THE
INDIAN LAW REPORTS
HIMACHAL SERIES, 2017

EDITOR
RAKESH KAINTHLA
Director,
H.P. Judicial Academy,
Shimla.

February, 2017

Vol. XLVII (I)

Pages: HC 202 to 264

Mode of Citation : I L R 2017 (I) HP 1

Containing cases decided by the High Court of

Himachal Pradesh and by the Supreme Court of India

And

Acts, Rules and Notifications.

PUBLISHED UNDER THE AUTHORITY OF THE GOVERNMENT OF HIMACHAL PRADESH BY THE CONTROLLER, PRINTING AND STATIONERY DEPARTMENT, HIMACHAL PRADESH, SHIMLA-5.

INDIAN LAW REPORTS

HIMACHAL SERIES

(February, 2017)

INDEX

1)	Nominal Table	i
2)	Subject Index & cases cited	1 to 4
3)	Reportable Judgments	202 to 264

Nominal table
I L R 2017 (I) HP 1

Sr. No.	Title		Page Number
1.	Dhani Ram Vs. B.B.M.B. and another		256
2.	Dheeraj Kumar Vs. Puran Chand		203
3.	Durga Singh @ Suresh Kumar Vs. State of H.P.	D.B.	209
4.	General Manager Northern Railway Vs. Om Prakash & others		260
5.	Kanta Sharma and others Vs. Sudhir Behl		217
6.	Pushap Raj and another Vs. Dile Ram		226
7.	Sanjeev Kumar Vs. State of H.P.		202
8.	State of H.P. Vs. Balkrishan	D.B.	229
9.	State of H.P. Vs. Tilak Raj	D.B.	236
10.	Sunita Chandel Vs. State of Himachal Pradesh	D.B.	243

****

SUBJECT INDEX

'C'

Code of Criminal Procedure, 1973- Section357- Accused was convicted for the commission of offence punishable under Section 138 of N.I.Act and was sentenced to undergo S.I. for a period of 15 days and to pay compensation of Rs.8 lac and in default to undergo S.I. for a period of 15 days – it was contended that the petitioner has undergone the sentence of substantive imprisonment and the imprisonment in default and he is not liable to pay compensation – held, that mere undergoing the period of sentence of imprisonment in default of payment of compensation will not absolve a person of his liability to pay the compensation and the Court is bound to proceed against the accused for the recovery of the amount of compensation – petition disposed of. (Para-4 to 10) Title: Dheeraj Kumar Vs. Puran Chand Page-203

Code of Criminal Procedure, 1973- Section 482- Petitioner was convicted for the commission of offence punishable under Section 354 of I.P.C – an appeal was filed, which was partly allowed and the sentence was modified – the matter was compromised between the parties and an application was filed for compounding the offence- keeping in view the time period elapsed since the date of incident, application allowed and parties permitted to compromise the matter- the petitioner acquitted. (Para-2 to 8) Title: Sanjeev Kumar Vs. State of H.P. Page-202

'H'

H.P. Urban Rent Control Act, 1987- Section 14- Landlord sought eviction of the tenant on the ground of bonafide requirement – the Rent Controller allowed the petition and ordered the eviction of the tenant – an appeal was filed, which was allowed and the order of Rent Controller was set aside- held in appeal that the tenant is occupying the premises for more than 16 years-no eviction petition was filed against the tenant during those periods, which shows that there is no malafide intention on the part of the landlord – eleven members of the family of the landlord had squeezed themselves into three rooms– the tenant was inducted by the predecessor-in-interest of the landlord, which shows that the plea of family partition is probable- petition allowed the order of the Appellate Court set aside and that of the Trial Court restored.(Para-16 to 24) Title: Kanta Sharma and others Vs. Sudhir Behl Page-217

'I'

Indian Penal Code, 1860- Section 302 and 201- P, wife of the accused was strangulated by the accused with a rope- he made others understand that she had committed suicide by tying her neck with a dupatta – accused was tried and convicted by the Trial Court- held in appeal that no motive was attributed to the accused – prosecution version that accused used to torture the deceased in a state of intoxication has not been proved on record- hot exchanges occasionally between the couple is normal wear and tear of married life and will not motivate the accused to kill his wife- there was cutting in the post mortem report for which no explanation was given – the disclosure statement was also not established- the possibility of the deceased having committed suicide cannot be ruled out- prosecution version was not proved beyond reasonable doubt-appeal allowed and accused acquitted. (Para-18 to 34) Title: Durga Singh @ Suresh Kumar Vs. State of H.P. (D.B.) Page-209

Indian Penal Code, 1860- Section 302 and 201 read with Section 34- Deceased M used to come to the residence of accused S, who was running a Dhaba- co-accused were her servants and were working in the Dhaba- they were not happy with the visits of the deceased to the Dhaba or the residence- all the accused assaulted the deceased with the kick and fist blows- deceased died due to the beatings given to him- accused were tried and convicted by the Trial Court- held in appeal that accused had asserted in her statement recorded under Section 313 Cr.P.C that deceased

came to her room during night time and started molesting her- she slapped him and raised alarm on which co-accused came- it was duly proved that deceased was present in the room of the accused who was alone in the room- the possibility of the deceased outraging the modesty of the accused cannot be ruled out- prosecution version that co-accused were not happy with the visits of the deceased is not believable as co-accused were workers- accused had right of private defence- in these circumstances, co-accused have been acquitted- acquittal has been upheld by the Apex Court – in these circumstances, conviction of the accused was improper– appeal allowed and accused acquitted.(Para-17 to 28) Title: Sunita Chandel Vs. State of Himachal Pradesh (D.B.) Page-240

Indian Penal Code, 1860- Section 500- Complainant complained that accused had leveled false allegations calling them criminals and declaring that they had set the shop of the accused on fire – the complainant was tried and the accused was acquitted by the trial Court- held, that the complainant had categorically deposed that the accused had confessed in the presence of the respectable people of the Village regarding making false allegations – Pardhan and other witnesses were examined in proof of this fact – their testimonies were not shaken in their cross-examinations- Trial Court had wrongly discarded their testimonies to record the acquittal – appeal allowed- the order passed by Trial Court set aside – the accused convicted of the commission of the offence punishable under Section 500 of I.P.C. (Para-8) Title: Pushap Raj and another Vs. Dile Ram Page-226

'L'

Land Acquisition Act, 1894- Section 18- Land was acquired for laying down NangalTalwara Broad Gauge, Railway Line – Land Acquisition Collector awarded the compensation- aggrieved from the same, a reference was made to the District Judge who enhanced the compensation to Rs.55,000/- per kanal- aggrieved from the award, an appeal was filed- held, that the potentiality and situation of the acquired land is required to be proved with the exemplar land on the basis of cogent and reliable evidence- reliance was placed on the previous award in respect of land located in different village- however, it was not proved that potentiality and utility of the land in two villages is the same- appeal allowed- the judgment passed by the Reference Court set aside and the matter remanded with a direction to decide the same afresh after taking the additional evidence. (Para-14 to 20) Title: General Manager Northern Railway Vs. Om Prakash & others Page-260

'N'

N.D.P.S. Act, 1985- Section 20- Accused was found in possession of 510 grams charas- he was tried and acquitted by the Trial Court- held in appeal that the contradictions notice by the Trial Court to record the acquittal were not significant – the accused was apprehended at 5:40 A.M. and it was not possible to associate independent witnesses –the police officials supported the prosecution version – their testimonies were corroborated each other- link evidence was proved – the appeal allowed – judgment of the Trial Court set aside and accused convicted of the commission of offence punishable under Section 20 of N.D.P.S. Act. (Para-9 to 24) Title: State of H.P. Vs. Tilak Raj (D.B.) Page-236

N.D.P.S. Act, 1985- Section 20- Accused was found in possession of 4.5 kg. charas – he was tried and acquitted by the Trial Court- held in appeal that the recovery was effected at 12.05 A.M. mid night and it was not possible to associate independent witnesses at that time – the testimonies of police officials cannot be rejected, if found trustworthy and reliable –accused has not given any explanation regarding his arrest by the police – minor contradictions in the testimonies are not sufficient to discard the prosecution version –the accused has not led any evidence in his defence- the prosecution version was proved in these circumstances- appeal

allowed- judgment of the Trial Court set aside and accused convicted of the commission of offence punishable under Section 20 of N.D.P.S. Act. (Para-11 to 32) Title: State of H.P. Vs. Balkrishan Page-229

'S'

Specific Relief Act, 1963- Section 34- Plaintiff filed a civil suit for declaration that his date of birth was 1.4.1953 and for seeking a direction to the defendants to record the same in his service book- suit was opposed by pleading that plaintiff had produced BCB Discharge Certificate, in which his date of birth was recorded as 20.7.1945- he had admitted the same to be correct and had affixed his finger and thumb impression on his service book in acknowledgment of the correctness- suit was decreed by the Trial Court- an appeal was filed, which was allowed and the suit was dismissed- held in second appeal that the certificate issued by Gram Panchayat does not show any basis- copy of parivar register was not proved in accordance with law- name of the child was not mentioned in the certificate- it was not established that plaintiff was born on the date mentioned in the certificate- the plaintiff would have been eleven years at the time of entering in the service in view of new certificate produced by the plaintiff - it is unbelievable that a boy of eleven years would have been appointed to a job – appeal was rightly allowed by the Appellate Court- appeal dismissed. (Para-10 to 26) Title: Dhani Ram Vs. B.B.M.B. and another Page-256

TABLE OF CASES CITED

'C'

Chittaranjan Das vs. Durgapore Project Limited & Ors 99, CWN 897, (1996) IIILLJ 188 Cal

'G'

Girija Prasad vs. State of M.P., (2007) 7 SCC 625

'J'

Jagriti Devi vs. State of Himachal Pradesh, AIR 2009 SC 2869
Jai Prakash and others Vs. Union of India, (1997) 9 SCC 510
Joga Singh V. State of Himachal Pradesh, I L R 2016 (IV) HP 403 (D.B.)

'K'

Kanwar Singh and others Vs. Union of India, (1998) 8 SCC 136

'M'

Makhan Singh V. State of Haryana, (2015) 12 SCC 247

'N'

Noor Aga vs. State of Punjab, (2008) 16 SCC 417

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J..

Sanjeev Kumar .....Petitioner
Versus
State of H.P. .....Respondent

Cr. Revision No. : 01 of 2009
Decided on: 02.01.2017.

Code of Criminal Procedure, 1973- Section 482- Petitioner was convicted for the commission of offence punishable under Section 354 of I.P.C – an appeal was filed, which was partly allowed and the sentence was modified – the matter was compromised between the parties and an application was filed for compounding the offence- keeping in view the time period elapsed since the date of incident, application allowed and parties permitted to compromise the matter- the petitioner acquitted. (Para-2 to 8)

For the petitioner : Mr. Dalip K. Sharma. Advocate.
For the respondent : Mr. Pankaj Negi, Deputy Advocate General.
For the complainant : Mr. O.P. Negi, Advocate, vice Mr. C.D. Negi.

The following judgment of the Court was delivered:

Vivek Singh Thakur, Judge *(Oral)*

Present revision petition has been filed for setting aside conviction of petitioner under Section 354 IPC in case FIR No. 159/2004 dated 25.7.2004 registered in Police Station Jawali, District Kangra in Criminal Case No. 68-II/2004.

2. Petitioner was convicted under Section 354 IPC by learned Sub Divisional Judicial Magistrate in criminal case No. 68-II/2004 titled State of H.P. Vs. Sanjeev Kumar and was sentenced to undergo simple imprisonment for one year and to pay fine of Rs. 1000/- and in default of payment of fine to further undergo simple imprisonment for 2 months. However, in the appeal, preferred by the petitioner, learned Sessions Judge modified the sentence to rigorous imprisonment for three months with fine of Rs. 1000/- and in default of payment of fine further imprisonment of one month.

3. During pendency of present petition, an application for compounding the offence in question has been filed as victim and her complainant father has compromised the matter with petitioner. The compromise deed arrived at between the parties has also been placed on record as Annexure C-1.

4. Counsel for petitioner submits that both parties, habitants of nearby villages, for maintaining peaceful and harmonious relations, have amicably settled the dispute and all disputes between them have been put to an end by way of compromise placed on record and now none of them will pursue or file any claim or further proceedings in relation to present dispute and this matter has been compromised without any pressure and with free consent of parties and therefore, application seeking permission to compound the offence has jointly been filed.

5. Sh. O.P. Negi, Advocate, appearing under instructions of Sh. C.D. Negi, Advocate, original counsel for PW-2 victim and PW-1 her father endorses contents of the application as well as of compromise and submits that parties want to live in peace and harmony resolving the controversy involved between them. He also endorses written compromise placed on record.

6. Learned counsel for petitioner has also relied upon pronouncement of the Apex Court in Surat Singh V. State of Uttarakhand reported in (2012) 12 SCC 772 wherein identical

offence in similar circumstances was permitted to be compounded and petitioner therein was acquitted on the basis of compromise between the parties.

7. Offence in question was committed on 24.7.2004 and on that day offence under Section 354 IPC was compoundable under Section 320(2) Cr. P.C., with permission of the Court by woman assaulted to whom the criminal force was used. In present case, petitioner-accused, PW-2 victim and her father PW-1 Girdhari Lal have filed joint application for compounding the offence which is signed by all of them as well as by counsel representing them.

8. In above facts and circumstances, the parties are permitted to compound the offence and as a result whereof petitioner is acquitted from the offences charges with and the present petition is disposed of accordingly alongwith pending application(s).

****

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Dheeraj Kumar .....Petitioner

Versus

Puran Chand .....Respondent

Criminal Revision No.89 of 2016
Decided on : 03.01.2017

Code of Criminal Procedure, 1973- Section357- Accused was convicted for the commission of offence punishable under Section 138 of N.I.Act and was sentenced to undergo S.I. for a period of 15 days and to pay compensation of Rs.8 lac and in default to undergo S.I. for a period of 15 days – it was contended that the petitioner has undergone the sentence of substantive imprisonment and the imprisonment in default and he is not liable to pay compensation – held, that mere undergoing the period of sentence of imprisonment in default of payment of compensation will not absolve a person of his liability to pay the compensation and the Court is bound to proceed against the accused for the recovery of the amount of compensation – petition disposed of. (Para-4 to 10)

For the petitioner : Mr. N.K. Thakur, Sr. Advocate, with Mr. Divya Raj Singh, Advocate.
For the respondent : Mr. Devender K. Sharma, Advocate, vice counsel.

The following judgment of the Court was delivered:

Vivek Singh Thakur, Judge *(Oral)*

Petitioner is present in person. Learned counsel for petitioner submits that petitioner has served sentence of one month simple imprisonment and also 15 days simple imprisonment of default of payment of compensation imposed upon him vide impugned judgment and therefore, he has instructions to not to press the petition being infructuous. On inviting attention of petitioner as well as his counsel to direction to pay compensation of Rs. 8,00,000/- to the complainant, submission of not pressing the petition is reiterated with contention that as impugned judgment stands complied with, therefore, for petitioner nothing survives to agitate.

2. Besides sentence of simple imprisonment of one month, petitioner was also directed to pay a compensation of Rs. 8,00,000/- to the complainant under Section 357 Cr. P.C. and for default in paying compensation, 15 days further simple imprisonment was sentenced.

3. Despite serving sentence for default in making payment of compensation, petitioner is still liable to pay compensation to complainant-respondent as awarded by the trial court.

4. Learned counsel appearing for complainant-respondent submits that in view of provisions of Section 138 of NI Act and Section 421 read with Section 431 of Cr. P.C. amount of compensation is recoverable from petitioner and part of the judgment wherein direction to make payment of compensation has been passed by trial court, is yet to be complied with.

5. For considering rival contention of parties, it would be necessary to notice relevant provisions of Law:

A. The Negotiable Instruments Act

"138. **Dishonour of cheque for insufficiency, etc., of funds in the account-** Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit for that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may extended to two years], or with fine which may extend to twice the amount of the cheque, or with both....."

B. **The Criminal Procedure Code**

"357 *Order to pay compensation*-(1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(b) in the payment to any person of compensation for any loss or injury caused by the offences, when compensation is, in the opinion of the court, recoverable by such person in a civil court;

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.

(3) When a court imposes a sentence, of which fine does not form a part, the court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.

****

421. *Warrant for levy of fine* –(1) When an offender has been sentenced to pay a fine, the court passing the sentence may take action for the recovery of the fine in either or both of following ways, that is to say, it may-

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the collector of the district, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or

unless it has made an order for the payment of expenses or compensation out of the fine under Section 357.

****

431 *Money ordered to be paid recoverable as a fine*—Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine;"

6. Considering object and purpose of provisions of Negotiable Instrument Act with regard to dishonouring of cheque and proceedings related thereto, the Apex Court in case titled R. Vijayan V. Baby, AIR 2012 SC 528, has observed as under:

"14. We propose to address an aspect of the case under section 138 of the Act, which is not dealt with in Damodar S. Prabhu. It is sometimes said that cases arising under section 138 of the Act are really civil cases masquerading as criminal cases. The avowed object of Chapter XVII of the Act is to "encourage the culture of use of cheques and enhance the credibility of the instrument". In effect, its object appears to be both punitive as also compensatory and restitutive, in regard to cheque dishonour cases. Chapter XVII of the Act is an unique exercise which blurs the dividing line between civil and criminal jurisdictions. It provides a signle forum and single proceeding, for enforcement of criminal liability (for dishonoring the cheque) and for enforcement of the civil liability (for realization of the cheque amount) thereby obviating the need for the creditor to move two different For a for relief. This is evident from the following provisions of chapter XVII of the Act:

(i) The provision for levy of fine which is linked to the cheque amount and may linked to the cheque amount and may extend to twice the amount of the cheque (section 138) thereby rendering section 357(3) virtually infructuous insofar as cheque dishonour cases.

(ii) The provision enabling a First Class Magistrate to levy fine exceeding Rs. 5,000/- (Section 143) notwithstanding the ceiling to the fine, as Rs. 5,000/- imposed by section 29(2) of the Code;

(iii) The provision relating to mode of service of summons (section 144) as contrasted from the mode prescribed for criminal cases in section 62 of the Code;

(iv) The provision for taking evidence of the complainant by affidavit (section 145) which is more prevalent in civil proceedings, as contrasted from the procedure for recording evidence in the Code;

(v) The provision making all offences punishable under section 138 of the Act compoundable.

15. The apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of cheque by way of compensation under section 357 (1)(b) of the Code. Though a complaint under section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount, (which strictly speaking has to be enforced by a civil suit), in practice once the criminal complaint is lodged under section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of cheque, under section 357(1)(b) of the Code and the provision for compounding the offences under Section 138 of the Act. Most of the cases (except those where liability is

denied) get compounded at one stage or the other by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to dirct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financers) view the proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary.

16. Having reached that stage, if some Magistrates go by the traditional view that the criminal proceedings are for imposing punishment on the accused, either imprisonment or fine or both, and there is no need to compensate the complainant, particularly if the complainant is not a 'victim' in the real sense, but is a well-to-do financier or financing institution, difficulties and complications arise. In those cases where the discretion to direct payment of compensation is not exercised, it causes considerable difficulty to the complainant, as invariably, by the time the criminal case is decided, the limitation for filing civil cases would have expired. As the provisions of Chapter XVII of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation. Direction to pay compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate. Uniformity and consistency in deciding similar cases by different courts, not only increase the credibility of cheque as a negotiable instrument, but also the credibility of courts of justice.

17. We are conscious of the fact that proceedings under section 138 of the Act can not be treated as civil suits for recovery of the cheque amount with interest. We are also conscious of the fact that compensation awarded under section 357(1)(b) is not intended to be an elaborate exercise taking note of interest etc. Our observations are necessitated due to the need to have uniformity and consistency in decision making. In same type of cheque dishonour cases, after convicting the accused, if some courts grant compensation and if some other courts do not grant compensation, the inconsistency, though perfectly acceptable in the eye of law, will give rise to certain amount of uncertainty in the minds of litigants about the functioning of courts. Citizens will not be able to arrange or regulate their affairs in a proper manner as they will not know whether they should simultaneously file a civil suit or not. The problem is aggravated having regard to the fact that in spite of section 143(3) of the Act requiring the complaints in regard to cheque dishonour cases under section 138 of the Act to be concluded within six months from the date of the filing of the complaint, such cases seldom reach finality before three or four years let alone six months. These cases give rise to complication where civil suits have not been filed within three years on account of the pendency of the criminal cases. While it is not the duty of criminal courts to ensure that successful complainants get the cheque amount also, it is their duty to have uniformity and consistency, with other courts dealing with similar cases."

7. In case titled Suganthi Suresh Kumar Vs. Jagdeeshan reported in AIR 2002 SC 681: (2002)2 SCC 420, the Apex Court was considering legality and propriety of judgment of trial court Magistrate wherein after holding the respondent guilty of the offence under Section 138 of Negotiable Instruments Act, the trial court convicted the accused by sentencing him only to

undergo imprisonment till rising of the Court and to pay a fine of Rs. 5000/- each in two cases whereas total amount covered by cheques involved in the cases was Rs. 4,50,000/-. The Apex Court has observed as under:-

> "4. Mr. KV Viswanathan, learned counsel for the petitioner invited our attention to the following observations made by this Court in K. Bhaskaran v. Sankarna Vaidhyan Balan, [1999] 7 SCC 510:
>
> > "If a Judicial Magistrate of the First Class were to order compensation to the paid to the complainant from out of the fine realised the complainant will be the loser when the cheque amount exceeded the said limit. In such a case a complainant would get only the maximum amount of rupees five thousand. But the Magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) Cr.PC. The Supreme Court has emphasised the need for making liberal use of the provision. No limit is mentioned in the sub-section and therefore, a Magistrate can award any sum as compensation. Of Course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of a Magistrate of the first Class in respect of a cheque which covers an amount of Rs. 5000 the Court has power to award compensation to be paid to the complainant."
>
> 5. In the said decision this Court reminded all concerned that it is well to remember the emphasis laid on the need for making liberal use of Section 357(3) of the Code. This was observed by reference to a decision of this Court in [1988] 4 SCC 551 Hari Singh v. Sukbir Singh. In the said decision this Court held as follows:
>
> > "The quantum of compensation may be determined by taking into account the nature of crime, the justness of the claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The court may enforce the order by imposing sentence in default. (emphasis supplied)
> >
> > **********
>
> 10. That a part, Section 431 of the Code has only prescribed that any money (other than fine) payable by virtue of an order made under the Code shall be recoverable "as if it were a fine". Two modes of the recovery of the fine have been indicated in Section 421 (1) of the Code. The proviso to the sub-section says that if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant for levy of the amount.
>
> **********
>
> 12. The total amount covered by the cheques involved in the present two cases was Rs. 4,50,000. There is no case for the respondent that the said amount had been paid either during the pendency of the cases before the trial court or revision before the High Court or this Court. If the amounts had been paid to the complainant there perhaps would have been justification for imposing a flee-bite sentence as had been chosen by the trial court. But in a case where the amount covered by the cheque remained unpaid it should be the look out of the trial Magistrates that the sentence for the offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of

the cheque can be allowed to take dishonour of the cheque issued by him light heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount atleast during the pendency of the case."

8. Relying upon judgment titled Suganthi Suresh Kumar Vs. Jagdeeshan supra, Karnataka High Court in case titled Y. Vishnu Vs. S. Venktesh, 2006 Cr. LJ 1853 has held as under:-

"7. Section 421 of Cr. P.C. provides for recovery of fine by one of the two ways or by both of them. One way of recovery is to issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender. The second mode of recovery is to issue a warrant to the Deputy Commissioner of the District, authorizing him to realize the amount as arrears of land revenue. Where the offender undergoes the whole of the imprisonment in default of payment of fine, before recovery or before issuance of warrant for recovery, no such warrant can be issued, unless the Court assigns special reasons as to how despite the accused undergoing default sentence, there is necessity of recovering fine. However, there is an exception to this rule that is, if the recovery is for realizing expenses of the complainant or the compensation awarded under S. 357 of Cr. P.C. the power of the Court to issue warrant for recovery of that amount, continues even after the accused undergoes the default sentence in full.

7A. Taking into consideration the necessity of recovery of compensation from the accused where he has been convicted for the offence punishable under S. 138 of NI Act, Supreme Court in the case of Hari Singh V. Sukhbir Singh reported in AIR 1988 SC 2127 provided for imposition of default sentence on the failure of the accused to pay the compensation awarded under S. 357 of Cr. P.C. That decision has been later affirmed by the Supreme Court in the case of Suganthi Suresh Kumar V. Jagdeeshan reported in (2002) 2SCC 420: (AIR 2002 SC 681) wherein it has been directed that what the Supreme Court held in Hari Singh's case, shall be followed by all Courts in India, From the discussion made above, the following position of law emerges.

8. When compensation is awarded under S. 357 of Cr. P.C. either as part of the fine or independently, the recovery of the same gets precedence over the recovery of fine to be credited to the Government. Where compensation forms part of fine, the fine or portion of the fine has to be first applied for the payment of compensation under S. 357 of Cr. P.C. wherever there is an award of compensation and for the remaining amount of fine, if not paid or recovered, the accused has to be sent to prison to undergo the default sentence apart from the Court taking steps to recover the fine.

9. It may be noted that under the proviso to S. 421 (1) of Cr. P.C. the requirement on the Court to recover the amount of compensation by attachment and sale of accused's property does not cease merely because the accused has undergone the whole of the imprisonment in default of payment of fine by then."

9. In view of relevant provisions and pronouncements referred supra, I am of the opinion that despite serving sentence for default in making payment of compensation, petitioner is still liable to pay compensation to complainant-respondent as awarded by the Trial Court. For insisting prayer on behalf of petitioner to dismiss present petition not pressed, even after apprising legal position on the fact in issue present petition is dismissed as not pressed. However, it is made clear that serving sentence for default in making payment of compensation will not come in the way of the trial court for recovery of amount of compensation from the petitioner in accordance with law.

10. It is submitted on behalf of respondent that petitioner has also deposited some amount in the Trial Court during pending proceedings. If so, trial court is directed to release the said amount in favour of complainant-respondent Puran Chand by remitting the same in his bank account of nationalized bank immediately on furnishing account number by or on behalf of complainant before the trial court alongwith certified copy of this order. Petition alongwith pending applications, if any, is disposed of accordingly.

****

BEFORE HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, J. AND HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Durga Singh @ Suresh Kumar .....Appellant.
Versus
State of H.P. .....Respondent.

Cr. Appeal No. 270 of 2016.
Reserved on: 2.12.2016.
Decided on: 27.02.2017.

Indian Penal Code, 1860- Section 302 and 201- P, wife of the accused was strangulated by the accused with a rope- he made others understand that she had committed suicide by tying her neck with a dupatta – accused was tried and convicted by the Trial Court- held in appeal that no motive was attributed to the accused – prosecution version that accused used to torture the deceased in a state of intoxication has not been proved on record- hot exchanges occasionally between the couple is normal wear and tear of married life and will not motivate the accused to kill his wife- there was cutting in the post mortem report for which no explanation was given – the disclosure statement was also not established- the possibility of the deceased having committed suicide cannot be ruled out- prosecution version was not proved beyond reasonable doubt- appeal allowed and accused acquitted. (Para-18 to 34)

Case referred:
Jagriti Devi vs. State of Himachal Pradesh, AIR 2009 SC 2869

For the appellant : Mr. Dushyant Dadwal, Advocate.
For the respondent : Mr. Virender Verma, Addl. Advocate General.

