

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.970 OF 2019**

**MAHENDRASINH JORUBHA ZALA )...APPELLANT**

**V/s.**

**CENTRAL BUREAU OF INVESTIGATION )  
AND OTHERS )...RESPONDENTS**

Mr.K.H.Giri and Ms.Dhinika Shah, Advocate for the Appellant.

Mr.Anil Singh, Addl. Solicitor General, a/w. Mr.Sandesh Patil,  
Advocate for Respondent No.1.

Mrs.S.V.Sonawane, APP for the Respondent - State.

**CORAM : INDRAJIT MAHANTY &  
A. M. BADAR, JJ.**

**DATE: RESERVED ON 18<sup>th</sup> JULY 2019  
PRONOUNCED ON 5<sup>th</sup> AUGUST 2019**

**JUDGMENT : (PER : A.M.BADAR, J.)**

1            This is an appeal purported to be filed by the victim of  
the crime namely Mahendrasinh Jorubha Zala (Prosecution  
Witness No.205) under Section 372 of the Code of Criminal

Procedure (hereinafter referred to as the Cr.P.C. for the sake of brevity). This appeal is challenging the judgment and order dated 21<sup>st</sup> December 2018 passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, in Sessions Case No.177 of 2013, 178 of 2013, 577 of 2013 and 312 of 2014 acquitting the accused persons of offences punishable under Sections 120B, 364, 365, 368, 341, 342, 384, 302 read with 201 of the Indian Penal Code as well as under Section 25 of the Indian Arms Act.

2            Mr.Anil Singh, learned Additional Solicitor General, appearing for respondent no.1 Central Bureau of Investigation (hereinafter referred to as the CBI for the sake of brevity) at the outset, has raised objection regarding maintainability of the instant appeal by contending that appellant Mahendrasinh Jorubha Zala, who is merely examined as a witness during the course of the trial, cannot be considered as the victim of the crime in question, and as such, cannot validly maintain the appeal under Section 372 of the Cr.P.C. As agreed by both the parties, the

instant appeal was therefore heard on the point of maintainability of the appeal at the instance of the appellant, who claims to be the victim.

3 Briefly stated, facts of the prosecution case, projected from the charge-sheets filed by respondent no.1 CBI, can be summarized thus :

- (a) According to the prosecuting agency, the investigation revealed that during the year 2004, the criminal gang of Sohrabuddin had become very active in the area of Rajsamand, Nathdwara, Sukher and Udaipur districts of Rajasthan. The said areas are known for marble mining and trade. One Hamid Lala gang was very active in these areas and was giving protection to the marble traders and in return they were obtaining protection money from them. Gang of Sohrabuddin Shaikh wanted to take all the share of protection money by getting rid of Hamid Lala gang. Soharabuddin and his gang members in this regard wanted to extract some unpaid money of one Shri Agarwal of

Jodhur from M/s.Mariam Marbles. The gang members of Sohrabuddin including Azam, Mudassar, Raju went to Shri Ali Hasan Bohra, Proprietor of M/s.Mariam Marbles, Sukher, Udaipur to collect money. Shri Hamid Lala in connivance with M/s.Mariam Marbles, got a case registered against members of gang of Sohrabuddin Shaikh and got them arrested. Further, M/s.Mariam Marbles did not make any payment to the gang of Sohrabuddin Shaikh.

- (b) With the above background, the accused persons from Gujarat and Rajasthan entered into a criminal conspiracy to eliminate Sohrabuddin Shaikh. Rajasthan and Gujarat Police acted in connivance in the abduction and killing of Sohrabuddin Shaikh. Gujarat Police in order to create reasons for picking up Sohrabuddin stage managed the firing using the gang members of Sohrabuddin at the business premises of Shri Raman Patel and Shri Dashrath Patel (M/s.Popular Builders) in Navrangpura on 8<sup>th</sup> December 2004, which is the subject matter of Crime

No.1124 of 2004 in the Navrangpura Police Station. The First Information Report (FIR) in the said crime was lodged by one Beena Dave, Receptionist of M/s.Popular Builders. Patel Brothers were directed to give a statement against Sohrabuddin Shaikh and others under threat that on failure, Patel Brothers would face dire consequences. They were made as accused at a subsequent stage when they refused to give a statement. The appellant is also one of the accused in the said crime.

