulk parcel- Further, the entire proceedings relating to search were carried out at the place of occurrence but the personal search memo was witnessed by two independent witnesses who were not the members of raiding party- This shows that the memo of personal search was not prepared on the spot, but was prepared somewhere else- therefore, in these circumstances, the prosecution version becomes doubtful-consequently, the accused acquitted.

(Para-20, 21)

For the Appellant: Mr.Ramesh Thakur, Assistant Advocate General.

For the respondent: Mr.Manoj Pathak and Mr.Ashish Sharma, Advocates.

The following judgment of the Court was delivered:

**Per Sureshwar Thakur, Judge**

1. The instant appeal is directed against the judgement of acquittal, rendered on 25.3.2008, by the learned Special Judge, Shimla, H.P., in Sessions Trial No.1-S/7 of 2007, whereby the respondent has been acquitted for his having committed offence punishable under Sections 20 and 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (herein-after referred to as 'NDPS Act').

2. The prosecution story, in brief, is that on 29.3.2006, at about 8.30 p.m., HC Kuldeep Singh, along with Constables Naresh Kumar and Manmohan Singh, was on patrolling and traffic checking and on reaching near Durga Gas Agency, he noticed one Santro Car coming from Sanjauli to Chhota Shimla side. The said vehicle was signaled to stop, however, the vehicle was stopped 15-20 feet ahead. PW-11 HC Kuldeep Singh, along with other police officials, asked the driver to produce the documents of the vehicle. The driver of the vehicle omitted to produce the documents and got afraid on seeing the police. PW-11 had noticed one gathri, on the floor of the car, in front of front seat. Along with the Ghatri, one

handkerchief and one packet of nitrosun tablets 10 mg. were also found. On smelling the handkerchief, Charas was found to be kept in it. During the process of checking the Santro Car, one vehicle bearing registration No.HP-02-6307 came from Sanjauli side, in which Jagdish and Surat Chauhan, were traveling and they were associated by PW-11 in the investigation. On asking the name of the driver of the Santro Car, he disclosed his name Vikram Kuthiala (the accused). On weighing the Charas, in the presence of the witnesses, the same was found to be 800 grams. Out of the recovered Charas, two samples of 25 grams each were separated and the samples were sealed in two different parcels and the remaining Charas was packed in a separate parcel. The samples and the bulk Charas were sealed with seal impression M. Out of the nine strips of Nitrosun, two strips containing 10 tablets were separated as samples and were sealed in one parcel, which was sealed with seal M. the remaining seven strips were also put in a separate parcel which was also sealed with seal impression M. Seal impression of seal M was taken on a piece of cloth comprised in Ext.PW-1/A. All the five parcels were taken into possession vide recovery memo Ext.PW-1/B, bears the signatures of witnesses, namely, Jagdish Chand and Surat Chauhan and Constable Manmohan Singh, which was also got signed from accused. Three cloth pieces were prepared on the spot on which the seal impression M was affixed. NCB Form, comprised in Ext.PW-1/C was filled in by PW-11 HC Kuldeep Singh on the spot. PW-11 HC Kuldeep Singh sent Ruqua Ext.PW-1/E for registration of case to SHO, Police Station, Dhalli through Constable Naresh Kumar, upon which formal F.I.R. Ext.PW-1/F was registered.

3. After completion of the investigation, challan under Section 173 of the Cr.P.C. was prepared and filed in the Court. The trial court charged the accused for his having committed offence punishable under Section 20 and 22 of the NDPS Act, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 11 witnesses. On closure of the prosecution evidence, the statement of the accused under Section 313 Cr.P.C. was recorded in which he pleaded innocence. On closure of proceedings under Section 313 Cr.P.C., the accused was given an opportunity to adduce evidence, in, defence, and he chose not to adduce any evidence in defence.

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

6. The State of H.P. is aggrieved by the judgment of acquittal recorded by the learned trial Court. The learned Assistant 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/respondent.

7. On the other hand, the learned counsel, appearing for the respondent-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.

8. 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.

9. The first witness, who, stepped into the witness box to prove the prosecution case, is, PW-1 (Naresh Kumar). He deposes that on 29.3.2006, he, along with HC Kuldeep and Constable Manmohan Singh, was on patrol duty at Kali Dhank near Durga Gas Godown, when a Santro Car came there from Sanjauli side and it was signaled to stop. He further deposes tht the vehicle was stopped at a distance of 15-20 feet ahead and the driver of the said vehicle was asked to show the documents of the vehicle, however, he could not produce any such documents. He continues to depose that on checking the vehicle from inside, under the front seat, a Ghatri of cloth and one box was also kept aside. On smelling the Ghatri, it was found to be containing Charas and the box was found to be containing Nitrosun tablets of 10 mg each. The accused disclosed his name as Vikram Kuthiala. He proceeds to depose that in the meanwhile, another vehicle came from Sanjauli side bearing registration No.HP-02-6307 and stopped the same. Two persons, namely, Jagdish and Surat Chauhan were sitting inside that vehicle and they were associated with the police party and the Ghatri and the box were shown to them. On weighthment of the incriminating articles, Charas was found to be 800 grams and the tablets were 90 in number. He continues to depose that two samples of 25 grams each were separated from the Charas and sealed in separate parcels. The remaining Charas was sealed in a separate parcel. Seal impressions were taken on a piece of cloth comprised in Ext.PW-1/A. He further deposes that the Charas was taken into possession vide memo Ext.PW-1/B. Two strips of tablets were sealed in one separate parcel with seal M and the remaining strips were sealed in a separate parcel with the same seal and taken in possession vide memo Ext.PW-1/B. The accused and the witnesses have been deposed to have signed the memo along with Constable Manmohan and this witness identified his signatures. NCB Form comprised in Ext.PW-1/C was filled in on the spot and the grounds of arrest were disclosed to the accused comprised in memo Ext.PW-1/D and the accused was arrested. This witness proceeds to depose that the Investigating Officer handed over the Ruqua Ext.PW-11/C to him which he took to the police station and FIR comprised in Ext.PW-1/F came to be registered. During his cross-examination, he deposes that the Police Station, Dhalli is about 2 ½ Kilometers from the spot and he went to the Police Station on foot. However, he again stated that he took a free lift in a taxi from near the police post. He denied the suggestion put to him that the accused has been involved in a false case because of a quarrel between the accused and Kuldip Singh earlier.

10. PW-2 (ASI Tej Ram) deposes that on 30.6.2006, HHC Parkash Chand brought special report of the present case to him at about 11.30 a.m. along with a carbon copy and produced the same before the S.P., Shimla immediately, who, after perusing the same, appended report and signed the same. He further deposes that the original was kept by him in the office record and the carbon copy was handed over to HHC Parkash Chand.

11. PW-3 (MHC Parkash Chand) deposes that on 30.6.2006, special report, along with carbon copy, was handed over to me from Police Station to be taken to the S.P. Office, Shimla. He further deposes that he produced the same

before the Reader to the S.P.Shimla, who produced original and carbon copy before the S.P.Shimla and after that, the carbon copy comprised in Ext.PW-2/A was delivered to him, which he handed over to MHC P.S.Dhalli and original was retained by the Reader to S.P.

12. PW-4 (C.Shiv Ram) deposes that on 1.4.2006, Ashwani Kuthiala produced registration certificate and insurance of Santro Car No.HP-03A-2304, which is deposed to have been taken into possession vide memo Ext.PW-4/A in his presence and Constable Balvinder Singh, which is deposed to be bearing his signatures.

13. PW-5 (C.Shyam Lal) proved the original Raznamcha of 29.3.2006 and Rapat No.21, copy of which is comprised in Ext.PW-5/A. The same is deposed to be in his hand and the copy of Ext.PW-5/A was prepared by him. During his cross-examination, he denies the suggestion put to him that the entry Ext.PW-5/A is falsely prepared by him to implicate the accused.

14. PW-6 (C.Roop Lal) deposes that on 30.3.2006, MHC PS Dhalli Tek Ram handed over him two sample sealed parcels, out of which, one is stated to be containing 25 grams of Charas and the other 20 tablets of some medicine along with documents, sample of seals, NCB Form vide RC No.42/06. He further deposes that he carried the same to CFSL, Kandaghat and deposited the same in the Laboratory and handed over the receipt of the same on the RC to the MHC on the same day. He continues to depose that so far the case property remained with him, the same remained intact and un-tampered and the parcels were sealed with seal impression 'T'.

15. PW-7 (HC Tek Ram) deposes that on 29.3.2006, at about 11.30 p.m., SI Raj Kumar deposited with him five parcels duly sealed with seal 'T' along with NCB Forms in triplicate and sample seals 'T' and 'M'. He further deposes that he entered the same in the Malkhana Register and the abstract of which is comprised in Ext.PW-7/A. He continues to depose that he sent one sample part duly sealed containing Charas and another sample duly sealed containing tablets along with seal impression, seizure memo, NCB Form etc. on 30.3.2006 through Constable Roop Lal vide RC No.42/2006 to CTL Kandaghat. Constable Roop Lal deposited the same at the Laboratory on the same day and brought back the RC copy of which is comprised in PW-7/B. During his cross examination, he concedes to the suggestion put to him that in the Malkhana Register there is no entry of deposit of sample seals and NCB Forms.

16. PW-8 (SI Raj Kumar) deposes that on 29.3.2006, Ruqua comprised in Ext.PW-1/E was received through Constable Naresh Kumar on the basis of which FIR Ext.PW-1/F was came to be registered which is deposed to be bearing his signatures. He continues to depose that on the same day at about 11.15 p.m., HC Kuldip Singh produced before him five sealed parcels of case property sealed with seal M along with NCB Forms and sample seal impressions and he re-sealed the parcels with seal I and took the seal impressions on a piece of cloth comprised in Ext.PW-8/A. He proceeds to depose that he also took seal impression on the NCB Form and deposited the case property along with the NCB Forms immediately. He deposes to have issued the certificate about re-sealing comprised in Ext.PW-8/A. On receipt of the report of the Chemical Examiner comprised in Ext.PW-8/C, SHO Vijay Kumar prepared the challan. During his cross-

examination, he deposes that his statement was recorded by the Investigating Officer in the present case and he has mentioned in that statement that HC Kuldeep produced the case property before this witness at 11.30 p.m. He further deposes that after reading his statement comprised in Ext.DD, there was no mention of seal impression having been handed over to him by Kuldeep.

17. PW-9 (Jagdish Chand) and PW-10 (Surat Chauhan), since they, during their examination-in-chief, having not supported the prosecution version, they were declared hostile and was requested by the learned Public Prosecutor to be cross-examined. On his request, having come to be acceded to, they were cross examined by the learned Public Prosecutor but no incriminating material against the accused could be elicited from their cross-examination.

18. PW-11 (HC Kuldeep Singh), in his deposition, has deposed a version which is in square tandem with the genesis of the prosecution version, as referred to herein-above. During his cross-examination, he concedes to the fact that there was no mention in the Fard comprised in Ext.PW-1/B and the statements of witnesses regarding filling of NCB Form on the spot. The brief facts of the challan were prepared by ShO Vijay Kumar Sharma. He feigns ignorance that the platform of the Santro Car is deep and one cannot see anything from outside.

19. Even though the prosecution witnesses have deposed in tandem and in harmony qua each of the links in the chain of circumstances commencing from the proceedings relating to search, seizure and recovery till the consummate link comprised in the rendition of an opinion by the FSL, Junga, on the specimen parcels sent to it for analysis, portrays proof of un-broken and un-severed links, in the entire chain of the circumstances, hence it is argued that when the prosecution case stood established, it was legally unwise for the learned trial Court to have acquitted the accused.

20. Besides the testimonies of the official witnesses, though unravel the fact of theirs being bereft of any inter-se or intra-se contradictions hence, consequently when they enjoy credibility. Therefore, when, hence, the learned trial Court ought to have been constrained to record findings of conviction against the accused, nonetheless it appears that despite lack of any inter-se or intra-se contradictions in the testimonies of the prosecution witnesses, certain pervasive discrepancies as well as infirmities in the prosecution evidence that, too, of an immense propensity tenably led the learned trial Court to record findings of acquittal against the accused. The infirmities, imbuing the prosecution version, which have been tenably concluded by the learned trial Court to be smearing the prosecution case with the vice of prevarication, as such, rendering the prosecution case un-reliable are, (a) of Ext.PZ, the NCB Form qua tablets having not been deposed by PW-11 to have been filled in on the spot, besides PW-1 omits to depose that Ext.PZ qua tablets was filled on the spot, rather, when PW-1 deposes that only the NCB Forms Ext.PW-1/C relating to Charas was filled on the spot, the obvious conclusion, which ensues is that Ext.PZ was not filled on the spot, rather, was filled elsewhere. Consequently, the prosecution case of the entire proceedings qua both Charas and tablets having been completed at the site of occurrence staggers and falls apart. (b) Seal impressions of M, N and I, existing on Ext.PW-1/C and Ext.PZ, have been scribed thereon by the Investigating Officer, however, seal 'T' has been projected by the prosecution to have been used by S.I. Raj Kumar for re-sealing the sample parcels in the Police Station as well as the parcels containing

the bulk quantity, obviously then, in the face of both seal impressions 'M' and 'T' having been previously scribed by the Investigating Officer, as also the aforesaid seal impressions having been embossed therein on re-sealing by the Investigating Officer, hence portrays the fact of re-sealing though enjoined to be done by the SHO of the Police Station concerned, was not done by the later, sequelling transgression of the mandate of law contemplating the act of resealing to be performed by the SHO of the Police Station, concerned. Moreover, it also conveys when embossed by the Investigating Officer initially and on re-sealing, the factum of the entire proceedings relating to search the contraband being carried out at a place other than the place of occurrence. Consequently, on the strength of a concocted and invented prosecution version qua the entire proceedings relating to search, seizure and recovery having been purportedly made at the site of occurrence, whereas, it was not made, this Court would remain un-attracted to it.

21. The personal search of the accused has been portrayed by the prosecution to have been made on the spot before arresting him under Memo comprised in Ext.PW-11/D. Both Constables Shiv Kumar and Mohinder Singh are marginal witnesses to it, however, when both were not members of the police party, hence, when they are to be construed to be not present on the spot conveys that Ext.PW-11/D was not either scribed nor completed on the spot, rather, elsewhere. Consequently, the subsequent proceedings relating to search, seizure and recovery of items from the alleged conscious and exclusive possession are to be held to have commenced and completed elsewhere than at the site of occurrence. Consequently, the genesis of the prosecution story is eroded of its truth. The aforesaid discrepancies and infirmities, which existed in the prosecution story, are grave and pervasive and take with their fold the genuineness of or the veracity of the prosecution story. Given the existence of the aforesaid infirmities, the prosecution story receives a jolt inasmuch as the prosecution version is to be construed to be incredible.

22. The learned trial Court has appreciated the evidence in a mature and balanced manner and its findings, hence, do not necessitate interference. The appeal is dismissed being devoid of any merit and the findings rendered by the learned trial Court are affirmed and maintained. Records of the learned trial Court be sent down forthwith.

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**BEFORE HON'BLE MR. JUSTICE P.S. RANA, J.**

Daya Thakur wife of Sh. Dina Ram Thakur ....Applicant  
Versus  
State of H.P. ....Non-applicant

Cr.MP(M) No. 940 of 2014  
Order Reserved on 23<sup>rd</sup> September, 2014  
Date of Order 9<sup>th</sup> October 2014

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**Code of Criminal Procedure, 1973- Section 438-** At the time of granting bail, the Court has to see the nature of seriousness of offences, nature of evidence, circumstances peculiar to the accused, presence of the accused in the trial or

investigation, reasonable apprehension to witnesses, and larger interests of the State- Grant of bail is the rule and committal to jail is an exception- Since the investigation was complete and the conclusion of the Trial would take some time-hence, bail granted.

(Para-6)

**Cases Referred:**

Gurcharan Singh and others Vs. State (Delhi Administration, AIR 1978 SC 179  
The State Vs. Captain Jagjit Singh, AIR 1962 SC 253  
Apex Court DB 702, titled Sanjay Chandra vs. Central Bureau of Investigation,  
2012 Cri. L.J. 702

For the Applicant: Mr. G.C. Gupta, Sr. Advocate with Ms. Meera Devi, Advocate.

For the Non-applicant: Mr. M.L. Chauhan, Additional Advocate General and Mr. Pushpender Singh Jaswal, Deputy Advocate General.

The following judgment of the Court was delivered:

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**P.S. Rana, Judge.**

**Order:-** Present application filed under Section 438 of the Code of Criminal Procedure 1973 for grant of anticipatory bail in connection with case FIR No. 84 of 2014 dated 10.08.2014 registered under Section 498A and 506 read with Section 34 of Indian Penal Code registered in Police Station Ani District Kullu H.P.

2. It is pleaded that daughter-in-law of applicant has lodged a false and frivolous complaint against her. It is further pleaded that said complaint is counter blast to the divorce petition filed by son of the applicant. It is further pleaded that applicant is innocent and further pleaded that applicant will not abscond nor jump the bail and will not induce or threat to any person. Prayer for acceptance of bail application sought.

3. Per contra police report filed. As per police report, FIR No. 84 of 2014 dated 10.8.2014 registered under Sections 498A and 506 read with Section 34 of Indian Penal Code in Police Station Ani District Kullu H.P. There is recital in police report that marriage between Kamlesh and Sushil was performed in the year 2005 at village Ani District Kullu. There is further recital in police report that for 2/3 years husband of complainant and her mother-in-law behaved properly with complainant and thereafter behaviour of husband of complainant and her mother-in-law changed. There is further recital in police report that Kamlesh tolerated the behaviour of her husband and mother-in-law on the pretext that after lapse of time everything would become normal. There is further recital in police report that husband of complainant Kamlesh and her mother-in-law started quarrelling with Kamlesh and also demanded dowry. There is further recital in police report that husband of Kamlesh is posted in Block Development Office as Junior Engineer since four years. There is further recital in police report that husband of Kamlesh

has relations with one girl namely Puja. There is further recital in police report that husband of Kamlesh namely Sushil intends to marry Puja. There is further recital in police report that on dated 23.7.2014 Kamelsh went to meet her husband along with her daughter at Theog but her husband beaten the complainant and threatened to kill her. There is further recital in police report that Puja is harassing through mobile No. 98169-82829. There is further recital in police report that husband of complainant namely Sushil Kumar is forcing complainant Kamlesh to divorce him so that husband of complainant could remarry with Puja. There is further recital in police report that husband and mother-in-law of complainant are mentally and physically harassing Kamlesh. As per complaint the case was registered. Statements of prosecution witnesses recorded and marriage certificate from Gram Panchayat and family register obtained. There is recital in police report that no investigation from applicant is required.

4. Court heard learned Advocate appearing on behalf of the applicant and learned Additional Advocate General appearing on behalf of the State and also perused the record.

5. Submission of learned Advocate appearing on behalf of applicant that applicant is innocent and applicant did not commit any offence cannot be decided at this stage. The same fact will be decided when the case shall be disposed of on merits after giving due opportunity to both the parties to lead evidence in support of their case.

6. Another submission of learned Advocate appearing on behalf of the applicant that investigation is complete and case will be decided in due course of time and on this ground anticipatory bail application be allowed is accepted for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. **See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration).** Also see **AIR 1962 SC 253 titled The State Vs. Captain Jagjit Singh.** It was held in case reported in **See 2012 Cri. L.J. 702 Apex Court DB 702, titled Sanjay Chandra vs. Central Bureau of Investigation** that the object of bail is to secure the appearance of the accused person at his trial. It was held that grant of bail is the rule and committal to jail is exceptional. It was held that refusal of bail is a restriction on personal liberty of individual guaranteed under Article 21 of the Constitution. It was further held that accused should not be kept in jail for an indefinite period.