The following judgment of the Court was delivered:

Dharam Chand Chaudhary, J.

Appellant-convict Durga Singh alias Suresh Kumar (hereinafter referred to as the accused) aggrieved by the judgment dated 7.6.2016, passed by learned Addl. Sessions Judge-II, Mandi, Circuit Court at Jogindernagar, District Mandi, in Sessions Trial No. 59/2015 has preferred the present appeal in this Court. The trial Court vide impugned judgment has convicted him for the commission of offence punishable under Sections 302 and 201 IPC and he has been sentenced to undergo life imprisonment as well as to pay a fine of Rs. 20,000/- under Section 302 IPC whereas to undergo imprisonment for a period of 2 years and to pay a fine of Rs. 5,000/- under Section 201 IPC.

2. In an unfortunate incident, having taken place on 19.4.2014 around 10:00 PM, Pammi Devi, a young lady aged 40 years who happened to be the wife of accused had lost her life. The allegations against the accused, in a nut shell, are that it is he who strangulated her with a piece of rope (Ext. P-5) knowing fully well that by doing so, he would cause her death and allegedly committed the offence of murder. Not only this, but after commission of offence of

murder of his wife, the deceased with a view to screen the evidence he had made to understand that she had hanged herself and committed suicide and that he has no hand in her death.

3. The record of this case reveals that the deceased was married to accused 20-22 years ago. Out of this wed-lock, PW-2 Kumari Kirna, PW-5 Kumari Pooja and PW-6 Master Ankush were born to the deceased. The deceased was living with accused and her children as well as her mother-in-law Smt. Jai Dei (PW-3) in her matrimonial house at Village Bhagehar PO Khajur, Tehsil Lad Bharol, under the jurisdiction of PS Jogindernagar, Distt. Mandi. On the fateful day, the couple attended some function where the accused consumed alcohol also. As per the prosecution case, in the evening hot exchanges had taken place between them in the house. The accused was heavily drunk. He allegedly had been administering beatings to his wife, the deceased under the influence of liquor. On the fateful day, he strangulated her with rope Ext. P-5 and to make the others understand that she had committed suicide tied her neck with her dupatta Ext. P-1 to show that she had hanged herself and committed suicide.

4. The FIR Ext. PW-20/A was registered at the instance of Naginder Singh (PW-1), brother of the deceased. He reported to the police on 9.4.2014 around 10:00 PM, he was informed over telephone by his younger sister Rita that something wrong has happened in the house of Pammi Devi, the deceased. Rita further informed PW-1 that Pammi had committed suicide. On hearing this PW-1 Naginder Singh accompanied by his brother Bhag Singh rushed to the house of the deceased. He reached there and found the dead body of Pammi lying on the floor. Since he had informed the police of PS Jogindernagar also, therefore, the police reached the spot early in the morning i.e. around 4:00 AM. From the surrounding circumstances, he observed that his sister had not committed suicide but she was strangulated and murdered. He accordingly made the statement Ext. PW-1/A which was recorded by the police on the basis thereof FIR Ext. PW-20/A was registered.

5. A red coloured Dupatta Ext. P-1, found to be cut with sickle was brought from another room along with sickle Ext. P-2 were taken into possession vide memo Ext. PW-1/B to which PW-1 Naginder Singh is one of the attesting witnesses. The police photographed the dead body and prepared the inquest papers. The dead body was taken into possession by the police. On an application Ext. PW-7/A made for getting the autopsy on dead body conducted, PW-7 Dr. H.S.Sabarwal has conducted the autopsy and submitted the report Ext. PW-7/D. The post mortem report reveals that initially in the opinion of PW-7 Dr. H.S. Sabarwal, the cause of death was found to be ante mortem hanging, however, word "**hanging**" by way of cutting was replaced with word "**strangulation**", as per the entries against item No. VI "**certificate of cause of death**". However, final opinion was left open to be given on receipt of the report from FSL. The report was received and as in view of testimony of PW-8 Dr. Niti Prakash Dubey, Assistant Director, RFSL, Mandi, no alcohol, poison, narcotic drug and psychotropic substance etc. were found in the stomach contents, pieces of small and large intestines, liver spleen and kidney as is apparent from the perusal of report Ext. PW-8/A also, therefore, the opinion qua cause of death remained the same. The rope Ext. P-5 was shown to PW-7 Dr. H.S. Sabarwal and on seeing the same, he further opined that strangulation could have been caused thereby. Being so, the case which initially was registered under Sections 498A and 306 IPC was converted into a case under Sections 302 and 201 IPC.

6. The I.O. PW-19 SI Yog Raj conducted the investigation. He prepared the spot map Ext. PW-19/A and got the dead body photographed vide photographs Ext. PW-19/B-1 to Ext. PW-19/B-10. He also recovered dupatta Ext. P-1 and sickle Ext. P-2 at the instance of accused Durga Singh and taken the same into possession vide memo Ext. PW-1/B. On the same day, he recovered salwar (red and green coloured) Ext. P-3 of the deceased which was produced by her daughter Kirna (PW-2) and taken the same into possession vide memo Ext. PW-1/F. The supplementary statement of PW-1 Naginder Singh and his brother Bhag Singh as well as Kirna (PW-2) were also recorded by him. He also completed the inquest papers Ext. PW-19/C and PW-19/D and moved the application Ext. PW-7/A to the Medical Officer, Civil Hospital, Jogindernagar for conducting the autopsy on the dead body of Pammi Devi.

7. Further investigation was conducted by PW-20 Amar Singh, the then SHO, PS Dharampur. The accused was interrogated by him and thereafter arrested. The information qua his arrest was given to his brother vide memo Ext. PW-20/C. He had also taken into possession compromise deed Ext. PW-1/D vide memo Ext. PW-1/A which was produced by Naginder Singh, the complainant in the presence of PW-4 Kamla Devi. He recorded the statements of PW-4 Kamla Devi, PW-3 Jai Dei Ext. PW-20/D and that of PW-5 Pooja Devi Ext. PW-20/E, that of PW-6 Ankush Ext. PW-20/F, allegedly as per their version. The statements of PW-9 Ramesh Chand Ext. PW-20/G and PW-20/H Krishan Chand were also recorded by the I.O. PW-20 Insp. Amar Singh. It is he, who on receipt of the post mortem report Ext. PW-7/D, converted the case from Section 306 IPC to 302 IPC. The accused allegedly made confessional statement on 25.4.2014 that his wife had not committed suicide with her dupatta but it is he who strangulated her with rope of jute (शेल). He further disclosed before the I.O. PW-20 Insp. Amar Singh that the rope was concealed by him in the room. The disclosure statement Ext. PW-18/A of the accused was recoded in the presence of Const. Pratap Kumar PW-18. On the basis of the statement Ext. PW-18/A, rope Ext. P-5 was recovered and taken into possession vide seizure memo Ext. PW-9/A. On receipt of the chemical examiner's report Ext. PW-20/K, opinion Ext. PW-7/D and Ext. PW-20/L according to which blood was found on the rope Ext. P-5, offence punishable under Section 201 IPC was also added in the FIR against the accused. PW-20, IO Amar Singh has prepared the spot map Ext. PW-20/M consequent upon the disclosure statement PW-18/A made by the accused.

8. On completion of the investigation and finding that the accused had committed offence punishable under Sections 302 and 201 IPC, report under Section 173 Cr.P.C. was prepared by PW-20 Insp. Amar Singh and filed in the Court.

9. As point out at the outset, learned trial Court on prima-facie finding a case under Section 302 and 201 IPC made out against the accused, had framed charge against the accused accordingly.

10. Now, if coming to the evidence, the material prosecution witnesses are Naginder Singh, brother of the deceased (PW-1), Kirna Devi, Pooja Devi and Ankush Kumar (PW Nos. 2, 5 and 6), daughters and son of deceased, respectively, Jai Dei, mother-in-law of deceased (PW-3), Kamla Devi, the Pradhan Gram Panchayat (PW-4), Ramesh Chand and Krishan Singh, the witnesses to the recovery of rope (PWs 9 & 10), respectively, Const. Partap Kumar (PW-18) a witness to the disclosure statement Ext. PW-18/A. The another material witness examined by the prosecution and relied upon by the trial Court is PW-7 Dr. H.S. Sabarwal who had conducted autopsy on the dead body and opined that the cause of death of deceased was ante-mortem strangulation.

11. The remaining prosecution witnesses i.e. Dr. Niti Prakash (PW-8) a scientist in RFSL, Hari Dass Patwari (PW-11), Hem Singh Kanungo (PW-12), Rajesh Kumar, Asstt. Director, RFSL, Mandi (PW-13), HC Kamlesh Kumar (PW-14), HHC Deepak Raj (PW-15), Const. Rakesh Kumar (PW-16) and HC Gopal Chand (PW-17) are formal who remained associated with the investigation of the case in one way or the other.

12. The I.Os of this case are PW-19 SI Yog Raj and PW-20 Insp. Amar Singh.

13. Besides the ocular evidence, the prosecution has also produced in evidence the documentary evidence, as referred to hereinabove.

14. Learned trial Judge, on appreciation of the evidence available on record, has arrived at a conclusion that the prosecution with the help of cogent and reliable evidence has satisfactorily proved beyond all reasonable doubt that it is the accused who has murdered his wife deceased Pammi and thereby committed an offence punishable under Sections 302 and 201 IPC. The accused has been accordingly convicted and sentenced.

15. The legality and validity of the impugned judgment has been questioned on the grounds, inter alia that as per the evidence available on record, the deceased had been leading

happy married life with the accused. The material prosecution witnesses have not supported the prosecution case that the accused used to torture the deceased under the influence of liquor and as such caused her death by strangulating her with rope Ext. P-5. The evidence that on the day of occurrence, the accused having consumed lot of alcohol in some function and was almost lying in an unconscious condition in the kitchen, has not been considered at all. There being no allegation that he after marriage ever demanded dowry from the deceased or her parents, no motive can be assigned to the alleged murder of his own wife by the accused. The unequivocal and categoric statements made by PW-2 Kirna Devi, PW-5 Pooja Devi and PW-6 Ankush Kumar, children of deceased and by PW-3 Jai Dei, her mother-in-law discarding the prosecution story being wrong has also been erroneously brushed aside. No weightage is stated to be given to the statement of PW-1 Naginder Singh that after the compromise, the deceased and accused were leading happy married life and that his sister, the deceased was short tempered. Not only this, but his testimony that there was conflict of thoughts between his sister and accused, has also been erroneously brushed aside. On the other hand, learned trial Judge allegedly satisfied itself while convicting the accused without any iota of evidence. The doctor PW-7 Dr. H.S. Sabarwal at one stage has opined that the deceased committed suicide by way of hanging was not taken into consideration. When PW-7 Dr. H.S. Sabarwal did not notice any struggle mark and even the bangles of the deceased were intact on her wrists, the present cannot be said to be a case of strangulation at all. The Court below forgetting that it was dealing with human being has mis-construed the evidence available on record at its whims and fancies and recorded the findings of conviction which are not legally sustainable. No one was associated from the locality to show that the relations of the accused were not cordial with the deceased. The evidence which does not substantiate the commission of offence under Section 302 IPC even remotely, has been misappreciated to record wrong findings. There being no iota of evidence qua the date, time and place of the mal-treatment of the deceased by the accused, no case under Section 302 IPC was made out against the latter. The very important and relevant aspect i.e. accused on that day had attended some function in the village along with the deceased and when returned to home being under the influence of liquor slept in the kitchen itself whereas deceased before she committed suicide had her dinner in the room has been erroneously brushed aside by the trial Court. Since the deceased was short tempered, therefore, she had committed suicide by hanging herself with dupatta. The accused had no role to play in her death. The prosecution has concocted and engineered a false case against him. Since the prosecution has failed to bring home guilt to the accused beyond all reasonable doubt, therefore, the accused should have been acquitted of the charge.

16. Sh. Dushyant Dadwal, Advocate learned counsel representing the convict-accused, while drawing our attention to the oral as well as documentary evidence has argued with all vehemence that the present being a case of no evidence, no case under Sections 302 & 201 IPC is made out against the accused. According to Mr. Dadwal, learned trial Court while convicting the accused has based its findings on hypothesis, conjectures and surmises. It has been pointed out that learned trial Court by convicting and sentencing an innocent person has erred in law and on facts. Being so, the impugned judgment has been sought to be quashed.

17. On the other hand, Mr. Virender Verma, learned Addl. Advocate General, while repelling the arguments addressed on behalf of the accused has urged that no illegality or irregularity can be attached to the judgment under challenge as according to him, the Court below has appreciated the evidence available on record in its right perspective. Since the evidence available on record establishes the guilt of the accused, therefore, he according to Mr. Verma, has rightly been convicted and sentenced.

18. On analyzing the rival submissions as well as re-appraisal of the evidence available on record, the only question which needs consideration in this appeal is as to whether the prosecution has satisfactorily pleaded and proved that it is the accused alone who murdered his wife and tried to introduce a false story that he had no hand in her death or it is she who herself has committed suicide.

19. The poser so arise for our determination needs appraisal of the given facts and circumstances and also the evidence available on record. However, before that it is desirable to note as to what constitutes the commission of offence punishable under Section 302 IPC in legal parlance.

20. As per Section 300 IPC, culpable homicide is murder firstly if the offender is found to have acted with an intention to cause death or secondly with an intention of causing such bodily injury knowing fully well that the same is likely to cause death of someone or thirdly intention causing bodily injury to any person and such injury intended to be inflicted is sufficient in the ordinary course of nature to cause death or if it is known to such person that the act done is imminently dangerous that the same in all probability shall cause death or such bodily injury as is likely to cause death.

21. Culpable homicide has been defined under Section 299 IPC. Whoever causes death by way of an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death can be said to have committed the offence of culpable homicide. Culpable homicide is murder if the act by which death is caused is done with the intention of causing death. Expression "intent" and "knowledge" postulate the existence of a positive mental attitude which is of different degree. We are drawing support in this regard from the judgment of Apex Court in ***Jagriti Devi vs. State of Himachal Pradesh, AIR 2009 SC 2869.***

22. The ingredients of culpable homicide amounting to murder therefore are; (i) causing death intentionally and (ii) causing bodily injury which is likely to cause death. Whether the present is a case where the evidence available on record is suggestive of that it is the accused who strangulated the deceased with rope Ext. P-5 intentionally to cause her death and such an act on his part amounts to culpable homicide amounting to murder or not, needs re-appraisal of the evidence available on record. However, before that it is deemed appropriate to point out that if the accused had motive to cause the death of the deceased, the eye witness count of the occurrence may not be required, however, where the motive is missing, the prosecution is required to prove its case with the help of testimony of eye witnesses.

23. In the given facts and circumstances of this case, the prosecution has not attributed any motive to the accused nor is its case that it is due to such motive he has caused the death of his own wife that too when he was residing with her for the last 20-22 years and gave birth to three children out of her wed-lock with him. The only allegation that the accused was habitual drunkard and used to torture and administer beatings to the deceased seems to be correct only to the extent that he had been consuming liquor, however, while under the influence of liquor he had been treating the deceased with cruelty and also maltreating her, is not proved from the evidence available on record. The reference in this regard can be made to the testimony of daughters and son of the deceased who have stepped into the witness-box as PW-2, PW-5 and PW-6. They all, while in the witness-box, have stated in one voice that their father, the accused had been consuming liquor. They, however, ruled out the allegation that he was habitual drunkard and had been beating the deceased under the influence of liquor. Similar is the version of the mother of accused, PW-3 Smt. Jai Dei. No doubt, PW-6 Master Ankush tells us about some hot exchanges having taken place between the accused who had consumed liquor and the deceased. He, however, denied the suggestion that his father, the accused had been administering beatings to the deceased under the influence of liquor. Not only this, but it has further come in the prosecution evidence by way of their respective testimony that on the day of occurrence, there was some function in the village. The couple i.e. the accused and the deceased both had attended that function. The accused consumed excessive alcohol and on his return to the house had slept in the kitchen in an unconscious condition. Therefore, they have not supported the prosecution case rather had turned hostile. When cross-examined, they have denied their statements having been recorded by the police during the investigation of the case. Similar is the version of their grand-mother PW-3 Jai Dei. Even, as per the testimony of PW-2 Kirna Devi and Pw-5 Pooja Devi, sometimes, their mother the deceased and their grandmother

(PW-3) also used to consume liquor. As a matter of fact, it is the children of the deceased and her mother-in-law PW-3 Jai Dei who were present in the house. Since the children have love and affection towards both the parents and sometimes on higher side to the mother as compared to the father, therefore, the testimony of PW-2 Kirna Devi, PW-5 Pooja Devi and PW-6 Ankush Kumar which does not implicate the accused should have not been discarded at all by learned trial Judge. In view of the evidence as has come on record by way of the testimony of aforesaid witnesses, in our considered opinion, no doubt, the accused had been consuming liquor, however, not treating the deceased with cruelty or beating her under the influence of liquor. The hot exchanges occasionally, if any, between the couple is wear and tear of normal married life and even if it is believed that the couple had been quarreling with each other, such occasional quarrel cannot be made basis to arrive at a conclusion that the accused had intention to kill his wife, the deceased.

24. Mr. Dushyant Dadwal, Advocate learned counsel representing the accused is, therefore, absolutely justified in arguing that the evidence available on record has not been appreciated by the trial Court in its right perspective and rather misconstrued and misunderstood to record the findings of conviction against the accused by hook and crook.

25. In the impugned judgment, much has been said about the medical evidence which has come on record by way of post mortem report Ext. PW-7/B and the testimony of PW-7 Dr. H.S.Sabarwal. Interestingly enough, the report Ext. PW-7/B reveals that no wound or ante mortem marks could be noticed by PW-7 Dr. H.S.Sabarwal while conducting the autopsy on the dead body except for ligature mark and the fracture of cricoids cartilage. The report Ext. PW-7/B reveals that the cause of death in the opinion of PW-7 was ante mortem hanging i.e. hanging by a person himself which generally happens in a case of suicide. However, by way of over writing and cutting, word “hanging” has been replaced by word “strangulation”. The explanation, therefor, as has come on record in the testimony of PW-7 Dr. H.S.Sabarwal is that the cutting in the report is in his hand and under his initials. He, however, has not explained as to how he initially opined that the cause of death was ante-mortem hanging. No doubt, when the Court questioned him in this regard, it is clarified that he got confused and could not understand the question put to him by learned defence counsel and it is for this reason words “hanging mark on the neck” occurred in his cross-examination. As a matter of fact, PW-7 Dr. H.S.Sabarwal in his cross-examination has admitted the suggestion that there were hanging ligature mark on the body of the deceased. Therefore, in view of his testimony to this effect also, there being cutting in the opinion given in the post mortem report Ext. PW-7/B, the possibility of change in his opinion that the cause of death was ante-mortem strangulation under some pressure or for extraneous consideration cannot be ruled out. Otherwise also, the opinion of an expert cannot be treated as a conclusive proof of the occurrence and rather is one of the piece of evidence required to be considered and appreciated along with other evidence available on record.

26. In the case in hand, the testimony of the material prosecution witnesses referred to hereinabove, is not suggestive of that the deceased was strangulated by the accused whereas the testimony of PW-2 Kirna, PW-3 Jai Dei and PW-5 Pooja Devi to the effect that when PW-2 Kirna and PW-5 Pooja Devi went to collect utensils from the room of their parents where the deceased had taken her meals, they noticed the dupatta Ext. P-1 around the neck of their mother and she was lying hanged with wooden rafter (बरल) in the roof of the room. They raised hue and cry which attracted the attention of PW-3 Jai Dei and local residents to the site of occurrence. The dead body was brought down and the knot of dupatta around the neck of the deceased got cut with the help of sickle.

27. True it is that it was suggested to PW-5 Pooja Devi that at 9:00 PM, her father, the accused called them and told to come down and see their mother who was not talking, however, she denied the same being wrong. It was also denied that on the call of her father, she came to the room and noticed that the neck of mother was tied with dupatta and dead body lying on the floor. She rather admitted that it is her sister PW-2 who raised alarm in the courtyard and

started weeping loudly. She has also denied that the accused had planned to kill the deceased. It is also denied that accused had killed the deceased with her own dupatta. PW-6 Master Ankush, no doubt, has admitted that on the call of his father, he went down in the room of his parents along with his sisters and it is his sister PW-2 Kirna Devi who cut the knot of dupatta around the neck of the deceased with the help of sickle. However, in view of testimony of PW-2 Kirna, PW-3 Jai Dei and PW-5 Pooja Devi nothing of the sort did take place because they are categoric and specific while stating that the dead body was seen hanging in the room by PW-2 Kirna Devi who had gone there to collect the utensils. The accused was sleeping in the kitchen at that time under the influence of liquor. The prosecution case that the accused first strangulated the deceased and thereafter called children and his mother to the site of occurrence to see the deceased, who was not talking, is not at all proved beyond all reasonable doubt.

28. Much has also been said about the so called disclosure statement Ext. PW-18/A made by the accused. No doubt, according to PW-18 Const. Pratap Kumar, the disclosure statement Ext. PW-18/A that it is the accused who had strangulated his wife with the help of a jute rope and that it is he who can get the rope recovered which has been concealed by him in his bed room behind the iron drum was made by the accused. The recovery of the rope Ext. P-5 in the manner as claimed by the prosecution is, however, not at all proved because as per the version of PW-9 Ramesh Chand, a witness to the recovery memo Ext. PW-9/A whereby the rope was recovered and taken into possession, the same was recovered from a cow-shed and not from a place behind iron drum in the bed room. PW-10 Krishan Singh, the another witness to recovery of the rope has also not supported the prosecution case at all as according to him he remained associated in the investigation of the case with his brother-in-law Ramesh Chand (PW-9), however, nothing was taken into possession in his presence. He, however, in his cross-examination, has admitted his signature over the recovery memo Ext. PW-9/A. It has also come on record by way of testimony of PWs 2, 3 & 5 that no drum was lying in the bed room of the accused and deceased.

29. It is significant to note that not only the complainant PW-1 Naginder Singh, the brother of the deceased but PW-2 Kirna and PW-5 Pooja have also stated that the deceased was a short tempered lady. As noticed supra, she also used to consume liquor. PW-1 Naginder Singh has also admitted that the accused and deceased used to pick up quarrel on trifles. Since on the fateful day, her husband, the accused was under the influence of liquor and she might have coerced him for that, therefore, hot exchanges between the two seems to have taken place only due to that. In view of she being short tempered, the possibility of the deceased having hanged herself at her own on account of being fed up with the habit of consumption of liquor by her husband had put an end to her life cannot be ruled out. It is for this reason, initially the case was registered under Section 306 IPC. The offence punishable under Section 302 IPC was registered against the accused by the investigating agency only on the basis of receipt of the post mortem report and also on the basis of ligature i.e. rope Ext. P-5, the recovery whereof is not at all proved on record, as noticed by us in earlier part of this judgment. Even the opinion of the doctor that the cause of death was ante-mortem strangulation, for the detailed reasons hereinabove, is also not proved and rather in the given facts and circumstances as well as the evidence available on record, the present is a case of ante mortem hanging i.e the commission of suicide by the deceased at her own and without any provocation or instigation from the side of her husband.

30. The so called date of compromise Ext. PW-1/B has also been pressed into service. As per the prosecution case, the compromise was arrived at between the accused and the deceased on an occasion when she was beaten up by him and she left the matrimonial home as well as started living in the house of her parents. As per the version of PW-1 Naginder Singh in his cross-examination, the Panchayat was called to their house and compromise Ext. PW-1/B was arrived at. The same, according to him, was taken into possession in the presence of Kamla Devi PW-4 by the police. PW-4 Kamla Devi, while in the witness-box though has supported the prosecution, however, may be being the resident of the same village to which the complainant

belongs. Her testimony further reveals that deceased Pammi never complained to her qua her ill-treatment by her husband, the accused. The compromise deed is dated 23.8.2007 whereas the occurrence pertains to 19.4.2014 i.e. after about 7 years of the said compromise. The Pradhan Gram Panchayat and the witness to this document were not examined by the prosecution to the reasons best known to it. Otherwise also, as per the testimony of PW-1 Naginder Singh, after the compromise was arrived at between the deceased and the accused, they were leading happy married life. As per the own testimony of PW-1 Naginder Singh, PW-2 Kirna Devi had told him that her mother had hanged herself whereas her father the accused was sleeping while being under the influence of liquor. Being so, there was no question for the accused to have strangulated the deceased. Otherwise also, it is not possible for a person under the influence of liquor to strangulate a person like the deceased having average built body and that too without there being any mark of struggle on the body of the person so strangulated. As per the post mortem report, no mark of struggle or any injury could be noticed on the body of the deceased. Even bangles on her wrists were found to be intact. The bangles in her wrists are visible in the photograph Ext. PW-19/B-7. Had she been strangulated by the accused, obviously she would have struggled to save herself and in that process, what to speak of receiving injuries on her person, her bangles would have been broken. The non-availability of such evidence on record also belies the prosecution case against the accused. Learned trial Judge though seems to have been influenced with the presence of blood on Ext. P-5 rope without there being any evidence that it was human blood. Above all, it is not the prosecution case that blood had oozed out from the ligature around the neck of the deceased. The present, as such, is a case where the Court below has based its findings on assumptions and presumptions in utter disregard of the evidence available on record.

31. The remaining prosecution evidence as has come on record by way of the testimony of formal witnesses would have been of some help to the prosecution case had its case against the accused been otherwise proved beyond all reasonable doubt. Above all, such evidence, i.e. the testimony of PW-8 Dr. Niti Prakash Dubey, Asstt. Director, RFSL, Mandi, no alcohol, poison, narcotic drug and psychotropic substance could be detected in the stomach contents, pieces of small and large intestines, liver spleen and kidney sent for analysis. Whereas PW-11 Hari Dass, Patwari on an application Ext. PW-11/A moved by the I.O. had prepared the aks Tatima of the house of the accused Ext. PW-11/B and the Jamabandi Ext. PW-11/C. PW-12 Hem Singh Kanungo had counter signed the Jamabandi Ext. PW-11/C. PW-13 Rajesh Kumar is again Asstt. Director RFSL, Mandi. He, on analysis of the exhibits i.e. dupatta and sickle had opined that death was possible by hanging with dupatta, however, no fiber could be detected on the sickle. He, therefore, has proved his report Ext. PW-7/B. PW-14 Kamlesh Kumar, the MHC of the Police Station Jogindernagar has supported the prosecution case qua deposit of the case property with him and transmission thereof to the FSL for analysis. PW-15 HHC Deepak Raj has proved the rapat Ext. PW-15/A which was entered on the basis of information qua this incident received from PW-1 Naginder Singh. Accordingly, PW-19 SI Yog Raj accompanied by other police officials were deputed to the spot vide rapat Ext. PW-15/B. PW-16 Const. Rakesh Kumar had supported the prosecution case qua taking the case property to FSL and deposit thereof in safe condition there whereas PW-17 HC Gopal Chand has stated that a cloth parcel containing the case property of this case was handed over to him by PW-19 SI Yog Raj which he entered in the malkhana register and retained the same in safe custody. PW-18 Const. Pratap Kumar, as already noticed is a witness to the so called disclosure statement Ext. PW-18/E which is not at all proved. The remaining witnesses PW-19 SI Yog Raj and PW-20 Insp. Amar Singh are Investigating Officers. Therefore, when the prosecution has failed to make out a case against the accused, it is not desirable to elaborate the evidence as has come on record by way of testimony of above formal witnesses which at the most could have been considered as link evidence. On the other hand, the plea the accused raised in his defence that he is innocent and that only one PW i.e. PW-1 Naginder Singh has deposed against him falsely and at the instance of his enemies seems to be nearer to the factual position.