- (c) According to the prosecution case, investigation also revealed that Sohrabuddin with the help of Tulsiram Prajapati, Azam and Sylvester eliminated Hamid Lala, the Ganglord on 31<sup>st</sup> December 2004. Thus, the protection money which Hamid Lala was getting from big marble traders used to be pocketed automatically by Sohrabuddin Shaikh, Azam, Tulsiram Prajapati and Sylvester. Investigation further disclosed that in the months of October – November 2004, Sohrabuddin contacted over phone, the

owners of M/s.R.K.Marbles and M/s.Sangam Textiles with a view to extort large sum of money from them by extending latent threats. It was also revealed that those Traders approached political leaders as well as police officers of Rajasthan. On the basis of intelligence inputs given by Rajasthan Police, the First Information Report (FIR) was lodged by Anti-Terrorist Squad of Gujarat police against Sohrabuddin Shaikh and others. According to the Investigator, since there was no active/recent criminal case against Sohrabuddin Shaikh in Gujarat State, a stage managed firing was arranged in the office of Popular Builders, Ahmedabad on 8<sup>th</sup> December 2004.

- (d) The prosecution averred that investigation further disclosed that around 14<sup>th</sup> / 15<sup>th</sup> / 16<sup>th</sup> November 2005, at about 8.00 p.m., Soharbuddin Shaikh along with his wife Kausarbi, left his village Jhirniya, Madhya Pradesh for Hyderabad to meet his friend, Nayabuddin @ Bongir Nayeem @ Capt. Hasif Khan who was also known as Kalimuddin in connection with

Eid Celebrations. Nayabuddin, brother of Sohrabuddin had gone to see off Sohrabuddin, sister-in-law Kausarbi and Tulsiram Prajapati at Indore bus stand. They left in a white Maruti vehicle which belonged to Kalimuddin. They went to Hyderabad. At Hyderabad, Sohrabuddin stayed with Kalimuddin.

- (e) Investigation disclosed that in the morning of 22<sup>nd</sup> November 2005, Hari - a close confidant of Saleema Begum @ Aapa, sister of Kalimuddin, went to the booking office of M.J.Travels, Hyderabad, and purchased two tickets for Sohrabuddin and Kausarbi, in the name of Salim, for Sangli in Maharashtra. Then on 22<sup>nd</sup> November 2005, Sohrabuddin Shaikh and Kausarbi boarded the luxury bus KA 05 F 5051 of Sangeeta Travels proceeding for Belgaum and occupied seats nos.29 and 30 respectively. The route of this bus was from Hyderabad to Solapur, Miraj, Sangli, Kolhapur to Belgaum.

- (f) The prosecution alleged that the police party also followed the said luxury bus. About 15 to 20 kms from the hotel, their vehicles overtook the luxury bus and stopped the bus. Tulsiram Prajapati who was sitting in the bus, came to be picked up by the police. After sometime, police again came inside the bus and picked up Sohrabuddin. When Sohrabuddin was made to get down from the bus, his wife Kausarbi also got down. After sometime, one police person in civil dress told Kausarbi to go inside the bus but she refused and replied that “Mere shohar ke bina nahi jaungi.” Police then decided to take Kausarbi with them. Rajasthan Police Personnel took Tulsiram Prajapati straight to Udaipur.
- (g) According to the prosecution case, Sohrabuddin Shaikh was then taken and kept at the Disha Farm from 23<sup>rd</sup> November 2005 till the night of 25<sup>th</sup> November 2005. Sohrabuddin Shaikh was then taken to Arham Farm House during the intervening period for the purpose of interrogation and he was finally shifted to Arham Farm House in the night of 25<sup>th</sup>