7. In view of the fact that investigation is complete in present case and in view of the fact that trial will be concluded in due course of time, Court is of the opinion that it would be in the ends of justice to allow the bail application. Court is of the opinion that if anticipatory bail application is allowed then interest of State and general public will not be adversely affected in present case.

8. Submission of learned Additional Advocate General that if bail is granted to applicant then applicant will induce threat and influence the prosecution witnesses and on this ground anticipatory bail application be declined



is rejected being devoid of any force for the reasons hereinafter mentioned. It is held that if applicant will flout the terms and conditions of bail order then prosecution will be at liberty to file application for cancellation of bail in accordance with law.

9. In view of above stated facts anticipatory bail application filed by applicant is allowed and interim bail granted on dated 14.8.2014 is made absolute on following terms and conditions. (i) That applicant shall join the investigation as and when called for by the Investigating Officer in accordance with law. (ii) That applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iii) That applicant will not leave India without the prior permission of the Court. (iv) That applicant will not commit similar offence qua which she is accused. (v) That applicant will furnish her residential address to the Investigating Officer in written manner. Anticipatory bail application filed under Section 438 Cr.P.C. stands disposed of accordingly including all pending miscellaneous application(s), if any.

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**BEFORE HON'BLE MR. JUSTICE P.S. RANA, J.**

Kiran Mai wife of Shri Nand Kishore ....Petitioner  
Versus  
State of H.P. and others ....Respondents

CWP No. 7210 of 2013  
Order Reserved on 15<sup>th</sup> September, 2014  
Date of Order 9<sup>th</sup> October, 2014

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**Constitution of India, 1950- Article 226-** The petitioner was engaged as a language teacher as per resolution dated 16.06.2004-After sometimes, she was asked not to come to the school- Respondents contended that the appointment of the petitioner was not in accordance with the recruitment and promotion rules and was merely a stop gap arrangement on temporary basis- it was further contended that she was not appointed as per the procedure and as per the Recruitment and Promotion Rules and her services were rightly terminated- Held, that there was no recital in the resolution dated 16.06.2004 that the applications were invited for the post of language teacher or any advertisement was issued- Appointment to any public post without any notice to the general public is contrary to the Recruitment and Promotion Rules- Appointment of the petitioner to the post of language teacher was a stop gap arrangement which would not confer any right upon the petitioner to continue in the post-petition dismissed.

(Para-5)

**Cases Referred:**

Haribans Misra and others vs. Railway Board and others, AIR 1989 SC 696

J&K Public Service Commission etc. vs. Dr. Narinder Mohan and others, AIR 1994 SC 1808

Dr. Kashinath Nagayya Ibatte vs. State of Maharashtra and others, 1995 Supp (3) SCC 363

State of Haryana and others vs. Piara Singh and others, AIR 1992 SC 2130

Ishwar Chand vs. State of H.P. and others, CWP No. 7447 of 2013 decided on dated 4.8.2014 of Hon'ble High Court of H.P.

For the Petitioner: Mr. Vinod Chauhan, Advocate.

For the Respondents: Mr. Pushpinder Singh Jaswal, Deputy Advocate General with Mr.J.S.Rana, Assistant Advocate General.

The following judgment of the Court was delivered:

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**P.S. Rana, Judge**

**Order** Present civil writ petition filed under Section 226 of the Constitution of India. Brief facts of the case as pleaded are that elections of PTA were held for the year 2004-05 in Government High School Beetan Tehsil Haroli District Una HP. It is further pleaded that vide resolution dated 16.6.2004 petitioner namely Kiran Mai was engaged as language teacher as per remuneration of ` 1700/- per month to be paid out of PTA fund vide Annexure P-4. It is further pleaded that thereafter petitioner worked continuously without any break in the school. It is also pleaded that petitioner was asked not to come to school and petitioner represented her case to respondent Nos. 4 and 5 i.e. Headmaster Government High School and the President Parents-Teachers Association Government High School Beetan Tehsil Haroli District Una for grant-in-aid but the same has not been decided till date. It is further pleaded that respondents be directed to release grant-in-aid w.e.f. 2004 immediately and further pleaded that respondents be also directed not to dispense with services of petitioner.

2. Per contra reply filed on behalf of the respondents pleaded therein that petitioner was not engaged against the post of language teacher as per procedure and norms and further pleaded that petitioner was not engaged as per Recruitment and Promotion Rules prevalent at the time of her appointment. It is further pleaded that petitioner was engaged by PTA Committee of Government High School as stop gap arrangement on temporary basis by way of passing a simple resolution. It is further pleaded that claim of the petitioner for continuation on the post of language teacher is not justified and is contrary to law. It is further pleaded that as petitioner was not engaged as per procedure and norms and was not engaged as per Recruitment and Promotion Rules and her services are rightly terminated by PTA Committee of Government High School Beetan, Tehsil Haroli District Una. Prayer for dismissal of writ petition sought.

3. Court heard learned Advocate appearing on behalf of the petitioner and learned Additional Advocate General appearing on behalf of the respondents-State and Court also perused the entire record carefully.

4. Following points arise for determination in this civil writ petition:-
1. Whether petitioner will be allowed to continue in service as language teacher in Government High School Beetan, Tehsil Haroli District Una HP on PTA basis?
  2. Whether petitioner is legally entitled for release of grant-in-aid w.e.f. 2004 as alleged?

**Findings on point No.1**

5. Submission of learned Advocate appearing on behalf of the petitioner that petitioner be allowed to continue as language teacher in Government High School Beetan on PTA basis is rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that petitioner was appointed as Hindi language teacher as per remuneration of `1700/- per month as per resolution passed by PTA Committee on dated 16.6.2004 (Annexure P-4). Court has perused Annexure P-4 dated 16.6.2004 carefully. There is no recital in resolution dated 16.6.2004 that applications were invited for post of language teacher by PTA Committee from general public. There is no mention in resolution dated 16.6.2004 that advertisement was issued to the general public for the post of Hindi language teacher. It is held that any appointment on public post without any notice to the general public is contrary to the Recruitment and Promotion Rules. It is held that appointment of petitioner to the post of language teacher was stop gap appointment only. It was held in case reported in **AIR 1989 SC 696 titled Haribans Misra and others vs. Railway Board and others** that person appointed on ad-hoc basis cannot claim lien on post to which he was so appointed. It was held in case reported in **AIR 1994 SC 1808 titled J&K Public Service Commission etc. vs. Dr. Narinder Mohan and others** that ad-hoc employee should be replaced as expeditiously as possible by direct recruits. It is held that ad-hoc appointee could be allowed to continue till regular appointees are not available. It was held in case reported in **1995 Supp (3) SCC 363 titled Dr. Kashinath Nagayya Ibatte vs. State of Maharashtra and others** that candidates working on ad hoc basis have to give place in accordance with Rules. It was held in case reported in **AIR 1992 SC 2130 titled State of Haryana and others vs. Piara Singh and others** that ad-hoc employee should be regularized in accordance with Rules only and it was held that employee should be eligible and fit person to the post. It is well settled law that ad-hoc appointment is temporary appointment pending regular recruitment. It was held by Hon'ble High Court of H.P. in **CWP No. 7447 of 2013 decided on dated 4.8.2014 titled Ishwar Chand vs. State of H.P. and others** that if no proper procedure was adopted by Parents-Teachers Association for appointment and if appointment was made merely on resolution without conducting any interview of candidates and without giving any notice to general public while appointing them on PTA basis service of appointee should not be regularized.

6. Another submission of learned Advocate appearing on behalf of the petitioner that various other persons engaged in various schools as language teachers without holding interview of candidates and without notice to general public are continuing in service and on this ground petition be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. Petitioner did not implead other persons as co-respondents who have been engaged in

various schools as language teachers without holding any interview and without giving notice to general public. It is well settled law that no one should be condemned unheard on the concept of audi alteram partem. Point No. 1 is answered in negative.

**Findings on Point No.2**

7. Submission of learned Advocate appearing on behalf of the petitioner that representation was filed by the petitioner before respondent Nos. 4 and 5 i.e. Headmaster Government High School Beetan District Una and President Parents-Teachers Association Government High School Beetan Tehsil Haroli District Una for claiming grant-in-aid but till date representation is not disposed of by respondent Nos. 4 and 5 is partly accepted. Respondent Nos. 4 and 5 are directed to dispose of the representation of petitioner qua grant-in-aid within one month after receipt of copy of order strictly in accordance with Grant-in-aid to Parents Teachers Association Rules 2006 (Annexure R-1) dated 20<sup>th</sup> February 2007 issued by the Director of Elementary Education vide notification No. EDN-H(5)C(10)17/2006-PTA (Elementary). Point No. 2 is decided accordingly.

8. In view of above stated facts it is held that (1) Prayer of the petitioner to regularize her service as language teacher in Government High School Beetan Tehsil Haroli District Una is declined. (2) Representation of petitioner for grant-in-aid will be disposed of within one month after the receipt of certified copy of this order strictly as per Grant-in-aid to Patents Teachers Association Rules 2006. Petition stands disposed of with no order as to costs. All pending miscellaneous application(s) also stand disposed of.

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

Shyam Singh                                 ...Appellant.  
 Vs.  
 State of H.P.                                 ...Respondent.

Cr. Appeal No.465 of 2010.  
 Reserved on: 25.09.2014  
 Decided on: 09/10/2014

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**N.D.P.S. Act, 1985- Section 20-** Search of vehicle being driven by the accused led to recovery of one bag containing 10 Kg. Charas and other bag containing 9 Kgs. Charas- One person ran away from the vehicle prior to its search- Held, that the police had not made any efforts to associate independent witness - Testimonies of the police officials regarding topography of the area was falsified by the photographs -Testimonies of the police officials that they tried to locate the independent witnesses but could not succeed was not acceptable- therefore, the accused acquitted.

(Para-22)

For the Appellant: Mr.Anup Chitkara, Advocate.

For the Respondent: Mr.Ramesh Thakur, Assistant Advocate General.

The following judgment of the Court was delivered:

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**Per Sureshwar Thakur, Judge.**

This appeal is directed against the judgment, rendered on 1<sup>st</sup> October, 2010, by the learned Special Judge, Fast Track Court, Kullu, H.P., in Sessions Trial No. 18 of 2010, whereby the accused Shyam Singh has been convicted for the commission of offence punishable under Section 20(b)(ii)(C) of the Narcotic Drugs & Psychotropic Substances Act, 1985 and sentenced to undergo rigorous imprisonment for a period of fifteen years and to pay a fine of Rs.1,50,000/- and in default of payment of fine to further undergo simple imprisonment for a period of three years.

2. Prosecution case, in brief, is that ASI Man Singh, along with Constables Vijay Kumar and Varun Mahant, had gone to Naglari on 27.08.2009 in vehicle bearing registration No.HP-34A-0213, which was being driven by Constable Narian Singh. A vehicle bearing registration No. HP-34A-6902 came from Gushani at about 5 a.m. ASI Man Singh signaled the vehicle to stop. When the vehicle stopped, one person got down from the rear seat of the vehicle and ran away. The driver of the vehicle was apprehended by ASI Man Singh and on being enquired, he revealed his name as Shyam Singh, the accused. The driver Shyam Singh revealed the name of the absconding person as Mahinder. On suspicion of possession of some contraband, ASI Man Singh made inquiry in presence of Constable Vijay Kumar and Constable Varun, as to whether the accused wanted to be searched by the Magistrate or a Gazetted Officer. The accused consented to be searched by the police. ASI Man Singh also gave his personal search to the accused. The search of the vehicle was conducted and during which, two bags were found on the front seat located beside the driver. One bag was found to be containing 10 Kgs charas and the other was found to be containing 9 Kgs charas, after weighing. The bag containing 10 kgs of charas was having ten packets, out of which 9 packets were having stick like charas and the tenth packet was having stick like and spheres like charas. The other bag was containing 9 packets, out of which 8 were having stick like charas and 9<sup>th</sup> packet was having stick like and cub like charas. Each bag was wrapped in a separate piece of cloth. Each bag was sealed with 12 impressions of seal T. Seal impressions were taken separately on five pieces of cloth and NCB-I form was filled in triplicate and the seal was handed over to Constable Vijay Kumar. The vehicle, along with parcels, was taken into possession vide seizure memo and signatures of Constable Vijay Kumar and Constable Varun Mahant and also of the accused were also taken on the seizure memo. Photographs of the site of occurrence were taken by Constable Varun Mahant from official camera.

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

4. The accused was charged for his having committed an offence punishable under Section 20(b)(ii)(C) and under Section 29 of the NDPS Act by the learned trial Court to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined 14 witnesses. On closure of the prosecution evidence, the statement of the accused under Section 313 of the Code of Criminal Procedure, was recorded in which he pleaded innocence and claimed false implication. In defence, the accused examined two witnesses.

5. On appraisal of evidence on record, the learned trial Court convicted and sentenced the accused for his having committed an offence under Section 20(b)(ii)(C) of the NDPS Act.

6. The appellant Shyam Singh is aggrieved by the judgment of conviction, recorded by the learned trial Court. Shri Anup Chitkara, learned counsel for the accused, has concertedly and vigorously contended that the findings of conviction, 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 conviction be reversed by this Court, in the exercise of its appellate jurisdiction and be replaced by findings of acquittal.

7. On the other hand, the learned Assistant Advocate General, appearing for the respondent-State, has, with considerable force and vigour, contended that the findings of conviction, 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.

8. With the able assistance of the counsel appearing on either side, this Court, in, a threadbare manner scrutinized the entire evidence on record.

9. The first witness who stepped into the witness box to prove the prosecution case is PW-1 (Vijay Kumar). He in his deposition has deposed a version which is in square tandem with the genesis of the prosecution version, as referred to herein-above, however, in his cross-examination, he admitted that there are no residential houses near the bridge on both the sides and there is a village Gushaini which is at a distance of 1-1½ Km. He further deposes that Constable Varun Mahant was sent towards Gushaini to call independent witness but he returned after about 10 minutes as he did not find any person in village Gushaini. He denied the suggestion that there are residential houses near the bridge and admitted the suggestion that the houses are visible adjacent to the bridge in photograph Mark D1. He further admitted the suggestion that houses are visible in Mark D2 adjacent to Naglari bridge towards Banjar side.

10. PW-2 Varun Mahant deposes that he, along with Constable Vijay Kumar and ASI Man Singh, was present at Naglari bridge in vehicle bearing registration No. HP-34A-0213 which was being driven by C.Narian Singh on 27.8.2009. At about 5 a.m., a vehicle, bearing registration No.HP-34A-6902, came from Gushaini side. ASI got down from the official vehicle and signaled to stop the said vehicle. When that vehicle was stopped, one person got down from the left

rear side of the vehicle and ran away. Driver was apprehended in the vehicle. On inquiry, he revealed his name Shyam Singh. He further deposes that ASI told the accused Shyam Singh that he was suspecting the possession of some contraband and search of the accused and his vehicle was to be conducted. He continues to depose that accused was informed that he could give his personal search and the search of the vehicle in the presence of a Magistrate or a Gazetted Officer. Accused consented to be searched by the police vide memo Ext.PW-1/A. He continues to depose that search of the vehicle was conducted and two bags were recovered from the front seat located besides the driver which was checked by ASI Man Singh. He further deposes that first bag was having ten polythene bags containing charas and the other bag was found to be containing 9 packets of charas. Each polythene bag was weighing one kilogram charas. Each bag was wrapped in a piece of cloth and sealed with 12 impressions of seal T. NCB I form was filled in triplicate. Seal impression was taken separately on five pieces of cloth. Seal was handed over to witness Vijay Kumar. He further deposes that the photographs Ext.PW2/A1 to Ext.PW2/A9 was taken during various stages of investigation. He continues to depose that constable Vijay Kumar was sent alongwith the rukka to the police station.

11. PW-3 Harish Kumar, since he, during his examination-in-chief, having not supported the prosecution version, he was declared hostile and was requested by the learned Public Prosecutor to be cross-examined. On his request, having come to be acceded to, he was cross examined by the learned Public Prosecutor but no incriminating material against the accused could be elicited from his cross-examination. In his cross-examination, PW-3 deposes that

12. PW-4 Constable Ramesh Kumar deposes that accused Satinder Kumar handed over a mobile phone to ASI Man Singh on 31.08.2009. This mobile was seized by the police vide memo Ext.PW-3/A, which is signed by him and Harish Kumar.

13. PW-5 Lok Raj, since he, during his examination-in-chief, having not supported the prosecution version, he was declared hostile and was requested by the learned Public Prosecutor to be cross-examined. On his request, having come to be acceded to, he was cross examined by the learned Public Prosecutor but no incriminating material against the accused could be elicited from his cross-examination. In his cross-examination, PW-5 deposes that the police called telephonically him on 27.8.2009 in Police Station, Banjar and he reached in the Police Station at about 9 – 10 a.m. He further deposes that the police obtained his signatures on some documents which were written, however, he deposes that the same was not read over and explained to him.

14. PW-6 Rajesh Suman deposes that he was posted as JBT in Govt. Primary School, Pekhari-II. The police had filed an application Ext.PW-6/A for obtaining the school leaving certificate of Satinder Kumar. He further deposes that he issued certificate Ext.PW-6/B which is deposed to be in his hand and bearing his signatures.

15. PW-7, ASI Man Singh, in his deposition has deposed a version, which is in square tandem with the genesis of the prosecution version, as referred to herein-above, however, in his cross-examination, he deposes he had not mentioned in the ruqua or documents prepared by him that he had made efforts

to associate independent witnesses or to apprehend the absconder. He feigns ignorance that there is adequate light and visibility between the months of May and September. This witness further deposes that he do not remember the time taken to apprehend the accused or to prepare the notice under Section 50 or to give the personal search. He further deposes that it takes 10-15 minutes to prepare the consent memo and the memo of personal search. He proceeds to depose that he do not remember whether he had made an inquiry about the bags from the accused or not. He denies the suggestion, put to him, that no case property was sealed at Naglari. The key of the vehicle was in the ignition switch and when the vehicle was seized, the key also came in his possession. He feigns ignorance that accused Shyam Singh had a cell phone numbers of various orchardists in connection with his business.

16. PW-8 Davender Verma, PW-9 Prem Thakur, PW-12 Constable Sunil Kumar and PW-13 HC Harbans Kumar are formal in nature.

17. PW-10 Uttam Chand deposes that SHO Lal Singh handed over two parcels, each of which was sealed with 12 impressions of seal T and six impressions of seal H alongwith sample seals T and H, form NCB I in triplicate on 27.08.2009 at 1.25 p.m. He further deposes that he made entry in register No. 19 at Sr. No.131 and case property was deposited in Malkhana. He continues to depose that he handed over both these parcels, copy of F.I.R, copy of seizure memo, sample seals T and H, NCB form in triplicate to HHC Noor Din on 28.08.2009 with the directions to carry these to FSL. During his cross-examination, he denies the suggestion that no case property was deposited with him and he had not sent the same to FSL vide RC No.109/09 on 28.8.2009 through HHC Noor Din.