32. In view of the re-appraisal of the facts of this case and also the evidence available on record, in our considered opinion, the present is a case where this incident has not only taken away the valuable and precious human life but at the same time recording of findings of conviction and sentence against the accused on highly inadmissible evidence is also travesty of justice. The accused and deceased who lived in the company of each other for 20-22 years and had three children as well as old mother to support he would have not caused the death of the deceased, his own wife and that too without any motive therefor. Recording findings of conviction and awarding the punishment for life imprisonment against the accused, the children i.e. two young daughters and a school going son have been rendered orphan and liability to support and look after them is shifted upon their old grand mother.

33. The present, as such, is a case where innocent person has been convicted and sentenced to jail and thereby caused injustice to him. The impugned judgment, as such, is not legally sustainable and as the prosecution has miserably failed to prove its case against the accused either under Section 302 IPC or under Section 201 IPC, beyond all reasonable doubt, therefore, he is entitled to be acquitted of the charge framed against him.

34. For all the reasons hereinabove, this appeal succeeds and the same is accordingly allowed. Consequently the impugned judgment is quashed and set aside and the accused is acquitted of the charge framed against him. He is serving out the sentence in jail, therefore, he be set at liberty forthwith, if not required in any other case. Release warrants be issued accordingly.

35. The appeal stands finally disposed of.

****

BEFORE HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, J.

Smt. Kanta Sharma and others .....Petitioners

Versus

Shri Sudhir Behl .....Respondent

Civil Revision No. 124 of 2005
Reserved on : 03.11.2016
Decided on: February 27, 2017

H.P. Urban Rent Control Act, 1987- Section 14- Landlord sought eviction of the tenant on the ground of bonafide requirement – the Rent Controller allowed the petition and ordered the eviction of the tenant – an appeal was filed, which was allowed and the order of Rent Controller was set aside- held in appeal that the tenant is occupying the premises for more than 16 years- no eviction petition was filed against the tenant during those periods, which shows that there is no malafide intention on the part of the landlord – eleven members of the family of the landlord had squeezed themselves into three rooms– the tenant was inducted by the predecessor-in-interest of the landlord, which shows that the plea of family partition is probable- petition allowed the order of the Appellate Court set aside and that of the Trial Court restored.(Para-16 to 24)

Cases referred:

Mohan Lal Aggarwal V. Kali Ram 1997 (2) Sim.L.C 508

Jagat Ram Chauhan V. Smt. Avinash Partap and another Latest HLJ 2014 (HP) 420

Messrs. Karta Ram Rameshwar Dass V. Ram Bilas and others, (2006) 1 Supreme Court Cases 125

For the petitioners: Mr. Bhupinder Gupta, Sr. Advocate with Mr. Neeraj Gupta, Advocate.

For the respondent: Mr. Bimal Gupta, Sr. Advocate with Ms. Kusum Chaudhary, Advocate.

The following judgment of the Court was delivered:

Dharam Chand Chaudhary, Judge.

The petitioners (hereinafter referred to as the 'landlords') who have succeeded the estate left behind by the original petitioner-landlord Hans Raj (since dead) being his legal heirs have laid challenge to the judgment dated 06.08.2005 passed by learned appellate authority, Shimla in Civil Miscellaneous Appeal No. 42-S/14 of 2003, whereby on reversal of the order passed against the respondent (hereinafter referred to as the 'tenant') by learned Rent Controller, Shimla in Rent Case No. 179/2 of 1998 has quashed the same and dismissed the rent petition. The parties hereinafter shall be referred to as 'landlords' and 'tenant' in short in this judgment.

2. The ejectment of the tenant was sought by Hans Raj, the predecessor-in-interest of landlords under the provisions of Section 14(3) (d) of the Himachal Pradesh Urban Rent Control Act, 1987, which reads as under:

> "14. (1) * * *
>
> (2) * * *
>
> (3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—
>
> (a) * * *
>
> (b) * * *
>
> (c) * * *
>
> (d) in the case of any residential building, if he requires it for use as an office, or consulting room by his son who intends to start practice as a lawyer, an architect, a dentist, an engineer, a veterinary surgeon or a medical practitioner, including a practioner of Ayurvedic, Unani or Homoeopathic system of Medicine or for the residence of his son who is married, if—
>
> (i) his son as aforesaid is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be; and
>
> (ii) his son as aforesaid has not vacated such a building without sufficient cause, after the commencement of this Act, in the urban area concerned."

3. The tenant was inducted in two rooms set consisting of one bed room, one drawing room-cum-dining room, kitchen, bath/W.C and balcony marked as 'B' in the plan Ext. PW-5/A situate in first floor of building 114/1 Ward No. 11, Krishnanagar, Shimla (hereinafter referred to as the 'demised premises' in short) in January, 1985. The rent as agreed upon was Rs. 750/- per month inclusive of all taxes. The rent note is Ext. PW-1/A.

4. It was pleaded in para 18(a) of the eviction petition that the landlords neither occupied nor vacated any premises within the municipal limits of Shimla during five years preceding the institution of eviction petition. The family of the landlords residing in the same building at the time of institution of the eviction petition was consisting of deceased Hans Raj, his wife, mother, two married sons, children as well as 3rd son of marriageable age, who ultimately got married during the pendency of the petition. Besides, the married daughters of the petitioners also keep on visiting the landlords regularly. Their family relations also keep on visiting them off and on. Therefore, the accommodation comprising three rooms, a small store, kitchen and bath/W.C under their use and occupation is not sufficient to meet their own requirement. The accommodation rented out to the tenant was claimed to be suitable for providing accommodation to the unmarried younger son whose marriage according to them could not be finalized for want of suitable accommodation for his use and occupation. The tenant keeping in view such large family of the landlord was requested time and again to hand over vacant possession of the demised premises, but of no avail, hence the petition for his eviction therefrom.

5. It was also claimed that the demised premises in family settlement (mark 'B') dated 1.12.1982 had fallen to the share of landlords and it is they who had been receiving the rent from the tenant since then.

6. In reply, the eviction petition was sought to be dismissed on the ground that the same being not in accordance with the provisions of Urban Rent Control Act and rules framed thereunder is not maintainable and as the landlords allegedly suppressed material facts, therefore, they are not entitled to seek the relief of eviction of the tenant. On merits, it was submitted that besides the petitioners, there are other co-owners/landlords of the demised premises. They are in occupation of more than sufficient accommodation. They even got vacated some accommodation within the statutory period preceding the institution of eviction petition. The agreed rent i.e. Rs. 750/- per month has not been denied while answering para No. 11 of the petition. It is also admitted that the tenant was inducted as such in the demises premised in January, 1985. The execution of the rent note is also admitted.

7. While answering para 18(a) (i) of the petition, it is denied that the demised premises are bonafidely required by the landlords for their own use and occupation or for the use and occupation of other members of their family/relations or family friends. It is also denied that the landlords not own or occupy or got vacated any accommodation within the municipal limits of Shimla during five years preceding the institution of the petition. The size of the family of the landlords as given in the petition was not admitted being incorrect. It was also denied that the married daughters of the landlords or their family relations visit them regularly. The landlords and other co-owners allegedly are in occupation of more than sufficient accommodation. The existence of family settlement whereby the demised premises fell in the share of landlords has also been denied.

8. In rejoinder, the landlords have denied the contents of the preliminary objections being wrong. On merits, while denying the contentions to the contrary, in reply they have reiterated the entire case as set out in the eviction petition. It was specifically pleaded that they became exclusive owner of the demised premises in terms of the family settlement dated 1.12.1982. In rejoinder to reply to para 18(a) of the petition, it was further pleaded that in 3rd week of March, 2000, one room set in the ground floor of the building was vacated by one Shakia. Since the landlords were residing in the top floor of the building, whereas, the accommodation so vacated was situated in the ground floor of the building, therefore, being not suitable to them, they were ready and willing to shift the tenant in the said accommodation.

9. On the pleadings of the parties following issues were framed by learned Rent Controller:-

1. Whether the petitioner bonafide requires the demised premises for his personal use and occupation and also for his family members as alleged? OPA.
2. Whether this petition is not maintainable as alleged? OPP.
3. Relief.

10. Deceased Hans Raj had stepped into the witness box as PW-1 and also examined his brother Pritam Singh as PW-2, Shri Rameshwar, Officer incharge Dayanand Public School as PW-3 and Shri Pyare Lal, Senior Clerk Office of DFSC, Shimla as PW-4. Shri Dinesh Sharma, one of the landlords has appeared in the witness box as PW-5 and proved the map Ext. PW-5/A.

11. The tenant on the other hand had stepped into the witness box as RW-1 and also examined Shri Murari Lal as RW-2.

12. Learned Rent Controller on appreciation of the evidence comprising oral as well as documentary has arrived at a conclusion that the landlords in their claim for additional accommodation for their own use and occupation was bonafide. The tenant as such, was not legally justified to dictate terms to them in the matter of accommodation required by them for

their own use and occupation. Also that he should have occupied the accommodation vacated by Shri Shakia in the ground floor of the building, keeping in view the size of the family of landlords. The petition was as such, allowed vide order dated 19.06.2003. However, learned Appellate Authority on reversal of the order passed by learned Rent Controller has dismissed the rent petition as pointed out at the very out set.

13. The legality and validity of the impugned judgment has been questioned in this Court on several grounds, however, mainly that accommodation in the building in question vacated by Rameshwar Sharma and Mohan Lal Rana being in the share of Pritam Singh, the brother of deceased Hans Raj should have not been taken into consideration nor the petition dismissed on the basis thereof, as such facts sought to be brought on record by the tenant by way of application under Order 41 Rule 27 of the Code of Civil Procedure were denied by them. The Appellate Authority though dismissed the application under Order 41 Rule 27 CPC, however, erroneously presumed that the landlords have admitted the vacation of accommodation by the aforesaid Rameshwar Sharma and Mohan Lal Rana in complete departure to their specific response that the accommodation so vacated by the said tenant was in the share of Shri Pritam Singh, the another co-sharer in the building in question. The landlords had nothing to do with such accommodation and there being contentious issues having arisen between the parties until and unless the opportunity to lead evidence granted, such facts should have been ignored from consideration while adjudging the bonafide requirement of the petitioners/landlords. The partition in family settlement between the landlords and Pritam Singh another co-sharer also stood proved from the testimony of said Shri Pritam Singh was erroneously ignored. The partition having taken place in the year 1982 was also proved from the statement of deceased landlord Hans Raj. In view of such evidence available on record, there was no occasion to learned Appellate Authority to have concluded that the partition of the building in question not proved, that too, when the tenant had miserably failed to adduce any evidence to prove otherwise that the property was still joint of the landlords and said Shri Pritam Singh. The findings that other house of the landlords and other co-owners at Kaithu (Shimla) was still joint, therefore, the building in question was also joint property are stated to be erroneous and contrary to the evidence produced by the landlords. Learned Appellate Authority has failed to appreciate that had the accommodation vacated by aforesaid Rameshwar Sharma and Mohan Lal Rana been considered to be in the share of the landlords, the accommodation available with other co-owners in the building should have also been considered. It has not been done and to the contrary, learned Appellate Authority has made out a totally new case in favour of the tenant, which according to the landlords amounts to illegal and arbitrary exercise of jurisdiction. Learned Appellate Authority has also committed illegality in doubting the bonafide of the landlords to accommodate the tenant in the premises vacated by Shri Shakia in the ground floor of the building as according to landlords, the authority below has erroneously ignored the detailed order in this regard passed by learned Rent Controller in the eviction petition on 3.09.2002, whereby the application filed by the tenant seeking a direction to put him in the premises vacated by one Shakia was dismissed after taking into consideration the fact that offer made initially by the landlords to the tenant in this regard was declined by him. Since the application was filed by the tenant after the landlords having spent considerable amount for carrying out repairs in the said accommodation and as the tenant had initially declined the offer made to him to shift there, the application according to the landlords was rightly dismissed by learned Rent Controller. Learned Appellate Authority also committed error of law while clubbing the requirement of the landlords along with the accommodation fallen vacant and made available to Pritam Singh, who as per own admission of the tenant was also residing in that very building. Therefore, on account of misreading, misconstruction and misappreciation of the facts as well as evidence available on record, a grave injustice is stated to have caused to the landlords. The impugned judgment as such, has been sought to be quashed and set aside.

14. Mr. Bhupinder Gupta, learned Senior Advocate assisted by Mr. Neeraj Gupta, Advocate during the course of arguments has urged all the grounds raised in the memorandum of petition and while placing reliance on the evidence as has come on record by way of own

testimony of Hans Raj, PW-1, the deceased petitioner-landlord as well as that of his brother Pritam Singh, PW-2 and the map Ext. PW-5/A has contended that learned Appellate Authority was not justified in dismissing the eviction petition on reversal of the order passed by learned Rent Controller. The own admissions as has come on record by way of statement of tenant have also been pressed in service to substantiate the claim of the landlords. Mr. Bhupinder Gupta has further urged that the tenant cannot be permitted to dictate terms to the landlords as to which accommodation should be occupied by them or sufficient for their own use and occupation. It being their sole prerogative, the choice should have been left to the landlords only.

15. On the other hand, Mr. Bimal Gupta, learned Senior Advocate assisted by Ms. Kusum Chaudhary, Advocate while repelling the arguments addressed on behalf of the landlords has pointed out that the plea of partition of the building in question is not at all proved. There being no legal and acceptable evidence that the premises vacated by Rameshwar Sharma and Mohan Lal Rana were in the share of Pritam Singh, learned Appellate Authority has not committed any illegality or irregularity while arriving at a conclusion that the said premises also became available to the landlords for being occupied by them to meet their personal requirement. It is also pointed out that the tenant was willing to shift to the premises in the ground floor of the building vacated by Shri Shakia, however, the landlords not allowed him even to do that also. Therefore, according to Mr. Gupta, when the evidence available on record is suggestive of that the landlords have got sufficient accommodation to cater to their personal need, hence learned Appellate Authority has not committed any illegality or irregularity in dismissing the eviction petition on reversal of the order passed by learned Rent Controller.

16. This Court has given its thoughtful consideration to the given facts and circumstances and also the evidence available on record as well as the arguments addressed on both sides. Before entering the controversy upon merits, it is desirable to reproduce following extracts from the judgment of a Co-ordniate Bench of this Court in ***Mohan Lal Aggarwal*** V. ***Kali Ram 1997 (2) Sim.L.C 508***:-

> "17. There can be no dispute with the case law that in a case of bona fide requirement, it is necessary that till the decree of eviction is passed, the landlord should satisfy that the need is bona fide and continues to subsist. If at the time of granting the final order such material is brought on record which would dis entitle the landlord seeking ejectment of the tenant, the same shall certainly be taken into account, but the Court has to be very cautious while looking into these changed situations or attending circumstances
>
> 18. In a given situation and in appropriate cases the Courts have to bear in mind the relief and the same would be moulded on the date the ejectment is to be ordered in case such events have taken place during the continuance of proceedings which destroyed the very foundation or claim as put fourth by the landlord or the facts which were existing at the time when the petition was initially filed, have dis-appeared. There can be no two opinions that the requirement of the landlord should continue to exist till the date the tenant is finally ordered to be evicted and thrown on the read The events and developments or such acts and conduct of the landlord which may dis entitle him from seeking ejectment, would certainly be taken cognizance of But unfortunately, even if these events, as brought on record by the tenant, are looked info, do not, in my considered opinion, save the tenant from his eviction.
>
> 19. The tenant in the present case is not the Judge of the requirement of the landlord or of his son for which the landlord alone is the Judge. It is for the landlord to see which accommodation is needed for himself and his family, for the married son and the family and in case there are more than one married son, which part of the premises have to be allotted to whom keeping in view the size of the family and the living style……

21. Daughters after marriage in our society do not severe their connections with the parental home. They keep on visiting their parents very often and some times with their husbands and children. Some accommodation is always needed for their comfortable stay.

23. As 1 look at the things, a case of subsequent events has to be looked into from the point of view of the landlord also. Even when some portions in the building have fallen vacant it is completely the option of the landlord to choose and decide as to which particular portion, site, floor or accommodation is needed to suite his needs or other members of the family including the needs of the married son and his family. Option is again given to the landlord to make a choice as to against which tenant, in case there are many, he desires to file ejectment proceedings in order to meet his requirement and the tenant cannot, in any situation, be permitted to thrust upon the landlord his own choice nor the Court, in the given situation, would exercise any advisory jurisdiction in telling the landlord to accept the one which the Court may offer or the one which is suggested by the tenant.

24. The Courts, on a proper case made out, shall certainly look into the purpose projected by the landlord whether the same is bona fide and is not designed or motivated or prompted by some hidden deal and the relief could always be moulded, if the Court ultimately comes to the conclusion that the subsequent events established on record would dis-entitle the landlord from an order of ejectment against the tenant. The language of the statute is plain and simple. To only two impediments are that the son is not occupying in the urban area concerned any other building for residence and has not vacated such building without sufficient cause, after the commencement of the Act, in the urban area concerned.

26. ……..The Courts of law have to keep in mind the language and the words used in the statute and they are not required to import their own knowledge or to extend the meaning of the phraseology used therein. According to the provision, a landlord would apply to the Controller for order directing the tenant to put the landlord in possession in case of any residential building, if he requires it for the residence of his son who is married…….

31. The Courts of law have to keep in mind the social status, economic standard and the desire coupled with the need to make oneself more comfortable in his own premises and this test is to be applied from the view point of landlord and his family members. The Courts is not expected to substitute its own ideas and the decision is to be left to the landlord himself. It may not be out of place to state here that the landlord in the present case has offered an alternative accommodation to the tenant in the basement of the building but the offer stands declined by the tenant on the ground that it is neither suitable nor sufficient. Sufficiency or suitability of the tenant is not the headache of the landlord When the tenant has refused to accept this offer made by the landlord on the ground that the accommodation being offered is neither suitable nor sufficient, it is strange how can the landlord be ordered to make himself comfortable in that accommodation and that the same would be sufficient to meet his requirement.

32. ……..In a place like Shimla friends and relations, living in other parts of the country, very often come to this place during acute summer days and some portion has to be kept in order to meet their needs and requirement. Simply because at one point of time the landlord for some economic or financial stringencies or for different reasons has let out his building, would not justify the stand taken by the tenant in dismissing the ejectment petition Once the landlord is able to establish on record that the need is genuine and bonafide, it would not frustrate his right for seeking orders of ejectment of the tenant directing him to

hand over the possession to landlord. 'Sufficient cause' has to be construed liberally sq as to advance the object for which the provision has been made in the statute.

33. About the scope of this Court, It has to be kept in view that while exercising its revisional jurisdiction, this Court will not sit as a Court of appeal to re-appraise the evidence placed on record by the parties, if it is said correctly, it is not permissible When findings of fact have been recorded by the Rent Controller and have been confirmed by the Appellate Authority and that too on appreciation of the evidence, the High Court would not be justified in looking at the material from a deferent angle or substitute its own wisdom. That would be travelling completely outside the ambit and scope of this power.

34. It may further be made clear that this Court shall certainly interfere and reverse the findings if it is shown that the orders of ejectment are based on no material or are based on fictitious material or suffer from any patent error of law or perversity. In that situation, the findings of fact would certainly loose their binding force."

17. Mr. Bhupinder Gupta, learned Senior Advocate has also placed reliance on the judgment of a Co-ordinate Bench of this Court in ***Jagat Ram Chauhan*** V. ***Smt. Avinash Partap and another Latest HLJ 2014 (HP) 420***. This Court has gone through the law so cited at the Bar, however, in view of the principle settled in *Mohan Lal Aggarwal's* case (supra), it is deemed appropriate not to burden this judgment by reproduction of the observations made in the judgment so cited at Bar.

18. The tenant herein admittedly is occupying the demised premises for the last more than 16 years as admittedly he was inducted as such in January, 1985. No petition for his eviction was filed by the landlords seeking his ejectment during this long span, which by itself would show that there is no malafide intention on the part of the landlords in seeking ejectment of the tenant from the demised premises. Admittedly, the members of family of landlord i.e. at the time of institution of eviction petition 11 in number had squeezed themselves in a three rooms set mark 'B' in the map Ext. PW-5/A. Similarly, the demised premises mark 'A' in Ext. PW-5/A is in possession of the tenant. The accommodation mark 'B' with the landlords is in top floor of the building, whereas, the demised premises in first floor thereof. The same as such, is suitable for being occupied by the landlords for their own use and occupation.

19. There is no dispute so as to tenant was inducted in the demised premises by Hans Raj, the predecessor-in-interest of landlords. The execution of rent note Ext. PW-1/A has also not been denied by the tenant. This document amply demonstrates that the tenant was inducted in the demised premises by deceased Hans Raj. Had the partition not been effected between the co-sharers in the year 1982, how Hans Raj could have inducted the tenant in the demised premises in exclusion to his brother and other co-sharer Pritam Singh, PW-2. The original settlement deed though has not seen the light of the day, as it is the photocopy thereof, mark 'B' has been produced in evidence by the landlords. However, the own testimony of deceased Hans Raj while in the witness box as PW-1 and that of his brother and other co-sharer Pritam Singh should have not been ignored by learned Appellate Authority, more particularly when they were not cross-examined on behalf of the tenant qua this part of their testimony. As a matter of fact, no suggestion has been given to both of them that the partition of the demised premises did not take place in the year 1982 and that the case to this effect set out in the eviction petition and the evidence produced is false. In their cross-examination, no doubt, they have been cross-examined qua this aspect of the matter also, however, their testimony in examination-in-chief remained unshattered because nothing material lending support to the case of the tenant could be elicited therefrom. Above all, the tenant has miserably failed to prove otherwise that the building in question was joint of all the co-sharers and unpartitioned. Therefore, case of the landlords that the building came to be partitioned in family settlement in the year 1982 and it is thereafter the tenant was inducted by deceased Hans Raj in the demised premises stands

satisfactorily proved on record. Deceased Hans Raj as such has rightly filed the petition seeking eviction of the tenant from the demised premises on the ground that the same is bonafidely required by him for his own use and occupation and use and occupation of other members of the family, who at the time of institution of the petition were 11 in number and three rooms accommodation mark 'B' in the map Ext. PW-5/A, in the considered opinion of this Court, was not sufficient to cater to the own requirement of accommodation of the landlords. The point in issue, therefore, is covered in favour of the landlords by the judgment of the Apex Court in ***Messrs. Karta Ram Rameshwar Dass*** V. ***Ram Bilas and others, (2006) 1 Supreme Court Cases 125***. The relevant extract whereof reads as follows:

> 7. In view of the foregoing discussion, we hold that in a suit for partition filed by one co-sharer against another if a tenant is made party, he can object to the claim for partition if it is shown that the same was not bona fide and made with an oblique motive to overcome the rigors of rent control laws which protected eviction of tenant except on grounds set out in the relevant statute. After a partition is effected or a decree for partition is passed, it would be open to the co-sharers to evict a tenant from that portion of tenanted premises which had fallen in their respective shares by filing separate proceedigns for eviction under rent control laws on the grounds enumerated thereunder in the present case, the tenant failed to prove that the claim for partition was not bona fide. Therefore, final decree in the suit for partition has been rightly confirmed by the High court but it was not justified in reversing decree of the trial court, which directed that the possession of the tenant could not be disturbed unless and until proceeding is initiated for its eviction under the Act, and in ordering for recovery of possession from the tenant of that portion of the tenanted premises which had fallen to the share of the plaintiff. In our view, the trial court was quite justified in directing that possession of the tenant would not be disturbed and it can be evicted only in accordance with law by taking steps for eviction under the provisions of rent control legislation upon the grounds enumerated thereunder.

20. The findings that since the building namely 'Harbhajan Cottage' situate at Kaithu (Shimla) is still joint of the landlords and other co-sharers, therefore, the building 114/1, in which the demised premises situate is also their joint property are absolutely without any basis as it cannot be believed by any stretch of imagination that if Harbhajan Cottage is unpartitioned property of the co-sharers, the building 114/1 is also still joint, more particularly when the landlords by producing cogent and reliable evidence had satisfactorily proved that the partition thereof came to be effected in the year 1982 in a family settlement. Being so, the findings as recorded by learned Appellate Authority below that the building in question is unpartitioned are neither legally nor factually sustainable.

21. Surprisingly enough learned Appellate Authority has heavily relied upon the so called admissions on the part of the landlords qua vacation of accommodation comprising 2-2 rooms each by Rameshwar Sharma and Mohan Lal Ran during the pendency of proceedings in the eviction petition. True it is that tenant had filed an application under Order 41 Rule 27 CPC before the Appellate Authority below for placing on record the subsequent events such as the accommodation rented out to aforesaid Rameshwar Sharma and Mohan Lal Rana had been vacated by them during the pendency of the eviction petition. In reply to the application, the stand of the landlords was that no doubt such accommodation was vacated by the aforesaid tenants, however, the same was in the share of Pritam Singh, PW-2, another co-sharer. Taking such response of the landlords as their admission and ignoring that part of the reply in which it was averred that they had nothing to do with the accommodation so vacated by the aforesaid two tenants being in the share of Pritam Singh, learned Appellate Authority was not justified to conclude that the said accommodation was sufficient to cater to the needs of accommodation required by deceased Hans Raj and other members of his family, that too, without entering upon the merits and contentious issues raised by the landlords in reply to the said application. The

application rather was dismissed in view of the specific stand of the landlords that the accommodation vacated by aforesaid Rameshwar Sharma and Mohan Lal Rana was in the share of Pritam Singh, the Appellate Authority could have not arrived at a conclusion that the said accommodation was available for being occupied by the landlords without affording the parties an opportunity of being heard and to show that the accommodation so vacated was in the share of landlords or Shri Pritam Singh. Therefore, the findings recorded by learned Appellate Authority are far fetched and germane of its own mind, without there being any evidence available on record that it is the landlords alone to whom the accommodation so vacated belongs. Their mere admission that aforesaid Rameshwar Sharma and Mohan Lal Rana have vacated the accommodation consisting of two rooms each with them in that very building during the pendency of the eviction petition could have not been taken into consideration to arrive at a conclusion that the said accommodation was in their share and became available for being occupied by them. Learned Appellate Authority was not at all justified in adjusting the said accommodation to adjudge the own requirement of the landlords without consideration that in case the said accommodation was that of the landlords, what was other accommodation in the share of Pritam Singh. Learned Appellate Authority rather seems to have made out a case at its own in favour of the tenant. Such an approached is not at all appreciated.