November 2005. Sohrabuddin, who was in illegal custody, was finally taken to GEB Electric Pole between Narol and Vishala Circle, by the officials of the Anti-Terrorist Squad. He was made to alight from the official Maruti Fronti vehicle and shown encountered while trying to run away on a motorcycle by the officials of the Anti-Terrorist Squad Gujarat and the Special Task Force of Rajasthan. Kausarbi, who was also under illegal confinement at the Disha Farm, was then shifted to Arham Farm House in the morning of 26<sup>th</sup> November 2005. Kausarbi was an eye witness to the abduction of Sohrabuddin Shaikh. She was, thereafter, eliminated by the accused persons and her body was burnt in Village Illol. Investigation further revealed that bundles of hay were put on the dead body of Kausarbi and it was burnt at the bank of the river at Village Illol.

- (h) The third person who was abducted along with Sohrabuddin and Kausarbi was Tulsiram Prajapati. Investigation further disclosed that he was a material witness / eye witness to the

abduction of Sohrabuddin and his wife. In pursuance of the criminal conspiracy to screen themselves from the legal consequences of the crime, the accused acted in concert with each other to keep Tulsiram Prajapati, a significant material eye witness to the abduction of Sohrabuddin Shaikh and Kausarbi under their continuing control and beyond the reach of others. Accordingly, Rajasthan Police detained Tulsiram Prajapati on 26<sup>th</sup> November 2005 for achieving the common object of keeping Tulsiram Prajapati under their control. At around 1500 hours on 26<sup>th</sup> November 2005, Tulsiram Prajapati was picked up at Bhilwara and was brought to Udaipur in the evening of the same day. He, however, was shown to be arrested only three days later on i.e. 29<sup>th</sup> November 2005 in the Hamid Lala Murder case (Crime No.214 of 2004 of Police Station Hathipole). He was then remanded to police custody till 10<sup>th</sup> December 2005.

- (i) According to the prosecution case on 25<sup>th</sup> December 2006 Tulsiram Prajapati was given in custody of specially formed

escort team of Udaipur Police headed by Assistant Sub-Inspector Narayan Singh and comprising of Police Constables Dalpat Singh, Kartar Singh and Yaduveer Singh. Tulsiram Prajapati was produced before the court at Ahmedabad in Popular Builder Firing case on 26<sup>th</sup> December 2006. The prosecution case indicates that during return journey undertaken on 26<sup>th</sup> December 2006 from Ahmedabad to Udaipur by Udaipur Express, Tulsiram Prajapati was infact not with the escort team headed by Assistant Sub-Inspector Narayan Singh. At about 3.00 a.m. of 27<sup>th</sup> December 2006, show of escape of Tulsiram Prajapati from the custody of the police guards was made. When the train became slow because of turning near Shamalji Railway Station, Tulsiram Prajapati was shown to have escaped from custody of the police guards. It is alleged that two criminals threw chilli powder in eyes of police guards Yaduveer Singh and Kartar Singh when they accompanied Tulsiram Prajapati towards urinal and then along with those two criminals, Tulsiram Prajapati was shown to have escaped from the

custody of the Police Guards. Farce of trying to nab him by chasing him and firing bullets was made. According to prosecution, he was not in the custody of those guards. Thereafter, he was infact killed in fake encounter at about 5.00 a.m. of 28<sup>th</sup> December 2006 by one of the accused named Ashish Kumar Pandya, Police Sub-Inspector of Gujarat Police.

- (j) With these material facts reflecting in the charge-sheets, respondent no.1/ CBI has alleged that accused persons have, thus, committed offences punishable under Sections 120B read with 364, 365, 368, 341, 342, 302, 384 and 201 read with 34 of the Indian Penal Code, by detaining abducted persons, taking them to the place of occurrence where they were killed by showing fake encounter as genuine and destroying and tampering with evidence with a view to cause disappearance of evidence to screen the offenders.

(k) The learned trial court framed and explained the Charge to the accused persons for offences punishable under Sections 120B, 364, 365, 368, 341, 342, 302 read with 201 of the Indian Penal Code as well as under Section 25 of the Arms Act. The accused persons, who were put up for trial, abjured their guilt and claimed trial. In order to bring home the guilt to the accused persons, the prosecution has examined as many as 210 witnesses including appellant Mahendrasinh Jorubha Zala, who was examined as Prosecution Witness No.205 (hereinafter referred to as PW205 for the sake of brevity). After closure of evidence of the prosecution, accused persons, who faced the trial, were examined under Section 313 of the Cr.P.C. They, however, did not enter in the defence.