18. PW-11 Noor Din, since he, during his examination-in-chief, having not supported the prosecution version, he was declared hostile and was requested by the learned Public Prosecutor to be cross-examined. On his request, having come to be acceded to, he was cross examined by the learned Public Prosecutor but no incriminating material against the accused could be elicited from his cross-examination. In his cross-examination, PW-11 admits the suggestion, put to him, that NCB-I form in triplicate and sample seals T and H along with other documents were handed over to him and he had deposited all these articles at FSL.

19. PW-14 S.I. Lal Singh deposes that on 27.08.2009, one Rukka comprised in Ext.PW-7/B was received in the police station written by ASI Man Singh and he recorded an F.I.R. Ext.PW-14/A on the basis of Rukka, which is deposed to be signed by him. He further deposes that on the same day, ASI Man Singh handed over two parcels each of them was sealed with 12 impressions of seal T and he re-sealed each parcel with six impressions of seal H. He continues to depose that he filled in column Nos.9 to 11 of NCB I form Ext.PW-7/A and he handed over the parcels, sample seals T & H, NCB I form to MHC for depositing these in Malkhana and when the result of analysis was received, he prepared the challan and presented the same before the Court. During his cross-examination, he denies the suggestion that the case property did not remain in safe custody or there was tampering with the same.



20. Even though the prosecution witnesses have deposed in tandem and in harmony qua each of the links in the chain of circumstances commencing from the proceedings relating to search, seizure and recovery till the consummate link comprised in the rendition of an opinion by the FSL, Junga, on the specimen parcels sent to it for analysis, portraying proof of unbroken and unsevered links, in the entire chain of the circumstances, hence it is argued that when the prosecution case stood established, it would be legally unwise for this Court to acquit the accused.

21. Besides the testimonies of the official witnesses, when unravel the fact of theirs being bereft of any inter-se or intra-se contradictions hence, consequently they too enjoy credibility.

22. Nonetheless, even if all the vital links in the chain of circumstances which connect the accused in the alleged commission of the offence stand convincingly established yet a vital flaw which ingrains the prosecution version with a vice of infirmity, is the lack of association of independent witnesses despite their availability by the Investigating Officer in the proceedings relating to search, seizure and recovery of contraband from the alleged exclusive and conscious possession of the accused. The said flaw would not have acquired accentuation so as to concomitantly render the prosecution version to be smeared, unless evidence portrays that the omission on the part of the Investigating Officer to associate independent witness in the proceedings relating to search, seizure and recovery of contraband from the exclusive and conscious possession of the accused, was both deliberate and intentional. However, a keen and circumspect analysis of the depositions of PW-1 and PW-2 does not only portray the factum of the said omission being not only intentional but being also deliberate with the obvious purpose of smothering the truth of the prosecution version. The inference aforesaid is anvil upon the factum of PW-1 having in his deposition, comprised in his cross-examination, deposed qua the factum of village Gushaini being located at a distance of 1-1½ kilometer from the site of occurrence wherein a residential habitation was located. Obviously, his deposition underscores the factum of availability of independent witnesses in close proximity to the site of occurrence. Now, when he deposes that PW-2 went towards Gushaini to elicit the association of independent witnesses there-from and his having returned there-from after 10 minutes with the information that none could be found, if construed in conjunction with the fact that he further belies the suggestion put to him that residential houses are located on either side of Naglari bridge. Therefore, when he belies the factum of existence of houses on either side of Naglari bridge, inasmuch, as, of no houses existing either towards Banjar or towards Gushaini, which factum when is rather benumbed and overwhelmed by the existence of Mark D-2, which comprises photographic evidence, hence, attains sanctity, constrains this Court to conclude that even, if, assuming PW-2 had proceeded to village Gushaini to locate independent witness and had been unsuccessful in his concert to secure them for theirs being associated in the apposite proceedings, yet his having deposed to have not visited the village on the other side of Naglari bridge inasmuch, as, towards Banjar side, on the prevaricated score of, no houses existing therein, portrays that the Investigating Officer as well as both PW-1 and PW-2, the official witnesses, were unaware of the topography of the place as well as qua the factum of existence of houses on both sides of Naglari bridge. As a natural concomitant given their ignorance qua the topography of the area where

the occurrence took place, as also, as a natural corollary qua the factum of existence of houses in close proximity to the site of occurrence. Therefore, PW-1 appears to have feigned a pretextual extenuation for lack of availability of independent witness towards Banjar side of Naglari bridge. Moreover, the further deposition of PW-2 having visited village Gushaini to locate independent witness too appears to be a mere pretext or a mere prevarication qua his purported visit to there to locate independent witness, whereas PW-2 never went even upto village Gushaini to locate independent witness. Furthermore, the deposition of PW-2, who had purportedly proceeded to village Gushaini portrays utter and blatant prevarication inherently imbuing it, comprised in the fact of his feigning ignorance qua the fact of any habitation existing towards Banjar side of Naglari bridge which factum is proclaimed to be benumbed by photographic evidence comprised in Mark-D-2. Consequently, proclamation of non availability of houses towards Banjar side of Naglari bridge, when too, hence is rendered to be imbued with falsity, in sequel his purported visit to village Gushaini to locate independent witnesses and which visit was fruitless, too appears to be a mere sham especially in the face of his being unaware of the topography of the vicinity of the place where the occurrence took place arising from his ignorance qua lack of availability of houses towards Banjar side of Naglari bridge. Consequently, it has to be concluded that both PW-1 and PW-2 are inventing and concocting a version qua efforts having been made at their instance to locate independent witness and such efforts being unyielding. Furthermore, as a natural corollary, it appears that when they have indulged in blatant lies as well as prevarications to project purported efforts having been made to locate independent witness, such illusory efforts only convey the factum of theirs rather taking to clothe the apposite proceedings with purported truthfulness arising from purportedly concerted genuine efforts having been as such made. However, when despite availability of independent witness in close vicinity to the site of occurrence for reasons aforesaid, neither the Investigating Officer nor PW-1 and PW-2 made any concerted efforts to associate independent witness so as to clothe the apposite proceedings with the hue of impartisanship, as also, to obviate any inference, of the Investigating Officer having conducted a tainted investigation, rather when such non association arises on account of deliberateness, it, hence appears that such deliberateness on the part of the Investigating Officer to omit to associate independent witnesses was occasioned for no reason than that of his proceeding to conduct a slanted, tainted and partisan investigation, which obviously does not acquire any truth and credibility.

23. In view of the above discussion, the appeal is allowed and the impugned judgment of 1<sup>st</sup> October, 2010, rendered by the learned Special Judge, Fast Track Court, Kullu, is set aside qua accused Shyam Singh. The appellant/accused is acquitted of the offence charged. The fine amount, if any, 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.

24. The Registry is directed to prepare the release warrant of the accused and send it to the Superintendent of the Jail concerned, in conformity with this judgment, forthwith. Record of the trial Court be sent down forthwith.

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

State of H.P. ....Appellant.

Versus

Prem Chand & Others ...Respondents.

Cr.Appeal No.331 of 2008.

Reserved on: 24/09/2014.

Date of Decision:09.10.2014.

**Indian Evidence Act, 1872- Section 3-** Appreciation of evidence- Deceased was found dead in her home- Father of the deceased had made a generalized statement about the ill-treatment and mal-treatment meted out to her by the accused- Father of the deceased had not attributed any specific role to the accused- No date, month or year regarding beatings was given- No complaint was made by the father on receiving this information from his daughter- No medical examination of the deceased was got conducted regarding injuries suffered by the deceased- The letters stated to have been written by the deceased to her father were not produced, which shows that the version of his father regarding ill-treatment and maltreatment was a concoction- Further his version that the deceased had told him about imminent threat to her life was also not acceptable as she had left for her matrimonial home subsequent to this disclosure.

(Para-25)

**Indian Penal Code, 1860- Section 498-A** - The prosecution witnesses made generalized and vague statement regarding ill-treatment- No facts which would constitute an instigation to the deceased to take her life were deposed by the witnesses- Held, that the generalized statements are not sufficient to prove that the deceased was subjected to ill-treatment and maltreatment or she was instigated to commit suicide by the accused- Accused acquitted.

(Para-28)

For the Appellant: Mr.Ramesh Thakur, Assistant Advocate General.

For the respondents: Mr.N.S.Chandel, Advocate.

The following judgment of the Court was delivered:

**Per Sureshwar Thakur, Judge**

1. The instant appeal is directed against the judgement of acquittal, rendered on 16.1.2008, by the learned Additional Sessions Judge-II, Kangra at Dharamshala, in Sessions trial No. 5/2007, whereby the respondents have been acquitted for theirs having committed offence punishable under Sections 498-A and 306 IPC read with Section 34 IPC.

2. The prosecution story, in brief, is that on 6.11.2003 on receipt of telephonic information regarding death of a female in suspicious circumstances at village Bandi, the police headed by SI Prem Chand rushed to the spot after

incorporating the same into the daily diary and the statement under Section 154 Cr.P.C of one Shri Raghbir Singh was recorded. Raghbir Singh has deposed in his statement that his daughter Reeta Devi was married with Prem Chand resident of Village Bandi on 5.3.2003. He further deposed in his statement that his wife had received a telephonic information in the early morning that Reeta Devi had died and thereafter he alongwith other villagers rushed to the matrimonial house of Reeta Devi at village Bandi, where they found her dead. He further disclosed in his statement that his daughter had already disclosed 3-4 times about the beatings being delivered by her husband and she was being beaten up at the instance of brother and bhabhi of her husband. He further disclosed that his daughter had been killed by giving beatings by the accused persons. His statement was sent to the Police station for registration of FIR and the dead body of the deceased was taken into possession after inquest report and same was sent for postmortem examination. The Doctor had opined the cause of death as asphyxia due to antemortem hanging as no other disease, injury or poison seen over the body. One Nawaar and cloth lying on the spot also taken into possession and site plan of the house of deceased was prepared after taking photographs of the dead body. Opinion of Forensic Expert was sought in which the Forensic Expert opined partial hanging antemortem in nature.

3. After completion of the investigation, challan, under Section 173 of the Cr.P.C., was prepared and filed in the Court.

4. The trial court charged the accused for theirs having committed offence punishable under Sections 498-A and 306 IPC read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined as many as 13 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 Ramesh Thakur, learned Assistant 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/respondent.

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 first witness, who, stepped into the witness box to prove the prosecution case, is, PW-1 Dr. D.P Swamy who had conducted the post mortem examination of the deceased. In his opinion comprised in his report, he has attributed the demise of the deceased to antemortem hanging. He has denied in his opinion the factum of death of the deceased being sequelled by any injury or poison.

11. PW-2 Rahubir Singh deposes that the marriage of her deceased daughter was solemnized with accused Prem Chand on 5.3.2003 at village Bandi. He continues to depose that on 5.11.2003 he received telephonic information at about 4 a.m. that her daughter had died. On receipt of information he alongwith his wife and other villagers rushed to the house of her daughter Reeta Devi at village Bandi and found her daughter lying dead in the room. He further deposes about the factum of his deceased daughter on hers visit to her parental home having disclosed to him the factum of beatings delivered to her by the accused. However, he has deposed that he had advised her daughter to keep patience. He further deposes that on 4.11.2003 his daughter had come to his house and she disclosed to him about the beatings delivered by the accused on her person. He further deposes that his deceased daughter disclosed to him that she might be killed in her matrimonial home and on the next day she was found dead and they came to know that his daughter had died owing to hanging as there was piece of Nawar lying there. He further deposes that piece of Nawar Ex. P-1 is the same which was shown and taken into possession. He further deposes that his statement was recorded by the police over which he appended his thumb impression at encircled portion 'A'. During the course of his cross-examination he deposes that his deceased daughter used to send letters from Patiala to him and used to have telephonic conversation. It is stated to be incorrect that his statement was not recorded by the police. He deposes that his statement was recorded only once and he appended his thumb impression over three places. It is stated to be incorrect that in his statement before the police, he did not mention the name of the brother and wife of the brother of accused Prem Chand. He confronted with his statement Ex. PW-2/A wherein the name of the brother and his wife are not mentioned though it has been mentioned as Jeth and Jethani of the deceased. He further deposes that the letters of deceased received by him were neither shown nor handed over to the police. It is stated to be incorrect that the police had recovered a piece of paper from the place where the deceased was found dead and the same was taken into possession by the police. It is also stated to be incorrect that he was is not in a position till today as to what is the cause of death of his daughter. It is also stated to be incorrect that the deceased was adamant to accompany her husband.

12. PW-3 Shakuntala Devi deposes that her daughter disclosed to her on hers visiting her parental house that accused Prem Chand, his elder brother and his wife used to give her beatings. She further deposes that on 4.11.2003 the deceased had come to their house for Tikka to her brother and on being asked she disclosed that she was being beaten up by the accused. She further deposes that on the next morning at about 4 a.m. she had received telephonic information that her daughter had died. Thereafter they rushed to her matrimonial home where

she was found lying dead in the house. She further deposes that she might have been killed by the accused. It is stated to be incorrect that her daughter was adamant to live with her husband. It is stated to be correct that the marriage of her deceased daughter with Prem Chand was with her consent. It is also stated to be incorrect that her daughter had no talks with her when she visited their house before her death. It is stated to be correct that they never made any written complaint against the accused.

13. PW-4 Asha Devi deposes that deceased disclosed to her that she was being beaten up by her husband, jeth and jethani. She further deposes that accused Prem Chand used to give beatings to the deceased under the influence of liquor. She further deposes that on 4.11.2003 the deceased had visited her parental house for Tikka to her brother where she disclosed that she was being beaten up in her in-laws house and she was not ready to go back to her matrimonial home. She further deposes that they advised her to go to her matrimonial house and on the next morning she was found dead there. In her cross-examination she deposes that the deceased never wrote letter to her, however the deceased made telephone conversation with her from Patiala. She further deposes that there is no telephone in her house. It is stated to be correct that the deceased met her on 4.11.2003 on her visit to her parental home and was supposed to go back on the next morning to Patiala.

14. PW-5 Bidhi Chand deposes that he was associated by the police during the investigation. Piece of Nawar and one piece of cloth were deposed to have taken into possession by the Police under memo Ex. PW-5/A, which were put into a sealed packet and sealed with seal SK. He further deposes that he and Ujala Devi signed the same.

15. PW-6 Kasturi Lal deposes that there is no facility of telephone in the house of Shakuntla Devi and his telephone is being used by them. On 5.11.2003 at about 4.00 a.m. a call for Shakuntla Devi came over to his telephone and on attending the same Shakuntla Devi started weeping and on his asking she told that her daughter Reeta Devi had died. Thereafter he accompanied the parents of Reeta Devi alongwith other villagers to the house of Reeta and found her lying dead inside her house. He further deposes that he came to know that she died as a result of hanging.

16. PW-7 Jagdish Chand is the photographer. He deposes that he clicked the Photographs comprised in Ex. PW-7/A to Ex. PW-7/F and negatives thereof are Ex. PW-7/A-1 to Ex. PW-7/F-1.

17. PW-8 is the deposition of Ashwani Kumar who deposes that during the investigation, he was associated by the police. He continues to depose that he prepared the site plan comprised in Ex. PW-8/A, which bears his signatures as well as signatures of Assistant Engineer at encircled portion 'A'. The site plan is deposed to be the true and correct as per the original record.

18. PW-9 Purshottam Chand has turned hostile and on being permitted by the Court, he came to be cross-examined by the learned Public Prosecutor. During the course of his cross-examination he deposes that accused Prem Chand is his cousin. He stated it to be correct that he heard a noise coming from the house of the accused on 5.11.2003 at about 10 p.m. It is also stated to be correct that he

alongwith his wife and his Bhabi Kailasho Devi rushed to the house of the accused after hearing noise and when they reached in the house, they found the deceased to be dead. It is stated to be incorrect that on making inquiry about the cause of death, it was disclosed by the accused that Reeta Devi died as a result of hanging. It is stated to be incorrect that the accused used to give beatings to the deceased. He denied that he is deposing falsely in order to save the accused being his brotherhood.

19. PW-10 Inspector Sanjeev Chauhan deposes that he prepared the final report after completion of the investigation.

20. PW-11 C . Rakesh Kumar deposes that on 6.11.2003 DD No. 34 was incorporated on the receipt of telephonic information. The copy of which is deposed to be bearing Ex. PW-11/A, which is true and correct to the original.

21. PW-12 SI Prem Chand deposes that on receipt of telephonic information on 6.11.2003 from PP Gagaj regarding a female died in suspicious circumstance at Village Bandi, he proceeded to the spot accompanied by LC Sudha, HC Ashok and C. Bhawani Singh. He deposes that he recorded the statement of father of the deceased under Section 154 Cr.P.C comprised in Ex. PW-2/A which was sent to the police vide endorsement Ex. PW-12/A for registration of FIR. He deposes that he prepared inquest reports Ex. PW-1/B and Ex. PW-1/C. He further deposes that on application Ex. PW-1/A he sought postmortem examination of the dead body of the deceased. He has prepared the spot map comprised in Ex. PW-12/B. He deposes that he took into possession one piece of Nawar Ex. P-1 and another piece of cloth Ex. P-2 under memo Ex. PW-5/A and put the same into sealed packet duly sealed with seal SK in the presence of the witnesses. He further deposes that he recorded the statements of the witnesses. He continues to depose that the forensic expert was also called on the spot on 14.11.2003. He further deposes that on completion of the investigation, he handed over the case file to the SHO.

22. PW-13 Dr. Suresh Sankhyan deposes that on 14.11.2003 at about 12. p.m. he visited the place of occurrence at the instance of the police and observed the length of the ligature material, low point of suspension, salivary stains report are suggestive of partial hanging ante-mortem in nature. He further deposes that low point of suspension results in partial hanging which is usually suicidal in nature. His report has been deposed to have comprised in Ex. PW-13/A.

23. PW-1 has proved the Post Mortem Report wherein he recorded his observations qua the body of the deceased as subjected to post mortem examination by him. The said observations are:-

“Antimortem Injury

Ligature Mark

Antemortem reddish colour around mid of neck front side, extending to the upper part of the neck, near both the angles of mandible. Length and breath 7 inches X ½ inches, below up-ward in direction because of evience grazed abrasion from below up-wards including two extra ligature mark each about 1x1/2 inch on the left side of upper part of the neck. Subcutaneous hemorrhages present below

the ligature mark. The mark is not seen on the back of the neck because intervening scalp hairs as shown in the diagram

#### Cranium and Spinal Cord

NAD and only congestion of brain and membranes.

#### Thorax

1. Walls, ribs and cartiges
- 2,3,4 and 5 respectively pleure, larynux and trachea, right and left lungs were found congested and froth seen on cut section of lungs.
6. Heart and vessels Right side full of dark reddish fluid.

#### Abdomen

1. and 2 Walls and peritoneum NAD and there was no smell alcohol in peritoneum cavity.
3. Mouth larynx and Esophagus was NAD
4. Stomach and its contents were found 300 cc of mildly digested food as rice, pulses (Grams) pale in colour. No smell of alcohol or poison.
5. Small intestines and their contents were 20 CC of midly digested food in the proximal 6 inches of small intestines.
6. Larger intestines and their contents was full of gases and faecal matter.
- 7,8,9 respectively Live spleen and kidney were shown congested.
- 10 Bladder empty and no peculiar smell.
11. Organs of generation NAD No evidence of pregnancy and other foul play.

#### Muscles, bones and Joints

NAD”

He has in his deposition proved his opinion comprised in it, wherein he has attributed the demise of the deceased to antemortem hanging. He has denied in his opinion the factum of death of the deceased being sequelled by any injury or poison.