22. Now if coming to the factual matrix, the tenant admittedly has been inducted in the demised premises as such by deceased Hans Raj. The tenant while in the witness box as RW-1 has admitted that there were 11 members in the family of deceased Hans Raj including himself and his mother. They were deceased Hans Raj, his wife, mother, two married sons, one unmarried son (who also got married during the pendency of these proceedings) and three school going children. The tenant also admits that married daughter of deceased Hans Raj used to visit him along with her husband and children. As per own admission of the tenant while in the witness box, the landlords were residing in the accommodation mark 'B' in the map Ext. PW-5/A. In the considered opinion of this Court, the accommodation mark 'B' in Ext. PW-5/A is not at all sufficient to cater to the needs of the landlords. No doubt, one room set in ground floor of the building vacated by Shakia was occupied by the landlords after carrying out extensive repairs. There is no denial to their case that this accommodation was offered to the tenant, however, he refused to shift there, remained uncontroverted. No doubt, subsequently, an application was field by him before learned Rent Controller for seeking a direction to the landlords to shift him to the said accommodation, however, that application was dismissed by learned Rent Controller vide a detailed and reasoned order passed on 3.9.2002. Learned Rent Controller while dismissing the application has taken note of the facts such as offer made by the landlords to the tenant to shift there, however, he declined the same and that they spent approximately Rs. 1,00,000/- to carry out repairs thereof. The possibility of the tenant agreed for occupying the said accommodation on finding that extensive repairs was carried out by the landlords to make the same suitable for their own use and occupation, cannot be ruled-out. Learned Rent Controller as such has rightly dismissed the application filed by the tenant. The observations to the contrary recorded by learned Appellate Authority are neither legally nor factually sustainable. Any how, further addition in the accommodation vacated by Shri Shakia is also not sufficient to cater to the needs of landlords because it was comprising of only one room, whereas the minimum requirement even as per learned Appellate Authority of the landlords was of seven rooms. Since it is held hereinabove that the accommodation vacated by Shri Rameshwar Sharma and Mohan Lal Rana was not that of the landlords, therefore, learned Appellate Authority was not justified in clubbing the same to adjudge their requirement. The eviction petition, in these circumstances, in all fairness and in the ends of justice should have been allowed because the landlords have specifically pleaded and proved that the demised premises are bonafidely required by them for their own use and occupation. Learned Appellate Authority as such was not justified in reversing the well reasoned order passed by learned Rent Controller on appreciation of the evidence available on record in its right perspective.

23. The present for the reasons recorded hereinabove, is a case where the impugned judgment deserves to be quashed and set aside by this Court in exercise of its revisional

jurisdiction because the findings recorded by learned Appellate Authority are based on no material. As a matter of fact, the evidence available on record has not been appreciated in its right perspective and to the contrary, learned Appellate Authority has made out a case at its own, favoring the tenant. The present is a case where on account of misappreciation of evidence and learned Appellate Authority having travelled beyond the record, the impugned judgment suffers from an illegal and patent error of law, hence perverse. The findings recorded by learned Appellate Authority, therefore, have certainly lost its binding force. Learned counsel representing the tenant has not been able to persuade this Court to take similar view of the matter as has been taken by learned Appellate Authority. The present rather is a case where the eviction petition has been erroneously dismissed on reversal of the order of eviction passed against the tenant by learned Rent Controller, which in view of the findings of this Court hereinabove was not only well reasoned but also legally sustainable.

24. For all the reasons hereinabove, this petition succeeds and the same is accordingly allowed. Consequently, the impugned judgment is quashed and set aside and the impugned order passed by learned Rent Controller in Rent Case No. 179/2 of 1998 is upheld. As a consequence thereof, the tenant is ordered to be evicted from the demised premises mark 'A' in the map Ext. PW-5/A. Pending application(s), if any, shall also stand disposed of. No orders as to costs.

****

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

Pushap Raj and another .....Appellants.
Versus
Dile Ram .....Respondent.

Cr. Appeal No. 414 of 2008
Decided on : 27/02/2017

Indian Penal Code, 1860- Section 500- Complainant complained that accused had leveled false allegations calling them criminals and declaring that they had set the shop of the accused on fire – the complainant was tried and the accused was acquitted by the trial Court- held, that the complainant had categorically deposed that the accused had confessed in the presence of the respectable people of the Village regarding making false allegations – Pardhan and other witnesses were examined in proof of this fact – their testimonies were not shaken in their cross-examinations- Trial Court had wrongly discarded their testimonies to record the acquittal – appeal allowed- the order passed by Trial Court set aside – the accused convicted of the commission of the offence punishable under Section 500 of I.P.C. (Para-8)

For the Appellants: Mr. G.R. Palsra, Advocate.
For the Respondent: Mr. Naveen K. Bhardwaj, Advocate.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge (Oral)

The complainants stand aggrieved by the verdict of acquittal pronounced upon the accused/respondent by the learned Sub Divisional Judicial Magistrate, Chachiot at Gohar, District Mandi.

2. The brief facts of the case are that a complaint was filed by complainants Pushap Raj and Yash Pal against the accused that with the motive to harm their reputation and to

defame them, the accused has levelled false allegations calling them criminals in the presence of public, relatives, near and dears. It is alleged that the accused has declared publicly that they have set on fire the shop of the accused on 12.11.2004. The complainants in their preliminary evidence examined Pushap Raj as CW-1, Yash Pal complainant as CW-2, Hukam Chand as CW-3, Hem Raj as CW-4 and one Tej Singh as CW-5 and placed on record copy of legal notice Ex.CW-1/A and copy of reply Ex.CW-1/B.

3. After recording of preliminary evidence Court of the SDJM took cognizance against the accused and notice of accusation under Section 500 I.P.C was put to him on 28.6.2007 to which the accused pleaded not guilty and claimed trial.

4. In order to prove its case, the complainants examined 7 witnesses. On closure of complainants' 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. He did not choose to lead any evidence in defence.

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

6. The learned counsel for the complainants' has concertedly and vigorously contended qua the findings of acquittal recorded by the learned trial Court standing not based on a proper appreciation of evidence on record, rather theirs standing sequelled by gross mis-appreciation by it of the relevant material on record. Hence, he contends qua the findings of acquittal being reversed by this Court in the exercise of its appellate jurisdiction and theirs being replaced by findings of conviction.

7. The learned counsel appearing for the respondent has with considerable force and vigour contended qua the findings of acquittal recorded by the Court below standing based on a mature and balanced appreciation of evidence on record by the learned trial Court and theirs not necessitating any interference, rather theirs meriting 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 learned counsel for the complainants has contended qua the learned trial Magistrate mis-analyzing/mis-appreciating the testimonies of the complaints' witnesses wherein they with utmost categoricality besides with inter-se harmony, voiced qua the incriminatory derogatory utterances holding echoings therein qua the complainants' setting ablaze his shop on 12.11.2004 standing pronounced by the accused upon the complainants' on 16.12.2004. For testing the vigour of the contention addressed herebefore by the counsel for the complainants' it is imperative to advert to the statement of the complainants besides their witnesses, as stood recorded at the pre-summons issuance stage. At the stage prior to the learned trial Magistrate ordering for issuance of summons upon the accused, the complainants had testified therein qua on 16.12.2004, on theirs visiting the house of the accused qua thereat the accused, in their presence besides in the presence of the respectables of the village also in the presence of the Pradhan of the Panchayat concerned, confessing qua his rearing false allegations qua the complainants' setting ablaze his shop on 12.11.2004. However, subsequent to the learned trial Magistrate putting notice of accusation to the accused for his committing an offence punishable under Section 500 IPC, the complainants' in proof thereof had apart from leading into the witness box one Tej Singh, the Pradhan of the Panchayat concerned in whose presence a confession stood made on 16.12.2004 by the accused, led other witnesses into the witness box, yet the dependence made by the complainants' upon witnesses other than the Pradhan of the Panchayat concerned, to succor the allegations constituted in the complaint, may not hold any tenacity, contrarily their statements are discardable apparently when the complainant Pushap Raj in his testimony recorded at the stage preceding the putting of notice of accusation to the accused by the learned trial Magistrate, he omitted to with specificity pronounce their names therein whereupon an inference is erectable qua the complainant subsequently contriving the naming of witnesses other than Tej Singh, the Pradhan of the Panchayat concerned who significantly on 16.12.2004 whereat

on the complainants' visiting his house overheard the accused making a confession before them qua his rearing false allegations against the complainants' qua theirs setting ablaze his shop. Consequently, the statement of the complainants' beside the statement of Tej Singh recorded at the stage subsequent to the putting by the learned trial Magistrate the notice of accusation upon the accused, remains alone to be analyzed, for discerning therefrom qua the complainants' emphatically succeeding in leading convincing evidence qua the allegations made by them in the complaint. A close circumspect reading of the deposition of CW-2 unveils qua in his cross examination his underscoring his acquiescence to the suggestion put to him by the learned counsel for the accused qua his on the day subsequent to his shop standing gutted in a fire, his making a statement before the Tehsildar and before the Police, who in quick spontaneity thereto visited the relevant site of occurrence, holding echoings qua his shop catching fire on account of short-circuit. The aforesaid acquiescence made by CW-2 in his cross-examination holding therewithin echoings qua the accused, not at the outset inculpating the complainants, for theirs setting afire his shop, when construed in tandem with the testimony of CW-5, one Tej Singh the Pradhan of the Panchayat concerned, in whose presence the complainant in his testimony recorded at the pre summons issuance stage, communicates qua on 16.12.2004 on the complainants' visiting the house of the accused, thereat the latter in the presence of CW-5 confessing qua his rearing false allegations qua the accused setting ablaze his shop, unveils qua his though corroborating the testimony held in the cross-examination of the CW-2 qua the accused at the outset both before the Tehsildar and before the Police officials who in quick spontaneity to the relevant shop catching fire visited the relevant site making a proclamation before them qua the eruption of fire in his shop arising from short circuiting, nonetheless qua the pivotal factum of the complainants, visiting the house of the accused on 16.12.2004 whereat the latter made a confessional statement before CW-3 qua his rearing an allegation qua the complainants setting ablaze his shop also visibly holds intra se corroborative echoings adversarial vis.a.vis the defence. Reiteratedly in his examination in chief CW-3 rather has corroborated the version propounded in the examination in chief of CW-1 qua on 16.12.2004, the accused in his presence besides in the presence of Tej Singh making a confession qua his rearing false allegations qua the complainants' setting afire his shop. Consequently, even if the complainant had before the Police besides before the Tehsildar who in quick spontaneity to the ill-fated occurrence visited the relevant site of occurrence ascribed the reason of his shop catching fire to short circuiting yet exculpation thereat of the guilt by the complainant by the accused, holds no relevance conspicuously in the face of the uncontroverted visible factum of both CW-2 and CW-3 with intra se corroboration deposing qua on 16.12.2004, the accused, on the complaints' visiting his homestead his thereat in the presence of the complainants' besides in the presence of CW-3 confessing qua his nursing false allegations qua the complainants' setting his shop on fire. The aforesaid deposition of the complainants' witnesses when remained un-eroded of their sanctity hence constitute formidable evidence of sinewed vigour, for succoring the allegations constituted in the complaint whereas the learned trial Court in its verdict has remained unmindful of the impact of the afore referred depositions besides obviously has omitted to analyze their probative value. Consequently, this court is constrained to conclude qua the learned trial Magistrate omitting to appreciate the best evidence emphatically pronouncing upon the guilt of the accused/respondent. In aftermath, reinforcingly, it can be formidably concluded, qua the findings returned by the learned trial Court meriting interference. In summa, the verdict recorded by the learned trial Magistrate suffers from a gross infirmity as well as a perversity of non appraisal of the relevant and germane evidence whereupon this Court is constrained to reverse the findings of acquittal pronounced upon the accused. The appeal is accepted. The impugned judgement is quashed and set-aside. The accused be produced before this Court on 20th March, 2017 for his thereon being heard on the quantum of sentence.

****

BEFORE HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, J. AND HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

State of H.P. .....Appellant
Versus
Balkrishan .....Respondent

Cr. Appeal No. 165 of 2011
Reserved on : 11.11.2016
Decided on: 27.2.2017

N.D.P.S. Act, 1985- Section 20- Accused was found in possession of 4.5 kg. charas – he was tried and acquitted by the Trial Court- held in appeal that the recovery was effected at 12.05 A.M. mid night and it was not possible to associate independent witnesses at that time – the testimonies of police officials cannot be rejected, if found trustworthy and reliable –accused has not given any explanation regarding his arrest by the police – minor contradictions in the testimonies are not sufficient to discard the prosecution version –the accused has not led any evidence in his defence- the prosecution version was proved in these circumstances- appeal allowed- judgment of the Trial Court set aside and accused convicted of the commission of offence punishable under Section 20 of N.D.P.S. Act.(Para-11 to 32)

Cases referred:
Joga Singh V. State of Himachal Pradesh, I L R 2016 (IV) HP 403 (D.B.)
Makhan Singh V. State of Haryana, (2015) 12 SCC 247
Girija Prasad vs. State of M.P., (2007) 7 SCC 625
Noor Aga vs. State of Punjab, (2008) 16 SCC 417

For the appellant: Mr. M.A.Khan and Mr. Virender Verma, Addl. A.G
For the respondent: Mr. Ramesh Sharma, Advocate.

The following judgment of the Court was delivered:

Dharam Chand Chaudhary, Judge.

Learned Special Judge, Fast Track Court, Chamba has acquitted the respondent (hereinafter referred as to the 'accused') of the charge under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the 'NDPS Act' in short) vide judgment dated 24.01.2011 passed in Sessions Trial No. 15/2010, which is under challenge before this Court in the present appeal.

2. The legality and validity of the impugned judgment has been questioned on the grounds *inter-alia* that learned trial Court has not appreciated the evidence available on record in its right perspective and to the contrary, based its findings on hypothesis, surmises and conjectures. The testimony of prosecution witnesses has been discarded for untenable reasons, particularly when they had no enmity with the accused. The reasoning as given is erroneously wrong and unsustainable. The cogent and reliable evidence having come on record by way of testimony of PW-1, PW-2 and also the I.O. PW-9 has erroneously been brushed aside. Minor contradictions in the statements of prosecution witnesses have been given undue weightage while discarding the prosecution case and recording findings of acquittal. The recovery of charas weighing 4.500 kilograms from the exclusive and conscious possession of the accused is satisfactorily proved from the evidence produced by the prosecution. The evidence that PW-9 has conducted the investigation with the help of mega light, which was held by Constable Rajesh is also erroneously brushed aside. The evidence should have been read as a whole to record the

findings of conviction and a sentence or two from the statements of witnesses should have not been picked up to discard the prosecution case against the accused. The witnesses PW-1 HC Narender Singh, PW-2 HHC Kewal Krishan and the I.O. PW-9 Naseeb Singh though were official witnesses, however, on perusal of their testimony, they all supported the prosecution case on all material aspects. It is with these submissions in the grounds of appeal, the impugned judgment has been sought to be set aside and the accused convicted of the charge under Section 20 of the NDPS Act framed against him.

3. In order to decide the fate of this appeal, it is desirable to take note of the facts in a nut-shell. On 28.1.2010, ASI Naseeb Singh, PW-9 has entered rapat No. 6 Ext. PW-7/B in daily diary at 8.30 P.M. and accompanied by HC Virender Singh (PW-1), HHC Kewal Krishan (PW-2), Constable Rajesh Kumar and Constable Yakub Mohammad proceeded for patrolling towards Sundla and Koti area. Around 12.05 a.m (mid night), on their way to police station and while at Kotipul, they noticed accused walking down through a path towards Kotipul side. PW-9 alighted from the vehicle along with other police officials. The accused on seeing them got frightened and tried to run away towards Kotipul side. He allegedly was over powered by him with the help of other police officials. He was found carrying a black coloured bag Ext. P-2 on his shoulder. On suspicion that he may be carrying some narcotic drug or psychotropic substance in the bag, he was apprised orally as well as in writing about his legal right qua his search before a nearby gazetted officer or Magistrate. Memo Ext. PW-1/A was prepared in this regard. The accused allegedly consented for being searched by the police present on the spot. On this, PW-9 and other police officials had offered their search to the accused first. Nothing incriminating, however, was recovered from them. Memo Ext. PW-1/B was prepared in this regard. It is thereafter, search of the bag being carried by the accused was conducted by PW-9. A polythene packet Ext. P-3 was found kept in the bag. On further search of the said packet, charas in the shape of sticks and balls was found kept therein. The same was weighed with scales and weights available in the I.O. kit. The recovered charas was found to be 4.500 kilograms in weight.

4. The recovered charas was put in the same polythene packet Ext. P-3. Ext. P-3 thereafter was put in the same black coloured bag. Ext. P-2. The bag and parcels were sealed with four seals of impression 'N' and taken in possession vide seizure memo Ext. PW-1/E. Specimen of seal Ext. PW-1/C was obtained on a piece of cloth separately. NCB forms Ext. PW-1/D were also filled in triplicate on the spot. Seal 'N' after its use was handed over to PW-1 HC Varinder Singh.

5. Rukka Ext. PW-9/A was prepared by the I.O. ASI Naseeb Singh. The same was sent by hand to police station, Sadar, Chamba through PW-2 HHC Kewal Krishan for registration of FIR against the accused. Consequently, FIR Ext. PW-8/A was registered in the police station. Copy of rukka Ext. PW-9/A sent to S.P. Chamba through PW-2 was received by the said officer under his signatures. The spot map Ext. PW-9/B was prepared. The accused was apprised about the offence he committed and the provisions of sentence prescribed therefor vide memo Ext. PW-1/F and arrested. His personal search was conducted vide memo Ext. PW-1/D. He thereafter was brought to police station Sadar Chamba along with the case property and produced before ASI/SHO Mukesh Kumar, PW-8. The said witness had re-sealed the parcel containing the recovered charas with seal 'O'. Its specimen Ext. PW-4/A was obtained on the back of sample seal Ext. PW-1/C. Its facsimile was also affixed on NCB forms Ext. PW-1/D. The entries to this effect were made in daily diary vide rapat Ext. PW-3/D. PW-8 thereafter deposited the case property along with NCB forms in triplicate, sample of seals 'N' and 'O' and seizure memo with Pawan Kumar, PW-3, the then MHC Police Station, Chamba at 4.15 p.m. PW-3 had entered the case property entrusted to him by PW-8 along with sample of seals, NCB forms, seizure memo etc. in the malkhana register vide entries Ext. PW-3/A. He forwarded the case property to Forensic Science Laboratory along with sample of seals, NCB forms and seizure memo through LHC Joginder Singh vide RC Ext. PW-3/B. The I.O. PW-9 has prepared the special report Ext. PW-5/B and it was sent to S.P. Chamba through Constable Rajesh Kumar vide memo Ext. PW-7/C. The said Constable after delivery of the special report in the office of S.P. Chamba entered the rapat Ext. PW-3/C qua his arrival in the police station. On receipt of the report of chemical

examiner Ext. P-X and completion of the investigation challan was prepared and filed in the Court.

6. Learned Special Judge on appreciation of the prosecution case and the evidence collected by the investigating agency has prima-facie held the accused having committed the offence punishable under Section 20 of the NDPS Act. Charge against him was, therefore, framed accordingly.

7. On appreciation of the evidence produced by the prosecution, learned Special Judge has concluded that the evidence as has come on record by way of the testimony of official witnesses being highly contradictory and inconsistent cannot be relied upon to record the findings of conviction against the accused. He, as such, was given benefit of doubt and consequently acquitted of the charge framed against him.

8. Mr. M.A. Khan, learned Additional Advocate General has vehemently argued that the evidence as has come on record by way of the testimony of official witnesses is as much good as that of an independent person. Learned trial Court, however, has erroneously brushed aside the same. Mr. Khan while taking us to the statements of material prosecution witnesses i.e. HC Virender Singh PW-1, HHC Kewal Krishan PW-2 and also I.O. ASI Naseeb Singh PW-9 has strenuously contended that the statements they made are consistent on all material aspects of the prosecution case. The contradictions, if any, according to Mr. Khan are not of such a nature to belie the recovery of huge quantity of charas weighing 4.500 kilograms from the accused. With the passage of time, parrot like version of the prosecution case is not expected from the witnesses. Mr. Khan, as such, has urged that the present is a fit case where while quashing the impugned judgment, the accused may be convicted and sentenced for the commission of offence he committed under Section 20 of the NDPS Act.

9. On the other hand, Mr. Ramesh Sharma, learned defence counsel while repelling the arguments addressed on the appellant-State has argued that the learned trial Court has not committed any illegality or irregularity in discarding the prosecution evidence, highly contradictory in nature and inconsistent. The close scrutiny of the evidence as has come on record by way of the testimony of prosecution witnesses none else but the police officials, according to Mr. Sharma leave no manner of doubt that the prosecution has failed to prove its case against the accused beyond all reasonable doubt. He, as such, is stated to be rightly acquitted of the charge framed against him.

10. The present is a case where the plea of accused that option under Section 50 of the Act has not been given to him in accordance with law stands rejected by learned trial Judge, as is apparent from the perusal of the impugned judgment. This part of the judgment being not assailed any further has therefore, attained the finality.

11. In the given facts and circumstances and the arguments addressed on both sides, the questions that; firstly it was not possible for the police party to associate the independent witnesses to witness the search and seizure despite efforts made and on that count, the proceedings vitiated and secondly, the evidence as has come on record by way of testimony of official witnesses is neither dependable nor reliable, in view of the inconsistencies and contradictions taken note of by learned trial Court in the impugned judgment arises for our consideration in this appeal.

12. In order to decide the questions ibid, the reappraisal of the evidence comprising oral as well as documentary is required. However, before that it is desirable to note that an offence committed under the Act is not only heinous but serious in nature also. An offence under the Act is not against an individual but against the Society, as a whole, because illicit trafficking of drugs not only affects a particular individual but the public at large and in particular our young generation. The NDPS Act is a piece of social legislation enacted with the sole idea to curb illicit trafficking of drugs. A case registered under the Act, therefore, needs consideration, keeping in mind the above factors. At the same time, keeping in view there being provision of deterrent punishment against an offender, if ultimately held guilty, the provisions contained under the act

to safeguard an offender from conviction and sentence also need to be looked into thoroughly so that any innocent person may not be convicted and sentenced.

13. The statute casts a duty upon the prosecution not only to prove beyond all reasonable doubts the commission of an offence by an offender, but additionally the compliance of various provisions mandatory in nature enshrined thereunder. Thus, law casts a duty on the Courts, seized of the case registered under the Act, to deal with it with all circumspection and caution and before recording the findings of conviction against an offender to satisfy itself about the compliance of procedural requirements and also the availability of cogent and reliable evidence connecting the accused with the commission of the offence.

14. It is also deemed appropriate to point out that the recovery of narcotic drug or psychotropic substance from the conscious and physical possession of the accused is *sine qua non* for recording the findings of conviction against him. We are drawing support in this regard from the judgment of a Division Bench of this Court in Criminal Appeal No. 71 of 2013, titled State of Himachal Pradesh V. Karnail Singh @ Kaila, decided on 8th September, 2016. The Division Bench by placing reliance on the judgment of Bombay High Court in Rubyana alias Smita Sanjib Bali V. State of Maharashtra and others, 1996 Crl. L.J. 148 has concluded that the possession must be conscious and intelligent and mere physical presence of the accused in proximity or even close to something incriminating is not sufficient to connect him with the commission of an offence of this nature.

15. The present is a case of recovery of huge quantity of charas weighing 4.500 kilograms from the polythene packet Ext. P-3 being carried in a black coloured bag Ext. P-2 by the accused during odd hours i.e. 12.05 a.m. (mid night). As noticed supra, non joining of independent persons as witnesses and the contradictions in the testimony of official witnesses taken note of in the impugned judgment have weighed heavily with learned trial Judge while acquitting the accused of the charge.

16. The joining of independent persons to witness the search and seizure is always in the interest of fair trial, however, one should not loose sight of the fact that independent persons are not available at all places and every time for being associated as witnesses by the investigating agency and that the testimony of official witnesses, if on close scrutiny inspire confidence, should be relied upon to bring guilt home to the accused. It is held by a Division Bench of this Court in Criminal Appeal No. 3 of 2013 titled Joga Singh V. State of Himachal Pradesh, decided on 7th July, 2016 while placing reliance on the judgment of the Apex Court in Makhan Singh V. State of Haryana, (2015) 12 SCC 247. The relevant extract of the same reads as follows:

> ".....In peculiar circumstances of the case, it may not be possible to find out independent witnesses at all places and at all times. Independent witnesses who live in the same village or nearby villages of the accused are at times afraid of to come and depose in favour of the prosecution. Though it is well settled that a conviction can be based solely on the testimony of official witnesses, condition precedent is that the evidence of such official witnesses must inspire confidence. In the present case, it is not as if independent witnesses were not available....."

17. The Apex Court in ***Girija Prasad vs. State of M.P., (2007) 7 SCC 625*** has also held that the testimony of official witnesses is as much good as that of independent person, however, the same in the light of the ratio of this judgment is required to be examined with all circumspection and caution.

18. Be it stated that the I.O. has associated HC Virender Singh and Constable Yakub Mohammad as witnesses to witness the search and seizure. It is not the prosecution case that the efforts were made to associate the independent persons as witnesses, however, no-one could be traced out due to odd hours or the spot an isolated place. The evidence as has come on record by way of rukka Ext. PW-9/A and other documentary evidence referred to hereinabove supported by the testimony of PW-1 and also PW-2 amply demonstrates that the accused was nabbed at

12.05 a.m. (mid night) at Kotipul, which as per the spot map is an isolated place. No doubt, an effort was made by the defence to show that PWD/IPH department colony was at a distance of 10 meters from that place, besides a switch yard of electricity board was also situated nearby. Both PW-1 and PW-2 and for that matter PW-9 have stated in one voice that from the spot said colony was situated at a distance of 400-500 meters, whereas, switch yard at 500-600 meters. Meaning thereby that neither the colony nor switch yard were situated nearby to the place of recovery. Otherwise also, being odd hours, it was not possible to join anyone either from the colony or from the switch yard as an independent witness to witness the search and seizure. Learned trial Judge was not justified in recording findings that the prosecution witnesses firstly denied the suggestion given to them qua existence of PWD/IPH department colony and switch yard, however, in the same breath admitted that the colony and switch yard are situated there for the reason that they have denied the existence of colony and switch yard at a distance of 10 meters and deposed that the same were at a distance of 400-500 and 500-600 meters respectively from that place. The testimony of PW-1 and PW-2 and also that of PW-9 has, therefore, been misconstrued and misread by learned trial Judge. Since in the light of the judgments of the apex Court in ***Makhan Singh's*** and ***Girja Prasad's*** case (supra), the testimony of official witnesses, if consistent and inspire confidence can be relied upon to bring guilt home to the accused. Therefore, in the peculiar circumstances that it was an isolated place where the accused was nabbed and being odd hours, it was not possible for the I.O. to have associated some independent persons to witness the search and seizure, non-joining of independent witnesses is not fatal to the prosecution case for the reason that in the considered opinion of this Court, the testimony of prosecution witnesses is consistent, hence dependable. The contradictions for the reasons to be recorded hereinafter are not of such a nature that the same goes to the very root of the prosecution case. Learned trial Judge, therefore, was not justified in arriving at a conclusion to the contrary that the I.O. had avoided to associate independent persons as witnesses intentionally to implicate the accused in the case in hand falsely.