(l) After hearing the parties, the learned trial court, by the impugned judgment and order dated 21<sup>st</sup> December 2018, was pleased to acquit the accused persons in Sessions Case Nos.177 of 2013, 178 of 2013, 577 of 2013 and 312 of

2014. This judgment is sought to be impugned by PW205 Mahendrasinh Jorubha Zala in the instant appeal.

4           We have heard the learned counsel appearing for appellant Mahendrasinh Jorubha Zala (PW205). He drew our attention to paragraph 165 of the impugned judgment and order and argued that the appellant was co-accused with the deceased Tulsiram Prajapati and Mohd.Azam in the case of firing at the office of Polular Builder and he is direct victim of the crime. Therefore, as per provisions of Section 2(wa) of the Cr.P.C., he is entitled to file the instant appeal. Our attention was drawn to the statement of the appellant recorded under Section 164 of the Cr.P.C. filed with the compilation of documents and the learned counsel for the appellant argued that the same was not exhibited during the course of recording of evidence of the appellant/PW205 and therefore, the appellant had applied for his re-examination by moving an application to that effect, by invoking provisions of Section 311 of the Cr.P.C. The learned counsel argued that the said application was rejected by the learned trial

court on 21<sup>st</sup> December 2018. The learned counsel was at pains to point out that in his statement recorded under Section 164 of the Cr.P.C. by the learned Metropolitan Magistrate, the appellant has alleged that an attempt to extort an amount of Rs.15 lakh from him by the discharged police officers. He argued that as the statement of the appellant is reflecting the fact that discharged accused D.G.Vanzara, Deputy Inspector General, Anti Terrorist Squad, Ahmedabad, had attempted and extorted an amount of Rs.15 lakh from him under the threat of encounter, the appellant/PW205 is the victim of the crime. By pointing out the opening paragraph of the impugned judgment and order, the learned counsel argued that accused persons are acquitted of the offence punishable under Section 384 of the Indian Penal Code, which deals with the punishment for extortion, and therefore, the appeal, as framed and filed under Section 372 of the Cr.P.C. by the appellant/PW205 is maintainable. In submission of the learned counsel for the appellant, there was no fair trial of the alleged offence, and therefore, order of re-trial of the case is must. The appellant has placed reliance on judgment of the Full Bench

of Allahabad High Court in the matter of **Manoj Kumar Singh vs. State of Uttar Pradesh and Others**<sup>1</sup> to substantiate his contention that the appellant can be construed as the victim of the crime in question. Reliance is placed on the judgment of the Division Bench of Hon'ble Madhya Pradesh High Court in the matter of **Uday Bhan vs. State of Madhya Pradesh and Another**<sup>2</sup> to buttress the contention that the victim is an aggrieved person not only in a crime but also in an investigation, enquiry, trial, appeal, revision, review etc. The learned counsel for the appellant placed reliance on the charge-sheet in Crime No.1124 of 2004 registered at Navrangpura Police Station, Ahmedabad City, in respect of firing at the office of the Popular Builder.

5           To counter these submissions, the learned Additional Solicitor General of India has vehemently argued that in the instant appeal the appellant is making allegations against discharged accused D.G.Vanzara and Abhay Chudasama. The

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2017 CRI.L.J. 1240

2   2014 CRI.L.J. 2151

appellant has arraigned even all discharged accused as party respondents to the instant appeal without challenging the orders of their discharge. It is further argued that case of Popular Builder has no relevance to the case in hand. It is further contended that two appeals challenging the impugned judgment and order of acquittal viz. Criminal Appeal Nos.656 of 2019 and 641 of 2019 filed at the instance of two brothers of deceased Sohrabuddin, namely, Nayabuddin Shaikh and Rubabuddin Shaikh, are already admitted for final hearing by this court, and therefore, the appellant, who was merely examined as witness by the prosecution cannot be construed as the victim of the crime in question. His appeal is, therefore, liable to be dismissed as not maintainable. The learned ASGI has submitted that several third parties have filed various proceedings in the instant case and lastly the Division Bench of this court in the matter of **Bombay Lawyers Association vs. Central Bureau of Investigation and connected matters**<sup>3</sup> was pleased to hold that the third party has no locus to institute the proceedings in the form of public interest, and that too, after lapse of three years after discharge orders passed by the