24. The father of the deceased while stepping into the witness box as PW-2 has deposed in extremely vague and generalized terms about the factum of his deceased daughter on hers visiting her parental home having disclosed to him the factum of ill-treatment or maltreatment meted out to her by the accused, comprised in theirs belaboring her. However, he has deposed that he had advised her daughter to keep patience. The complaints aforesaid made by the deceased to her father on hers visiting the house of the latter are couched in vague and generalized terms, they lack in specificity qua attributions to each of the accused



of specific acts of ill-treatment or maltreatment as also lack in specificity and precision qua the date month and year when such acts were purportedly perpetrated upon her by the accused. Even otherwise the fact as disclosed by the deceased to her father on hers visiting her father's house, of the accused belaboring her, is rendered unbelievable in the face of:-

- i. No complaint having been made by the father of the deceased on his receiving information from his deceased daughter on hers visiting him, wherein she revealed to him the factum of hers being belabored by the accused.
- ii. Omission on the part of the father of the deceased as well as the deceased to get the injuries examined from a competent medical practitioner and to obtain MLC from him displaying as well as corroborating the factum of the deceased having been subjected to belaboring by the accused too belies all or any of aforesaid attributions made by PW-2 in his deposition to the deceased

25. Moreover in his cross-examination the father of the deceased has divulged the fact of the deceased having communicated to him through letters about the factum of hers being subjected to ill-treatment and maltreatment by the accused which purportedly instigated and actuated her to commit suicide, however in the face of the letters aforesaid having omitted to be handed over to the police by the father of the deceased, dispels the credibility of the deposition of the father of the deceased of his having been communicated by the deceased through letters about the woes she was undergoing in her matrimonial home. Consequently it emerges that hence the deceased did not communicate to her father through letters about the sufferings she was undergoing at her matrimonial home, which inference as a natural corollary constrains a conclusion that hence, she was not subjected to maltreatment or ill-treatment by the accused at her matrimonial home. As a concomitant it has to be deduced that attributions of maltreatment or ill-treatment made by PW-2 against the accused on revelations made to him by his deceased daughter rather apparently are a mere concoction as well as an invention and are to be construed to be incredible. The prosecution urges that given the fact that the deceased visited her parental home on 4.11.2003 on which date as divulged by the testimony of PW-2 she disclosed to the latter the reasons qua the woes which befell upon her at her matrimonial home, which reasons while portraying the fact of hers being belabored by the accused, hence, hers apprehending an imminent threat to her life while constituting a credible disclosure qua purported instigatory or actuary factors in close proximity to the fateful incident which occurred on 6.11.2003 constrain a conclusion qua the guilt of the accused. However the said argument necessitates its being repulsed on the score that in case there was a disclosure by the deceased to her father of an imminent threat to her life, it is enigmatic as to what led the father of the deceased to persuade her to leave for her matrimonial home. Consequently if she left for her matrimonial home after 4.11.2003 it has to be hence construed that she had left for that place as there was no grave or imminent threat to her life as portrayed by PW-2 in his deposition for if she faced such a grave threat to her life, PW-2 would have dissuaded her from departing from her parental home to her matrimonial home.

26. The deposition of PW-3 the mother of the prosecutrix corroborates the testimony of PW-2. However, again her testimony alike the testimony of PW-2 being unspecific and imprecise qua the attribution of acts of cruelty meted out by each of the accused to the deceased besides lacking in specificity and precision qua the date, time and year when such acts of ill-treatment or maltreatment were meted by the accused to the deceased. As such, on the strength of a vague and nebulous deposition of PW-3 no capital can be drawn by the prosecution that hence any of such unspecific or generalized acts actuated or instigated the deceased to commit suicide. Moreover besides when the potency and enormity thereof remain omitted to be communicated and when potent evidence portraying the magnitude of the purported instigatory facts would alone have constrained this Court to draw a conclusion against the accused, omission thereof bolsters an inference that the inculcation of the accused remains un-clinched. Besides for the reasons alike the one meted by this Court for dispelling the strength of the testimony of PW-2 while its purportedly conveying that the accused hence belabored the deceased the testimony of PW-3 too necessitates its being discarded.

27. PW-4 too alike PW-2 and 3 has deposed in generalized terms qua the purported acts of cruelty meted by the accused to the deceased. She too deposed that when on 4.11.2003 the deceased visited her parental home and made a disclosure to her of hers being belabored by the accused in her matrimonial home and hers besides having also divulged to her of hers facing an imminent threat to her life, which fact too does not also attain credibility in the face of the aforesaid witnesses, too, alike PW-2 her father, having omitted to despite the purported gravity of threat to the life of the deceased, restrain her from proceeding to her matrimonial home. In case no such restraint was exercised upon the deceased by PW-2 against her proceeding to her matrimonial home where she was purportedly facing an imminent threat to her life, an apposite conclusion which emerges forth is that she was permitted to leave for her matrimonial home as the scenario there was neither grave nor alarming as espoused by PWs No. 3 and 4. Even otherwise she in her cross-examination has deposed that the deceased had telephonic conversations with her from Patiala wherein she disclosed to her the tales of woes and sufferings which had beset her at her matrimonial home. However the facts of any such disclosure over telephonic conversations she had with the deceased stands belied by the fact of hers having conceded in her cross-examination of there being no facility of telephone at her home. Consequently, it appears that this witness is inventing and concocting facts while attributing a false role to the accused.

28. An analysis of the testimonies of the prosecution witnesses made by this Court unveils the fact of the witnesses having abysmally failed to, with precision and exactitude depose qua the date and timings when the purported acts of ill-treatment or maltreatment were perpetrated on the person of the deceased by the accused, as a sequel on the strength of mere generalized attributions, besides omission on the part of the prosecution witnesses to depose that any of such purported acts acquired such potency or enormity so as to constitute theirs comprising instigatory or actuary factors for the deceased to take her life, constrains this Court not to draw a conclusion against the accused. Moreover preponderantly when they also omitted to depose qua the purported instigatory and actuary acts being in immediate proximity to the occurrence renders for the reasons aforesaid the attributions made by the prosecution

witnesses to the accused being both prevaricated and invented. As such, the entire genesis of the prosecution story has abysmally omitted to portray the factum of the deceased having been subjected to ill-treatment or maltreatment at the instance of the accused or also besides it has also omitted to emphatically project that the accused at a time proximate to the fateful incident had perpetrated upon her such acts of cruelty which were of such enormity which ultimately drove the deceased to commit suicide. In sequel for omission of portrayal by the prosecution of the accused having hence committed potent instigatory or actuary acts, of such potency and magnitude which drove the deceased to take her life, the learned trial Court has hence appreciated the evidence in a mature and balanced manner and its findings, do not necessitate interference. The appeal is dismissed being devoid of any merit and the findings rendered by the learned trial Court are affirmed and maintained. Records of the learned trial Court be sent down 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  
Ajay Kumar and others .....Respondents.

Cr. Appeal No. 332 of 2008.  
Reserved on: 19.09.2014.  
Date of Decision :09.10.2014.

**Code of Criminal Procedure, 1973- Section 162** - Testimony of PW-12 an eye witness was contradictory and suffered from improvement as he had omitted to disclose to the police that he had received the telephonic call on which he had gone to the spot, that the deceased had assaulted the accused on his face and had subsequently tendered apology to the accused, that the accused were leading a crowd of 30 to 35 persons including the family members of the accused, accused 'M' was carrying Danda and accused 'Y' was wielding Sickle, which would show that his testimony was false and could not be relied upon.

(Para-14)

**Indian Evidence Act, 1872- Section 3-** Appreciation of evidence- PW-5 'Y' omitting to disclose that he had recognized the accused 'Y' and 'M' in the crowd, his statement is in contradiction to the testimony of PW-12 which would show that PW-5 and PW-12 were not together at the spot and had given the manufactured version qua the incident.

(Para-14)

**Indian Evidence Act, 1872- Section 27-** Search of house of 'P' was conducted during which one Kudali was recovered- Medical Officer stated that the injury noticed by him could have been caused by Darati- Held, that the recovery of

Kudali was not effected pursuant to the disclosure statement or a recovery memo, therefore, the introduction of Kudali had no value in the prosecution case.

(Para-15)

**Indian Evidence Act, 1872- Section 3-** Appreciation of evidence- Medical Officer stated that the weapons of offence shown to him had broken edges and were not sharp enough to cause injuries noticed by him in dead body, which would suggest that the prosecution version that injuries were caused by the accused by these weapons could not be relied upon.

(Para-15)

**For the Appellant:**

Mr. Ashok Chaudhary, Addl.  
Advocate General.

**For the Respondents:**

Mr. G.R. Palsra and Mr. T.S.Chauhan,  
Advocates.

The following judgment of the Court was delivered:

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**Sureshwar Thakur, Judge**

The instant appeal is directed by the State, against the impugned judgment, rendered on 8.1.2008 by the learned Sessions Judge, Mandi, Himachal Pradesh in Sessions Trial No. 23 of 2007, whereby, the learned trial Court acquitted the accused/respondents for theirs having committed an offence under Section 302 read with Section 34 IPC.

2. Brief facts, of the case are that complainant Om Chand is the father of deceased Yadav Singh @ Sanjay. His son was working as driver in PWD in Lauhal area prior to his death. He came home on 19.10.2006 and on the morning of 20.10.2006 he had gone to collect the sale consideration of Alto Car which had sold to one Bitu about two months back. Sanju reached home at about 7.45 p.m from Sundernagar. At about 8.30 p.m. his son received a call on his mobile and thereafter he left the house telling his father that he would come soon. Sanju did not come at night and the complainant thought that his son had stayed at the house of his Mausli. Lateron a telephone call was received by Harish (PW-12) younger son of the complainant on his mobile that somebody has picked up quarrel with his brother Sanju. However, he did not tell about this to his father Om Chand. Next day i.e. on 22.10.2006 at 7 p.m. a telephonic call was received by his nephew Kirnu from Mohindru of village Badyar that a dead body was lying near the bushes by the side of the road and the complainant should verify the same. Thereafter complainant alongwith 4/5 persons went in a car to village Badyal and found the dead body lying in the bushes. In the meantime Pradhan of Gram Panchayat Badyar had informed the police and the police also arrived at the spot and examined the dead body. They noticed injury marks on the dead body. Statement of complainant Om Chand under Section 154 Cr.P.C was recorded on the basis of which FIR Ex. PP was registered. PW-19 SHO Hemant Kumar took the photographs Ex. PW-6/1 to 20 and thereafter he filled up the inquest papers vide Ex. PB. Vide memo Ex. PC articles lying near the dead body were taken into the possession. Site plan Ex. PY of the place where the dead body was lying also

prepared. Statements of the witnesses were recorded. The accused were arrested on 22.10.2006. On 24.10.2006 the disclosure statement of accused Ajay was recorded. On the basis of disclosure statement made by accused, Darat Ex. P-2 was recovered from his cowshed and the same was taken into possession vide memo Ex. PG in the presence of the witnesses. The site plan of place of recovery is Ex. PG/1. The disclosure statement of accused Manoj Kumar Ex. PF was also recorded. On the basis of which police got recovered sickle Ex. P-3 vide Ex. PH. The site plan of place of recovery is Ex. PH/1. Mobile phone of the associates of the deceased were also taken into possession vide memo Ex. PAC. On the disclosure statement of accused Yogesh Kumar Ex. PJ, danda Ex. P4 was recovered from the kitchen of his house. The same was taken into possession vide memo Ex. PK and site plan of place of recovery Ex. PK/1 was prepared. The house of father of accused Manoj kumar was searched under memo Ex. PAD. Similarly house of Pawan Kumar was also searched under memo Ex. PA and Kudali Ex. P-7 was recovered. The dimension of the Kudali Ex. P-7 was taken; memo in this regard is Ex. PR. On application Ex. PU, PW-16 has conducted the post mortem and issued a post mortem report comprised in Ex. PV. In his opinion, the cause of death was injury to heart and brain but mainly to the heart. During the course of investigation, the doctor examined the accused Ajay Sharma and noticed three injuries. He has issued MLC Ex. PO and opined that injury No.1 is possible with grip having sharp edged weapon.

3. On completion of the investigation, into the offence, allegedly committed by the accused, report under Section 173 Cr.P.C was prepared and filed in the Court.

4. The accused were charged for theirs having committed an offence punishable under Section 302 read with Section 34 IPC, by the learned trial Court, to which they pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined 19 witnesses. On closure of the prosecution evidence, the statements of the accused under Section 313 of the Code of Criminal Procedure, were recorded in which they pleaded innocence and claimed false implication.

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

6. The State of H.P. is aggrieved by the judgment of acquittal recorded by the learned Trial Court in favour of the accused/respondents. Mr. Ashok Chaudhary, the learned Additional Advocate General has concertedly and vigorously contended, that the findings of acquittal recorded by the learned trial Court below are not based on a proper appreciation of the evidence on record rather, they are sequelled by gross mis-appreciation of the material evidence 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/respondent.

7. On the other hand, the learned defence counsel 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 the evidence on record and do not necessitate interference, rather merit vindication.

8. 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.

9. The alleged occurrence took place on the night of 21.10.2006. In the said occurrence, deceased Sanjay @ Yadav is alleged to have been assaulted by the accused with Drat, Danda and sickle, etc., for avenging the previous altercation interse him and accused Ajay Kumar at the shop of Kaku chicken vendor. The occurrence aforesaid preceding the alleged occurrence is alleged to have taken place on 21.10.2006 at 8.00 p.m in the presence of Ashok Kumar (PW-6) and (PW-5) Yuvraj. Besides, accused Ajay Kumar who allegedly sustained injuries caused by the deceased reported the matter to the police, comprised in Ext.PL. Consequently, on the score of accused Ajay Kumar hence nursing a motive to avenge the injuries inflicted upon him by the deceased Sanjay Kumar on 21.10.2006 at 8.00 p.m., as such, with the motive reared by him he is alleged to have done to death deceased Sanjay Kumar. The deposition of PW-1 Om Chand, father of the deceased as also the complainant, though does not render a vivid ocular version qua the incident, yet it elucidates the factum of on 21.10.2006 at 7.45 p.m., when deceased Sanjay arrived home at 8.30 p.m., his having received a call over his mobile which led him to leave home with an intimation PW-1 that he would return home soon. However, though deceased Sanjay Kumar had intimated to PW-1 on his departure from home of his intending to return home soon, however, he did not return. Nonetheless, the brother of the deceased, Harish Kumar (PW-12) did receive a call divulging the fact of somebody having had an altercation with the deceased. In the morning of the succeeding day, at 7.20 a.m., one Mahindru is deposed to have made a call to Kirnu, nephew of complainant Om Chand, disclosing therein that a dead body was lying near the pump house in the bushes. The intimation aforesaid, led PW-1 alongwith his nephew Sanju, Kiran Kumar and Raj Kumar to leave for the spot, where they found the dead body of Sanjay. It is apparent on a reading of the testimony of PW-1 that PW-12 Harish Kumar remained home throughout the night of 21.10.2006. However, a disclosure qua the incident which took place on the previous night was yet not made by PW-12 to PW-1. Obviously, perse when PW-12 remained home throughout the night of 21.10.2006, he, was ill-equipped as well as disempowered to make a disclosure or reveal the details of the incident which took place then. Concomitantly, then any disclosure made by PW-12 to PW-1 about any incident which took place on 21.10.2006 cannot acquire any tenacity.

10. Even otherwise, the inculpatory role, as attributed to the accused by the prosecution fades in the face of PW-1 having not disclosed in his statement comprised in Ext.P-1, the names of any of the accused even in the face of a vivid disclosure enumerating the details of the incident which occurred on the night preceding the recovery of the body of the deceased having been disclosed to him by PW-12. Consequently, an apt inference which flows is that both PW-12 and PW-1 were unaware of the identity of the accused. In sequel, it has to be concluded that the learned trial Court while according weight to the said factum and its prodding it to conclude that the identity hence of the accused who had assaulted the deceased and caused his death had remained un-established, does not suffer from any perversity or absurdity of mis-appreciation of evidence on record.

11. Even an advertence to the testimony of PW-12 is significant. He in his examination-in-chief has deposed that on 21.10.2006 at 8.00 or 8.15 p.m. he

received a telephonic call from Yuvraj from Behna that a quarrel had taken place with his deceased brother at Badyal, which led PW-12 to leave for Badyal on a scooter. On his arriving at Badyal, PW-12 found Ghan Shyam, Om Prakash and deceased Sanju quarrelling with each other. However, he interceded and separated them. He continues to depose that Yuvraj inquired from accused Ajay about the telephone number of Kaku Chicken Vendor and Ajay apprised him that he was not aware of the said number. He deposed that there was again an altercation interse the two and he separated them. He also admitted that fact that his deceased brother Sanju gave a blow on the face of Ajay and the former apologized to Ajay for his mis-demeanor. He deposes that he alongwith Sanju, Ghanshyam and Yuvraj when had arrived near the Pump house, then from behind Ajay, Yogesh and Manoj also arrived there. Accused Ajay has been deposed to be carrying a weapon like Darat, accused Yogesh has been deposed to be carrying sickle and accused Manoj has been deposed to be carrying a Danda. Though, he deposes that he concerted to intercede and repulse the assault, however, to no avail. Accused Ajay has been deposed to have chased Sanju on the road and he deposes his having heard cries of Sanju 'Bhag Gaya'. Subsequently, he deposes that he alongwith the above associates came towards Behna and Ghanshyam left him on the way. On reaching home he found that deceased Sanju was not there. He has also deposed that he alongwith Yuvraj went to Bedyal on scooter to search for Sanju and made a telephonic call on his mobile, which remained unanswered. Lastly, he deposes that he went to bed at 9.30 p.m and omitted to disclose the entire incident to Om Chand PW-1.

12. The deposition of the brother of the deceased PW-12 Harish Kumar comprised in his examination-in-chief, has not got to be accepted at its face value. For unearthing the truth of his deposition, it is imperative for this Court to incisively discern and also read his testimony comprised in his cross-examination so as to look for existence therein of any embellishments or improvements arising from omission on the part of PW-12 to previously state before the police the facts deposed by him during his examination-in-chief. Only in case his testimony is read in a wholesome manner and its omitting to unravel interse contradictions or intrase contradictions vis-à-vis his previous statement recorded in writing would credibility be hence imputed to the deposition of PW-12. An incisive reading of the testimony of PW-12 comprised in his cross-examination unveils the factum of this witness having deposed certain facts in his examination-in-chief which were omitted to be stated by him to the police in his statement recorded under Section 161 Cr.P.C. Obviously, facts deposed for the first time in Court by PW-12 during the course of recording of his examination-in-chief, obviously when omitted to be stated to the police earlier, constitute embellishments and improvements rendering his testimony qua the facts deposed for the first time in Court to be disempowered to attain sanctity. The facts which have been deposed by PW-12 for the first time in Court and which render them to be acquiring the taint of improvements and embellishments are (a) omission in the previous statement of PW-12 made to the police of a telephonic call having been made by Yuvraj from Behna and of his having not stated to have gone to Badyal where Yuvraj, Sanju and Ghanshyam met to him. (b) Lack of occurrence in his previous statement recorded under Section 161 Cr.P.C. comprised in Mark-D of deceased Sanju having assaulted accused Ajay on his face in his presence and of an apology having been made by the deceased to Ajay, (c) lack of narration in his previous statement comprised in mark-D of all the three accused leading a crowd of 30 to

35 persons including the family members of the accused. (d) Omission to narrate in his previous statement that accused Manoj was carrying Danda (Ext.P-4) and sickle (Ext.P-3) was wielded by accused Yogesh. (e) Reticence in his previous statement comprised in Mark-D that owing to Diwali festival, he omitted to disclose the details of the incident to his family members. Lack of occurrence in the previous statement of PW-12 comprised in Mark-D of facts aforesaid existing in his examination-in-chief while for reiteration comprising improvements and embellishments, hence rendering his testimony to be imbued with falsity, are grave, pervasive and immense. They unstrip and unshred the veracity of the version qua the incident deposed by PW-12 in his examination-in-chief. As a concomitant, the prosecution version anvil upon the deposition of PW-1 and PW-12 is wholly infected with the vice of untruthfulness, concoction and invention, on which no reliance can be placed by this Court.