19. The present being a case of recovery of huge quantity of charas i.e. 4.500 kilograms, it cannot be believed by any stretch of imagination that the same was planted on the accused. It is the accused who was apprehended, arrested and tried in the case in hand. It is proved so from the endorsement in his hand and signature on consent memo Ext. PW-1/A, whereas, his signatures on remaining documents, Ext. PW-1/B, Ext. PW-1/E and also arrest memo Ext. PW-1/F as well as his personal search memo Ext. PW-1/G. It is not his case that he was not apprehended nor above documents contains his signatures. True it is that when the incriminating circumstances appearing against him in the prosecution evidence were put to him in his statement recorded under Section 313 Cr.P.C. he has denied the same either being incorrect or for want of knowledge. He even has expressed his ignorance to his arrest in this case. Therefore, his denial and his conduct to avoid answering such incriminating circumstances put to him in his statement under Section 313 Cr.P.C. leads to the only conclusion that the denial or his ignorance to the circumstances appearing against him in the prosecution case is a clever move to save him from his conviction. As a matter of fact, it was incumbent upon him to have atleast explained as to why he was arrested by the police and where he was arrested, had he not been present on the spot. His denial/ignorance to such incriminating circumstances lead to the only conclusion that he has suppressed material facts from the Court to save himself from his prosecution.

20. It is not the case of the accused that he was not apprehended by the police at Kotipul and his answer 'I do not know' to such circumstance appearing against him in the prosecution evidence can conveniently be taken to arrive at a conclusion that it is he who was apprehended by the police during odd hours at 12.05 a.m. (mid night) and charas recovered from the bag he was carrying with him.

21. Now if coming to the contradictions in the prosecution evidence, true it is that as per the version of HC Virender Singh PW-1, the police party stopped for a while at Sundla, whereas, as per that of PW-2 HHC Kewal Krishan at Surgani and no where else, whereas, according to the I.o. PW-9, they stopped at all places i.e. Koti, Badoh, Surgani and Sundla. We,

however, failed to understand as to how this contradiction has discredited the prosecution story as learned defence counsel has not made any submission in this regard during the course of arguments. It is also not known as to how the recovery of charas weighing 4.500 kilograms from the bag Ext. P-2, the accused was carrying with him could be doubted.

22. Learned trial Judge has laid much emphasis on the time spent for conducting investigation as well as reducing into writing various documents on the spot and concluded that the investigation was not conducted in the manner as claimed in the prosecution case. Learned trial Judge on the basis of evidence as has come on record by way of testimony of PW-1 has noted that if the accused was interrogated for 10 minutes and the consent memo scribed at 12.10 a.m., the time of scribing the same would have not been 12.32 a.m., however, no time of scribing the memo Ext. PW-1/A find mentioned thereon. While taking note of the statement of I.O. PW-9, if the memo Ext. PW-1/A was scribed in 20 minutes and personal search memo Ext. PW-1/B in another 20 minutes, 40 minutes were consumed in getting the said memos prepared. However, according to him, it took 12 minutes each in scribing of these memos. It has also been observed that in case the recovered charas was weighed in three rounds, it was not possible to complete weighing of charas, sealing the same in parcels and prepration of seizure memo in 30 minutes as stated by PW-9. Learned trial Court while taking note of the evidence as has come on record by way of the testimony of PW-1 and PW-9 has concluded that the memo Ext. PW-1/A was scribed at 12.15 a.m. or 12.20 a.m., whereas, the personal search memo Ext. PW-1/B by 12.25 a.m. If 30 minutes were consumed in weighing the recovered charas and in resorting to sealing and sampling process, it was 1.25 a.m. by that time. Rukka could have not been completed by 1.30 a.m. We, however, are not satisfied with such minute calculation of time spent for conducting investigation and preparation of various memos taken into consideration by learned trial Judge for the reason that accused was apprehended at 12.05 a.m. only 3-5 minutes were required for ascertaining as to where he was going during odd hours and his antecedents etc. Looking to the contents of personal search memo, the same could have been reduced into writing in 10 minutes i.e. by 12.20 a.m. The another memo Ext. PW-1/B could have also been prepared within next 15 minutes, that too, after conducting personal search of the police officials by the accused. This process, therefore, may have been completed by the I.O. by 12.30-40 a.m. The search of the bag of the accused and recovery of charas may have taken 2-3 minutes, whereas, the sealing and sampling process 15-20 minutes. In all probability, the scribing of the seizure memo and also rukka could have possibly been done by 1.30 a.m. Otherwise also, there was no occasion to learned trial Judge to have gone into all details meticulously for the reason that testimony of PW-1 and PW-9 qua variance of time 10-15 minutes is not going to make any difference and render the recovery of huge quantity of charas from the accused doubtful.

23. The inventory of articles lying in the I.O kit also weighed heavily with learned trial Judge. True it is that the witnesses PW-1 and PW-2 have stated that inventory of the articles lying in the I.O. kit was not prepared, however, it should not be taken to believe that I.O. had no kit with him nor he was having weight and scale for the reason that the I.O. as and when on patrol duty or leave the police station for conducting investigation of a case always takes with him the kit issued to him. Therefore, when the recovered charas in this case was produced in the trial Court, it cannot be inferred that the same was not weighed nor found to be 4.500 kilograms.

24. The rukka as per prosecution case was handed over to PW-2 at 1.30 a.m. for being taken to the police station for registration of FIR and a copy thereof for perusal of S.P. Chamba. According to PW-1, he walked about 1½ kilometers on foot and then boarded some vehicle to reach in the police station at Chamba. No doubt, he failed to tell the number of the vehicle and also admit that it was forest area and light was not available there. His testimony, however, reveals that the rukka Ext. PW-9/A was handed over by him at 2.30 a.m. (wrongly mentioned as 2.50 a.m. in the impugned judgment). PW-8 has stated that rukka was received by him in the police station at 2.30 a.m. It took 20 minutes to him to record the FIR and as such he handed over the case to PW-2 at about 2.50 a.m. There is no reason to disbelieve such evidence produced by the prosecution. Learned trial Judge rather went wrong while holding that the case file could have not been handed over to PW-2 at 2.50 a.m. for the reason that rukka was delivered

in the police station at 2.30 a.m and not at 2.50 am. Such evidence seems to be correct for the reason that S.P. Chamba as per endorsement on the copy of rukka Ext. PW-9/A under his signature has received the same at 2.50 a.m. It is proved that rukka was first delivered at 2.30 a.m. by PW-2 in the police station and a copy thereof thereafter in the residence of S.P. Chamba at 2.50 a.m. and it is thereafter at about 2.50 a.m. he collected the case file from the police station. The file as per version of PW-2 was thereafter delivered by him to the I.O. on Chamba bus-stand at 3.30 a.m. Therefore, no inconsistency going to the very root of the prosecution case can be said to be there in prosecution evidence qua this aspect of its case.

25. There can't also be any inconsistency qua the production of case property before PW-8 and re-sealing thereof by the said witness for the reason that the testimony of PW-9 and that of PW-8 makes it crystal clear that the case property was produced at 3.45 a.m. The same was re-sealed by PW-8. The case property, NCB forms, and seizure memo were produced before PW-8. The same was re-sealed by the said witness with seal 'O'. Re-seal memo Ext. PW-4/B was prepared in this regard. True it is that in the memo, there is no mention of the production of recovery memo, however, the extract of malkhana register Ext. PW-3/A reveals that PW-8 had deposited the case property along with NCB-I forms, sample of seals and recovery memo. Not only this but in RC also, there is mention of forwarding the case property to Forensic Science Laboratory along with NCB forms in triplicate, recovery memo and sample of seals. True it is that it has come in the statement of PW-3 that the case property was deposited with him at 4.00 a.m., whereas, re-seal memo was prepared at 4.15 a.m. Such discrepancy, however, again is not of such a nature to discredit the prosecution case and rather the result of human error, hence should have not been given undue weightage.

26. In the opinion of learned trial Judge seal of rubber could have not been affixed with '*lakh*' on the parcel containing the recovered charas. The opinion so formed, however, is without any substance for the reason that rubber seal can conveniently be put with '*lakh*' on a parcel. Learned trial Judge, therefore, was not justified in holding that the rubber seal with '*lakh*' could have not been put on the parcel.

27. The inconsistencies and contradictions noticed supra are, therefore, not of such a nature so as to render the recovery of charas weighing 4.500 kilograms from the accused doubtful. On the other hand, the prosecution case qua the recovery of charas in question from the accused after obtaining his consent and the search of police officials he conducted finds full support from the documentary evidence i.e. consent memo Ext. PW-1/A. The memo qua search of the police officials conducted by the accused Ext. PW-1/B and the recovery memo Ext. PW-1/E. The sample of sale 'N' is Ext. PW-1/C, whereas, the NCB form Ext. PW-1/D. The accused has been apprised about the offence he committed and the provision of sentence provided therefor vide memo Ext. PW-1/F. The rukka Ext. PW-9/A contains all details qua the manner in which the investigation has been conducted. Not only this but the endorsement under the signature of S.P. Chamba on the rukka Ext. PW-9/A amply demonstrate that the same was received by him at 2.50 a.m. The re-sealing of the case property by PW-8 is also proved from his own testimony and that of PW-9 as well as re-seal memo Ext. PW-4/B.

28. Now if coming to the testimony of PW-1 and the I.O., the same corroborates the prosecution case in toto. Their testimony finds further corroboration from that of PW-2. They all have been subjected to lengthy cross-examination, however, except for so called contradictions noted by learned trial Judge and discussed by us in this judgment hereinabove which in our view are not of such a nature so as to discredit the recovery of huge quantity of charas from the possession of accused, nothing else lending support to the prosecution case could be elicited therefrom.

29. This Court is not oblivious to the legal principle that in a case of this nature, where there is stringent provision qua punishment of offenders, if held guilty, the Court must look forward for cogent and reliable evidence and the prosecution is under an obligation to prove its case beyond all reasonable doubt. This Court is also alive to the legal principle that more serious is the offence, the stricter degree of proof is required to hold the offender guilty. However,

in view of the evidence discussed hereinabove, we find the present a case where the prosecution has proved its case against the accused beyond all reasonable doubt. The findings hereinabove recorded by us on re-appraisal of the evidence available on record, brings this case out of the purview of the judgment of the apex Court in ***Noor Aga vs. State of Punjab, (2008) 16 SCC 417,*** relied upon by learned trial Judge to form an opinion that the evidence produced by the prosecution is not cogent and reliable and that the same rather suffers from discrepancies as well as contradictions. We rather find the present a case where the prosecution has been able to bring the guilt home to accused Balkrishan with the help of cogent and reliable evidence. The minor discrepancies and procedural irregularities, as we noticed hereinabove, neither goes to the very root of the prosecution case nor can be treated fatal to it.

30. The prosecution has been able to prove the recovery of charas weighing 4.500 kgs. from the exclusive and conscious possession of accused. Therefore, it was for the accused to have explained his innocence as envisaged under Section 35 and 54 of the Act. The present, as such, is a case where presumption as envisaged under Sections 35 and 54 of the Act has to be drawn against accused and as he failed to explain his innocence, hence on this score also, it would not be improper to conclude that the charas weighing 4.500 kgs has been recovered from his exclusive and physical possession. The findings to the contrary, as recorded by learned trial Judge, are neither legally nor factually sustainable.

31. In view of what has been said hereinabove, the present is not a case where it can be said that the prosecution has failed to prove its case against the accused beyond all reasonable doubt. The reappraisal of the evidence by us rather lead to the only conclusion that the recovery of charas weighing 4.500 kgs from the conscious and exclusive possession of the accused stands satisfactorily explained. The charge under Section 20 of the NDPS Act framed against him is, therefore, fully established on record. The accused has failed to explain as to what he was doing at Kotipul during odd hours i.e. 12.05 a.m. (mid night) had he not been carrying the contraband i.e. charas with him. He has not produced any evidence in his defence. No explanation is forthcoming in his statement under Section 313 Cr.P.C as to when and where he was arrested by the police, had he not been present and nabbed by the police at Kotipul. Therefore, as has been held in ***Noor Aga's*** case, presumption under Section 35 and 54 of the Act has to be drawn against the accused.

32. Being so, the only inescapable conclusion would be that the accused has committed the offence punishable under Section 20 of the NDPS Act. He, therefore, is convicted accordingly. The findings of his acquittal as recorded by learned trial Judge are thus quashed and set aside. Let him to surrender to his bail bonds and he be produced in this Court on _____ for being heard on quantum of sentence. Production warrants be issued accordingly.

****

BEFORE HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, J. AND HON'BLE MR. JUSTICE AJAY MOHAN GOEL, J.

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

Versus

Tilak Raj .....Respondent

Cr. Appeal No. 37 of 2015
Reserved on : 28.11.2016
Decided on: 27.2.2017

N.D.P.S. Act, 1985- Section 20- Accused was found in possession of 510 grams charas- he was tried and acquitted by the Trial Court- held in appeal that the contradictions notice by the Trial Court to record the acquittal were not significant – the accused was apprehended at 5:40 A.M.

and it was not possible to associate independent witnesses –the police officials supported the prosecution version – their testimonies were corroborated each other- link evidence was proved – the appeal allowed – judgment of the Trial Court set aside and accused convicted of the commission of offence punishable under Section 20 of N.D.P.S. Act. (Para-9 to 24)

Case referred:
Makhan Singh V. State of Haryana, (2015) 12 SCC 247

For the appellant:	Mr. V.S. Chauhan, Addl. A.G with Mr. Vikram Thakur and Mr. Puneet Rajta, Dy. A.Gs.
For the respondent:	Mr. Ashwani Sharma, Advocate vice Mr. Mandeep Chandel, Advocate.

The following judgment of the Court was delivered:

Dharam Chand Chaudhary, Judge.

Learned Special Judge, Kullu vide judgment dated 7.8.2014 passed in Session Trial No. 128/2013 (294 of 2013) while arriving at a conclusion that there are contradictions and omissions in the evidence produced by the prosecution has acquitted the respondent (hereinafter referred as to the 'accused') of the charge under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the 'NDPS Act' in short).

2. The legality and validity of the impugned judgment has been questioned on the grounds inter-alia that cogent and reliable evidence produced by the prosecution has been appreciated by learned trial Judge in a slip shod and perfunctory manner and as a result thereof, based its findings on hypothesis, surmises and conjectures. The reasoning given by learned trial Court while acquitting the accused of the charge is manifestly unrealistic, unreasonable and also unsustainable, as there was no occasion to the Court below to have discarded the well reasoned and consistent testimony of prosecution witnesses without any rhyme or reason and for untenable reasons. The acquittal of the accused in the case in hand is stated to be in utter disregard of the cogent and reliable evidence available on record. There being no material contradictions nor any omissions in the investigation conducted, learned trial Court has erroneously given undue weightage to the so called contradictions in the statements of prosecution witnesses. The quantity of charas recovered from the accused being 510 grams, it cannot be said that the same was foisted upon the accused by the police falsely, particularly when nothing has come on record that the I.O. and the official witnesses he associated to witness the search and seizure were inimical to the accused or having any grudge against him. The impugned judgment is, therefore, stated to be legally and factually unsustainable. The same, as such, has been sought to be quashed and set aside.

3. Now if coming to the record, HC Brij Bhushan, I.O. Police Post, Jari accompanied by Constable Ashok Kumar PW-2, Constable Bhim Sen and Home Guard Anil Kumar left for patrolling towards Chharod nalla early in the morning i.e. at 4.00 a.m. Rapat in this regard in daily diary Ext. PW-1/A was entered. The police party while at Kenchi mor had seen the accused coming from Manikaran side. He was having green coloured bag Ext. P-2 in his hand. On noticing the presence of police party, he had thrown the said bag Ext. P-2 towards valley side and started walking briskly towards Bhunter side. Such an act on the part of the accused raised suspicion in the mind of the police officials, therefore, he was intercepted by PW-7, who is I.O, of the case. The I.O. has verified the antecedents of accused and the reason qua throwing the bag Ext. P-2 by him. He, however, failed to give satisfactory reply and rather became nervous. On this, the accused was directed by PW-7 to pick up the bag and to get the same checked. He in compliance to the directions of PW-7 picked up the bag from the place where it was thrown and shown the same to PW-7. The place an isolated one having no population, therefore, Constable Ashok Kumar PW-2 and HC Bhim Sen accompanying the I.O. were associated to witness the

search and seizure. On checking the bag Ext. P-2 six 'Chaparnuma' (rectangle) shaped pieces wrapped with brown coloured cello tape were recovered. On removal of cello tape three pieces were found 'Aayatakkar' (rectangular) in shape, whereas, remaining 'Golinuma' (ball) shaped wrapped with transparent polythene Ext. P-3. The same was weighed with electronic scale with the I.O. and found to be 510 grams in weight. The recovered charas was again put in the same bag Ext. P-2 and sealed with three impressions of seal 'O' in parcel Ext. P-1. The sample of seal 'O' Ext. PW-2/A was separately obtained over a piece of cloth and seal after its use was handed over to Constable Ashok Kumar. The NCB forms Ext. PW-4/A were filled in triplicate and thereafter the contraband allegedly charas recovered from the possession of the accused was taken in possession vide seizure memo Ext. PW-2/B. Therefore, rukka Ext. PW-6/A was prepared and sent to the police station, Kullu through Constable Ashok Kumar, on the basis whereof FIR Ext. PW-6/B was registered against the accused by the Inspector/Station House Officer Sher Singh. PW-6 has prepared the file and same was handed over to PW-2 Constable Ashok Kumar for being taken to the I.O. PW-7 at the spot. The I.O. had prepared the site plan Ext. PW-7/A and also photographed the spot vide photographs Ext. PW-7/B-1 to Ext. PW-7/B-10. He also prepared the CD Ext. PW-7/B-11 and recorded the statements of witnesses as per their version. The accused was interrogated and thereafter arrested and grounds of arrest were disclosed to him vide memo Ext. PW-7/G. He thereafter was got medically examined in CHC Jari. The accused along with the case property was produced before the Station House Officer, PW-6 in Police Station, Kullu who re-sealed the parcel Ext. P-1 with three impressions of seal 'I' and after filling up the relevant columns of NCB forms Ext. PW-4/B handed over the case property with all documents to PW-4, HC Ram Krishan, Police Station, Kullu. Rapat qua re-sealing the case property and entrustment thereof Ext. PW-6/D was also entered in the daily diary.

4. On the same day, special report Ext. PW-3/A was prepared and delivered to the Additional S.P. Kullu Shri Nihal Chand. The Additional S.P. had made the endorsement Ext. PW-3/B thereon and handed over the same to his Reader Balbir Singh PW-3. PW-4, the MHC had forwarded the parcel Ext. P-1 along with NCB-1 forms, seizure memo and samples of seal to Forensic Science Laboratory, Junga vide RC No. 78/13 Ext. PW-4/C through Constable Chet Ram PW-5. This witness has also filled entries in column No. 12 of NCB forms Ext. PW-4/B. PW-5 had deposited the case property and the documents as well as sample of seals handed over to him in the laboratory and not allowed the same to be tampered with in any manner whatsoever. On the receipt of report of chemical examiner Ext. P-A and completion of investigation, prepared the challan and filed in the Court.

5. Learned Special Judge on consideration of the challan and documents annexed thereto has found a prima-facie case under Section 20 of the NDPS Act made out against the accused and charge against him was framed accordingly. He, however, pleaded not guilty to the charge and claimed trial. Therefore, the prosecution has examined seven witnesses in all. The material prosecution witnesses, however, are PW-2 Constable Ashok Kumar and the I.O. PW-7 Brij Bhushan.

6. On the other hand, accused in his statement recorded under Section 313 Cr.P.C. has denied all incriminating circumstances appearing against him in the prosecution evidence being wrong and pleaded that the prosecution witnesses being police officials have falsely deposed against him. He, however, opted for not producing any evidence in his defence.

7. Learned trial Judge on appreciation of the facts of the case and also the evidence available on record has arrived at a conclusion that the prosecution evidence is not consistent and rather contradictory in nature and also that the contradictions/omissions appeared on record goes to the root of the prosecution case. The accused was, therefore, acquitted of the charge framed against him.

8. On careful perusal of the impugned judgment, we could notice the following contradictions/inconsistencies/omissions taken into consideration by learned trial Judge while recording the findings of acquittal in this case:

I. The testimony of PW-2 that accused picked up the bag Ext. P-2 from the place where it was thrown by him opened and got the same checked from the I.O. PW-7, whereas, according to the I.O. he picked up and shown the bag to him and then it was checked.

II. As per rukka Ext. PW-2/B and FIR Ext. PW-6/B, six 'Chaparnuma' (rectangle) shaped pieces out of which three 'Aayatakaar (rectangular) in shape, whereas, three 'Golinuma (ball) shaped were recovered from the bag Ext. P-2, whereas, according to PW-2 six recovered packets were 'Chappati' shaped and as per the testimony of PW-7, six pieces of rectangular in shape, whereas, six in round shape.

III. According to PW-2, he took lift from the spot up to Bhunter and therefrom he travelled to Kullu by bus when deputed to deliver rukka in the police station there. In view of this, trial court has concluded that the vehicles were coming and as such the version of PW-2 and PW-7 that the spot was an isolated and secluded place, independent witnesses were not associated is deliberate and the evidence to the contrary is false.

IV. The version of PW-2 that the police party went to the spot in the private vehicle of the I.O PW-7, however, the I.O. has not stated so nor is there any mention in the rapat Ext. PW-1/A in this regard.

V. According to PW-2 he handed over the rukka to PW-4 HC Ram Krishan and it is he who prepared the case file as well as handed over to him, however, according to PW-6, the Station House Officer, it is he who recorded the FIR on the basis of rukka as well as prepared the case file and handed over the same to PW-2. PW-4 Ram Krishan has not said that it is he who received the rukka and registered the FIR as well as prepared the case file and delivered the same to PW-2. Thus in view of the findings recorded, the testimony of PW-2 is not reliable.

VI. According to PW-2 he delivered the rukka in the police station at 8.30 a.m. and the FIR was handed over to him at 8.50 a.m., however, as per the testimony of PW-6, the Station House Officer, it took 45 minutes to prepare the file. Therefore, the Court below has suspected the manner in which as per prosecution case the FIR was registered and the case file prepared.

VII. According to PW2 and PW-7, six pieces wrapped with 'khaki' (brown) coloured cello tape were recovered from the bag Ext. P-2 and when the cello tape removed recovered substance was found wrapped in transparent polythene, however, as per report Ext. P-X, the wrapper on the substance being zip polythene, therefore, the trial Court has doubted the authenticity and genuineness of samples sent for analysis.

9. In our considered opinion, the contradictions/omissions hereinabove noticed by learned trial Judge were not of such a nature so as to have gone to the very root of the prosecution case and in the light of overwhelming cogent and reliable evidence to belie the recovery of contraband i.e. charas from the bag Ext. P-2, which the accused was holding in his hand and on seeing the police thrown the same in hill side.

10. No contradiction as at Serial No. (i) hereinabove is there in the prosecution evidence for the reason that both PW-2 and PW-7 have said in one voice that bag Ext. P-2 was picked up by the accused on the direction of I.O. PW-7. He got the same checked from the I.O., opened and shown the same to the I.O. and then it was checked is one and the same thing because the same checked by the accused or shown the same first and thereafter checked by the I.O. does not make any difference nor version of PW-2 and PW-7 could have been treated as contradictory in nature.

11. Now if coming to the so called contradiction in the testimony of PW-2 and PW-7 and also rukka Ext. PW-2/B as well as FIR Ext. PW6/B, the opinion formed by learned trial Judge is again far fetched for the reason that 'Chaparnuma' (rectangle) shaped pieces out of which three pieces were found 'Aayatakkar' (rectangular) in shape, whereas, remaining 'Golinuma' (ball) shaped were recovered from the bag Ext. P-2. True it is that as per the version of PW-2 six 'Chapatti' shaped pieces were recovered from the bag, whereas, as per that of I.O. six rectangular pieces were found kept therein. True it is that there is inconsistency in the testimony of said witnesses qua this aspect of the matter because there is difference between 'Chapatti' shaped substance and rectangular shaped substance. The facts, however, remains that six pieces were recovered from the bag. The same as per rukka were rectangular and balls shaped. It is well said that a man may tell lie but not the documents. As a matter of fact, recovered charas was in the form of six pieces, out of which three pieces were rectangular, whereas, three ball shaped. The same can be seen in the photographs Ext. PW-7/B-7 and Ext. PW-7/B-8. Therefore, on this score also, no contradiction and inconsistency of such a nature so as to go to the root of the prosecution case should have been inferred by learned trial Judge.

12. Now if coming to the so called inconsistency in the prosecution evidence as noticed at Serial No. (iii) hereinabove, the same is again uncalled for because it was 7.35 a.m. when the rukka Ext. PW-2/A was prepared and handed over to PW-2 for being taken to Police Station, Kullu for registration of the case, whereas, the accused was nabbed at 5.40 a.m. early in the morning, it can reasonably be believed that by the time i.e. 7.35 a.m. when the rukka was handed over to PW-2, the vehicular traffic would have commenced on the road and PW-2 who as per his version walked few steps towards Kullu from the spot took lift in some vehicle available by that time. Therefore, there was no occasion for learned trial Judge to have discarded the evidence as has come on record by way of the testimony of PW-2 and PW-7 that spot being isolated and secluded place, independent persons were not present there to witness the search and seizure. True it is that PW-1 and PW-2 admit existence of liquor vend nearby the spot and few other shops at a distance of 200 meters therefrom. However, in early hours, it was not possible to have called someone if sleeping at that time in the said shop(s). The apex Court has held in ***Makhan Singh*** V***. State of Haryana, (2015) 12 SCC 247*** that it is not always possible to join independent persons to witness the search and seizure at all places and at every time and that at occasions, the independent person even show their reluctance for being associated as witness to witness the search and seizure and also that official witnesses, if associated, in such an eventuality if close scrutiny of their testimony reveals that the same is consistent and not contradictory in nature, they are as much good as any other independent person. The relevant extract of the judgment in ***Makhan Singh'*** case (supra) reads as follows:

> ".....In peculiar circumstances of the case, it may not be possible to find out independent witnesses at all places and at all times. Independent witnesses who live in the same village or nearby villages of the accused are at times afraid of to come and depose in favour of the prosecution. Though it is well settled that a conviction can be based solely on the testimony of official witnesses, condition precedent is that the evidence of such official witnesses must inspire confidence. In the present case, it is not as if independent witnesses were not available....."

Therefore, learned trial Judge should have not recorded the findings of acquittal on this score also.

13. The so called inconsistency at Serial No. (iv) that as per testimony of PW-2, the police party went to the spot in private vehicle of the I.O. PW-7, whereas, PW-7 has not stated so while in the witness box nor is there any mention in this regard in the rapat Ext. PW-1/A, is again without any basis for the reason firstly, that PW-2 has not been cross-examined qua this part of his statement in examination-in-chief nor any suggestion given to PW-7 that the police party had gone to the spot in his vehicle or otherwise. Otherwise also, how the mode by which the police party reached on the spot was relevant for the reason that the evidence in the shape of photographs Ext. PW-7/B-1 to Ext. PW-7/B-8 reveals that the accused can be seen on the spot

along with green coloured bag Ext. P-2 after being thrown in the valley side below the road. It is significant to note that the accused has not questioned the authenticity and genuineness of the photographs nor is it his case that the same are not of the spot. The conclusion drawn by learned trial Judge as such is far fetched and beyond the evidence available on record.