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3 2018 SCC Online Bom 4788

competent court. By relying on judgment of the Division Bench of Bombay High Court in the matter of **Chattar Singh vs. Subhash and Others**<sup>4</sup> it is argued that the appeal at the instance of witness is not maintainable.

6           We have considered the rival submissions and also perused the record and proceedings which were called by us in Criminal Appeal Nos.656 of 2019 and 641 of 2019 filed by Nayabuddin Shaikh (Prosecution Witness No.181) and Rubabuddin Shaikh (Prosecution Witness No.208). Appellants in these appeals are the victims being brothers of deceased Sohrabuddin Shaikh. These appeals are already admitted for final hearing by us. The simple question which falls for consideration in the instant appeal is whether the appeal, as framed and filed by PW205 Mahendrasinh Jorubha Zala, challenging the judgment and order of acquittal recorded by the learned Additional Sessions Judge, Greater Mumbai, is maintainable, as an appeal by the victim.

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4   ILR (2011) Delhi II 470

7           Undisputedly, the appeal is a creature of statute and the said right inheres in no one. Right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide for an appeal from a particular judgment and order, the court is bound to follow the express words of the statute. For its maintainability, the appeal must have the clear authority of law. Section 372 of the Cr.P.C., in terms, makes it clear that no appeal can lie from any judgment and order of a criminal court, except provided for by the Cr.P.C. or by any other law for the time being in force. Proviso clause of Section 372 of the Cr.P.C. empowers the victim to prefer an appeal. Thus, an appeal under the Criminal Procedure Code is also a creature of statute and cannot be assumed until and unless clearly provided under the Cr.P.C. Therefore, in view of the aforesaid statement of law no appeal under the Criminal procedure Code can be filed except as provided in the said Code. The said right of appeal cannot be 'read into' any class of citizen/party to a trial if not expressly

contemplated under the Cr.P.C. It needs to be pointed out that Chapter XXIX of the Cr.P.C. provides for appeals and no appeal can be filed, maintained and validly entertained if the same is not filed as per the provision of Chapter XXIX of the Cr.P.C. The relevant provision of the said chapter, in so far as appeals against acquittal are concerned, are quoted herein below for ready reference:-

**372. No Appeal To Lie Unless Otherwise Provided**

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Provided the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

**378. Appeal In Case Of Acquittal**

(1) Save as otherwise provided in Sub-Section (2) and subject to the provisions of Sub-Sections (3)

and (5),

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.”;

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of Sub-Section (3), also direct the Public Prosecutor to present an appeal-

(a) to the Court of Session, from an order of

acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(3) No appeal under Sub-Section (1) or Sub-Section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under Sub-Section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under Sub-Section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under Sub-Section (1) or under Sub-Section (2).

8 Thus from a bare perusal of the text of Section 372 of the Cr.P.C., it is clear that legislature in its wisdom has given a right of appeal only as provided in the Cr.P.C. and has expressly forbidden any appeal which is not contemplated under the Cr.P.C. Further perusal of Sections 372 and 378 of the Cr.P.C. manifest the nature of order. The party who is competent to file an appeal against the said order is also clearly and unambiguously stipulated in the Cr.P.C.

9 In so far as order of acquittal is concerned the legislature in its wisdom has specifically conferred right to specified class of parties to the trial to file an appeal against an order of acquittal. The same is clear from the following:-

- (i) Section 372 confers right of appeal on a victim against any order passed by the Court

acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, directly and without seeking leave of the concerned court;

- (ii) Section 378(1)(1) confers right on a District Magistrate to direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence
- (iii) Section 378(1)(2) confers right on the State Government to direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal;
- (iv) In case the matter has been investigated by CBI or any central agency then Section 378 (2) confers power to the Central Government to direct the Public Prosecutor to present an appeal against the order of acquittal;
- (v) Section 378 (4) confers right on a complainant to file an appeal against the order of acquittal.