13. A perusal of the deposition of PW-5 Yuvraj, the person who was purportedly accompanying PW-12 at the material time while omitting to unravel the fact of his having recognized accused Yogesh and Manoj in the crowd owing to darkness, while comprising an intra-se contradiction vis-à-vis the deposition of PW-12 who, however, has attributed an inculpatory role to both aforesaid, hence renders imbued with the vice of prevarication, the testimonies of both PW-5 and PW-12. Besides it renders untruthful of both having purportedly gathered at the site of the occurrence. For lack of existence of harmony and consistency interse the testimonies of PW-5 and PW-12 qua the genesis of the prosecution case then an apt and ready inference which ensues, is, that hence when both were not together at the site of occurrence then too the concomitant deduction which spurs, is that both are rendering a concocted and manufactured version qua the incident, which cannot gain credence with this Court.

14. The deposition of PW-6 omits to lend support to the prosecution case. Besides the scanning of the testimony of PW-4 Ghanshyam underscores the factum of his having not lent support to the prosecution case. He during the course of his cross-examination by the learned Public Prosecutor on his having come to be declared hostile feigns ignorance qua the presence of the accused in the crowd as also with his having deposed that he did not perceive any Danda wielded by any member of the crowd renders his testimony to be rendering no support or succor to the prosecution version. A perusal of the testimonies of the witnesses aforesaid whose depositions were relied upon by the learned Additional Advocate General to canvass before this Court that hence the charge against the accused stood convincingly established and proved, does rather as aptly concluded by the learned trial Court constrain a conclusion, that their testimonies are infirm and discrepant, ridden with improvements and embellishments vis-à-vis their previous statements recorded in writing, besides theirs turning hostile and hence not rendering support to the prosecution case, renders the prosecution case to capsize.

15. Even the deposition of PW-16 the doctor who conducted the post mortem examination on the body of the deceased omits to give strength to the prosecution version inasmuch, as, (a) on weapons of offence, purportedly wielded by the accused with which the purported lethal blow was delivered on the person of the deceased being Darat, Kudali, Drati and Lathi, when shown to this witness and perceived to be having blunt and broken edges at places and not sharpen enough to cause injuries noticed by him on the body of the deceased (b) his having unequivocally voiced that the sharp injury is not possible with blunt weapon like



Lathi. In sequel, his testimony unfolds the fact of the user of none of the weapons shown to this witness being the cause of the injuries as noticed by PW-16 on the body of the deceased while conducting his post mortem examination. However, Ext.P-21 Kudal, the weapon of offence, purportedly used by the accused for purportedly assaulting the deceased was introduced by the prosecution/Investigating Officer and shown to PW-16 during the course of the recording his testimony. On Ext.P-21 being shown to PW-16, it sequelled elicitation of an opinion of PW-16 that Injury No. 3 as elucidated in his post mortem report Ext.PB is possible with its user. Consequently on strength of the opinion rendered by PW-16 on Ext.P-21 on its having been shown to the former during the course of his examination-in-chief an empathic argument, is, concerted to be built by the learned Additional Advocate General, that, hence the prosecution has been able to clinch the factum of the inculcation of the accused, in the commission of the offence alleged against them. However, the said argument, is, bereft of any force or vigour, inasmuch, as (a) the introduction of Ext.P-21 Kudal is not preceded by preparation of a disclosure statement or a recovery memo in consequence to its recovery thereof having been made at the instance of the accused, for rearing open an inference that hence even when it was shown to PW-16 during the course of the recording of his examination-in-chief it was an efficacious weapon of offence wielded and used by the accused for perpetrating the assault on the deceased. Lack of evidence portraying the factum of its purported recovery at the instance of the accused in succession to a disclosure statement qua the fact of its place of hiding or concealment musters the conclusion that its introduction by the prosecution, is, tainted and besmirched. Consequently, it is an unworthwhile introduction which carries no force in the eyes of law. Also then any opinion rendered by PW-16 qua its having begotten the Injury No. 3, is not edificatory. (b) Even assuming that any injury which purportedly led to the demise of the deceased was sequelled by the user at the instance of the accused of Kudal Ext.P-21 yet with the entire thrust and weight of the oral evidence qua the occurrence being ridden with a plethora of improvements and embellishment as well as blatant interse and intra se contradictions in the testimonies of the prosecution witnesses, as such, discounting the very fact of the occurrence as portrayed by the prosecution to have taken place, strips of in its entirety the factum of user of Ext.P-21, if any, by the accused for perpetrating the assault on the person of the deceased, which assault ultimately led to his death.

16. As such, the impugned judgment does not suffer from any vice, absurdity or perversity of mis-appreciation or non appreciation of evidence. Consequently, reinforcingly, it can be formidably concluded that the findings of the learned trial Court are based on a mature and balanced appreciation of evidence on record and do not merit interference.

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

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**BEFORE HON'BLE MR. JUSTICE P.S. RANA, J.**

Sushil Thakur son of Sh. Dina Ram Thakur ....Applicant  
 Vs.  
 State of H.P. ....Non-applicant

Cr.MP(M) No. 941 of 2014  
 Order Reserved on 23<sup>rd</sup> September, 2014  
 Date of Order 9<sup>th</sup> October, 2014

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**Code of Criminal Procedure, 1973- Section 438-** At the time of granting bail, the Court has to see the nature of seriousness of offences, nature of evidence, circumstances peculiar to the accused, presence of the accused in the trial or investigation, reasonable apprehension to witnesses, and larger interests of the State- Grant of bail is the rule and committal to jail is an exception- Since the investigation was complete and the conclusion of the Trial would take some time- hence, bail granted.

(Para-6)

**Cases Referred:**

Gurcharan Singh and others Vs. State (Delhi Administration, AIR 1978 SC 179  
 The State Vs. Captain Jagjit Singh, AIR 1962 SC 253  
 Apex Court DB 702, titled Sanjay Chandra vs. Central Bureau of Investigation,  
 2012 Cri. L.J. 702

For the Applicant: Mr. G.C. Gupta, Sr. Advocate with Ms. Meera Devi, Advocate.

For the Non-applicant: Mr. M.L. Chauhan, Additional Advocate General with Mr. Pushpender Singh Jaswal, Deputy Advocate General.

The following judgment of the Court was delivered:

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**P.S. Rana, Judge.**

**Order:-** Present application is filed under Section 438 of the Code of Criminal Procedure 1973 for grant of anticipatory bail in connection with case FIR No. 84 of 2014 dated 10.08.2014 registered under Section 498A and 506 read with Section 34 of Indian Penal Code registered in Police Station Ani District Kullu H.P.

2. It is pleaded that wife of applicant has filed a false and frivolous complaint against the applicant. It is further pleaded that said complaint is counter blast to the divorce petition filed by the applicant. It is further pleaded that applicant is a government employee and is innocent and further pleaded that applicant will not abscond nor jump the bail and will not induce or threat to any person. Prayer for acceptance of bail application sought.

3. Per contra police report filed. As per police report, FIR No. 84 of 2014 dated 10.8.2014 registered under Sections 498A and 506 read with Section 34 of Indian Penal Code in Police Station Ani District Kullu H.P. There is recital in police report that marriage between Kamlesh and Sushil was performed in the year 2005 at village Ani District Kullu. There is further recital in police report that for 2/3 years husband of complainant and her mother-in-law behaved properly with complainant and thereafter behaviour of husband of complainant and her mother-in-law changed. There is further recital in police report that Kamlesh tolerated the behaviour of her husband and mother-in-law on the pretext that after lapse of time everything would become normal. There is further recital in police report that husband of complainant Kamlesh and her mother-in-law started quarrelling with Kamlesh and also demanded dowry. There is further recital in police report that husband of Kamlesh is posted in Block Development Office as Junior Engineer since four years. There is further recital in police report that husband of Kamlesh has relations with one girl namely Puja. There is further recital in police report that husband of Kamlesh namely Sushil intends to marry Puja. There is further recital in police report that on dated 23.7.2014 Kamelsh went to meet her husband along with her daughter at Theog but her husband beaten the complainant and threatened to kill her. There is further recital in police report that Puja is harassing through mobile No. 98169-82829. There is further recital in police report that husband of complainant namely Sushil Kumar is forcing the complainant Kamlesh to divorce him so that husband of complainant could remarry with Puja. There is further recital in police report that husband and mother-in-law of complainant are mentally and physically harassing Kamlesh. As per complaint the case was registered. Statements of prosecution witnesses recorded and marriage certificate from Gram Pancahyat and family register obtained. There is recital in police report that no investigation from applicant is required.

4. Court heard learned Advocate appearing on behalf of the applicant and learned Additional Advocate General appearing on behalf of the State and also perused the record.

5. Submission of learned Advocate appearing on behalf of applicant that applicant is innocent and applicant did not commit any offence cannot be decided at this stage. The same fact will be decided when the case shall be disposed of on merits after giving due opportunity to both the parties to lead evidence in support of their case.

6. Another submission of learned Advocate appearing on behalf of the applicant that investigation is complete and case will be decided in due course of time and on this ground anticipatory bail application be allowed is accepted for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. **See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration.** Also see **AIR 1962 SC 253 titled The State Vs. Captain Jagjit Singh.** It was held in case reported in **See 2012 Cri. L.J. 702 Apex Court DB 702, titled Sanjay Chandra vs. Central Bureau of**

**Investigation** that object of bail is to secure the appearance of the accused person at his trial. It was held that grant of bail is the rule and committal to jail is exceptional. It was held that refusal of bail is a restriction on personal liberty of individual guaranteed under Article 21 of the Constitution. It was further held that accused should not be kept in jail for an indefinite period.

7. In view of the fact that investigation is complete in present case and in view of the fact that trial will be concluded in due course of time, Court is of the opinion that it would be in the ends of justice to allow the bail application. Court is of the opinion that if anticipatory bail application is allowed then interest of State and general public will not be adversely affected in present case.

8. Submission of learned Additional Advocate General that if bail is granted to applicant then applicant will induce threat and influence the prosecution witnesses and on this ground anticipatory bail application be declined is rejected being devoid of any force for the reasons hereinafter mentioned. It is held that if applicant will flout the terms and conditions of bail order then prosecution will be at liberty to file application for cancellation of bail.

9. In view of above stated facts anticipatory bail application filed by applicant is allowed and interim bail granted on dated 14.8.2014 is made absolute on following terms and conditions. (i) That the applicant shall join the investigation as and when called for by the Investigating Officer in accordance with law. (ii) That applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iii) That the applicant will not leave India without the prior permission of the Court. (iv) That applicant will not commit similar offence qua which he is accused. (v) That applicant will furnish his residential address to the Investigating Officer in written manner. Anticipatory bail application filed under Section 438 Cr.P.C. stands disposed of. All pending application(s), if any also disposed of.

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

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

Criminal Appeal No.209 of 2009  
Reserved on : October 7, 2014  
Date of Decision : October 10, 2014.

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**Indian Penal Code, 1860- Section 84-** In order to take the benefit of Section 84, the accused has to prove that at the time of commission of offence, the accused by reason of unsoundness his mind was incapable of knowing the nature of act or that he was doing what was either wrong or contrary to law- In the present case,

the Medical Officer had admitted that he had not seen the old record of the accused pertaining the period when the offence was committed by the accused- No eye witness had deposed about the mental condition of the accused- The evidence showed that the accused had committed the offence without any provocation and he was fully aware of the consequences, hence the accused was rightly convicted.

(Para-8 to 21 )

**Cases Referred:**

State of Madhya Pradesh v. Shmadulla, AIR 1961 SC 998  
 Mariappan v. State of Tamil Nadu, (2013) 12 SCC 270  
 State of Rajasthan v. Shera Ram alias Vishnu Dutta, (2012) 1 SCC 602  
 Elavarasan v. State represented by Inspector of Police, (2011) 7 SCC 110  
 S.K. Nair v. State of Punjab, (1997) 1 SCC 141  
 Vijayee Singh and others v. State of U.P., (1990) 3 SCC 190  
 Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, AIR 1964 SC 1563  
 Basdev v. State of Pepsu, AIR 1956 SC 488  
 Sudhakaran v. State of Kerala, (2010) 10 SCC 582  
 Sidhapal Kamala Yadav v. State of Maharashtra, (2009) 1 SCC 124  
 Hari Singh Gond v. State of M.P., (2008) 16 SCC 109  
 Bablu alias Mubarik Hussain v. State of Rajasthan, (2006) 13 SCC 116  
 Shrikant Anandrao Bhosale v. State of Maharashtra, (2002) 7 SCC 748  
 T.N. Lakshmaiah v. State of Karnataka, (2002) 1 SCC 219  
 State of H.P. v. Gian Chand, (2001) 6 SCC 71  
 Oyami Ayatu v. The State of Madhya Pradesh, (1974) 3 SCC 299  
 Sheralli Wali Mohammed v. The State of Maharashtra, (1973) 4 SCC 79  
 Ratan Lal v. The State of Madhya Pradesh, (1970) 3 SCC 533  
 Bhikari v. The state of Uttar Pradesh, AIR 1966 SC 1  
 Amrit Bhushan Gupta v. Union of India and others, (1977) 1 SCC 180  
 Paras Ram and others v. State of Punjab, (1981) 2 SCC 508  
 Bapu alias Gujraj Singh v. State of Rajasthan, (2007) 8 SCC 66  
 Surender Mishra v. State of Jharkhand, (2011) 11 SCC 495

For the Appellant : Mr. N.K. Thakur, Senior Advocate/ Legal Aid Counsel  
with Mr. Chaman Negi, Advocate.

For the Respondent : Mr. B.S. Parmar, Mr. Ashok Chaudhary, Additional  
Advocates General, Mr. Vikram Thakur, Mr. Puneet  
Rajta, Deputy Advocates General and Mr. J.S.  
Guleria, Assistant Advocate General.

The following judgment of the Court was delivered:

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Sanjay Karol, Judge

The short point, which arises for consideration in the present appeal, is as to whether the accused/convict has been able to establish his defence of unsoundness of mind, as is so required under the provisions of Section

84 of the Indian Penal Code and Sections 101 & 105 of the Indian Evidence Act, 1872 or not. Also, as to whether prosecution has been able to establish the guilt of the accused beyond reasonable doubt.

2. Appellant-convict Balwant Singh, hereinafter referred to as the accused, has assailed the judgment dated 18.5.2009, passed by Additional Sessions Judge (2), Kangra at Dharamshala, Himachal Pradesh, in Sessions Trial No.14-D/2008, titled as *State of Himachal Pradesh v. Balwant Singh*, whereby he stands convicted of the offence punishable under the provisions of Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and pay fine of ₹10,000/- and in default thereof to further undergo imprisonment for two years.

3. On 19.11.2007, Ramesh Chand (PW-1) telephonically informed the police at Police Station, Shahpur, that his brother Balwant Singh (accused) was seen with a *Drat* in his hand. It appeared that accused had killed his wife namely Sunita Devi. Police party headed by SI Bhadur Singh (PW-11) reached village Kiari where they found dead body of Sunita Devi lying inside the house of the accused. Statement (Ex. PW-1/A) of Ramesh Chand, under the provisions of Section 154 of the Code of Criminal Procedure, was recorded on the spot, on the basis of which FIR No.150/07, dated 20.11.2007 (Ex.PW-11/C), under the provisions of Section 302 of the Indian Penal Code was recorded at Police Station, Shahpur, District Kangra, Himachal Pradesh. Police conducted investigation on the spot and sent the dead body for postmortem. Report (Ex. PX) was taken on record by the police. Weapon of offence, i.e. *Drat* (Ex. P-1), sketch of which is Ex. PW-3/H, was taken into possession by the police. Reports (Ex. PW-11/H & 12/B) from the FSL were also obtained by the police. Stains of blood on the *Drat* and the clothes matched with that of the deceased. Police, during investigation, recorded statements of witnesses. With the completion of investigation, challan was presented in the Court for trial.

4. Accused was charged for having committed an offence punishable under the provisions of Section 302 of the Indian Penal Code to which he did not plead guilty and claimed trial.

5. In order to establish its case, prosecution examined as many as 12 witnesses and statement of the accused under the provisions of Section 313 of the Code of Criminal Procedure was also recorded, in which he took plea of innocence and false implication. Significantly, no plea of insanity/unsoundness of mind was taken, except for examining one witness Dr. Dinesh Dutt Sharma (DW-1), who proved medical record (Ex. DW-1/A, 1/B & 1/C), pertaining to treatment of the accused.

6. Based on the testimonies of witnesses and the material on record, trial Court convicted the accused of an offence punishable under the provisions of Section 302 of the Indian Penal Code and sentenced him as aforesaid. Hence, the present appeal by the accused.

7. Significantly, as per the evidence proved on record by the accused, he was undergoing medical treatment for "Psychosis NOS", but then this was for the period subsequent to the commission of crime. During trial, accused was administered psychiatric treatment at the Government Hospital, Tanda. He was

certified to have recovered fully. In fact, vide document (Ex. DW-1/C), Dr. Dinesh Dutt Sharma issued the following certificate:

“This is in reference to the your endorsement No.HFW(MS)G-16=8467 dated 27.09.2008 on above cited subject it is stated that Mr Balwant Singh was examined by me in Psychiatry OPD today on 17.09.2008 and his previous medical records were perused. He is a diagnosed case of ‘Psychosis NOS’ and has been taking treatment from department of Psychiatry, Dr. RP Govt. Medical College, Kangra at Tanda, Currently he does not have features of active mental disorder and he is fit to face the trial.

This information may please be forwarded onto the concerned quarter.”

8. Now in Court, the very same doctor admits that he had not examined the old record of the accused, more so for the period 2007-2008, as none was produced before him. Thus, there is no evidence on record, reflecting, even remotely, the mental condition of the accused, as on the date of commission of crime, i.e. 19.11.2007 or even prior thereto.

9. Section 84 of the Indian Penal Code reads as under:

“**84. Act of a person of unsound mind.**- Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”

10. Sections 101 and 105 of the Indian Evidence Act, 1872 (hereinafter referred to as the Evidence Act), read as under:

“**101. Burden of proof.**- Whosoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

#### *Illustrations*

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

- (b) A desires a Court to give judgment that he is entitled to certain land in the possession of *B*, by reason of facts which he asserts, and which *B* denies, to be true.

A must prove the existence of those facts.”

**“105. Burden of proving that case of accused comes within exceptions.-** When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860) or within any special exception of proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the court shall presume the absence of such circumstances.

*Illustrations*

- (a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

- (b) A accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control;

The burden of proof is on A.

- (c) Section 325 of the Indian Penal Code (45 of 1860) provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.”