14. If coming to the contradiction as at Serial No. (v) hereinabove, it is pertinent to mention here that PW-6 is very specific in stating that when rukka was brought to the police station by PW-2, FIR was registered and endorsement Ext. PW-6/C thereon was made by him. Also that it is he who has prepared the file and handed over the same to PW-2. Therefore, it cannot be believed that PW-2 had handed over the rukka to MHC Ram Krishan PW-4 and it is the said witness who had prepared the case file as well as handed over the same to PW-2, more particularly when Ram Krishan has not said anything while in the witness box that rukka was received by him or that after registration of FIR he prepared the case file as well as handed over the same to PW-2. Meaning thereby that the statement of PW-4 that he handed over the rukka to PW-4 and that it is the said witness who had prepared the case file and handed over the same to him for being taken to the I.O. on the spot came to be made inadvertently and may be on account of fading of memory with the passage of time. Above all, parrot like version of the matter cannot be expected from a witness. Learned trial Judge, therefore, should have not influenced from such inconsistency in the prosecution evidence to such an extent so as to record the findings of acquittal, irrespective of recovery of charas weighing 510 grams from the accused.

15. True it is that as per testimony of PW-2, he had delivered the rukka in the police station at 8.30 a.m., whereas, FIR was handed over to him at 8.50 a.m. Learned trial Judge has noticed in the impugned judgment that in view of the testimony of Station House Officer, PW-6, the case file could be prepared within 45 minutes. It is, however, not so because as per version of PW-6, it took 30-45 minutes to prepare the file. Meaning thereby that the file was ready by 9.00 or 9.15 a.m. Therefore, the version of PW-2 that the case file was handed over to him at 8.50 a.m. is nearer to 9.00 a.m. and for that matter even 9.15 a.m. also. Therefore, learned trial Judge should have not been influenced by such inconsistency or contradiction to such an extent so as to have recorded the findings of acquittal that too in complete ignorance of other cogent and reliable evidence available on record. Such contradictions, in our considered opinion, is not major and rather minor and even not goes to the very root of the prosecution case also.

16. True it is that as per the rukka Ext. PW-6/A and FIR Ext. PW-6/B as well as testimony of PW-2 and PW-7, six pieces wrapped with brown coloured cello tape were recovered from the bag Ext. P-2. When the cello tape was removed, the same were found wrapped with transparent polythene. In the report Ext. P-X, the parcel Ext. P-1 when opened in the laboratory those six pieces were found wrapped with zip polythene. We made efforts to find out as to what this zip polythene means but unsuccessfully as we could not lay our hand on any such material defining sip polythene. Learned trial Judge has not made any endeavor to make distinction between 'transparent polythene' and 'zip polythene'. Therefore, we fail to understand as to without making any distinction between transparent polythene and zip polythene, how the learned trial Judge could have doubted the authenticity and genuineness of the samples sent for analysis, particularly when as per report Ext. P-X sealed parcels were received with NCB-1 forms, seizure memo and sample of seals 'O' and 'I' only but the seals were intact. The findings to the contrary to our mind have been recorded merely to acquit the accused from the charge framed against him.

17. In view of what has been said hereinabove, the contradictions and inconsistencies in the prosecution evidence made basis by learned trial Judge to acquit the accused from the charge framed against him are absolutely baseless nor can go to the root of the prosecution case so as to render the recovery of charas from the possession of the accused doubtful.

18. On the other hand, while going through the statements of the prosecution witnesses i.e. material witnesses PW-2 and PW-7, we are convinced that they both have supported the prosecution case in one voice except for the above contradictions, which we have

considered and found not sufficient to render the recovery of charas weighing 510 grams from the accused doubtful. No other contradiction or inconsistency could be noticed by us in their statements nor brought to our notice during the course of arguments.

19. The link evidence as has come on record by way of testimony of remaining prosecution witnesses noticed by learned trial Judge also, however, without any observations as to whether the same inspire confidence or not, to our mind is cogent and reliable and connects the accused with the commission of offence he committed.

20. In brief, PW-1 Constable Varun of Police Post, Jari has brought the original rojnamcha register. He has proved rapat No. 3 dated 29.4.2013, rapat No. 8 dated 29.04.2013 and rapat No. 16 dated 30.04.2013 Ext. PW1/A, Ext. PW-1/B and Ext. PW-1/C respectively as according to him the same are true and correct as per the original record he produced in the Court. Rapat Ext. PW-1/A proves the departure of police party from the police post early in the morning at 4.00 a.m. on 29.04.2013. The same corroborates the testimony of PW-1 and PW-7 also in this regard. Rapat Ext. PW-1/B reveals that I.O. PW-7 has completed the proceedings on the spot up to the stage of sending rukka and thereafter in view of rush of vehicular traffic on the road, he returned to police post and completed rest of the investigation there including the arrest of the accused and recording the statements of the prosecution witnesses etc. etc. Rapat Ext. PW-1/C pertains to the arrival of I.O. in the police post on 30.04.2013 at 6.00 p.m. after depositing the case property with PW-6 Station House Officer in Police Station, Kullu and obtaining the police remand of the accused from the Court. The evidence so come on record by way of these documents and the testimony of PW-1 substantiates the prosecution case.

21. PW-3 Balbir Singh is the Reader to Additional S.P. Kullu. He has proved the special report Ext. PW-3/A, which as per the version of the I.O. PW-7 was delivered to the then Additional S.P. Nihal Singh on 30.04.2013. This document contains an endorsement in the hands of Additional S.P. that the same was received by him from the I.O., PW-7 on 30.4.2013 at 1.20 p.m. in his office. Therefore, the compliance of Section 57 of the Act also stands made.

22. As noticed supra, the Station House Officer PW-6 has not only proved the prosecution case qua registration of FIR Ext. PW-6/B on the basis of rukka Ext. PW-6/A as well as the endorsement on FIR Ext. PW-6/C but also the sealed parcel with seal 'O' containing the recovered charas with his own seal 'I'. He had drawn the sample of seal 'I' which is Ext. PW-6/E. The memo Ext. PW-6/D qua the production of case property before him and its re-sealing as well as deposit thereof in the Malkhana through PW-4 Ram Krishan was also prepared. The compliance of Section 55 of the Act is, therefore, also made out in this case.

23. Now if coming to the testimony of PW-4 Ram Krishan, on entrustment of sealed parcel containing the recovered charas by the Station House Officer with him, he made entry Ext. PW-4/A in this regard in the Malkhana register and retained the same along with NCB-1 forms in triplicate, copy of seizure memo as well as sample of seals. PW-4 has also proved the prosecution case qua the case property was forwarded to Forensic Science Laboratory, Junga vide RC No. 78/13 Ext. PW-4/C through Constable Chet Ram PW-5. Not only this but as per further testimony of this witness, he had filled entries against column No. 12 of NCB forms Ext. PW-4/B. He further tells us that PW-5 Chet Ram on his return from FSL had deposited the receipt qua deposit of the case property in the laboratory with him. PW-5 Chet Ram has also proved the prosecution evidence qua the case property was taken by him to the laboratory and deposit thereof along with NCB-1 forms in triplicate and relevant documents as well as sample of seals in same condition there.

24. It is thus seen that the link evidence is also complete in this case. Learned trial Judge has not critically analysed the link evidence so come on record and only observed that the same was not sufficient to prove the liability of the accused, may be on account of influenced with the factum of the material prosecution witnesses PW-1 and PW-7 are police officials and on account of the so called inconsistencies as well as contradictions we discussed hereinabove was not found cogent and reliable. We, however, are not in agreement with the findings of acquittal

recorded by learned trial Court on account of being influenced by the contradictions/inconsistencies aforesaid as the same for all the reasons detailed hereinabove do not go to the very root of the prosecution case and rather minor and occurred due to memory of witnesses faded away with the passage of time.

In view of what has been said hereinabove, the present is not a case where it can be said that the prosecution has failed to prove its case against the accused beyond all reasonable doubt. The reappraisal of the evidence by us rather leads to the only conclusion that the recovery of charas weighing 510grams from the bag which was being carried by the accused stands satisfactorily explained. The charge under Section 20 of the NDPS Act framed against him is, therefore, fully established on record. Being so, the only inescapable conclusion would be that the accused has committed offence punishable under Section 20 of the NDPS Act. He, therefore, is convicted accordingly. The impugned judgment as such is quashed and set aside and the accused is convicted for the commission of the offence punishable under Section 20 of the ND & PS Act. Let him to surrender to his bail bonds and produced in this Court on 5.4.2017 for being heard on the quantum of sentence. Production warrant be issued accordingly.

****

BEFORE HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, J. AND HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Sunita Chandel .....Appellant.
Versus
State of Himachal Pradesh .....Respondent.

Cr. Appeal No. 360 of 2016.
Reserved on: 4.11.2016.
Decided on: 27.2.2017.

Indian Penal Code, 1860- Section 302 and 201 read with Section 34- Deceased M used to come to the residence of accused S, who was running a Dhaba- co-accused were her servants and were working in the Dhaba- they were not happy with the visits of the deceased to the Dhaba or the residence- all the accused assaulted the deceased with the kick and fist blows- deceased died due to the beatings given to him- accused were tried and convicted by the Trial Court- held in appeal that accused had asserted in her statement recorded under Section 313 Cr.P.C that deceased came to her room during night time and started molesting her- she slapped him and raised alarm on which co-accused came- it was duly proved that deceased was present in the room of the accused who was alone in the room- the possibility of the deceased outraging the modesty of the accused cannot be ruled out- prosecution version that co-accused were not happy with the visits of the deceased is not believable as co-accused were workers- accused had right of private defence- in these circumstances, co-accused have been acquitted- acquittal has been upheld by the Apex Court – in these circumstances, conviction of the accused was improper– appeal allowed and accused acquitted.(Para-17 to 28)

For the appellant : Mr. C.N.Singh, Advocate.
For the respondent : Mr. Virender Verma, Addl. AG.

The following judgment of the Court was delivered:

Dharam Chand Chaudhary, J.

Appellant herein is one of the convicts. She was convicted along with her co-accused Naresh Kumar alias Ashok Kumar, Suresh Kumar and Anil Kumar for the commission of

an offence punishable under Sections 302 and 201 read with Section 34 IPC and sentenced to undergo life imprisonment and also to pay a fine of Rs. 5,000/- and to undergo rigorous imprisonment for a period of 4 years and to pay a fine of Rs. 2,000/- for the commission of offence punishable under Section 201 read with Section 34 IPC. Their co-accused Bhaskar Chandel son of the appellant-convict was also convicted for the commission of offence punishable under Section 201 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of 4 years and to pay a fine of Rs. 2,000/-.

2. Accused Sanju, their co-accused is a proclaimed offender and the trial qua him on and after 16.11.2013, the day when he absconded is, however, deferred for being taken up as and when he is apprehended and produced in the Court.

3. It is worth mentioning that co-accused/convicts, namely, Naresh Kumar alias Ashok Kumar, Suresh Kumar and Anil Kumar of appellant herein have, however, been acquitted by a Co-ordinate Bench of this Court vide judgment dated 27.4.2016, passed in Cr. Appeal No. 275 of 2015 and its connected appeals bearing Nos. 364/2015 and 394/2015. Convict Sunita Chandel, has however, filed the present appeal on 22.7.2016 in this Court i.e. after the decision of the aforesaid three appeals, which were filed by her co-accused/convicts, as aforesaid.

4. Her complaint is that she has been convicted and sentenced by learned trial Court contrary to the provisions of law and the evidence available on record. The trial Court allegedly failed to appreciate the defence of the appellant-convict qua her modesty outraged by deceased, who entered in her bed-room and attempted to assault her sexually. On hearing her cries, her co-accused rushed to the room and saved her from the deceased. It is her co-accused who administered beatings to the deceased. The criminal liability upon the accused was fastened for the reason that they failed to show as to how deceased Manjeet Singh had died, had he been not administered beatings by them. The appellant-accused allegedly would have not made false statement qua outraging of her modesty by the deceased and thereby maligned her reputation. The testimony of PW-38 Raj Kumar who heard cries of appellant-convict qua her molestation by the deceased is also ignored while concluding that no report to this effect was lodged by her with the police. The reasoning given by the trial Court, while convicting the accused persons, is perverse and not based upon proper appreciation of the evidence available on record. The findings that the prosecution has proved its case beyond all reasonable doubt are claimed to be perverse being far fetched. The accused allegedly were implicated in the case falsely because five prosecution witnesses, namely, PW-10 Indu Kumari, PW-11 Satish Kumar, PW-13 Sant Ram, PW-16 Sanjay Kumar and PW-17 Pankaj Kumar have not supported the prosecution case. The so called independent witnesses were interested in the success of the prosecution case, hence could not have been relied upon. The findings of conviction, according to the appellant-convict, were based upon surmises, conjectures and hypothesis. Out of 41 witnesses examined by the prosecution, five have turned hostile, however, this fact has not been appreciated at all. The cardinal principles of criminal jurisprudence that charge could only have been said to be proved when certain and explicit evidence is produced has also been ignored. The trial Court has also failed to appreciate that suspicion howsoever grave cannot take place of proof. There being no motive for the convict to have killed the deceased, the findings of conviction could not have been recorded against her. Appellant-convict Sunita Chandel, has therefore, sought her acquittal on reversal of the impugned judgment.

5. The prosecution case, shortly stated, is that deceased Manjeet Singh used to come to the residence of accused Sunita Chandel at Village Kallar frequently. She was also running a Dhaba there. Her co-accused Naresh Kumar, Suresh Kumar, Anil Kumar and Sanju (Proclaimed offender) were her servants and working in the Dhaba. They were not happy with regular visits of deceased to the Dhaba or the residence of accused Sunita Chandel. Therefore, they in connivance with said accused planned to teach a lesson to the deceased. Accused Sunita Chandel called deceased Manjeet Singh to come with a filled gas cylinder to Ashok Dhaba. He borrowed a gas cylinder from Ateh Mohammad on 18.2.2012 at Kallar and brought the same in his Alto car bearing registration No. HP-69A-4444. His brother Rakesh Kumar met him at Village

Kallar. He had conversation with his brother for some time. It is, thereafter, he alone went to the bed-room of accused Sunita Chandel. She was alone in the bed-room at that time. Seeing the deceased going to the bed-room of said accused, her co-accused Naresh, Suresh and Anil Kumar followed him. They all assaulted the deceased with fist and kick blows. The deceased was under the influence of liquor, therefore, he was not able to defend himself. On account of beatings administered to him by the accused persons, he died on the spot itself. The occurrence was witnessed by PW-38 Raj Kumar. He, out of fear, however, fled away from the place of occurrence. Blood splashed all around in the room. The blood stains on walls and other articles in the room, though were washed by the accused persons, however, some blood stains remained on the idol of Goddess Kali kept in one side of the room. The dead body, after being wrapped in a mat and legs tied with a bed sheet, was loaded in the Car of the deceased and taken by accused Ashok Kumar and Anil Kumar towards Dehar. A bag containing blood stained clothes and shoes was also kept in the vehicle. At Dehar, the car was taken to the cliff near river Satluj and thrown in the river by accused Anil Kumar. Accused Ashok Kumar had thrown cell phone of deceased into the river which could not be recovered during the course of investigation.

6. After throwing the vehicle along with the dead body of Manjeet Singh into the river, accused Anil and Ashok Kumar called for taxi of their co-accused Sanjay Kumar bearing No. HP-01 B-0617 to Barmana. They travelled therein up to Ashok Dhaba at Kallar. On the way, petrol worth Rs. 500/- was filled in the vehicle at the petrol pump of M/S Ram Lal Anand & Sons. The payment was made by accused Ashok Kumar.

7. On 19.2.2012, PW-9 ASI Gulab Singh, In-charge PP Dehar received information that a tyre of light vehicle was visible in river Satluj at Dehar. Rapat Ext. PW-9/A to this effect was entered in the Daily Diary and ASI Gulab Singh rushed to the spot. He found a white coloured vehicle lying in river Satluj. Accordingly, information was given to SHO, Police Station Sundernagar and a crane was sought to be deployed to take out the vehicle from river. The vehicle was taken out and it was found to be an Alto car bearing registration No. HP-69A-4444. The dead body with both legs tied with bed sheet was lying inside the car. On inspection of the dead body, injuries were found present on the head and other parts thereof. On enquiry from Sahil (PW-18), son of deceased, he disclosed that the vehicle was of his father Manjeet Singh. Said Sahil accompanied by PW-1 Surjeet and PW-36 Vikrant rushed to the spot. He identified the dead body to be that of his father Manjeet Singh. Consequently, statement of PW-18 Sahil Ext. PW-18/A was recorded by Jagdish Chand (PW-39), the then Insp./SHO, PS Sundernagar. On the basis of Ext. PW-18/A, FIR Ext. PW-27/A was registered at PS Sundernagar.

8. Insp./SHO Jagdish Chand (PW-39) had clicked photographs Ext. PW-39/A-1 to PW-39/A-17 of the dead body on the spot. He also prepared the site plan Ext. PW-39/B. The vehicle was seized by the police vide seizure memo Ext. PW-1/A. Insp./SHO Jagdish Chand had prepared inquest papers Ext. PW-39/C and PW-39/D. The docket Ext. PW-29/A was sent along with the inquest report for conducting autopsy on the corpus of Manjeet Singh. The autopsy was conducted by PW-29 Dr. Ranesh Kumar. He issued the post mortem report Ext. PW-29/B. On perusal of the reports of chemical examiner Ext. PW-29/C to PW-29/E, Ext. PW-22/B and Ext. PW-22/C, PW-9 ASI Gulab Singh in his opinion has found the cause of death of Manjeet Singh to be the combined effect of head trauma and hypovolemic shock. The inner Ext. P-6, shirt Ext. P-7 and pullover Ext. P-8 of the deceased were taken into possession by Insp./SHO Jagdish Chand vide seizure memo Ext. PW-4/A.

9. During the course of the search of the house of accused Sunita Chandel, conducted by Insp./SHO Jagdish Chand in the presence of PW-2 Ram Saran and PW-30 Balak Ram, the blood stains were found to be removed. PW-5 ASI Jasbir Singh was deputed to take team of scientists from RFSL Gutkar to Kallar and Dehar. The team had inspected the room in the house at Kallar which was lying sealed and taken into possession a table cloth Ext. P-11 vide seizure memo Ext. PW-5/C, piece of mat Ext. P-12 vide seizure memo Ext. PW-5/D. Blood stains were also lifted from the idol of Goddess Kali lying in the room. Blood on the walls was also marked/scratched by the team of scientists. The blood on the door of adjoining room was

collected on a piece of paper and taken into possession vide memo Ext. PW-5/F. PW-5 ASI Jasbir Singh had thereafter prepared the site plan Ext. PW-5/H. Photographs Ext. PW-7/A-1 to PW-7/A-14 were also clicked by PW-7 Const. Yadvinder Singh. At Dehar, the team of scientists had seized blood stained pieces of seat belt Ext. P-1 and piece of rear seat cover Ext. P-2 vide seizure memo Ext. PW-3/A. A shoe, black in colour Ext. P-3, was also seized by the team along with a card case containing sand Ext. P-4 vide seizure memo Ext. PW-3/C. The water of river Satluj was also taken for sample in a bottle Ext. P-3 and seized vide memo Ext. PW-3/B. PW-5 ASI Jasbir Singh had prepared site plan Ext. PW-5/M and Const. Yadvinder Singh had taken photographs Ext. PW-7/A-15 to PW-7/A-27. The report Ext. PW-22/A was prepared by PW-22 Tek Chand, one of the members of the inspection party. After analyzing the sample, he prepared detailed reports Ext. PW-22/B and PW-22/C. On 22.2.2012, PW-9 ASI Gulab Singh had got the car HP-69A-4444 of the deceased checked up mechanically from mechanic Ramesh. The report is Ext. PA. The clothes of accused Sunita i.e. Salwar Ext. P-16 and shirt Ext. P-17 were also seized vide memo Ext. PW-6/A. Accused Anil Kumar and Naresh Kumar allegedly made disclosure statements Ext. PW-8/A and PW-8/B and in consequence thereof identified the spot at Village Dehar from where they had thrown down the vehicle along with the dead body. Identification memos are Ext. PW-8/C, PW-39/E and Mark-DO1. The spot map Ext. PW-39/F and PW-39/G were prepared by Insp. SHO. Jagdish Chand. The empty cylinder Ext. P-18 was taken into possession vide seizure memo Ext. PW-11/A on 26.2.2012. The same was identified to be that of Ateh Mohammad (PW-15). The disclosure statement made by accused Anil Kumar Ext. PW-11/B was recorded and at his instance pants Ext. P-19 was taken into possession vide seizure memo Ext. PW-11/C. Currency notes worth Rs. 3,000/- lying in the dash board of the car were also taken into possession by the police. Pants of accused Bhaskar Chandel Ext. P-9 and P-10 were seized vide seizure memo Ext. PW-4/B on 29.2.2012. On that very date, accused Suresh Kumar had made disclosure statement Ext. PW-4/D and consequent upon the same got recovered two vests Ext. P-20 and P-21 on the basis thereof. Accused Sunita Chandel, allegedly gave demarcation of the room, where after administering beatings to the deceased, he was killed vide seizure memo Ext. PW-11/A. The spot maps Ext. PW-20/A, PW-21/B and PW-31/B as well as jamabandi(s) Ext. PW-20/B and PW-21/C were obtained from Sukardeen (PW-20), Nikka Ram (PW-21) and Naresh Kumar (PW-31). Ext. PW-38/A, statement of PW-38 Raj Kumar was got recorded under Section 164 Cr.P.C. from PW-41 Sh. Aneesh Garg, JMIC Sundernagar. The case property was deposited in the malkhana with HC Anil Kumar (PW-26) vide entry Ext. PW-32/C. Seven sealed parcels were deposited with PW-26 HC Anil Kumar which were entered at Sr. No. 1040 Ext. PW-32/D. On 24.2.2012, 26.2.2012 and 29.2.2012, Insp./SHO Jagdish Chand had deposited sealed parcel i.e. gas cylinder with PW-26 HC Anil Kumar vide entries at Sr. Nos. 1042, 1043 and 1046, Ext. PW-32/E to PW-32/G.

10. The case property was sent to RFSL, Mandi through PW-33 HHC Durga Dass vide RC No. 195/11-12. The remaining case property was also sent to FSL, Junga through PW-25 Const. Suresh Kumar vide RC No. 199/11-12. Some more case property was sent to RFSL, Gutkar, Mandi thorugh PW-24 HHG Chander Kant vide RC No. 202/11-12. Some case property was again sent to RFSL, Gutkar through HHC Durga Dass Vide RC No. 195/11-12.

11. Since the occurrence had taken place within the jurisdiction of Police Station, Sadar Bilaspur, therefore, FIR registered in PS Sundernagar along with its record was transferred there vide letter Ext. PW-26/A. On the receipt of order Ext. PW-14/A from Superintendent of Police, Bilaspur, Ext. PW-40/A, FIR Ext. PW-40/B was registered in Police Station Sadar, Bilaspur. PW-40 SI Vijay Kumar had conducted the spot inspection at Kallar and prepared site plan Ext. PW-40/C. He got the custody of accused transferred from case FIR No. 20/12 of PS Sundernagar to case FIR No. 84/2012 registered at PS Sadar Bilaspur. Accused Ashok Kumar and accused Anil Kumar had demarcated the spot at Dehar to PW-40 SI Vijay Kumar. The entire case property was also got transferred to the record of FIR No. 84/2012. Entry to this effect came to be made in the malkhana register.

12. On completion of the investigation, report under Section 173 Cr.P.C. was filed in the Court of learned JMIC, Bilaspur. The case being triable by the Court of Sessions, the same

was committed to the Court of learned Sessions Judge, Bilaspur by learned JMIC, Bilaspur vide order dated 4.9.2012.

13. Charge against accused persons, namely, Sunita Chandel, Anil Kumar, Naresh Kumar alias Ashok Kumar and Suresh Kumar was framed under Sections 302 and 201 read with Section 34 IPC whereas against accused Sanju and Bhaskar Chandel under Section 201 read with Section 34 IPC. They pleaded not guilty to the charge and claimed trial.

14. The prosecution, in order to sustain the charge against the accused, has examined 41 witnesses in all. The material prosecution witness is, however, PW-1 Surjeet Singh, the real brother of deceased Manjeet Singh. He has identified the dead body of his brother deceased Manjeet Singh lying inside the vehicle HP 69-A-4444 and also identified the vehicle to be that of his deceased brother. PW-3 Ankush Kumar is the witness, who while playing Cricket ran after the ball which fell into river Satluj where he noticed vehicle No. HP 69-A-4444 having fallen in the river. It is, in his presence, the vehicle was brought out of the water by the police with the help of a Crane. PW-4 ASI Ram Lal is a witness in whose presence Insp./SHO Jagdish Chand (PW-39) had conducted the inspection of the dead body after being taken out from the vehicle. PW-5 ASI Jasbir Singh is a witness to the inspection of the place of occurrence of Village Kallar by a team of FSL whereas PW-6 HC Chaman Lal is a witness to the recovery of salwar and shirt of accused Sunita Chandel vide Ext. PW-6/A. According to him, she while in custody disclosed that the salwar and shirt worn by her were the same which she had worn on the date of occurrence. PW-8 Om Prakash Modgil was examined to prove that accused Anil and Ashok Kumar had disclosed that they first stopped the vehicle near Satya Narain Mandir at Dehar and then break was applied and after alighting from the vehicle they removed the hand break and pushed down the vehicle into the river. PW-9 ASI Gulab Singh is a person to the recovery of vehicle HP 69-A-4444 from river Satluj by the police officials. PW-10 Kumari Indu is daughter of accused Sunita Chandel. She was examined to prove the prosecution case qua administering beatings with fist and kicks by the accused persons, however, she turned hostile and deposed that she had seen the deceased outraging the modesty of her mother. PW-11 Satish Kumar has also turned hostile to the prosecution case and admitted that sim No. 86796-94616 was given by him to accused Sunita Chandel and denied that I.D proof of Ashok Kumar was with respect of this sim. He is also a witness to the recovery of gas cylinder and pants of accused Anil Kumar vide Ext. PW-11/B and PW-11/C. He was also associated to prove the recovery of two vests (banians) vide recovery memo Ext. PW-11/E at the instance of accused Suresh. PW-12 Nand Lal is also a witness to the recovery of cylinder from accused Sunita Chandel. PW-13 Sant Ram is a witness to recovery of two vests from *nullah* by accused Suresh and witness to the recovery memo Ext. PW-11/E. PW-14 Sher Ali is a witness to the fact that the deceased had come to him on 18.2.2012 and asked for a gas cylinder. He, however, was having only one cylinder. PW-15 Ateh Mohd. is a witness to prove the prosecution case that gas cylinder was hired by the deceased from him on return basis. PW-16 Sanjay Kumar, a taxi driver at Kandraur was associated to prove the prosecution case qua hiring of his taxi by accused Anil and Suresh to perform back journey from Barmana to Kallar after throwing the vehicle in river Satluj at Dehar, however, he turned hostile and did not support the prosecution case. PW-17 Pankaj Kumar is a salesman in the Petrol Pump. He admitted filling of petrol worth Rs. 500 in the vehicle HP 01-B-0617 at 3-3:30 AM on 19.2.2012, however, did not support the prosecution case that Rs. 500/- was paid by accused Ashok. He did not support the prosecution case that two other persons were sitting in the car. PW-18 Sahil is son of deceased who had identified the dead body of his father and also vehicle No. HP 69-A-4444. PW-19 Mohinder Singh was examined to show that on his way to home around 8-8:30 PM, he had seen the vehicle HP 69-A-4444. In his cross-examination, he has admitted that he could not tell the registration number of other vehicles. The vehicle of this number was found to have been written by him on his left hand. PW-28 Navjeet Singh Sangwan was examined to prove call detail reports Ext. PW-28/A to PW-28/C. PW-29 Dr. Ramesh has proved the post mortem report Ext. PW-29/B. PW-30 Balak Ram is a witness to the seizure of the room of Dhaba of accused Sunita Chandel by the team of RFSL, Gutkar, Mandi. PW-35 Ganpat Ram is the owner of truck No. HP-24A-7873 and he was associated to prove the

prosecution case that accused Ashok Kumar had asked Raj Kumar (PW-38) the driver of his truck to bring vegetables. PW-36 Vikrant Sharma is the witness who accompanied Sahil, the son of deceased to Dehar and also a witness to the recovery of vehicle from river Satluj.