Furthermore, as per Section 378 (3) and (4) the aforesaid right to appeal conferred on the aforesaid categories of parties contemplated under Section 378, in so far as acquittal orders are concerned, is not provided under the Cr.P.C. as a matter of an absolute right but can be availed only with the leave of the court.

10           It is, thus, clear that except the aforesaid categories of parties i.e. District Magistrate, State Government, Central Government and complainant, who can avail a right to appeal with the leave of court, no other party has been conferred right of appeal against an order of acquittal and the same is specifically and expressly barred under Section 372 of the Cr.P.C. The victim can no doubt prefer an appeal challenging acquittal without leave of the court, as per proviso to Section 372 of the Cr.P.C.

11           Now let us examine who can be said to be a victim competent to prefer an appeal challenging acquittal under Section 372 of the Cr.P.C. Section 2(wa) of the Cr.P.C. defines the term victim. It reads thus :

“2(wa) “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.”

(emphasis supplied)

In the matter of Manoj Kumar Singh (supra) the Full Bench of the Allahabad High Court, in paragraph 54, has interpreted this definition of the term victim and it reads thus :

“54 In nutshell, it can be concluded that victim means the actual sufferer of offence (receiver of harm caused by the alleged offence) and no person other than actual receiver of harm can be treated as victim of offence, so as to provide him/ her a right to prefer appeal under the proviso of Section 372. In absence of the direct sufferer or in a case where the direct sufferer suffers a disability his or her legal heir or guardian would qualify as a victim.

In the matter of Uday Bhan (supra) following are the observations of the Madhya Pradesh High Court found in paragraphs 7 and 8. They read thus :

“7 In view of the above, it is evident that “victim” who is the ultimate sufferer in the commission of a crime has been given recognition as an aggrieved party by introducing the abovesaid amendment in Cr.P.C. There is no manner of doubt that right from the occurrence of the incident till the decision of trial, appeal or revision, till the highest court of law, the “victim” is as much interested in the decision as is the accused or the State. Infact, the “victim” on account of being the injured person and the sufferer, deserves to be recognized as the most aggrieved party in a crime. It is a happy state of affairs that the stand of the victim are now vindicated in shape of amendment in the Cr.P.C.”

“8 This court has, thus, no hesitation to hold that the victim is an aggrieved person not only in a crime, but also in an investigation, enquiry, trial, appeal, revision, review and also the proceedings by which the inherent powers of this court under Section 482, Cr.P.C. are invoked.”

12 It is, thus, clear that victim is a person who has suffered any loss or injury caused by reason of the act or omission

for which the accused person has been charged. Thus, whether a person is a victim or not, is required to be judged qua the Charge framed against the accused persons in the concerned trial, in the light of averments made in the charge-sheet filed by the prosecuting agency. The Charge framed by the trial court against the accused must be in respect of that act of the accused, by which the victim has actually suffered any loss or injury. Therefore, it becomes relevant to reproduce the Charge framed against the accused persons in the said sessions cases. The record and proceedings reveal that the following Charge was framed against the accused persons :

“ **CHARGE**

**FIRSTLY :** That all of you along with other remaining accused on and prior to 22.11.2005 at Ahmedabad and Hyderabad made criminal conspiracy to abduct Sohrabuddin with intention to kill him by posing a said killing as encounter and you also abducted Kausarbi – wife of Sohrabuddin and Tulsiram Prajapati, who were travelling with Sohrabuddin and you made criminal conspiracy to kill both of them being the witness to the abduction and killing of Sohrabuddin and with the object of

this criminal conspiracy you killed all of them viz. Sohrabuddin on 26.11.2005, Kausarbi on 29.11.2005 and Tulsiram Prajapati on 28.12.2006 in the State of Gujarat and out of your criminal conspiracy you destroyed the material evidence in the shape of leave record of accused no.25 – Aashish Pandya, prepared false FIR showing fake encounter as genuine and tried to pressurize the material evidence to protect the real culprits to save from legal punishment and also wrongfully confined Sohrabuddin and Kausarbi at Disha Farm and Arham Farm at Ahmedabad and illegally detained Tulsiram Prajapati from 26.11.2005 to 29.11.2005 at Udaipur and prepared incorrect record showing his arrest on 29.11.2005 and you thereby committed an offence punishable under Section 120(B) of IPC and within my cognizance.