(Emphasis supplied)



11. Apex Court in *State of Madhya Pradesh v. Shmadulla*, AIR 1961 SC 998, has clearly held that burden to establish mental condition of the accused, at the crucial point of time, lies upon the accused, who claims such benefit of unsoundness of mind. (See also: *Mariappan v. State of Tamil Nadu*, (2013) 12 SCC 270; *State of Rajasthan v. Shera Ram alias Vishnu Dutta*, (2012) 1 SCC 602; *Elavarasan v. State represented by Inspector of Police*, (2011) 7 SCC 110; *S.K. Nair v. State of Punjab*, (1997) 1 SCC 141; *Vijayee Singh and others v. State of U.P.*, (1990) 3 SCC 190; *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, AIR 1964 SC 1563; and *Basdev v. State of Pepsu*, AIR 1956 SC 488).

12. While taking note of provisions of Section 101 as also Section 105 of the Evidence Act, the apex Court in *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, AIR 1964 SC 1563 held that when a plea of legal insanity is set up, Court has to consider whether at the time of commission of the offence, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. *The crucial point of time for ascertaining the state of mind of the accused is the time of commission of offence.* Whether accused was in such a state of mind as to be entitled to the benefit of S. 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed by the crime. [ Also see: *Elavarasan (supra)*; *Sudhakaran v. State of Kerala*, (2010) 10 SCC 582; *Sidhapal Kamala Yadav v. State of Maharashtra*, (2009) 1 SCC 124; *Hari Singh Gond v. State of M.P.*, (2008) 16 SCC 109; *Bablu alias Mubarik Hussain v. State of Rajasthan*, (2006) 13 SCC 116; *Shrikant Anandrao Bhosale v. State of Maharashtra*, (2002) 7 SCC 748; *T.N. Lakshmaiah v. State of Karnataka*, (2002) 1 SCC 219; *State of H.P. v. Gian Chand*, (2001) 6 SCC 71; *Oyami Ayatu v. The State of Madhya Pradesh*, (1974) 3 SCC 299; *Sheralli Wali Mohammed v. The State of Maharashtra*, (1973) 4 SCC 79; *Ratan Lal v. The State of Madhya Pradesh*, (1970) 3 SCC 533; and *Bhikari v. The state of Uttar Pradesh*, AIR 1966 SC 1.]

13. In *Amrit Bhushan Gupta v. Union of India and others*, (1977) 1 SCC 180, the apex Court had the occasion to deal with a case where, based on medical opinion of the convict suffering from schizophrenia, while appreciating the law as laid down in England, rejected the plea of the accused not to undergo sentence, so imposed by the criminal Court.

14. Further, in *Paras Ram and others v. State of Punjab*, (1981) 2 SCC 508, the apex Court held that:

“2. Just one more observation relevant to the punishment. The poignantly pathological grip of macabre superstitions on some crude Indian minds in the shape of desire to do human and animal sacrifice, in defiance of the scientific ethos of our cultural heritage and the scientific impact of our technological century, shows up in crimes of primitive horror such as the one we are dealing with now, where a blood-curdling butchery of one's own beloved son was perpetrated, aided by other 'pious' criminals, to propitiate some bloodthirsty deity. Secular India, speaking through the court, must administer shock therapy to such anti-social 'piety', when the manifestation is in terms of inhuman and criminal violence. When

the disease is social, deterrence through court sentence must, perforce, operate through the individual culprit coming up before court. Social justice has many facets and judges have a sensitive, secular and civilising role in suppressing grievous injustice to humanist values by inflicting condign punishment on dangerous deviants. In discharge of this high duty, we refuse special leave in these applications against the correct convictions and sentences of the courts below.”

15. In *Vijayee Singh and others v. State of H.P.*, (1990) 3 SCC 190, the apex Court, observed that:

“23. At his stage it becomes necessary to consider the meaning of the words "the court shall presume the absence of such circumstances" occurring in Section 105 of the Evidence Act. Section 4 of the Act explains the meaning of the term "shall presume" as to mean that the Court shall regard the fact as proved unless and until it is disproved. From a combined reading of these two Sections it may be inferred that where the existence of circumstances bringing the case within the exception is pleaded or is raised the Court shall presume the absence of such circumstances as proved unless and until it is disproved. In Section 3 of the Act meaning of the terms "proved", "disproved" and "not proved" are given. As per this provision, a fact is said to be "proved" when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. A fact is said to be "disproved" when, after considering the matters before it the Court either believes that it does not exist, or considers its non existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be "not proved" when it is neither "proved" nor "disproved".

24. The first part of Section 105 as noted above lays down that when a person is accused of an offence, the burden of proving the existence of circumstances bringing the case within any of the exceptions or proviso is on him and the latter part of it lays down that the Court shall presume the absence of such circumstances. In a given case the accused may discharge the burden by expressly proving the existence of such circumstances, thereby he is able to disprove the absence of circumstances also. But where he is unable to discharge the burden by expressly proving the existence of such circumstances or he is unable to disprove the absence of such circumstances, then the case would fall in the category of "not proved" and the Court may presume the absence of such circumstances. In this background we have to examine the meaning of the words "the Court shall presume the absence of such

circumstances" bearing in mind the general principle of criminal jurisprudence that the prosecution has to prove its case beyond all reasonable doubt and the benefit of every reasonable doubt should go to the accused.

16. The apex Court in *Bapu alias Gujraj Singh v. State of Rajasthan*, (2007) 8 SCC 66, held as under:

"9. There are four kinds of persons who may be said to be *non compos mentis* (not of sound mind), i.e., (1) an idiot; (2) one made *non compos* by illness (3) a lunatic or a mad man and (4) one who is drunk. An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals; and those are said to be idiots who cannot count twenty, or tell the days of the week, or who do not know their fathers or mothers, or the like, (See *Archbold's Criminal Pleadings, Evidence and Practice*, 35th Edn. pp.31-32; *Russell on Crimes and Misdemeanors*, 12th Edn. Vol., p.105; 1 *Hale's Pleas of the Crown* 34). A person made *non compos mentis* by illness is excused in criminal cases from such acts as are committed while under the influence of his disorder, (See 1 *Hale PC* 30). A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes, having intervals of reason, (See *Russell*, 12 Edn. Vol. 1, p. 103; *Hale PC* 31). Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.

10. Section 84 embodies the fundamental maxim of criminal law, i.e., *actus non reum facit nisi mens sit rea* (an act does not constitute guilt unless done with a guilty intention). In order to constitute an offence, the intent and act must concur; but in the case of insane persons, no culpability is fastened on them as they have no free will (*furios is nulla voluntas est*).

11. The section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. Stephen in 'History of the Criminal Law of England, Vo. II, p. 166 has observed that if a persons cut off the

head of a sleeping man because it would be great fun to see him looking for it when he woke up, would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act. The law recognizes nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently dim to apprehend what he is doing, he must always be presumed to intend the consequence of the action he takes. Mere absence of motive for a crime, howsoever atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within this section. This Court in *Sheralli Walli Mohammed v. State of Maharashtra*, (1973) 4 SCC 79 held that (SCC p.79):

“The mere fact that no motive has been proved why the accused murdered his wife and child or the fact that he made no attempt to run away when the door was broken open would not indicate that he was insane or that he did not have the necessary mens rea for the offence.”

12. Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section 84 as the law contained in that section is still squarely based on the outdated M'Naughton rules of 19th Century England. The provisions of Section 84 are in substance the same as that laid down in the answers of the Judges to the questions put to them by the House of Lords, in M Naughton's case. (1843) 4 St. Tr. NS 847(HM). Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act; but merely a cessation of the violent symptoms of the disorder is not sufficient.

13. The standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact that an accused is conceited, odd irascible and his brain is not quite all right, or that the physical and mental ailments

from which he suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts, in the past or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this section.”

(Emphasis supplied)

17. The apex Court in *Sudhakaran (supra)*, further observed as under:
- “30. A bare perusal of the aforesaid section would show that in order to succeed, the appellant would have to prove that by reason of unsoundness of mind, he was incapable of knowing the nature of the act committed by him. In the alternate case, he would have to prove that he was incapable of knowing that he was doing what is either wrong or contrary to law.
31. The aforesaid section clearly gives statutory recognition to the defence of insanity as developed by the Common Law of England in a decision of the House of Lords rendered in the case of R. Vs. Daniel Mc Naughten. In that case, the House of Lords formulated the famous Mc Naughten Rules on the basis of the five questions, which had been referred to them with regard to the defence of insanity. The reference came to be made in a case where Mc Naughten was charged with the murder by shooting of Edward Drummond, who was the Pvt. Secretary of the then Prime Minister of England Sir Robert Peel. The accused Mc Naughten produced medical evidence to prove that, he was not, at the time of committing the act, in a sound state of mind. He claimed that he was suffering from an 2 [1843 RR 59: 8ER 718(HL)] insane delusion that the Prime Minister was the only reason for all his problems. He had also claimed that as a result of the insane delusion, he mistook Drummond for the Prime Minister and committed his murder by shooting him.
32. The plea of insanity was accepted and Mc Naughten was found not guilty, on the ground of insanity. The aforesaid verdict became the subject of debate in the House of Lords. Therefore, it was determined to take the opinion of all the judges on the law governing such cases. Five questions were subsequently put to the Law Lords. The questions as well as the answers delivered by Lord Chief Justice Tindal were as under:-

"Q.1 What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or

more particular subjects or persons: as, for instance, where at the time of the commission of the alleged crime the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing a revenging some supposed grievance or injury, or of producing some public benefit?

Answer

"Assuming that your lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion, that, notwithstanding the party did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law, by which expression we understand your lordships to mean the law of the land.

Q.2. What are the proper questions to be submitted to the jury when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence?

Q.3. In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?

Answers - to the second and third questions

That the jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the

question to the jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong, which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally, and in the abstract, as when put as to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that every one must be taken conclusively to know it without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course, we think, is correct, accompanied with such observations and explanations as the circumstances of each particular case may require.

Q.4. If a person under an insane delusion as to the existing facts commits an offence in consequence thereof, is he thereby excused?

Answer

The answer must, of course, depend on the nature of the delusion, but making the same assumption as we did before, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes in self-defence, he would be exempted from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.

Q.5. Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial, and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to law, or whether he was labouring under any and what delusion at the time?

Answer

We think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide; and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right."

A comparison of answers to question no. 2 and 3 and the provision contained in Section 84 of the IPC would clearly indicate that the Section is modeled on the aforesaid answers."

18. In *Surender Mishra v. State of Jharkhand*, (2011) 11 SCC 495, the apex Court held as under:

"11. In our opinion, an accused who seeks exoneration from liability of an act under Section 84 of the Indian Penal Code is to prove legal insanity and not medical insanity. Expression "unsoundness of mind" has not been defined in the Indian Penal Code and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code.



(Emphasis supplied)

19. In this background, we now proceed to discuss the evidence against the accused, in relation to the charged offence.

20. Neither from the testimony of defence witness nor from the cross-examination of the prosecution witnesses, it stands established that at the time of occurrence of crime, accused was in a state of unsound mind. The doctor concerned never had the occasion to see the record of prior medical treatment, if any.

21. We are of the considered view that it is an open and shut case, proving the guilt of the accused, committed without any provocation, fully aware of all consequences, in relation to the charged offence, which clearly stands established and proved through the testimonies of Ramesh Chand (PW-1), Rani Kumari (PW-2), Kamal Kishore (PW-3), Dyali Devi (PW-4), Swarana Devi (PW-5) and Bal Krishan (PW-7).

22. Witnesses Dyali Devi, Swarana Devi and Bal Krishan have proved that the accused, even prior to the incident, used to severely beat up the deceased and at times under the influence of intoxication. The deceased also brought the matter to the notice of the Pradhan (Swarana Devi) about the atrocities meted out by the accused. She cautioned him not to do so.

23. On the incident in question, we find the testimonies of Ramesh Chand, Rani Kumari and Kamal Kishore, to be absolutely inspiring in confidence.

24. Ramesh Chand states that on 19.11.2007 at about 11.30 p.m., he heard cries of children coming out from the house of the accused. He states that his house is just at a distance of 15 yards from the house of the accused. Hearing the cries, when he went there, he saw the accused standing outside the door of his house with a *Drat* in his hand. The deceased was lying inside the room in an injured condition. There was injury on the neck and blood stood smeared all around. Also, children were crying. He immediately informed the police about the incident. Now, this version of his stands corroborated by Rani Kumari, aged 12 years, daughter of the accused, who further states that she saw her father give beatings with a *Drat* to her mother. He gave blow on the head. She raised hue and cry. She also tried to save her mother, but her father threatened to even kill her. Repeatedly, her father gave blows over the neck of her mother. Hearing her cries, her uncle came, who informed the police. She is an eye-witness to the incident.

25. Crucially, both these witnesses were extensively cross-examined on the question of mental state of the accused and none has admitted him to be of unstable/ unsound mind. In fact, to our mind, accused has taken mutually destructive pleas by putting a suggestion to his daughter that it was he who was incurring all the household expenditure. It is not the case of the accused that he is a moneyed man and had adequate funds to look after his family. Now, if he was monetarily supporting his family, then obviously in a state of unsoundness of mind, he could not have earned and met the household expenditure. Also, the

daughter's evidence, fully inspiring in confidence, proves the guilt of the accused, beyond reasonable doubt.

26. Kamal Kishore corroborates the statement of Ramesh Chand and Rani Kumari, by stating that he also reached the spot and saw the accused carrying blood stained *Drat* in his hand. He further states that when the police reached the spot, the *Drat* (Ex. P-1) was taken into possession vide memo (Ex. PW-3/A).

27. Postmortem report (Ex. PX) indicates that deceased died on account of following ante-mortem injuries:

1. A semilunar incised wound size 3cm x 0.5 cm (bone deep) seen on the occipit.
2. An obliquely running incised wound on left side of head posteriorly involving ear lobule upto occipital bone of left side size 7 cm x 1 cm (bone deep).
3. An obliquely running incised wound on left side of head posteriorly 5cm below injury no.2 size 21mx2cm (bone deep).
4. An obliquely running incised wound on left side of head involving neck 5cm x 1cm (bone deep) and meeting injury no.3.
5. An obliquely running incised wound on left side of both of neck 8cm x 0.5 cm bone deep.
6. Three patterned abrasions on left side of upper back 17 cm, 15 cm & 13 cm length with variable thickness, having maximum breadth of 2.5 cm, 0.5 cm & 0.5 cm respectively, reddish brown coloured, curvilinear in shape.
7. An incised wound obliquely meeting injury no.6 size 5 cm x 0.5 cm (superficial).

28. It is not disputed before us that these injuries could have been caused with the weapon of offence (Ex.P-1). Also, police has ruled out possibility of deceased Sunita Devi having consumed poison, as report of FSL (Ex. PW-11/H) is on record to this effect. Another report of the FSL (Ex.PW-12/B) establishes that the blood and the hair found on the clothes of the accused, the deceased and the weapon of offence to be same.

29. In the instant case, it has come on record even through the defence evidence that the accused was addicted to alcohol. Prosecution has proved that accused gave several blows with a *Drat* on the vital part of the body of his wife. There was no provocation or reason for him to have done so. In fact, there is evidence to establish his past conduct, for which he was also reprimanded by the Pradhan. As such, it is a clear case of cold-blooded murder, which he committed, fully understanding the consequences of his actions, and as such deserves no sympathy.

30. For all the aforesaid reasons, in our considered view, prosecution has been able to establish the guilt of the accused, beyond reasonable doubt, by leading clear, cogent, convincing and reliable piece of evidence, not only ocular but also corroborative in the shape of recovery of weapon of offence.

31. For all the aforesaid reasons, we find no reason to interfere with the well reasoned judgment passed by the trial Court. The Court has fully appreciated the evidence placed on record by the parties. There is no illegality, irregularity, perversity in correct and/or in complete appreciation of the material so placed on record by the parties. Hence, the appeal is dismissed.

Appeal stands disposed of, so also pending application(s), if any.

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

Jagdev Ram .....Appellant.

Versus

State of Himachal Pradesh. ...Respondent.

Cr.Appeal No.2 of 2011.

Reserved on: 26/09/2014.

Date of Decision:10.10.2014.

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**Indian Penal Code, 1860- Section 302** - The complainant, deceased, his wife and his brother were grazing cattle- The accused came with the gun and abused the complainant and the deceased- Co-accused also appeared and started abusing the complainant and the deceased and rushed towards the fields where he was shot by the accused- Held, that mere omission to state that the accused had commanded the remaining accused to pelt stones at her and that the accused had asked her husband to compromise the previous dispute is not sufficient to doubt the testimony of the complainant, especially when the accused had admitted in his statement that he had killed the accused with the gun.

(Para-26)

**Indian Penal Code, 1860- Section 100** - Right of Private Defence- The suggestions were put to the prosecution witnesses that the deceased had assaulted the accused with the Darat/ Danda and the accused had shot the deceased- Held, that the right of private defence can be established if there was face to face duel between the accused and the deceased- in the present case, no witness had deposed that the accused and deceased were engaged in a duel, deceased was within a striking distance and had struck a blow on the person of the accused that would suggest that the accused and deceased were not engaged in a duel and there was no reason for the accused to fire a gunshot, therefore, the right of private defence was not available to the accused.

(Para-26, 27)

For the Appellant: Mr.Satyen Vaidya & Mr Vivek Sharma,  
Advocates.

For the respondent: Mr.Ashok Chaudhary, Additional  
Advocate General and Mr.Ramesh  
Thakur, Assistant Advocate General.

The following judgment of the Court was delivered:

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**Per Sureshwar Thakur, Judge**

1. The instant appeal is directed against the judgement of conviction, rendered on 21.12.2010, by the learned Additional Sessions Judge, Fast Track Court, Chamba, District Chamba, H.P., in Sessions Trial No.1/2010, whereby the accused/appellant has been convicted for his having committed offence punishable under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year.