15. PW-39 Raj Kumar, allegedly driver of truck No. HP-24A-7873 belonging to PW-35 Ganpat Ram, was associated to prove the prosecution case that on asking by accused Ashok Kumar, he had brought vegetables and delivered the same to said Ashok Kumar in the Dhaba. PW-39 Insp./SHO Raj Kumar, PS Sundernagar has conducted the investigation in this case. PW-41 is Aneesh Garg, the then Judicial Magistrate Sundernagar, who had recorded the statement of accused Raj Kumar under Section 164 Cr.P.C.

16. The remaining witnesses are formal as they remained associated during the investigation of the case in one way or the other.

17. Now, if coming to the statement under Section 313 Cr.P.C. of accused Sunita Chandel, while answering question No. 99, she has stated that a person well built and having beard came into her room during the night time and sat on her bed where she was resting alone. He started molesting her by pressing her breast and thereafter tried to pull the string of her Salwar with an intention to rape her. In order to rescue herself, she gave a slap on his face. She also raised alarm. On her shrieks, workmen who were working in the hotel and on the top floor also came downward alongwith numerous persons who were taking meals in the Dhaba at that time.

18. Her co-accused in their statements under Section 313 CrPC, have stated that they heard crises of Sunita Chandel and went to her room where people were giving beatings to some unknown person. They rescued her from his clutches by giving him fist and kick blows and dragged him outside the room. After some time, she also came out of room. No person was there except her daughter. PW-39 Jagdish, has admitted in his cross-examination that deceased Manjeet was alone in the room of Sunita. Volunteered that he was there for some time and had been called. He also admitted that during the course of investigation, it transpired that PW Indu Chandel was present in the adjoining room. It has come on record, during the investigation that appellant-convict Sunita had given beatings to Manjeet Singh.

19. As noticed at the outset, all the accused except accused Bhaskar Chandel, were convicted and sentenced for the commission of offence punishable under Sections 302 and 201 read with Section 34 IPC whereas accused Bhaskar Chandel under Section 201 read with Section 34 IPC.

20. Sh. C.N.Singh, Advocate, has with all vehemence argued that convict-appellant Sunita Chandel had never beaten up the deceased. It is, rather her co-accused Anil Kumar, Suresh Kumar and Naresh Kumar who had beaten up the deceased to protect the honour and dignity of owner of the Dhaba i.e. Sunita Chandel, aforesaid. Accused Sunita Chandel had not denied the presence of deceased in her room. The deceased entered in her room when she was all alone and tried to outrage her modesty. According to Mr. Singh learned counsel, the deceased was seen by PW-10 Indu Kumari outraging the modesty of her mother accused Sunita Chandel. It has also been argued that when accused Sunita Chandel raised alarm, her co-accused came down and administered beatings to the deceased to save their master, said accused Sunita Chandel from the clutches of the deceased who was trying to assault her sexually. Learned counsel has also pointed out from the evidence available on record that deceased entered into the room of accused Sunita Chandel under the influence of liquor and attempted to rape her. The alcohol content in his blood, as per the scientific investigation conducted in the matter was found to be 111.52 mg%. It has, therefore been urged that accused Sunita Chandel never administered beatings to the deceased and it is rather her co-accused who had beaten him up on seeing their master said Sunita Chandel was being assaulted sexually by the deceased. Our attention has also been drawn to the judgment of Coordinate Bench of this Court in Cr. Appeal No. 275 of 2015 and its connected matters Cr. Appeal Nos. 364 of 2015 and 394 of 2015 dated 29.4.2016, whereby her co-accused Anil Kumar, Suresh Kumar and Naresh Kumar alias Ashok Kumar, who

according to Mr. Singh were principal accused in this case, have been acquitted of the charge framed against them. It has, therefore, been contended that the points in issue in this appeal are covered in favour of the convict-appellant Sunita Chandel by the judgment ibid.

21. On the other hand, learned Addl. Advocate General, though has made an attempt to support the impugned judgment, however, according to him, co-accused of Sunita Chandel have already been acquitted by this Court.

22. As noticed supra, charge against the appellant-convict Sunita Chandel is under Sections 302 and 201 read with Section 34 IPC. In view of the evidence available on record, whether any case for commission of the said offence is made out against her or not is a first and foremost question which needs adjudication in this appeal.

23. As per the prosecution case itself, deceased Manjeet Singh was regular visitor to accused Sunita Chandel and her Dhaba. Her co-accused Anil, Suresh Kumar and Naresh Kumar alias Ashok Kumar allegedly were not happy with such visits of the deceased to their master Sunita Chandel aforesaid. The further allegations against her are that she in connivance with her co-accused as aforesaid planned to teach a lesson to the deceased. It was part of such conspiracy that deceased was called by accused Sunita Chandel to come to Dhaba along with a gas cylinder. He did so and came to her Dhaba and also brought the gas cylinder with him. As per further case of the prosecution, accused Sunita Chandel was all alone in her room and was taking rest in her bed room. The deceased straightway went down to her bed room and on seeing him going there, her co-accused as a part of their planning also came down to her room and pounced upon the deceased. They had beaten up the deceased with fist and kicks, as a result thereof, he received injuries on his person, including on vital parts of his body and succumbed to the injuries so received by him. In order to screen the evidence, his dead body was taken in his own car i.e. HP-69A-4444 by accused Anil Kumar and Suresh Kumar towards Dehar side. The dead body along with the car was made to roll down into the river Satluj at Dehar by them. The car was seen in water by local residents playing cricket at a stage when the cricket ball fell into the river and PW-3 Ankush Kumar while in search of the ball went there and noticed the Car in the water. The information came to be given to the police of PP Dehar and subsequently PS Sundernagar. The police swung into action and the car was taken out from the river in the presence of PW-1 Surjeet Singh and PW-3 Ankush Kumar by Insp./SHO Jagdish Chand (PW-39).

24. Now, if coming to the defence of appellant Sunita Chandel, while answering question No. 99, in her statement recorded under Section 313 Cr.P.C., she has admitted that the deceased having come to her room during night time, sat on her bed where she was resting alone, started molesting her by pressing her breasts. The deceased also tried to pull the string of her salwar intentionally to subject her to sexual intercourse. Also that she slapped him and raised alarm. On her shrieks, her co-accused working in the Dhaba also reached there along with several customers, who were having their meal in the Dhaba at that time. Her co-accused and the other customers administered beatings to the deceased to save her from his clutches. The deceased was dragged by them outside the room. Similar plea has been raised by her co-accused in their defence. According to them, the deceased after being beaten up was dragged outside the room and he fled away from the spot in his car.

25. The close scrutiny of the prosecution evidence and the plea so raised by the accused persons in their defence leaves no manner of doubt that the deceased was present in the room of accused Sunita Chandel, who was all alone in the room. On finding Sunita alone in the room, the possibility of the deceased having outraged her modesty and made an attempt to assault her sexually cannot be ruled out for the reason that had it been not so, there was no occasion for her to raise alarm and her co-accused to have administered beatings to the deceased. The prosecution story that the accused persons were not happy with frequent visits of the deceased to Sunita and her Dhaba cannot be believed to be true by any stretch of imagination for the reason that they were only workers and to whom she had been meeting and who had been coming to her perhaps was immaterial for them. Aggrieved thereby, if any, would have been her son accused Bhaskar Chandel or her daughter Kumari Indu (PW-10) or at the most Sunita

Chandel herself. The plea raised by accused Sunita in her defence finds corroboration from the testimony of her daughter PW-10 Kumari Indu, who in unequivocal terms deposed in her cross-examination conducted by learned Public Prosecutor that deceased Manjeet Singh was molesting her mother who slapped him. It is denied that she could hear shrieks of the deceased and according to her rather it is her mother who was crying. On this, she made hue and cry and workers from the Dhaba came to the room of her mother. According to her, the deceased was outraging the modesty of her mother. He was trying to pull the string of the salwar of her mother whereas her mother was resisting to such act attributed to him. The workers from the Dhaba came down along with other persons and administered fist and kick blows to the deceased who was ultimately dragged out of the room. He was given beatings outside the room by those persons. The defence of the accused, therefore, seems to be probable and nearer to the factual position.

26. Interestingly enough, it is not the prosecution case that accused Sunita Chandel had also joined hands with her co-accused in administering beatings to the deceased. As per the prosecution case, it is rather her co-accused who had administered beatings to the deceased with fist and kicks. On this score also, we fail to understand as to how criminal liability could have been fastened upon accused Sunita Chandel. Since, to our mind, Sunita was molested by the deceased and the possibility that the deceased attempted to assault her sexually cannot be ruled out, therefore, it was well within her right of private defence to slap the accused and also raise alarm to save her from the clutches of the deceased. The present, as such, is a case where the accused had not acceded her right of private defence while freeing herself from the clutches of deceased, who entered her room, fondled with her breasts and tried to open the string of her salwar. This aspect of the matter has been dealt with in detail by a Coordinate Bench of this Court in its judgment dated 29.4.2016 supra, rendered in Cr. Appeal No. 275 of 2015 titled Anil Kumar vs. State of H.P. and its connected Cr. Appeals preferred by the co-accused of Sunita Chandel against the findings of their conviction and sentence recorded by learned trial Court in this very judgment which is under challenge in the present appeal. The relevant extract whereof reads as follows:

> "44. In this case, accused have not acceded their right to private defence while saving Sunita Chandel from the deceased, who entered her room, fondled with her breasts and tried to open the string of her *Salwar*. According to plain reading of Section 100 IPC, the right of private defence of body extends, under the restrictions mentioned under Section 99 of the Indian Penal Code to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions enumerated there under, including assault with the intention to commit rape.
>
> 45. Their Lordships of the Hon'ble Supreme Court in **Yeshwant Rao v. State of Madhya Pradesh** reported in AIR 1992 SC 1683 have held that in a case where accused assaulted victim on seeing his minor daughter being sexually molested by victim right of private defence is extendable to such case. Fact whether sexual intercourse was with or without consent of daughter was not material. Fact whether the cause of subsequent death of victim was internal injury due to fall or result of blow by accused is also not material. Their lordships have held as under:
>
> > "9. It will be noticed that before the Sessions Judge the appellant had pleaded the right of private defence also but the Sessions Judge after noticing that the assault was an act of sudden and grave provocation did not pursue the matter further. It appears to us that it is a case where the right of private defence arises and the case is fully covered by Sections 96, 97 read with Section 100 of the Indian Penal Code. Whether it was a case of sexual intercourse with consent or without consent the fact remains that according to the case of the prosecution Chhaya was of 15 years of age and, therefore, the act of Lakhan Singh, deceased, would

amount to rape within the meaning of Section 375 Clause (6) of the Indian Penal Code. The Panchanama Ext. P-4 shows that the attempt of rape or actual sexual intercourse was not fully complete and it is in that state of affairs that the appellant is alleged to have assaulted the deceased with spade on his head. As per the medical evidence the cause of death is not by spade but it was due to the rupture of the liver which could be either by fall on hard object, as the appellant stated that the deceased tried to run away but hit against the wall and fell on the ground or it could be as a result of blow given by the appellant. The fact remains that the right of private defence is extendable to the facts of the present case when the daughter of the appellant was being sexually molested. It appears that this part of the case of the appellant was not brought to the notice of the High Court. The judgment of the High Court mainly deals with the prosecution case only. The right of private defence is fully applicable to the facts of the present case. We thus find that the appellant is entitled to acquittal. We would accordingly hold the appellant not guilty of the offence Under Section 325, I.P.C. as well. The result is that the appeal is allowed and the conviction and sentence of the appellant is set aside."

46. Their Lordships of the Hon'ble Supreme Court in **Raghavan Achari and Njoonjappan vs. State of Kerala** reported in AIR 1993 SC 203 have held that when accused found deceased in compromising position with his wife and deceased causing multiple injuries including grievous injury to accused, accused thereafter using chopper and causing death of deceased, accused thus cannot be said to have exceeded his right of private defence and thus was entitled to acquittal. Their Lordships have held as under:

"8. We have already noticed the injuries received by the appellant vide Ext. P. 7 as well as those confirmed at the time of discharge, Ext. P. 13. There can be no doubt also that the compromising position in which the appellant found the deceased with his wife it gave the appellant the grave and sudden provocation. This provocation was further aggravated when the appellant found the deceased taking further offence of causing grievous injury of the nature referred earlier to him and in the circumstances the right as envisaged under Section 100 became available to the appellant. No court expects the citizens not to defend themselves particularly when they have already suffered grievous injuries. It is clear that though the appellant has a chopper in his hand he did not initially use it against the deceased and it was only when the deceased succeeded in using the oil lamp, which is described as dangerous weapon by the High Court, which caused multiple injuries including grievous injury, that the appellant's provocation got further aggravated and it cannot be said on the facts and circumstances of the case that the appellant has exceeded his right of private defence.

9. The result is that the appeal is allowed and the conviction and sentence of the appellant are set aside and he is acquitted."

47. A Division Bench of the Orissa High Court in **State of Orissa v. Nirupama Panda**, reported in 1989 Crl. LJ 621 has held that when accused stabbed deceased person as he outraged her modesty, she was entitled to acquittal. The Division Bench has held as under:

"8. Along with the evidence of dying declaration it is necessary to consider the statements made by the respondent before P.W. 10, For this purpose, it is necessary to make a further reference to his evidence where he stated that after hearing from the deceased about the cause of

the chest wound, the witness found the respondent standing on the verandah of Bansidhar Das and enquired from her. The respondent told him that she stabbed the deceased, because he outraged her modesty (Atyachar). The above statement of the respondent was inculpatory in part and exclupatory in the other part. But considered as a whole, it did not tantamount to an extrajudicial confession for the reason that she had justified her action of stabbing the deceased in exercise of her right of private defence. Even if the statement is received as a piece of extrajudicial confession because of its inculpatory part, yet on the basis thereof and on consideration of the exculpatory part, it cannot be used as an incriminating piece of evidence against her, because she had every right to save her honour even by causing the death of the person who either committed rape on her or attempted to commit the same. The above being the position, the statement made by the respondent on the query of P. W. 10 instead of supporting the prosecution actually worked as a defence which was quite acceptable.

10. The evidence of P. W. 4 discloses that the respondent was married, but after her widowhood she led an immoral life by living as a mistres of Bansidhar Das. Even though for the sake of argument it is accepted that she was the mistress of Bansidhar Das, yet she was within her rights to save her honour from a rapist. Even a whore is entitled under law to protect herself from attacks of an intending rapist. Therefore, immoral character of the respondent, even if it is true, is of little consequence."

48. A Division Bench of the Rajasthan High Court in **Badan Nath vs. State of Rajasthan** reported in 1999 Cr. LJ 2268 has held that the deceased is alleged to have taken opportunity of absence of mother of prosecutrix and after alluring the accused/appellant to consume liquor made an attempt to commit rape upon daughter of accused, who was pregnant. Accused in anger stabbed deceased with sword lying in the room. Accused was entitled to benefit of right of private defence of person of his daughter. The Division Bench has held as under:

"13. The circumstances of the instant case do indicate that during the night of occurrence, deceased Arjun Singh's wife namely Nand Kanwar (PW 3) was not in his house. She along with her mother-in-law had gone to Kumadu Kura and returned to home on the next day after getting information from a messenger. It is noticed from the statement of DW 1 Smt. Kusum that during the night of occurrence her mother was also not present in accused appellant Badan Nath's house. Only DW 1 Smt. Kusum, accused appellant Badan Nath, her younger brother and sister were present. From the aforesaid circumstantial evidence it can be inferred that deceased, taking the opportunity of absence of her mother, after alluring accused-appellant Badan Nath to consume liquor, made an attempt to commit rape upon DW 1 Smt. Kusum who was pregnant. It is established from the statement of PW 4 Smt. Guddi that DW 1 was in advance pregnancy and she gave birth to a child after one or one month and a half following the date of occurrence. It is admitted by PW 4 Smt. Guddi that on the date of occurrence DW 1 was sleeping in the first floor of her home along with her sister who was about 9 or 10 years old. It is highly probable that as she was in advance pregnancy, she resisted the sexual intercourse with deceased and this resistance caused reasonable apprehension in the mind of accused appellant Badan Nath who reached on the spot and found deceased Arjun Nath, under the influence of liquor, was making attempt to commit rape upon his daughter and so he, in anger, stabbed to the deceased from the sword lying in the room.

14. There is yet another reason to arrive at the aforesaid conclusion. We are of the opinion that it is not necessary that every part of the evidence of the victim Smt. Kusum (DW 1) should be confirmed in the minutest details by independent evidence. Such corroboration can be sought either from direct evidence or from circumstantial evidence or from both. The circumstantial evidence on record leads towards an irresistible conclusion that blood was found on the bed where DW 1 Smt. Kusum was sleeping at the night of occurrence. The Investigating Officer has taken pieces of plastic niwar of the bed in his possession which are proved to be soaked with blood on which victim Smt. Kusum (DW 1) was sleeping at the night of occurrence. The trail of blood stains were found on the upstairs and on the wall leading to the room where Smt. Kusum (DW 1) was sleeping. However, no blood was found on the boundary wall of accused appellant embedded with glasses and in the Courtyard where the deceased is alleged to have jumped in the house of accused appellant. The aforesaid fact is fully established from the statement of PW 12 Madan Nath Son of Kishore Nath who, soon after the incident, saw the place of occurrence and found blood on the plastic niwar of bed of DW 1, he also found blood stains on the upstairs of the wall leading to the room of DW 1 where she was sleeping but found absence of blood on the wall of accused appellant embedded with glasses and in the Courtyard. The statement of PW 12 inspires our confidence and it is held that deceased Arjun Singh did go to the room of DW 1 Smt. Kusum on the first floor of house of accused appellant where she was sleeping. The existence of blood on the plastic niwar of the bed where DW 1 was sleeping and blood stains on the upstairs and on the wall leading to the room leads towards a strong inference that DW 1 is a truthful witness and deceased Arjun Singh did make attempt to commit rape with DW 1 against her will. In such a situation within the meaning of Section 100, IPC the right of private defence of accused appellant extends to causing death of deceased Arjun Singh.

15. Another strong reason attributable to arrive at the aforesaid conclusion is that in the Indian Society refusal to act by the Courts on the testimonial value of a victim of sexual assault in absence of any corroboration as a rule tantamounts adding insult to injury. We are of the opinion that woman in tradition-bound, impermissible Indian Society would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity has been committed by anyone. In the case on hand we are of the view that DW 1 must be deemed to be conscious of the danger being ostracized by the Society including by her husband, her own family members, relatives and neighbours. The statement of DW 1 Smt. Kusum who alleged herself to be victim of sex offence deserves to be given a great weight in the facts and circumstances of the present case as discussed here in above. To our mind the probabilities factor taken into account by the learned Sessions Judge does not render the sworn testimony of DW 1 unworthy of credence. DW 1 Smt. Kusum is put to a searching cross-examination by Public Prosecutor but nothing has been brought to our notice which may lead to discredit her sworn testimony.

16. Looking into the facts and circumstances of the present case we are of the view that the accused appellant deserves to be given benefit of right of private defence of person of his daughter Smt. Kusum (DW 1) as envisaged under Section 100, IPC wherein it is provided that the right of

> private defence of body extends, under the restrictions mentioned under Section 99 of the Indian Penal Code to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions enumerated there under. The case on hand squarely falls under Clause (3) of Section 100 which clearly provides that an assault with the intention of committing rape gives right of private defence which extends up to causing of death. In the present case, deceased Arjun Singh gave an assault with intention to commit rape with DW 1 Smt. Kusum who is daughter of accused appellant Badan Nath, therefore, in such a situation he is entitled to be given benefit of right of private defence of person of his daughter Smt. Kusum (DW 1) as envisaged under Clause (3) of Section 100, IPC and an argument contrary to it advanced by learned Public Prosecutor is not acceptable to us."

49. In the instant case also, the plea taken by the defence is that deceased tried to outrage modesty of Sunita Chandel. She raised alarm. Accused came down and gave beatings to the deceased. In this case, accused can be said to have exercised their right of private defence by giving beatings to the deceased person to save the modesty of Sunita Chandel.

50. A learned Single Judge of the Rajasthan High Court in **Bhadar Ram vs. State of Rajasthan** reported in 2000 Cr. LJ 1174 has held that the accused on hearing his widowed sister-in-law's cry for help rushed to her house with *Gandasa*, her house was found open by accused and injured was found grappling with her and trying to outrage her modesty, accused saved his sister-in-law from clutches of injured and inflicted *Gandasa* blow while injured was running away. Act of accused can be said to be in exercise of right of private defence and accused was entitled to acquittal. The learned Single Judge has held as under:

> "15. Accused appellant admitted even under Section 313, Cr.P.C. thatatabout 10-11 P.M. his sister-in-law Mohra cried to save her. He rushed to her house and found that the door of her house was opened and appellant was grappling with her. The appellant assaulted on Nand Ram and inflicted gandasi blow which he had taken when going to the house of Mohra. Then Nand Ram ran away from where. Smt. Mohra was examined in defence by the appellant. She stated that she was asleep in the courtyard of her house. It has small boundary wall. At about 10-11 P.M. Nand Ram grappled her body, she woke up and started crying. Then Bhadar Ram, whose house is adjacent, came armed with a gandasi, Nand Ram left her. He was chased by Bhadar Ram and two injuries were inflicted by Bhadar Ram on Nand Ram infront of her. She admitted that Nand Ram was a married person and it was submitted by the prosecution that Nand Ram, being a married man, could not have indulged in this activity. He is not right. Nand Ram as told by him as PW-4 is aged about 40 years. Mohra is a widow aged about 30-35 years and it was possible that Nand Ram could have gone there in order to outrage her modesty for attempt to commit rape. It is not always correct to say that a married man could not indulge in such activity. She stated that blood was found outside her house when police came in the morning. She stated that her father-in-law is a blind man and she told the story of her woe to the Sarpanch named as Girdhari. No report could be lodged because her father-in-law was a blind man and the Sarpanch did not help her. Ordinarily Mohra who is a widow lady would not involve her honour in order to save appellant in case defence was not true. The

learned Sessions Judge did consider the defence but was of the view that since right of defence was a right subject to restrictions indicated in Section 99 of IPC and one of the conditions is that harm indicated in self defence must be no more than is legitimately necessary for the purpose of defence and since the appellant exceeded his right, he was punished. Learned Sessions Judge relied on AIR 1974 SC 1550 : 1974 Cri LJ 1015, On karnathSingh v. The State of U.P., the facts of which were completely different than the facts of the present case. In that case on the day of occurrence when Deep Narain returned home Girja Singh complained to him how Onkarnath had beaten him without any rhyme and reason. Deep Narain Singh assured him that he would censure and correct Onkarnath. When Jagdish Narain reached home Deep Narain told him how Onkamaih had beaten Girja Singh at about noon. Thereafter the two brothers Narain and Deep Narain proceeded together to their cotton field. When they were coming back from the field, they met Onkarnath and Chhabi Nath. Deep Narain asked Onkarnath as to why he had beaten Girja Singh. Onkarnath insolently replied that he had done so that he would repeat the feat and would see what Deep Narain could do. A scuffle ensued. Both the parties then proceeded to their respective houses. The deceased and his brother had hardly gone 70-80 paces and reached near the Darwza of Hanuman Prasad, when all the five appellants and Amar Nath Singh came there in a body and surrounded them. Chhabi Nath attempted gandasa blows on the head of Jagdish Narain which the latter warded off on his hands. Vijai Bahadur Singh snatched away the gandasa from Chhabi Nath. The assailants then ran away leaving Deep Narain and Jagdish Narain injured at the spot. The facts in the citation relied by the learned Sessions Judge were quite different. But the principle laid down is that the harm indicated in self defence must be no more than is legitimately necessary for the purpose of defence and the right is conterminous with the commencement and existence of a reasonable apprehension of danger to body from an attempt or a threat to commit the offence. It avails only against a danger, real, present and imminent.

16. Applying this principle itself in this case, I find that there was a real danger to the body of Mohra who at the dead hour of night was grappled by Nand Ram in order to outrage her modesty for committing rape. She is a widow lady, nobody to help as her father-in-law was a blind man. She came later on, made complaints to Sarpanch about the incident who did not pay any heed. It was appellant who after hearing her noise and whose duty as her deceased husband's younger brother was to save her, came after hearing her hue and cry. He was a young boy of 23-24 years of age. He saved her from the clutches of Nand Ram and assaulted him with gandasi when he was running. It cannot be said that it was done in excess of right as a right of reprisal for punishment. Appellant saw Nand Ram grappling with his widow sister-in-law, was enraged because of grave and sudden provocation. He came prepared having a gandasi in his hand when he heard hue and cry of his sister-in-law at the time of dead hour of night on his part. Had he a firearm with himself he could have come with a firearm and could have shot at Nand Ram seeing that Nand Ram was grappling with his widow sister-in-law at that dead hour of night. To say that it was not in a right exercised in defence then what else could be. Section 100 of IPC gives a right of private defence of the body to the extent of causing death when an assault is made with an intention of committing rape. Accused appellant had seen Nand Ram

grappling with his sister-in-law and he has probabilised the defence. I am of the view that he had a right of private defence in assaulting Nand Ram. Reference may be made to Salikram v. State, (1990) 1 Crimes 630 (Madh Pra). In this case accused was entitled to right of private defence under Section 100 (thirdly) IPC and consequently entitled for acquittal.

9. It will be noticed that before the Sessions Judge the appellant had pleaded the right of private defence also but the Sessions Judge after noticing that the assault was an act of sudden and grave provocation."

27. The judgment ibid was further assailed by the State of Himachal Pradesh in the Apex Court by way of SLP (Cr.) No. 7381 of 2016 titled State of Himachal Pradesh vs. Anil Kumar. However, the Hon'ble Apex Court in its judgment dated 30.9.2016 has been pleased to observe that there is no justification to interfere with the impugned judgment of the High Court and as such, SLPs were ordered to be dismissed. Meaning thereby that the judgment of this Court in Cr. Appeal No. 275 of 2015 and its connected matters dated 29.4.2016 has now attained finality. Therefore, we need not to discuss the evidence any further for the reason that points raised in this appeal are covered in favour of the convict-appellant by the judgment of this Court in Anil Kumar's case (supra). It would thus not be improper for us to conclude that no case for the commission of offence punishable under Sections 302 and 201 read With Section 34 IPC is made out against accused Sunita Chandel. It is worthwhile to mention here that her case is rather on better footing as compared to that of her co-accused Anil Kumar, Suresh Kumar, Naresh Kumar alias Ashok Kumar who now stands acquitted of the charge because as per the prosecution case itself, beatings were administered to the deceased by them and not by her. The recovery of the car from river Satluj and that of the gas cylinder in the manner as claimed by the prosecution is also not suggestive of that it is the convict-appellant who murdered the deceased nor sufficient to connect her with the commission of offence.