**SECONDLY :** That you along with other remaining accused on the night of 22.11.2005 and 23.11.2005 on Hyderabad Sangli Road, abducted Sohrabuddin from Luxury Bus at Village Tadola in which he was travelling from Hyderabad to Sangli and out of your criminal conspiracy you made this abduction to kill him and you wrongfully restrained

him to proceed to Sangli and kept him wrongfully at secret place at Disha Farm and Arham Farm at Ahmedabad and thereby you committed an offence punishable under Sections 120(B), 341, 342, 364, 365, 368 of IPC and within my cognizance.

**THIRDLY :** That you along with other remaining accused on the night of 22.11.2005 and 23.11.2005 abducted Kausarbi from Luxury Bus at Village Tadola in which she was travelling alongwith Sohrabuddin and you wrongfully restrained and confined Kausarbi at Disha Farm and Arham Farm at Ahmedabad out of your criminal conspiracy and you conspired to kill her and you thereby committed an offence punishable under Sections 120(B), 341, 342, 364 and 368 of IPC and within my cognizance.

**FOURTHLY :** That you alongwith other remaining accused out of your criminal conspiracy on 26.11.2005 at Vishal Naka to Narol Circle at Ahmedabad, killed Sohrabuddin intentionally and with the knowledge that fire of bullet on his person will kill him and you thereby committed an offence punishable under Section 120(B) and 302 of IPC and within my cognizance.

**FIFTHLY :** That you alongwith other remaining accused out of your criminal conspiracy on 26.11.2005 kill Sohrabuddin and gave false FIR showing fake encounter to be genuine and in a stage-managed encounter out of your criminal conspiracy you brought the revolver and kept it in the hand of Sohrabuddin after his encounter and you thereby committed an offence punishable under Section 120(B) of IPC r/w Section 25(1B-a) of Arms Act, 1959 and within my cognizance.

**SIXTHLY :** That you alongwith other remaining accused made criminal conspiracy on 29.11.2005 to kill Kausarbi and out of said criminal conspiracy you set her body under fire at the riverbed near Illol village and this you did intentionally and with the knowledge that setting her on fire will kill her and you have collected the ash and bones from that place and thrown them into the river to disappear material evidence and to screen the real culprits from legal punishment and thereby committed an offence punishable under Sections 302, 201 and 204 of IPC and within my cognizance.

**SEVENTHLY :** That you alongwith other remaining accused made criminal conspiracy on 25.12.2006 to

eliminate Tulsiram Prajapati and to achieve this object you allowed his escape from the custody of escorts while travelling in train from Ahmedabad to Udaipur and you killed him intentionally and knowingly that firing from service revolver on his person will certainly kill him and you thereby committed an offence punishable under Section 120(B) and 302 of IPC and within my cognizance.

**EIGHTHLY :** That you alongwith other remaining accused out of your criminal conspiracy destroyed the leave record of accused no.25 – Aashish Pandya by accused no. 24 – Vipul Aggarwal to disappear material evidence and you prepared a false FIR showing fake encounter as genuine of Tulsiram Prajapati with intend to screen the real offenders from legal punishment and you thereby committed an offence punishable under Sections 120(B), 201 and 204 of IPC and within my cognizance.

**NINETHLY :** That you alongwith other remaining accused out of your criminal conspiracy on 29.12.2006 brought country made pistol with intend to keep it in the hand of Tulsiram Prajapati after his encounter at village Chapri and you thereby committed an offence punishable under

Section 120(B) of IPC r/w Section 25(1B-a) of Arms Act, 1959 and within my cognizance.”