2. The prosecution story, in brief, is that on 27.8.2009, Dhruv Ram (since deceased) and his wife, namely, Dillo (complainant) were grazing cattle near Government Primary School, Sandhi and nearby to them, Amar Nath (brother of the deceased) was also grazing his cattle. Accused Jagdev Ram used to reside in a house at his Nautor land at Sandhi along with his family. At about 2.45 p.m., accused Jagdev Ram came with a gun in his hand and abused complainant Dillo and deceased. Thereafter, co-accused Shivo @ Sheela, Bhuvneshwar Dutt and Naresh Kumar also appeared there and in furtherance of common intention of each other, they also started abusing the complainant and deceased and also criminally intimidated them with threats to their life. On their requesting the accused not to abuse them, the accused started pelting stones on complainant, as such, she rushed towards Government Primary School, Sandhi, whereas, deceased rushed towards maize fields in order to save themselves. Accused Jagdev Ram chased deceased with gun and when deceased saw back at about 3.00 p.m., accused Jagdev Ram shot him dead with the gun. On hearing the alarm of complainant, Ward Member Piar Singh came there and she narrated the incident to him. Her brother-in-law Amar

Nath also witnessed the occurrence. Said Piar Singh intimated Police Post, Surgani and pursuant thereto, report Ext.PW-9/A was made. A telephonic message was given by Constable Inder Singh No.206 M.C.P.P. Surgani at Police Station, Kihar and pursuant to the information, received from Piar Singh, daily dairy report comprised in Ext.PW-8/A was made and accordingly Inspector/SHO Pritam Singh and other officials rushed to the spot along with camera and other things. On reaching the spot at 9.00 p.m., the dead body was lying on the field and complainant (wife of the deceased) was present there and she made statement Ext.PW-1/A under Section 154 Cr.P.C. An endorsement in the said statement was made by SHO which was then sent to Police Station through Constable Hoshiar Singh where F.I.R. Ext.PW-11/E was registered. The photographs of the dead body Ext.PW-16/A-1 to Ext.PW-16/A-8 were clicked with the digital camera. Inquest reports Ext.PW-2/B and Ext.PW-2/C were prepared. A docket Ext.PW-7/A was prepared and the dead body was sent to Regional Hospital, Chamba for conducting post mortem. Dr.M.M.Marol and Dr.Ram Kamal conducted the post mortem on 28.8.2009 and a circular gun shot wound 10 x 12 x 15 Cms on right side of chest below 4 inches from right clavicle bone corresponding to the hole of shirt of right side of chest was found. X-Rays were also taken. Margins of wound showed singeing and were irregular. Multiple fractures of ribs were seen. Pallets were seen in the posterior chest wall. Lungs tissues were found damaged with pallets of gun shot. Pallets and red cork of the gun shot were extracted from the wound. The Medical Officer preserved viscera, pallets, cork and clothes of the deceased and parceled and sealed them and handed over the same to the Police for forensic examination. It was opined by the Medical Officer that the deceased had died due to a gun shot injury leading to massive intra thoracic hemorrhage leading to peripheral vesicular failure and respiratory failure but the final opinion was reserved till the receipt of report of Chemical Analyst. Post mortem report comprised in Ext.PW-7/E was procured. Spot map Ext.PW-16/B was prepared. Two blood stained sleepers, one blood stained Danda, three stones stained with blood, which were lying at the spot, along with blood stained earth, were taken into possession vide memo Ext.PW-2/A in presence of witnesses Piar Singh and Amar Nath which were separately wrapped in three parcels and sealed with seal H. Blood stained stones and earth were parceled in one parcel. Sample of seal H Ext.PW-3/A was taken separately on a piece of cloth and seal after use was handed over to witness Piar Singh. Accused Bhuvneshwar Dutt, Sheela Devi and Naresh Kumar were arrested on 28.8.2009 vide memo Exts.PW-6/C, D and E. The gun, used for killing the deceased, produced by Goutam Kumar, son of accused Jagdev, was taken into possession vide memo Ext.PW-4/A, which was parceled and sealed and three seals of seal A were affixed on the parcel. Khaka of gun Ext.PW-4/B was also prepared, sample seal was taken and the seal after use was handed over to witness Rajmal. Accused Jagdev Ram was arrested on 29.8.2009 vide memo Ext.PW-16/F. On 31.8.2009, accused Jagdev Ram made disclosure statement comprised in Ext.pW-5/A under Section 27 of the Indian Evidence Act that after gun shot, he had concealed the empty cartridge in the Ghala (grass field) and on the instance of the accused Jagdev Ram, empty cartridge Ext.P-11 was recovered, which was at a distance of 100-150 meters away from the dead body and was taken into possession vide memo Ext.PW-6/A in the presence of witnesses Laxman Kumar and Kanth Ram. Spot map of recovery of cartridge Ext.PW-16/G was prepared. The said cartridge was parceled and sealed with seal T by applying six seals. Specimen sample seal Ext.PW-6/B was also

taken. Accused Jagdev also produced gun licence Ext.PW-16/J from his house which was taken into possession vide memo Ext.PW-6/C.

3. All the parcels were deposited with MHC in Police Station. Tatima and Jamabandi comprised in Exts.PW-10/A and B were procured from the Patwari. The MHC made entry in the Malkhana Register at Sr.No.123, the abstract whereof is Ext.PW-11/A after the parcels were deposited with him by SHO on 28.8.2009. On 29.8.2009, Constable Madan Kumar also deposited two parcels along with one envelope duly sealed with three seals RH. The parcel containing viscera was sealed with ten seals and another parcel containing clothes which too was sealed with ten seals and entry in the Malkhana Register was made, the abstract whereof is comprised in Ext.PW-11/B. On 31.8.2009, a parcel containing empty cartridge duly sealed with six seals of impression T was also deposited which was entered in the Malkhana Register at Sr.No.125. On 3.9.2009, all the parcels and envelopes were sent to FSL, Junga through HHC Subhash Kumar vide RC No.29/09 comprised in Ext.PW-11/D in safe condition. Report of FSL comprised in Ext.PX and Ext.PY were received. No contents of alcohol or poison were seen in the viscera.

4. After completion of the investigation, challan, under Section 173 of the Cr.P.C., was prepared and filed in the Court. The trial court charged the accused for theirs having committed an offence punishable under Section 302 IPC read with Section 34 IPC and accused Jagdev Ram was also charged for an offence under Section 25 of the Arms Act, 1959.

5. In order to prove its case, the prosecution examined as many as 16 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. In defence, the accused examined one witness.

6. On appraisal of the evidence on record, the learned trial Court, returned findings of conviction against the accused/appellant.

7. The accused/appellant is aggrieved by the judgment of conviction, recorded by the learned trial Court. The learned counsel appearing for the accused/appellant has concertedly and vigorously contended that the findings of conviction, 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 conviction be reversed by this Court, in the exercise of its appellate jurisdiction and be replaced by findings of acquittal.

8. On the other hand, the learned Additional Advocate General appearing for the respondent-State has with considerable force and vigour, contended that the findings of conviction 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 first witness, who, stepped into the witness box to prove the prosecution case, is, PW-1 (Dillo Devi). She in her deposition has deposed a version, which is in square tandem with the genesis of the prosecution version, as referred to herein-above. During the course of her cross-examination, she admits the suggestion, put to her, that accused Jagdev has taken Nautor land at village Sandhi about 33-34 years back and had also built up a four roomed house on the said Nautor land. She further deposes that the case regarding breaking of teeth of her husband is pending adjudication in a Court. She continues to depose that all the accused had come together and accused Jagdev kept on hurling abusive language for about 10-15 minutes. She proceeds to depose that on their asking the accused not to abuse them, the accused asked his family members to pelt stones on her. This witness further deposes that while running, her husband had covered a distance of 30 feet and she was at a distance of about 100-150 feet from her husband. She further deposes that when her husband fell down, it was a sunny day. She further deposes that on raising an alarm, her brother-in-law Amar Nath came there. She has confronted with Ex.PW-1/A by deposing that she had disclosed to the police that they were grazing the cattle in a drabbad (ground) behind the temple and accused Jagdev had commanded the remaining accused to pelt stones.

11. PW-2 Amar Nath deposes that he was grazing cattle in Jungle at Sandhi. He deposes that at about 2.30-3.00 p.m., he heard a gun shot but he thought that the said fire might have been made in order to deter the crows etc. He continues to depose that his sister-in-law Dillo Devi gave him a call that his brother was shot dead and he should come. On this, he rushed to the spot and found his brother lying dead with injury on his chest. He continues to depose that on his asking, Dillo Devi as to what had happened, she disposed to him that her husband was killed by accused Jagdev by gun shot. Thereafter, he shouted that a murder has been committed. He deputed a boy to summon ward member from the village, the ward member reached the spot and then he intimated the police telephonically about the incident. He proceeds to depose that at about 7 p.m., police also reached the spot. On insistence of the police, he arranged gas lighter of kerosene. He further deposes that police took into possession the blood stained soil, three stones, sothi and chappals from the spot and sealed the same in separate parcels and the seal after use was handed over to the ward Member. The seized articles were taken into possession under memo Ext.PW-2/A, which is deposed to be bearing his signatures. During his cross-examination, he deposes that he had seen the accused Jagdev going towards his house after the gun shot was fired and 2-3 other persons were also with accused Jagdev including one lady, however, he deposes to have seen their back as they were going towards their house. He deposes that he had not heard accused hurling abuses to his brother and sister-in-law. This witness admits the suggestion that he was not in talking terms with accused and his family for the last 5-6 years and that at one point of time, his deceased brother had uprooted the door of his house. He admits the suggestion, put to him, that his deceased brother had been facing several cases in the Court. However, he feigns ignorance that the said cases were criminal.

12. PW-3 Piar Singh deposes that on 27.8.2009, he was called to the spot by the daughter of Dillo and a small child and he visited the spot at Sandhi where the dead body of deceased was lying. He deposes that he informed the police telephonically and the police came to the spot at 9.30 p.m. After inspecting

the spot, the police took into possession blood stained stones, soil, Sothi and blood stained Chappal vide memo Ext.PW-2/A which has been deposed to be bearing his signatures. He continues to depose that the articles were separately parceled and sealed and the seal after use was handed over to him and specimen of seal is comprised in Ext.PW-3/A which was taken on cloth and has also been deposed to be bearing his signatures. During his cross-examination, he denies the suggestion, put to him, that the deceased had created a fear psychosis atmosphere in the village.

13. PW-4 Rajmal deposes that he joined the investigation on 28.8.2009. He further deposes that the gun was taken into possession by the police vide recovery memo Ex.PW4/A in his presence and in presence of Prem Lal.

14. PW-5 Baldev Ram deposes that on 31.8.2009 accused Jagdev had made a disclosure statement to the police pursuant to which he got recovered one empty cartridge from the Ghasni beneath the grass which was taken into possession vide recovery memo Ex.PW-5/A in his presence and in presence of Doom Ram.

15. PW-6 Kanth Ram proved the recovery of empty cartridge at the instance of the accused.

16. PW-7 Dr. Ramkamal deposes that on 18.8.2009 he had conducted the post-mortem of deceased. He further deposes that there was a circular gun shot wound about 10x12x15 cms on right side of chest and four inches below right clavicle. The wound was corresponding to a hole in the shirt and the shirt was soaked with dry blood. He further deposes that the long tissue damage was seen in the wound with pellets of gun shot and multiple fractures of anterior ribs of right side was also seen. He further deposes that before conducting postmortem, the dead body was subjected to x-ray examination and films thereof have been deposed to be Ex.PW7/B and Ex.PW7/C. He further deposes that lung tissues were found burnt with pieces of ribs. The pellets and red-cork of the gun shot were extracted from the wound and sent to the forensic expert for analysis. He continues to depose that the viscera, cloths, pellets and cork were preserved and sealed in a parcel with seal of RH and handed over to the police for being taken to FSL. He deposes that in his opinion, the deceased had died due to gun shot injury leading to massive intra thoracic hemorrhage leading to peripheral vascular failure and respiratory failure. He further deposes that he was assisted by Dr.M.M. Marol in conducting the post-mortem, who also signed the post mortem report Ex.PW7/E. The reports of the FSL have been deposed to be Exts.PW, PX and PY. He further deposes that the probable time, between the injury and death, was 30 minutes and between death and post mortem was 24 hours.

17. PW-8 Satish Kumar proved daily diary report No.19, dated 27.8.2009, Ex.PW8/A which has been deposed by this witness to be correct as per the original brought by him in the Court.

18. PW-9 Inder Singh proved report No.13, Ex.PW9/A which has been deposed to be correct as per the original brought by him in the Court.

19. PW-10 Ghinder Singh proved tatima Ex.PW10/A and Jamabandi of the spot comprised in Ext.PW-10/B.



20. PW-11 H.C. Rakesh Kumar proved the deposit of the case property with him in the Malkhana of Police Station and its further transmission on 3.9.2009 to the FSL through HHC Subhash Kumar vide R.C.No.29/09. He further proved FIR Ex.PW11/E, which has been deposited by this witness to be bearing the signatures of ASI Dhanu Ram.

21. PW-12 SI Dhanu Ram deposes that on 27.8.2009, he was officiating as SHO, P.S. Kihar. He continues to depose that on the said date, a ruqua Ex.PW1/A was received through Constable Hoshiar Singh No.234, on the basis of which FIR Ex.PW11/E was registered which has been deposited by this witness to be bearing his signatures.

22. PW-13 Hans Ram deposes that after perusal of the investigation and taking into consideration reports of FSL Ex. PX and PY, he prepared challan in the case and filed the same in the Court. The challan has been deposited by this witness to be bearing his signatures.

23. PW-14 HHC Subhash Kumar deposes that on 9.3.2009, six parcels and two envelopes duly sealed were handed over to him by MHC Rakesh Kumar along with other documents for being taken to FSL, Junga vide R.C. No.69/09 and he deposited the aforesaid parcels at FSL, Junga on 4.9.2009. He further deposes that on return, he handed over the receipt to the MHC.

24. PW-15 Hoshiar Singh deposes that on 27.8.2009, he had accompanied SHO to the spot at village Ladhwah. He continues to depose that SHO gave him ruqua at 09.30 p.m. and he brought the ruqua to P.S. Kihar and handed over the same to ASI Dhanu Ram. He further deposes that after registration of the case, the file was given to him, which he handed over to SHO at Ladhwah.

25. PW-16 Inspector Prittam Singh in his deposition has deposed a version which is in square tandem with the genesis of the prosecution version, as referred to herein-above. In his cross-examination, he deposes that the telephonic message from Constable Inder Singh was received by him at 7.30 p.m. He further deposes that the gun shot was said to be fired at 3.00 p.m. He further deposes that the land of accused Jagdev was at a distance of 150-200 yards from the place where the dead body was lying. He denied the suggestion that whatever recoveries were got effected by him pursuant to disclosure statements under Section 27 of the Indian Evidence Act. He further denied the suggestions that no blood stains were found by the Chemical Examiner on the said articles. He denied the suggestion that he intentionally omitted to take the darat in possession. He further denied the suggestion that he had recorded the statement of Amar Nath at his own.

26. The genesis of the prosecution story is encapsulated in the ocular version qua the incident rendered by PW-1 Dillo Devi, wife of the deceased. She has in her examination-in-chief forthrightly deposed the factum of, on the fateful day when she alongwith her husband had gone to graze cattle towards Primary School, Sandhi, then at about 1.30 p.m all the accused appeared and insisted for settling a dispute which had occurred about three years ago, arising from one of the accused Naresh having broken the teeth of the deceased husband of PW-1. The insistence of the accused upon the deceased to compromise the said dispute

was not yielded to by the deceased and PW-1 which invoked the anger and wrath of the accused sequelling his hurling invectives upon the accused and of accused Bhuvneshwar Dutt, Naresh Kumar and Sheela Devi taking to pelt stones at PW-1 and her husband. However, this witness and her husband rushed towards the maize fields, yet she deposes that accused Jagdev chased her husband while wielding a gun and requests made by her to accused Jagdev not to kill her husband, bore no fruit, as during the course of chase, when her husband looked back accused Jagdev fired a gun shot with gun Ext. P-9 recovered under memo Ext. PW4/A. The testimony of PW-1, the ocular witness to the occurrence, has voiced a flawless and unblemished version qua the occurrence, which inspires both confidence as also is credible. Despite the fact that she has omitted to in her previous statement comprised in Ext.PW-1/A divulge the fact of accused Jagdev having commanded the remaining accused to pelt stones at her and her deceased husband, may render her version to be tainted as also when she omitted to record the factum of the accused while appearing at the site having insisted upon her and her deceased husband to compromise the previous dispute which had erupted inter se them and which had sequelled one of the accused Naresh breaking the teeth of her husband also, may ingrain with the vice of embellishment and improvement, the genesis of the prosecution story of it having commenced on the deceased and PW-1 having remained unyielding to the demand of the accused to compromise the previous dispute,. Moreover, even the factum of omission on the part of the prosecution to join as witnesses the students or teachers of the school in whose vicinity the occurrence took place, all also cumulatively do not lend any strength to the defence in its, hence, propagating the fact of the Investigating Officer having carried out a slanted and tainted investigation into the offence allegedly committed by the accused rather the effect, if any, of the aforesaid gets effaced in the face of the preeminent fact of the accused in his statement recorded under Section 313 Cr.P.C. having admitted the factum of his having killed the deceased with gun Ext. P9 recovered under recovery memo Ex. PW4/A. Even in the entire trend of cross-examination of the prosecution witnesses by the learned defence counsel, the moot suggestions which have been put to PW-1 and the other prosecution witnesses is of the deceased while wielding a darat/danda having perpetrated an assault on the accused which, however, was repulsed by the accused. On the score of the deceased wielding a danda/darat with which he purportedly perpetrated an assault on the accused which, however, he averted, is espoused to be giving ground or leverage to the accused, to rear an impression in his mind or nurse an apprehension that in case the assault purportedly perpetrated on his person by the deceased, is not averted by his firing a shot from the gun, which he was wielding at the apposite time, grievous injury or even death would accrue. Sinew and succor to the aforesaid propagation would accrue to the defence in case it was established that there was a face to face duel inter se the accused and the deceased at the relevant stage/time. Besides forthright evidence ought to upsurge portraying the fact of both the accused and the deceased while being engaged in a duel were at a very short distance or in close proximity to each other, on score whereof it could be concluded that the danda or darat wielded by the deceased with which he purportedly struck the accused would have sequelled a grievous or lethal injury, which was avertable only by the user of the gun wielded by the accused, hence, rendering the penal act of the accused to be clothed with the protective cover of it having been prodded in exercise by the accused of his right of private defence of

body. However, a close and incisive reading of the testimony of PW-1 omits to divulge the fact that both the accused and the deceased were either in close proximity to each other or were engaged in a duel. Omission of portrayal by PW-1 in her deposition of the accused and the deceased being engaged in a duel in course whereof the deceased while wielding a danda/darat and his while being within striking distance of the accused, his having struck a blow with the danda/darat on the person of the accused which, however, was repulsed/averted by the accused. Omission of the above evidence, fosters the inferences of (a) the accused and deceased being not in proximity to each other and both being not engaged in a duel in course whereof the deceased while not wielding a danda or darat had not struck a blow with them on the person of the accused, hence, did not necessitate its being averted by the latter by his taking to fire a gun shot at the deceased from gun Ex. P-9 and (b) lack of portrayal by PW-1 in her deposition of both the accused and the deceased while being face to face or in close distance to each other, which proximity inter se both facilitated or gave leverage to the deceased while his wielding a danda or darat to concert to deliver a blow with them on the person of the deceased which was avertable by means none other than by the user of gun at the instance of the accused, fillips an inference that hence there is abysmal failure on the part of the defence to facilitate this Court to clinch a finding of either there being a face to face duel inter se the deceased and the accused in which duel the deceased while being within striking distance of the accused had delivered a darat/danda blow on the person of the accused which had been averted by the accused by his firing a shot from gun Ex.P-9, hence, does not render vindicable the penal act of the accused, inasmuch as it does not acquire the protective shroud of it having been actuated in the exercise by him of the right of private defence, especially when his body remained un-endangered.