28. Since the entire evidence has been gone into in detail in Anil Kumar's judgment (supra) and her co-accused have been acquitted by this Court and also that the judgment of this Court has even been upheld by the Apex Court also, the findings of conviction and sentence recorded against appellant-convict Sunita Chandel are neither legally nor factually sustainable. We, therefore, allow this appeal and quash the impugned judgment whereby she has been convicted and sentenced to undergo life imprisonment and also to pay Rs. 5000/- fine under Sections 302 and 201 read with Section 34 IPC. We also order to set her free forthwith, if not required in any other case.

****

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Dhani Ram ...Appellant/Plaintiff

Versus

B.B.M.B. and another ...Respondents/Defendants

RSA No. 463 of 2006
Reserved on: 05.09.2016
Decided on: 28.02.2017.

Specific Relief Act, 1963- Section 34- Plaintiff filed a civil suit for declaration that his date of birth was 1.4.1953 and for seeking a direction to the defendants to record the same in his service book- suit was opposed by pleading that plaintiff had produced BCB Discharge Certificate, in which his date of birth was recorded as 20.7.1945- he had admitted the same to be correct and had affixed his finger and thumb impression on his service book in acknowledgment of the correctness- suit was decreed by the Trial Court- an appeal was filed, which was allowed and the suit was dismissed- held in second appeal that the certificate issued by Gram Panchayat does not show any basis- copy of parivar register was not proved in accordance with law- name of the child

was not mentioned in the certificate- it was not established that plaintiff was born on the date mentioned in the certificate- the plaintiff would have been eleven years at the time of entering in the service in view of new certificate produced by the plaintiff - it is unbelievable that a boy of eleven years would have been appointed to a job – appeal was rightly allowed by the Appellate Court- appeal dismissed. (Para-10 to 26)

Case referred:
Chittaranjan Das vs. Durgapore Project Limited & Ors 99,CWN 897, (1996) IIILLJ 188 Cal

For the appellant : Mr. Jagan Nath, Advocate.
For the respondents : Mr. N.K. Sood, Senior Advocate, with Mr. Aman Sood, Advocate.

The following judgment of the Court was delivered:

Vivek Singh Thakur, Judge.

Appellant (here-in-after referred to as **'plaintiff'**) filed a suit for declaration that his date of birth was 01.04.1953 and for direction to respondents (hereinafter referred to as **'defendants'**) to record the same accordingly in his Service Book.

2. The suit was contested by defendants on the ground that at the time of joining in B.B.M.B. on 01.03.1987 as daily wage Beldar, the plaintiff had produced BCB Discharge Certificate in which his date of birth was recorded as 20.07.1945 and accordingly in Service Book/Record maintained by B.B.M.B. date of birth of plaintiff was recorded as 20.07.1945 and admitting the same to be correct, he had affixed his finger and thumb impressions on his Service Book. The suit was also opposed on the ground of delay and laches, stating that under Rule 2.5 of Punjab Civil Services Rules, correction in date of birth was required to be made within two years from the date of entry in Service record.

3. Plea of defendants was rejected by trial Court for defendants had not produced record, pleaded in their written statement, basis for recording date of birth of plaintiff in Service Book. It was held that plaintiff was an illiterate person and his date of birth as 01.04.1953 was corroborated by two certificates Ex.P-2 and Ex. P-3 issued by concerned Gram Panchayat and plaintiff was appointed on regular basis in the month of July, 2001 and notice dated 20.01.2003 (Ex.P-1) was issued for correction of date of birth within two years of regularization as required under Punjab Civil Services Rules. It was further held that on failure of defendants to discharge their duty, plaintiff had no option except to approach Civil Court for redressal of his grievance.

4. Suit was decreed declaring that correct date of birth of plaintiff was 01.04.1953 instead of 20.01.1945 with further direction to defendants to correct the date of birth of the plaintiff in Service Book accordingly.

5. Being aggrieved by judgment of the trial Court, defendants preferred appeal.

6. Plaintiff placed on record copies of extract Register of Birth of Patwar Circle, Mahadev and translation thereof is Ex. PX and Ex.PY, copy of application dated 26.03.1998 submitted for correction of date of birth Ex. PZ. Defendants also placed on record certified copy of Service Book of plaintiff Ex. DW-2/A, Discharge Certificate DW-2/B, Service particulars DW-2/C, Service Record in Field Office Ex. DW-2/D, declaration and Nomination Form Ex. DW-2/E, application for Provident Fund Ex. DW-2/F and Medical Fitness Certificate Ex.DW-2/G in rebuttal by examining Mr. Narinder Kumar Sharma, Superintendent, B.B.M.B. as DW-2.

7. After considering evidence led by parties before trial Court as well as additional evidence placed on record during pendency of the appeal before him, District Judge allowed the appeal and dismissed the suit. Present appeal, filed by plaintiff against judgment passed by District Judge, has been admitted on following substantial questions of law:-

i) Whether the learned Lower Appellate Court has mis-interpreted and mis-construed the provisions of Rule 2.5 read with Annexure "A" of the Punjab Civil Service Rules?

ii) Whether the learned Lower Appellate Court has misinterpreted the provisions of Section 35 of the Indian Evidence Act?

iii) Whether the learned Lower Appellate Court erred in discarding the date of birth certificate Ex. P-2 and copy of Pariwar Register Ex. P-3 which had been duly proved on record and documents were squarely covered by the provisions of Section 35 of the Indian Evidence Act?

8. Counsel for plaintiff placed reliance on Ex. PZ, an application dated 26.03.1998 filed for correction of date of birth by plaintiff in the office of Executive Engineer BRSC and PD Division B.B.M.B. Sunder Nagar and also Ex. P-1 notice dated 20.1.2003. Learned counsel for defendants fairly admitted that application Ex. PZ was filed within two years of appointment as daily wage Beldar and notice Ex. P-1 was served within two years after regularization of services of plaintiff and thus desisted from raising objection that application for correction was not filed within two years of joining service. Therefore there was no delay in filing application by plaintiff for correction of his date of birth substantial question of law No.1 is answered accordingly.

9. Substantial questions No. 2 & 3 are interrelated as admissibility of date of birth certificate Ex. P-2, copy of Pariwar Register Ex. P-3 and copy of extract of Register of Birth Ex. PX and Ex. PY is to be considered under Section 35 of the Indian Evidence Act.

10. Learned counsel for plaintiff has relied upon judgments in case Dasi Ram and another Versus Emperor reported in A.I.R.(34) 1947 Allahabad 429, Bishwanath Gosain Versus Dulhin Lalmuni and others reported in AIR 1968 Patna 481, Gopichand Arya V. Bedamo Kuer, AIR 1966 Pat 231, Vanajakshamma and others versus P. Gopala Krishna, reported in AIR 1970 Mysore 305, Sushil Kumar Versus Rakesh Kumar reported in 2004(1) S.L.J. 655, Ram Suresh Singh Versus Prabhat Singh Alias Chhotu Singh and another reported in (2009) 6 Supreme Court Cases 681, Smt. Fulmatia Versus Sub-Divisional Officer Banda & ors. reported in AIR 2008 (NOC) 1136 (ALL) 2008 (1) ALJ 680.

11. Allahabad High Court, in Dasi Ram's case supra, has held that extract of register of birth maintained at the Thana under para 323 Police Regulation 1942 Edition, and entries made in this register are admissible in evidence under Section 35 of Evidence Act but extract from Chaukidars's book and the entry not made by Chaukidar himself will be inadmissible in evidence.

12. In Bishwanath Gosain's case, Patna High Court has held that entries in birth and death register are public document and are admissible under Section 35 of Evidence Act and that it is not necessary to prove who made the entries and what was the source of his information.

13. Patna High Court, in Gopichand Arya's case, has laid down that death register is a public document and presumption of correctness is attached to it and heavy onus lies on the party who wants to dispute the presumption.

14. In Vanajakshamma's case, Mysore High Court has held that copy of extract from the Register of Births, registered in municipality is a public document and as per Section 77 of the Indian Evidence Act, certified copy of public document may be produced in proof of the contents of the public document.

15. Hon'ble Supreme Court of India, in Sushil Kumar's case supra, has held that Admission Register or a Transfer Certificate issued by a Primary School does not satisfy the requirements of Section 35 of the Indian Evidence Act. In this judgment the Apex Court also relied upon judgment in case ***Chittaranjan Das vs. Durgapore Project Limited & Ors 99,CWN 897, (1996) IIILLJ 188 Cal.*** *wherein it was held* as under:

> "thus, in absence of the primary material on the basis whereof the age was recorded and particularly in view of the conflicting evidence available, it is not possible to accept the contention of Mr. Roy that the date of birth of the petitioner as recorded in the said certificate would prevail over the letter of the Board".

16. Hon'ble Supreme Court considered Ram Suresh Singh's case supra, in 2010(9) 209 alongwith other judgments and held that even if the entry was made in an official record by the official concerned in discharge of his official duty, it may have weighed but still may require corroboration by the person on whose information entry has been made and as to whether entry made has been exhibited and proved and standard of poof required herein is the same as in other civil and criminal cases. It has further been held that entries may be admissible under Section 35 of the Evidence Act but Court has right to examine their probative value and authenticity of the entries would be dependent on whose information said entries stood recorded and what was the source of information.

17. In Fulmatia's case supra, it has been held by Allahabad High Court that entry of Death and Birth in Pariwar Register is not conclusive proof but merely a piece of proof as entries of Pariwar Register can be changed.

18. In Khim Ram's case, Uttarakhand High Court has held that even characterizing the Pariwar Register as a public document within the provisions of the Indian Evidence Act, it cannot be held that the fact which has been stated in the Pariwar Register has been proved. The contents of the Pariwar Register cannot be accepted unless it is proved by cogent and reliable evidence of the person who supplied the information.

19. There is no dispute about settled position of law. But ratio of law laid down by Courts is to be applied on the basis of evidence led by parties. In the present case, Ex.P-2 is certificate issued by Gram Panchayat Kanaid but there is no reference in the said certificate that on what basis this certificate was issued by Gram Panchayat nor the same was issued on the basis of entries in Register of Birth and Death maintained under Birth and Death Registration Act, 1969.

20. Exhibit P-3 relied upon by plaintiff is copy of Family Register (Pariwar Register) maintained by Gram Panchayat Kanaid. It is settled law that copy of Pariwar Register is also not per-se admissible and it was required to be proved in accordance with law by leading evidence to prove this document.

21. Contents of Ex. P-2 and Ex. P-3 have not been proved by leading cogent and reliable evidence by plaintiff but these documents were tendered by plaintiff in evidence. Evidence of plaintiff is lacking with regard to source of entries made in these documents.

22. Ex. PX (translated copy PY) is extract of Register of Birth maintained by police. This extract may be admissible under Section 35 of the Indian Evidence Act but in view of conflicting date of birth of plaintiff in documents produced as Ex.DW-1/A to Ex. DW-1/G produced and proved by defendants by leading evidence of Narinder Kumar, the plaintiff was required to prove contents of documents relied by him by leading cogent and reliable evidence. Therefore contention raised on behalf of plaintiff by his counsel is not sustainable.

23. In absence of admissibility of Ex.P-2 and Ex. P-3, documents Ex. PX and its translation Ex. PY cannot be considered a sufficient proof to hold that date of birth of plaintiff was 01.04.1953 because in this document name of child is not mentioned and only fact which can be proved from this document is that on 01.04.1953, a son of Nanku had born. It was plaintiff or some one else is not clear. There is nothing on record to prove that Nanku was having only son and/or it was plaintiff who had born on 01.04.1953 as son of Nanku. Sufficient material has not been placed on record to prove that there was no other child/son of Nanku and plaintiff was only son of Nanku and certificate Ex. PX (PY) was related only to plaintiff.

24. On the contrary defendants by examining DW Narinder Kumar, have placed on record documents DW-2/A to DW-2/G pertaining to service record of plaintiff with BCB since 29.9.1964 to 24.09.1973. In these documents, date of birth of the plaintiff was 20.07.1945. At the time of entry in service with BCB on 29.09.1964, date of birth of plaintiff was entered as 20.07.1945. The fact that plaintiff had joined service in BCB on 29.09.1964 is not disputed by plaintiff. Taking his date of birth as 20.07.1945 his age on 29.09.1964 becomes 19 years whereas by taking date of birth of plaintiff as 01.04.1953, his age at the time of entry in service with BCB becomes less than 11 years. It is unbelievable that a boy in less than 11 years of age, was appointed in BCB.

25. On the basis of scrutiny of evidence on record and pronouncement of courts, discussed here-in-above, I am of the considered view that provisions of Section 35 of the Indian Evidence Act have been correctly interpreted and certificates Ex. P-2 and Ex. P-3 have rightly been discarded. Substantial questions No. 2 and 3 are answered accordingly.

26. In view of the above discussion, the appeal is dismissed being devoid of any merit and judgment passed by learned District Judge is affirmed.

****

BEFORE HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, J.

General Manager Northern Railway ....Appellant

Versus

Om Prakash & others ....Respondents

RFA No.406 of 2010 alongwith others
Judgment reserved on: 13.12.2016
Date of Decision: 28.2.2017.

Land Acquisition Act, 1894- Section 18- Land was acquired for laying down NangalTalwara Broad Gauge, Railway Line – Land Acquisition Collector awarded the compensation- aggrieved from the same, a reference was made to the District Judge who enhanced the compensation to Rs.55,000/- per kanal- aggrieved from the award, an appeal was filed- held, that the potentiality and situation of the acquired land is required to be proved with the exemplar land on the basis of cogent and reliable evidence- reliance was placed on the previous award in respect of land located in different village- however, it was not proved that potentiality and utility of the land in two villages is the same- appeal allowed- the judgment passed by the Reference Court set aside and the matter remanded with a direction to decide the same afresh after taking the additional evidence. (Para-14 to 20)

Cases referred:
Kanwar Singh and others Vs. Union of India, (1998) 8 SCC 136
Jai Prakash and others Vs. Union of India, (1997) 9 SCC 510

For the Appellant: Mr. Rahul Mahajan, Advocate for General Manager Northern Railway-appellant.
Mr. Neeraj Sharma, Deputy Advocate General for the state of H.P.

For the Respondents: Mr. Rahul Mahajan, Advocate for General Manager Northern Railway-respondent.

The following judgment of the Court was delivered:

Dharam Chand Chaudhary, Judge

Common award dated 31.3.2010, passed by learned Additional District Judge, Fast Track Court, Una, District Una, in various Land References, is under challenge in these appeals. This appeal and the connected RFA Nos.179/2010, 180.2010, 183/2010, 192/2010, 405/2010 and 479/2010 have been preferred by General Manager, Northern Railway-respondent No.2 before learned Reference Court, whereas RFA Nos. 172/2010, 173/2010, 175/2010, 176/2010 and 177/2010 by Satish Kumar etc., claimants in Reference Petition No.3/05/03, Joginder Kumar and another, claimants in Reference Petition No.15/05/03, Santosh Kumar and others, claimants in Reference Petition No.2/05/03, Bimla Devi and another, claimants in Reference Petition No. 20/05/03 and Om Prakash and others, claimants in Reference Petition No.62/06/03, respectively.

2. While respondent No.2. Northern Railway is aggrieved by the determination of the market value of the acquired land at the rate of Rs.55,000/- per Kanal by learned Reference Court below, the grouse of the claimants, as aforesaid, in a nutshell is that the market value so determined is highly inadequate, as according to them, the same should have been determined as Rs.50,000/- per Kanal and the compensation awarded to them accordingly. Therefore, while respondent No.2. has sought the relief of quashing the award, the above said claimants have sought the determination of the market value of the acquired land at the rate of Rs.50,000/- per Kanal and award of compensation to them, together with all statutory benefits accordingly.

3. It is a matter of record that the 1st respondent has acquired the land belonging to the claimants situate in villages Dangera, Kotla Khurd and Rainsary, Tehsil and District Una for the public purpose, namely, laying of Nangal-Talwara Broad Gauge railway line. Notification under Section 4 of the Land Acquisition Act issued on 21.3.1998 came to be published in the official gazette on 26.3.1998. The 1st respondent in the Court below, the Land Acquisition Collector (Railway) had assessed the market value of different categories of acquired land separately and awarded the compensation accordingly vide award dated 18.9.2000. In terms of the award under challenge, learned Reference Court, has, however, re-determined the market value of the all categories of acquired land at flat rate i.e. Rs.55,000/- per Kanal, irrespective of its category and classification. The compensation with respect to the structures/houses built up on the acquired land came to be re-determined separately. The compensation qua the acquired land and the structures/houses in existence thereon, so determined by the 1st respondent, was paid to the claimants accordingly. The correctness of the award, as pointed out at the outset, is the subject matter of dispute in these appeals preferred by the parties on both sides.

4. The commencement of the acquisition proceedings and acquisition of the land is not in dispute. The acquired land stands utilized for public purpose, namely, laying of Nangal-Talwara Broad Gauge railway line. The measurement of the acquired land has been given in para 1 of the impugned award.

5. The claimants in order to establish their claim for re-determination of the market value of the acquired land have produced in evidence copy of the sale deed Ext.PW1/A and that of the previous award of the Court Ext.P11. Besides, during the course of hearing arguments on their behalf, certified copy of another award passed by learned District Judge, Una in Land Reference Petition No.19 of 2005 and its connected Reference Petitions on 27.2.2010, was also pressed in service. On their behalf, reliance has also been placed on the testimony of PW2 Om Prakash-petitioner No.1 in Land Reference Petition No.62/06/03 and PW-3 Santokh Kumar-petitioner No.1 in Land Reference Petition No.2/05/03. PW-1 Ravi Kumar is Registration Clerk, who has been examined to prove the certified copy of the sale deed Ext.PW1/A, whereas PW-3 Kamal Dev is Numberdar of village Dangera and Gurmel Singh PW-5 is a person, who allegedly purchased land 3½ Kanals in village Dangera from Gian Chand etc. in a sum of Rs.1,46,000/-.

6. On the other hand, the respondents have examined Joginder Singh, Kanungo office of Land Acquisition Collector (Railway)-respondent No.1 and RW2 Ashok Kumar Patwari, Patwar Circle Dangera.

7. The claimants with the help of the evidence they produced have tried to explain that the utility and potentiality of their land acquired by the respondent is better than the land situated in village Rainsari, acquired for the same public purpose and qua which vide award Ext.P1, the market value has been determined by learned Reference Court at the rate of Rs.25,000/- per Kanal. With the help of the award dated 27.2.2010 passed by learned District Judge, Una, in Land Reference pertaining to acquisition of the land for the same public purpose, situated in village Basal, an effort has been made to persuade the Court that they are also entitled to the award of compensation at the rate of Rs.75,000/- per Kanal, of course without producing any evidence that the potentiality and quality of their land is similar to that of acquired land in village Basal.

8. Learned trial Court below though has not taken into consideration the solitary sale instance Ext.PW1/A produced in evidence on behalf of the claimants, however, on the basis of previous award Ext. P-11 passed by learned Addl. District Judge in respect of the land acquired in village Rainsary and another award passed by learned District Judge, Una on 27.2.2010, in Land Reference petition No.19/05 and its connected Reference Petitions in respect of the land acquired in village Bassal, has proceeded to assess the market value of the acquired land belonging to the claimants herein at the rate of Rs.55,000/- per Kanal.

9. The respondent-Northern Railway has questioned the legality and validity of the impugned award on the grounds, inter-alia, that the re-determination of the market value of the acquired land irrespective of its nature and category is bad in law being beyond the pleadings as well as the evidence produced by the parties on both sides. The testimony as has come on record by way of statements of RW1 and RW2 has erroneously been brushed aside. The average certificate Ext.RW2/A qua the price of land in village Dangera is also ignored without assigning any reason. Learned Court below has failed to understand the just and proper compensation determined by the land Acquisition Collector, keeping in view the potentiality, nature and character of the acquired land as well as the use to which it was being put. Since the Land Acquisition Collector had assessed the market value of different categories of land separately, therefore, re-determination of the same at flat rates i.e. at the rate of Rs.55,000/- per Kanal, has resulted in prejudice to the respondent-beneficiary. The claimants have also been awarded 20% of the awarded amount erroneously on account of the so called severance of their holdings irrespective of there being no evidence produced in this regard. There being no evidence that the potentiality as well as the utility of the acquired land was similar to that of the land acquired in village Rainsary, the previous award Ext. P11 could have not been considered at all. The award dated 27.2.2010 passed by learned District Judge, Una in Reference Petition 19/05 and its connected matters was erroneously made basis for re-determination of the market value of the acquired land for want of evidence that the utility and potentiality of the acquired land in village Basal was similar to that of the land belonging to the claimants situated in village Dangera. Since the claimants have received the compensation without raising any protest qua determination of the market value of the acquired land by the Land Acquisition Collector, therefore, references should have been dismissed.

10. Now, if coming to the grouse of the appellants, as aforesaid, preferred by some of the claimants, it seems to be that the market value of the acquired land should have been determined as Rs.50,000/- per Kanal and the compensation awarded to them accordingly.

11. Mr. Rahul Mahajan, Advocate, learned counsel representing the respondent-Northern Railway has mainly emphasized that for want of cogent and reliable evidence to show that the potentiality and utility of the acquired land in village Basal is similar to that of the claimants situate in village Dangera, Kotla Khurd and Rainsary etc., the award dated 27.2.2010 which pertains to the acquisition of land in village Basal could have not been made basis at all to determine the market value of the acquired land in these matters. Mr. Mahajan has also argued

that even the previous award Ext.P11 could have not been relied upon to determine the market value of the acquired land, as according to him, no cogent and reliable evidence has come on record to show that the potentiality and utility of the acquired land was similar to the acquired land situated in village Rainsary, to which award Ext.P11 pertains. Also that the award dated 27.2.2010 qua the acquired land situated in village Bassal should have also not been considered for want of requisite evidence nor the same being part of record. It has also been urged that there being no evidence qua the claimants having suffered with any loss on account of severance of their holdings, 20% over and above the compensation assessed by learned Court below should have not been granted to them.

12. On the other hand, Mr. Ajay Sharma, Advocate, learned counsel has urged that the land in question acquired long back in the year 1998 and the claimants being poor people, the impugned award calls for no interference by this Court in the appeals preferred against the same by the beneficiary-respondent No.2.

13. The claimants in the appeals they preferred against the impugned award had sought the re-determination of the market value of the acquired land at the rate of Rs.50,000/- per Kanal. The challenge so laid to the impugned award is absolutely baseless and without any application of mind for the reason that learned Reference Court below has determined the market value of the acquired land above Rs.50,000/- i.e. Rs.55,000/- per Kanal. Therefore, neither Mr. Sharma could substantiate such claim during the course of arguments nor this Court finds any merit in RFA No.181/2010, 172/2010, 173/2010, 175/2010, 176/2010 and 177/2010, preferred by some of the claimants against the impugned award. Therefore, these appeals are accordingly dismissed.

14. Now, if coming to the first contention urged on behalf of respondent-2-beneficiary, Hon'ble the Apex Court in ***Kanwar Singh and others*** *Vs.* ***Union of India***, ***(1998) 8 SCC 136***, has unequivocally and in clear terms held that in order to make the previous award of the Court or the sale instance basis to determine the market value of the acquired land, the potentiality and situation of the land in two different villages is required to be proved with the help of cogent and reliable evidence. The relevant portion of this judgment reads as follows:

> "9. The contention of appellants' counsel that appellants deserved to be awarded the same rate of compensation as it was awarded to the claimants of village Masoodpur and Mahipalpur, in the present facts and circumstances of the case, is not tenable. If we go by the compensation awarded to claimants of adjoining village it would not lead to the correct assessment of market value of the land acquired in the village Rangpuri. For example village 'A' adjoins village 'B', village B adjoins village 'C', village 'G' adjoins village 'D', so on and so forth and in that process the entire Delhi would be covered. Generally mere would be different situation and potentiality of the land situated in two different villages unless it is proved that the situation and potentiality of the land in two different villages are the same."

15. Similar is the ratio of judgment of Hon'ble apex Court in ***Jai Prakash and others*** *Vs.* ***Union of India, (1997) 9 SCC 510***.

16. Now, if coming to the case in hand, undisputedly, the previous award of the Court i.e. award dated 27.2.2010 passed by learned District Judge, Una in land Reference Petition No.19/05 and its connected Reference Petitions, has been taken on record by learned Court below during the course of arguments. This award has been made basis while determining the market value of the acquired land as Rs.55,000/- per Kanal. Such an approach on the part of learned Court below is not legally sustainable for the reason that the previous award of the Court in respect of the land situated in some other village acquired for the same public purpose, no doubt can be made basis to determine the market value of the other acquired land for the same purpose, however, if it is pleaded and proved that the potentiality and utility as well as other conditions of the acquired land in 2 different villages are the same and similar. Not only

this, but the previous award could have not been made basis without the same being part of the record of the case. As a matter of fact, the claimants should have produced the award in question in evidence, may be by way of leading additional evidence and also producing other cogent and reliable evidence to show that the potentiality and utility of the land, subject matter of dispute in that award, was the same and similar to that of the potentiality and nature of the land in the case in hand. No such procedure, however, has been resorted to and as such, in the light of the law laid down by the Hon'ble Apex Court in ***Kanwar Singh's*** case supra, learned Court below has erred in law while taking the award dated 27.2.2010 of village Bassal into consideration to re-determine the market value of the acquired land at the rate of Rs.55,000/- per Kanal. Had there been any evidence produced by the claimants that the potentiality of the acquired land in village Rainsary to which award Ext.P11 pertains is similar to that of the acquired land, the said award certainly would have been taken into consideration while re-determining the market value of the acquired land.

17. The present, as such, is a case where the award dated 27.2.2010 has erroneously been made basis by learned Reference Court below and as such the determination of the market value of the acquired land at the rate of Rs.55,000/- per Kanal is not legally sustainable. The claimants are whether entitled to the relief of re-determination of the market value of the acquired land and for enhancement of compensation in respect of the same, is a question which needs to be gone into afresh in the light of the above observations and also the evidence available on record.

18. Therefore, the present is a fit case where the impugned award being not legally sustainable deserves to be quashed, of course with a direction to learned Reference Court below to decide the Reference petitions afresh in the light of the evidence available on record and also the observations in this judgment hereinabove at the earliest, preferably by the quarter ending 30th June, 2017. It is clarified that if the claimants approach the Court below to lead additional evidence to prove the award dated 27.2.2010, the application filed for the purpose be considered on merits and decided in accordance with law and uninfluenced by any observation in this judgment.

19. With the above observations, this appeal and its connected appeals, i.e. RFA Nos.179/2010, 180/2010, 183/2010, 192/2010, 405/2010 and 479/2010 succeed and are accordingly allowed. Consequently, the impugned award is quashed and set aside. The Reference Petitions are, however, remanded to learned Reference Court below for disposal afresh in accordance with law and in the light of the observations hereinabove. The parties through learned counsel, representing them, are directed to appear in the Court below on 23.3.2017. 20.

20. Registry to remit the record to the Court concerned forthwith so as to reach there well before the date fixed.

21. As per the record, enhanced amount of compensation stands deposited in these cases. In few of the cases, 50% thereof even stands released also in favour of the claimants. It is deemed appropriate that the amount so lying deposited shall remain invested in fixed deposit till the reference petitions are considered and decided afresh in terms of this judgment. No steps for recovery of the compensation already released shall also be taken either by the beneficiary or the first respondent, Land Acquisition Collector in the reference petitions.

All the appeals stand disposed of accordingly.

****