13           We have also perused the charge-sheet filed by the prosecuting agency against the accused persons. Allegations leveled against the accused persons in the column charge / brief facts of the case in the charge-sheets are in respect of indulging in the criminal conspiracy, abducting of Sohrabuddin and Kausarbi, commission of their murder, causing disappearance of evidence to screen the offenders, committing murder of Tulsiram Prajapati etc. Those allegations are aptly mentioned in the opening paragraphs of this judgment.

14           We have also perused the deposition of the appellant who is examined as PW205 by the prosecution. The said deposition makes it clear that the appellant/PW205 is an accused in Crime No.1124 of 2004 of Navrangpura Police Station, Ahmedabad, for offences punishable under Sections 307, 427, 452, 114, 120B, 384, 386, 201, 202, 203, 204, 212, 193, 118 of the Indian Penal Code read with Sections 25(1)(b)A, 27(1)(2) of

the Arms Act. It is reported that the trial of this offence is still pending. The appellant/PW205 has deposed that he was inmate of jail with co-accused Tulsiram Prajapati (since deceased) who used to express apprehension of his encounter by the police. Even the appellant/PW205 has not deposed about so called threatening and extortion of an amount of Rs.15 lakh by discharged accused D.G.Vanzara, the then Deputy Inspector General, Anti Terrorist Squad, Ahmedabad, before the learned trial court. The deposition of the appellant/PW205 contains a note of the learned trial Judge to the effect that the same was read over to the witness and found correct.

15            Thus, neither the prosecution leveled the charge of extortion from the appellant/PW205 against the accused persons nor the appellant/PW205 has deposed about the same before the learned trial court. Thus, it cannot be said that the appellant/PW205 is a person, who had suffered any loss or injury, by reason of the act or omission, for which the accused persons have been charged. The appellant/PW205 has not suffered any

loss or injury, as a result of the crime in question. Alleged monetary dealings of the discharge accused with the appellant (PW205) in Popular Builder firing case (Crime No.1124 of 2004) of Navrangpura Police Station, Ahmedabad, wherein he is also one of the accused, is neither a fact in issue nor a relevant fact, so far as criminal conspiracy to abduct Sohrabuddin Shaikh, his wife Kausarbi and Tulsiram Prajapati and murdering them subsequently under the guise of fake encounter or otherwise, is concerned. Those averments are in respect of the crime regarding firing at the office of the Popular Builder, Ahmedabad, which is pending for trial in the competent court at Ahmedabad.

16           Thus, in view thereof, an appeal by a witness, who cannot be termed as a victim as defined by Section 2(wa) of the Cr.P.C., against an order of acquittal would be a fortiori and ex-facie barred under section 372 of the Code. The relevant portion of the judgment rendered by the Apex Court in the case of **Arcot Textile Mills Ltd. vs. Regl. Provident Fund Commr.**<sup>5</sup> can be quoted with advantage hereinbelow for ready reference:

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<sup>5</sup> (2013) 16 SCC 1

“20 .....It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision providing for appeal should neither be construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. (See **Ganga Bai v. Vijay Kumar [(1974) 2 SCC 393]** , **Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad [(1999) 4 SCC 468]** , **State of Haryana v. Maruti Udyog Ltd. [(2000) 7 SCC 348]** , **Super Cassettes**

**Industries Ltd. v. State of U.P. [(2009) 10 SCC 531 : (2009) 4 SCC (Civ) 280] , Raj Kumar Shivhare v. Directorate of Enforcement [(2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712] , Competition Commission of India v. SAIL [(2010) 10 SCC 744]).**

17           In view of the aforesaid, an appeal against an order of acquittal by the appellant, who is not the victim, is not at all maintainable under the provisions of the Cr.P.C. and the same is liable to be dismissed at the very threshold, it being a circuitous attempt to impugn the Judgment of acquittal without any authority of law. Hence, the order :

**ORDER**

The appeal is dismissed.

**(A. M. BADAR, J.)**

**(INDRAJIT MAHANTY, J.)**