27. Accentuation to the inference hereinabove of both the accused and the deceased being not face to face nor also the deceased wielded a danda or darat, is lent by the factum of PW-1 in her examination-in-chief having unequivocally deposed of the accused having chased her husband and while he looked back, the gun shot at him having been fired by the accused. Now the said factum had remained un-torn or unshred during her inexorable cross-examination to which she was subjected. The consequent effect, is that the factum of the accused having fired gun shot with Ex.P-9 during the course of his having chased the deceased stands clinched and repulses the propagation of the defence of a purported duel having erupted inter se the accused and the deceased with both being face to face or being in close proximity to each other which gave an opportunity to the deceased to strike a blow of darat/danda, purportedly wielded by him at the apposite stage, also it blunts the propagation by the defence of the deceased wielding a darat or danda for if, he assumingly wielded so and his being in close proximity of the accused, he would have either hurled/flung the danda at the accused or flung the darat at the person of the accused or would have struck a blow with the danda or the darat on the vital organs of the accused sequelling injuries on the person of the accused. However, when the accused remained uninjured or has received no injuries on his person purportedly in sequel to the deceased having concerted to strike his body with a danda or darat blow, the imminent conclusion which ensues that, hence, the deceased was not wielding a danda or darat, as a corollary, it has to be concluded that there was no

imminent or grave threat emanating from the purported act of the deceased with his purportedly wielding a danda or darat and its being of such magnitude so as to cause any danger to the life of the accused, for prodding or constraining him while exercising his right of private defence, take to fire a gun shot with gun Ex.P-9 for averting the purportedly imminent danger. As a further concomitant, it has to be deduced especially when the factum of the deceased being the initial aggressor stands belied that hence the right of private defence canvassed by the defence for extenuating or exculpating the guilt of the accused, is wholly prevaricated as well as invented, as such, it does not acquire any force or strength.

28. Moreover, the learned counsel appearing for the appellant canvases before this Court that the testimony of DW-1 while purportedly voicing and sustaining the propagation by the defence of the accused Jagdev having fired a gun shot with Ex.P-9 in exercise of his right of private defence emanating from the fact of deceased having delivered a danda blow on the person of the accused Jagdev, who yet averted it, thereafter the deceased having again attempted to deliver it has been contended to have been untenably overlooked by the learned trial Court. However, the said contention is rendered rudderless in the face of the fact of his veracity in his examination-in-chief having come to be impeached in his cross-examination wherein he deposed that village Ladhwah and Lakho are situated between the road opposite to which the grazing fields are situated and the distance of the road from the place where the dead body was lying is one kilometer rendering him hence incapacitated to see the occurrence. The fact which further taints the credibility of his deposition is a further admission in his cross-examination of the dead body being not visible from the place where he was grazing his cattle. Obviously then when from the place where he was purportedly grazing the cattle at the relevant time, the dead body of the deceased was not visible, consequently too as a natural corollary the occurrence qua which he renders an eye witness account in sustaining the defence of the accused is too rendered incredible.

29. In view of the above, it is held that the learned trial Court has appreciated the evidence in a mature and balanced manner and its findings, hence, do not necessitate interference. The appeal is dismissed being devoid of any merit and the findings rendered by the learned trial Court are affirmed and maintained. Records of the learned trial Court be sent down forthwith.

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**BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, CJ**

Oriental Insurance Company     ...Appellant.  
 Versus  
 Smt. Anita Sharma & others     ...Respondents.

FAO No.             205 of 2007  
 Reserved on : 26.09.2014  
 Decided on:   10.10.2014

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**Motor Vehicle Act, 1988 – Section 166-** The driver had a valid driving licence to drive the light motor vehicle with TPT endorsement-held, that the driver had a valid and effective licence and the Insurance Company is liable to indemnify the insured.

(Para-16, 17)

**Cases referred:**

New India Assurance Co. Ltd. versus Walaiti Ram and others, 2006 ACJ 2748

For the appellant: Mr. G.C. Gupta, Senior Advocate, with Mr. Balwant Kukreja, Advocate.

For the respondents: Mr. Sanjay Bhardwaj, Advocate, vice Mr. J.L. Bhardwaj, Advocate, for respondents No. 1 to 3.

Mr. K.R. Thakur, Advocate, for respondent No. 4.

The following judgment of the Court was delivered:

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**Mansoor Ahmad Mir, Chief Justice**

Subject matter of this appeal is the award, dated 26<sup>th</sup> April, 2007, made by the Motor Accident Claims Tribunal, Kinnaur at Rampur Bushahr, H.P. (hereinafter referred to as “the Tribunal”) in M.A.C. Case No. 113 of 2004, titled as Smt. Anita Sharma & others versus The Oriental Insurance Company & another, whereby compensation to the tune of ` 9,76,000/- with interest @ 9% per annum from the date of filing of the claim petition till its realization came to be awarded in favour of the claimants and against the appellant-insurer (hereinafter referred to as “the impugned award”) on the grounds taken in the memo of appeal.

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

3. The only question which is to be determined is – whether the Tribunal has rightly saddled the appellant-insurer with liability or otherwise?

4. In order to determine the issue, the brief facts of the case are to be noted.

**Brief facts:**

5. The claimants, being the victims of the motor vehicular accident, filed claim petition before the Tribunal for grant of compensation to the tune of ` 18,00,000/- as per the break-ups given in the claim petition on the ground that the deceased, namely Shri Rakesh Sharma, became victim of the motor vehicular accident, which was caused by the driver, namely Shri Jai Pal, while driving the Maruti Van-Taxi, bearing registration No. HP-01 A-0155, rashly and negligently on 6<sup>th</sup> November, 2004, at Pashada nullah on NH-22 near Jhakri, Tehsil Rampur, at about 11.00 p.m., deceased sustained injuries and succumbed to the injuries.

6. It is averred in the claim petition that the deceased was earning ` 11,000/- as a shopkeeper and ` 5,000/- from agricultural and horticultural vocations; the claimants have no other source of income and have been deprived of their source of dependency; the widow, Smt. Anita Sharma, has lost her matrimonial home and other claimants have lost their father, are deprived of love and affection.

7. The appellant-respondent No. 1 filed reply and contested the claim petition on various grounds. Respondent No. 2 has also filed reply but virtually has not contested the claim petition.

8. The following issues came to be framed by the Tribunal on 27<sup>th</sup> April, 2005:

*“1. Whether Sh. Rakesh Sharma had died on account of rash and negligent driving of driver of vehicle No. HP-01 A-0155? OPP*

*2. If issue No. 1 is proved, to what amount of compensation and from whom the petitioners are entitled to? OPP*

*3. Whether the claim petition is not maintainable against respondent No. 1? OPR-1*

*4. Whether the petitioner had instituted claim petition in collusion with respondent No. 2? OPR-1*

*5. Whether the driver of vehicle No. HP-01 A-0155 had not been in possession of a valid and effective driving licence at the time of the accident? If so, with what effect? OPR-1*

*6. Relief.”*

9. The claimants have examined four witnesses including one of the claimant, Smt. Anita Sharma. The owner-insured has stepped into the witness box as RW-2. The appellant insurer has examined an official, namely Shri Hira Lal, from the SDM Office as RW-1 and Shri Vipul Prabhakar as RW-3 in support of its case. After scanning the evidence, oral as well as documentary, the claim petition came to be granted.

**Issue No. 1:**

10. The Tribunal, after scanning the evidence, oral as well as documentary, held that the claimants have proved that the deceased driver, namely Shri Jai Pal, had driven the offending vehicle rashly and negligently and caused the accident, in which Shri Rakesh Sharma lost his life. Thus, the findings returned by the Tribunal on issue No. 1 are upheld.

11. I deem it proper to determine issues No. 3, 4 and 5 before deciding issue No. 2.

**Issues No. 3 and 4:**

12. The appellant-insurer has examined only two witnesses relating to driving licence. It has not led any evidence to prove that the claim petition was not maintainable and there was a collusion between the claimants and the owner-insured. Thus, the findings returned by the Tribunal on issues No. 3 and 4 are upheld.

**Issue No. 5:**

13. Learned Senior Counsel for the appellant-insurer argued that the driver of the offending vehicle was not having valid and effective driving licence to drive the offending vehicle and the licence was not obtained as per the procedure contained in Section 7 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act").

14. The argument of the learned Senior Counsel is devoid of any force for the following reason:

15. The appellant-insurer has examined Shri Hira Lal as RW-1, who is an official from the office of Registering and Licencing Authority and has stated that the driver was having licence to driver Light Motor Vehicles and further stated that TPT licence can be issued without having learner's licence.

16. Admittedly, the driver was having driving licence to drive Light Motor Vehicle. This Court in a bunch of appeals, **FAO No. 141 of 2012**, titled as **Bimla Devi versus The Oriental Insurance Company Limited & others**, being the lead case, **FAO No. 376 of 2010**, titled as **National Insurance Company Limited versus Prabhat Singh & others**, decided on 18<sup>th</sup> July, 2014, and **FAO No. 54 of 2012**, titled as **Mahesh Kumar & another versus Smt. Piaro Devi & others**, decided on 25<sup>th</sup> July, 2014, held that a driver, who is having driving licence to drive Light Motor Vehicle is not required to have the endorsement to drive passengers vehicle.

17. Even otherwise, the driver was having TPT endorsement on the driving licence and RW-1 has deposed that the licence could have been issued even without having the learner's licence.

18. It was for the appellant-insurer to prove that the driver was not having the valid and effective driving licence to drive the offending vehicle and the accident has occurred due to the reason that the driver of the offending vehicle was competent to drive one kind of the vehicle and was found driving different kind of vehicle, which it has failed to do so.

19. Learned Senior Counsel for the appellant-insurer has placed reliance on a judgment rendered by a learned Single Judge of this Court in **New India Assurance Co. Ltd. versus Walaiti Ram and others**, reported in **2006 ACJ 2748**. The judgment is not applicable in the given facts and circumstances of the case in hand for the reason that the endorsement of heavy goods vehicle-offending vehicle was made in the said licence after the accident had taken place.

20. The Tribunal has rightly discussed issue No. 5 in para 13 of the impugned award, is legally sound, needs no interference. Accordingly, findings returned on issue No. 5 are also upheld.

**Issue No. 2:**

21. Learned Senior Counsel for the appellant-insurer argued that the amount awarded is excessive. The argument is again devoid of any force. It was for the appellant-insurer to prove the same. Even otherwise, the insurer cannot question the same.

22. The claimants have led evidence to the effect that the deceased was running a shop in the name of *Ashiana Watch Service*, was selling televisions, watches, radio and tapes in the said shop and was an income tax payee. The claimants have also led evidence to the effect that he was having an apple orchard and was having income of ` 60,000/- - ` 70,000/- per annum from the said orchard. The Tribunal, while taking into consideration the income tax return filed by the deceased, held that the income of the deceased was not less than ` 90,000/- per annum and after deducting one third, held that the claimants have suffered loss of dependency to the tune of ` 60,000/- per annum.

23. The Tribunal has rightly applied the multiplier of '16' while keeping in view the date of birth of the deceased recorded in the copy of the matriculation certificate, in terms of which the deceased was 34 years of age at the time of accident and held that the claimants are entitled to ` 9,60,000/- under the head 'loss of source of dependency', ` 10,000/- under the head 'loss of love and affection', ` 1,000/- under the head 'taxi charges' and ` 5,000/- under the head 'funeral charges', total compensation amounting to ` 9,76,000/-. Thus, the compensation awarded is not excessive in any way, is just and proper, needs no interference.

24. Having said so, the impugned award is upheld and the appeal is dismissed.

25. 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, CJ.**

Oriental Insurance Company Ltd. ...Appellant

Vs.

Smt.Pratibha Devi and others. ...Respondents.

FAO No.166 of 2007

Decided on: October 10, 2014.



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**Motor Vehicle Act, 1988 - Section 149-** Tribunal had found that the owner had employed the driver after taking his driving test and after perusing the driving licence- Driving license was also renewed by the Registration and Licencing Authority, Paonta Sahib- Held, that the owner had not committed any willful breach – The owner is not required to make enquiries and investigation regarding genuineness of the driving licence.

(Para-4)

**Cases referred:**

Pepsu Road Transport Corporation versus National Insurance Company, reported in (2013) 10 Supreme Court Cases 217

National Insurance Co. Ltd. versus Swaran Singh & others, reported in AIR 2004 Supreme Court 1531

For the Appellant: Mr.Deepak Bhasin, Advocate.

For the Respondents: Nemo for respondents No.1 and 2.  
Mr.Karan Singh Kanwar, Advocate, for respondents No.3 and 4.

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The following judgment of the Court was delivered:

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**Mansoor Ahmad Mir, C.J. (oral):**

Subject matter of this appeal is the award, dated 9<sup>th</sup> March, 2007, passed by Motor Accident Claims Tribunal-I, Sirmaur District at Nahan, H.P., (hereinafter referred to as the Tribunal), in Claim Petition No.46-MAC/2 of 2005, titled Pratibha Devi and another vs. M/s Renuka Carrier and others, whereby compensation to the tune of Rs.1,56,000/-, with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization, was awarded in favour of the claimants (respondents No.1 and 2 herein) and the appellant-insurer came to be saddled with the liability, (for short, the impugned award).

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

3. The insurer has questioned the impugned award on the ground that the driving licence of the driver, namely, Kalyan Singh (respondent No.4 herein) was fake, but was duly renewed. Thus, it was submitted that the owner has committed willful breach.

4. The Tribunal after examining the record and scanning the evidence held that the insurer has failed to prove that the owner has committed any willful breach and saddled the insurer with the liability. The Tribunal, in paragraph 16

of the impugned award, has categorically held that the owner had employed the driver after taking his driving test and after perusing the driving licence, which was renewed by the Registering and Licencing Authority, Paonta Sahib. Thus, it cannot be said that the owner has committed any willful breach. The owner is not required to move here and there and make inquiries and investigations qua the genuineness of the driving licence.

5. It is profitable to reproduce paragraph 10 of the latest judgment of the Apex Court in the case of **Pepsu Road Transport Corporation versus National Insurance Company**, reported in **(2013) 10 Supreme Court Cases 217** hereinbelow:

*“10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation.”*

6. It is also beaten law of the land that the insurer has to plead and prove that the owner of the offending vehicle has committed willful breach of the terms contained in the policy and mere plea here and there cannot be a ground for seeking exoneration.

7. My this view is fortified by the Apex Court judgment in the case of **National Insurance Co. Ltd. versus Swaran Singh & others**, reported in **AIR 2004 Supreme Court 1531**. It is apt to reproduce relevant portion of paragraph 105 of the judgment hereinbelow:

“105. ....

(i) .....

(ii) .....

(iii) *The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in subsection (2) (a) (ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.*

(iv) *The insurance companies are, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings; but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.*

(v).....

(vi) *Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of the Act."*

8. Having said so, the Tribunal has rightly saddled the insurer with the liability.

9. In view of the above discussion, the impugned award merits to be upheld and the same is upheld. Consequently, the appeal is dismissed. The compensation amount be released in favour of the claimants strictly in terms of the impugned award, after proper identification.

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**BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, CJ.**

Seema Devi d/o Sh. Bhagwan Dass .....Appellant.  
Versus

Som Raj and others .....Respondents

FAO (MVA) No. 117 of 2008.  
Date of decision: 10.10.2014.

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**Motor Vehicle Act, 1988 –Section 166-** Owner-cum-Driver had passed away on the date of accident- Held that, the widow of the deceased had the remedy under the Workmen Compensation Act- No period of limitation has been prescribed for filing the claim petition, therefore, liberty granted to the claimant to withdraw the claim petition with a liberty to seek appropriate remedy- It was further ordered that the time period spent for prosecuting the claim petition and the appeal shall not come in the way of the claimant for seeking appropriate remedy.

(Para-2 to 4)

For the appellant:	Mr. B.S. Chauhan, Advocate.
For the respondents:	Nemo for respondent No.1.
	Mr. V.S. Chauhan, Advocate, for respondent No.2.
	Respondent No. 3 ex parte.
	Mr. Sunil Awasthi, Advocate, for respondent No. 4.
	Mr. Shrawan Dogra, Advocate General with Mr. M.A. Khan, Additional Advocate General, and Mr. J.K. Verma, Deputy Advocate General.

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The following judgment of the Court was delivered:

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**Mansoor Ahmad Mir, Chief Justice** (Oral)

Mr. M.A. Khan, the learned Additional Advocate General has filed affidavit in the open Court, made part of the file.

Mr. Khan Stated at the Bar that Mr. Gurdial Singh owner-cum-driver has passed-away on the unfortunate day, i.e., the date of accident.

2. It appears that the claimant/appellant has remedy available in terms of the provisions of Workmen's Compensation Act and, that too, in the capacity of widow of the deceased and not as daughter of Bhagwan Dass. At this stage, the learned counsel for the appellant/claimant prayed that he may be permitted to withdraw the present appeal alongwith the claim petition with liberty to seek appropriate remedy. His statement is taken on record.

3. The Motor Vehicles Act has gone through the sea change. In terms of the Amendment Act 53 of 1994, Section 166 (3) stands deleted which contained the time frame for filing the claim petitions. Thus, the time frame cannot be a ground for dismissing the claim petitions.

4. In this backdrop, I deem it proper to grant liberty to the claimant/appellant to withdraw the appeal as well as the claim petition to seek appropriate remedy. It is provided that the period spent for prosecuting the claim petition as well as this appeal shall

not come in the way of the claimant/appellant for seeking appropriate remedy.

5. In the given circumstances, the appeal as well as the claim petition is dismissed as withdrawn with liberty as prayed for.

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**BEFORE HON'BLE MR.JUSTICE MANSOOR AHMAD MIR, CJ.**

Oriental Insurance Company Ltd. ...Appellant

Versus

Smt.Biasa Devi and others. ...Respondents.

FAO(WCA) No.309 of 2010

Decided on: October 10, 2014.

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**Workmen Compensation Act, 1923 - Section 22-** Insurance Company is liable to pay the amount as per the schedule appended to the Act with interest-Remaining amount including funeral charges is to be paid by the owner.

(Para-2, 3 )

For the Appellant: Mr.Ashwani K. Sharma, Advocate.  
For the Respondents: Mr.J.R. Poswal, Advocate, for respondents No.1 and 2.  
Mr.Tara Singh Chauhan, Advocate, for respondents No.3 and 4.

The following judgment of the Court was delivered:

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**Mansoor Ahmad Mir, C.J. (oral):**

Challenge in this appeal is to the award, dated 18<sup>th</sup> May, 2010, passed by the Commissioner under Workmen's Compensation Act, Sadar, Sub Division, Bilaspur, H.P. in Claim Petition No.4 of 2002, titled Biasa Devi and another vs. Sant Ram and others, whereby the Commissioner allowed the Claim Petition filed by the claimants (respondents No.1 and 2 herein) under Section 22 of the Workmen's Compensation Act, 1923, (hereinafter referred to as the Act), and awarded compensation to the tune of Rs.2,26,380/- with interest at the rate of 12% per annum and also a notice was issued to the owner for showing cause as to why a penalty of not less than 50% of the awarded amount be not imposed on him, (for short the impugned award).

2. Mr.Ashwani K.Sharma, learned counsel for the appellant-insurer frankly conceded that the insurer can be saddled with the liability to the tune of Rs.1,69,781/-, say Rs.1,70,000/-, as per the Schedule appended with the Act. The argument is plausible.

3. The owner has not questioned the impugned award on any ground. Thus, I deem it proper to modify the impugned award by providing that the

insurer has to satisfy the impugned award to the tune of Rs.1,70,000/-, with interest at the rate of 12% per annum from the date of the impugned award till deposit, while the liability of the owner to satisfy the impugned award shall be to the tune of Rs.56,380/-, which shall also carry interest at the rate of 12% per annum from today. In addition, the owner is also directed to deposit the funeral charges to the tune of Rs.2,500/-, as awarded by the Commissioner. The owner is directed to deposit the amount of compensation falling to his share within eight weeks from today and on deposit, the same shall be released in favour of the claimants. The amount deposited by the appellant-insurer be released in favour of the claimants and the rest of the amount, alongwith interest, be refunded to the appellant-insurer through payee's account cheque.

4. The appeal is partly allowed and the impugned award stands modified, as indicated above. The appeal stands disposed of accordingly.

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