

103 (2 cases)

2024:PHHC:079293-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **CRA-D-161-DBA of 2003**
Date of Decision: 31.05.2024

State of Punjab ...Appellant
Vs.
Labh Singh and others ...Respondents

2. **CRR 2482 of 2002**

Tejinder Singh ...Petitioner
Vs.
State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Mr. I.P.S. Sabharwal, DAG, Punjab.

Mr. Karanvir Hooda, Advocate
Amicus Curiae, for the petitioner in CRR-2482-2002.

Appeal qua respondents No. 1 and 2
namely Labh Singh and Gahwa Singh
in CRA-D-161-DBA-2003 and
revision qua respondents No. 2 and 3 in CRR-2482-2002
already abated vide order dated 22.05.2024.

Mr. Abhaysher Singh, Advocate
for respondent No.3 in CRA-D-161-DBA-2003 and
for respondent No.4 in CRR-2482-2002-Kuldip Kaur.

N.S.SHEKHAWAT, J.

1. This judgment shall dispose off two cases, i.e., **CRA-D-161-DBA of 2003** titled as “**State of Punjab Vs. Labh Singh and others**” and **CRR-2482-2002** titled as “**Tejinder Singh Vs. State of Punjab and others**”, whereby, State of Punjab as well as Tejinder Singh, petitioner have challenged the impugned judgment dated 09.09.2002 passed by the Court of Additional Sessions Judge (Adhoc) Faridkot, whereby, the respondents were acquitted of the charge under Sections 304-B and 498-A of IPC.

2. The FIR Ex.P13 in the present case was registered on the basis of the statement made by Kuldip daughter of Tejinder Singh and wife of Labh Singh, respondent No. 1. The FIR Ex. P13 alongwith police proceedings have been reproduced below:-

“(Statement of Kuldip Kaur d/o Tejinder Singh Jat Sikh resident of Mohalla Sethian, Gali Hakima Wali Faridkot, age about 26 years.

It is stated that I am residing in the house of my parents for the last about 1 ½ years and I have two daughters. I have been married for the last about six years. I was married with Labh Singh son of Bhagwant Singh Caste Jat Sikh r/o Chhateana, District Muktsar and now was residing in the house of my parents. Because I was distressed from my in-laws family and my husband Labh Singh, brother-in-law (Jeth) Gawa Singh, sister-in-law (Jathani) Kuldip Kaur used to harass me and said to bring more dowry from my parents, which my parents could not give. For this reason, on being harassed by my

husband, jeth and jethani, on 8.6.98, at about 7 p.m. I poured kerosene oil upon me and set on fire myself. At that time except my grandmother Mohinder kaur, no one was present in the house. On catching fire, I raised alarm for rescue and neighbourers gathered, who put earth upon me and extinguished the fire. My father had gone to the field who was brought and he got admitted me in the medical college/hospital Faridkot for my treatment.

RO & AC RTI Kuldip Kaur Sd/- Piare Lal EM Faridkot dated 9.6.98 at 3.10 a.m. today in Guru Gobind Singh Medical Hospital, Faridkot Police proceedings- Today one medical ruqa No 1662 dated 8.6.98 received from the doctor of Guru Gobind Singh Medical College that Kuldip Kaur daughter of Tejinder Singh resident of Mohalla Sethian is admitted in the hospital due to catching fire in a burnt condition, upon which I the ASI alongwith HC Nachhatar Singh 1466 PHG Balwinger Singh, C. Naval Kishore 726 on Government Canter the driver of which is Paramjit Singh reached the hospital for recording statement of Kuldip Kaur and asked from the doctor in writing that Kuldip Kaur is able to give statement or not and due to serious condition of Kuldip Kaur, her dying declaration be got recorded from the magistrate, upon which after writing the request produced before SDM Sahib Faridkot who has deputed Shri Piare Lal Tehsildar -cum Executive Magistrate, who on reaching hospital, recorded the aforesaid statement of Kuldip Kaur. Whatever she has got recorded, the Tehsildar-cum-Executive Magistrate recorded and after recording it was read over to her, who, after hearing and

admitting it correct, put her right thumb impression underneath her statement, which has been attested by Shri Piare Lal Executive Magistrate. From this statement offence under Section 498 A IPC is found, upon which this statement is sent to the police station for registration of case under the said offence against the aforesaid accused through C. Naval Kishore. On registration of the case, case number be intimated, Higher officer and P.C.R be intimated. I alongwith co-officials is busy for investigation at the spot. Special reports be issued Sd/- Purjit Singh ASI, PS City Faridkot dated 9.6.99 GGSM Hospital, Faridkot, time 4 a.m. Today in the police station: On receipt of the aforesaid statement on registration of the case under the said offence against the said accused in the register, copy of the FIR along with original statement is being sent to the concerned ASI at the spot, through the arrival constable. Special reports are being sent to the higher officers through HC Jaljit Singh 700. Information is being given to the I/C PCR through wireless message.

Clouser of FIR vide request Sd/-
No. 44 dated 09.06.98 at 05.15 a.m. Jalour Singh SI/
SHO, P.S. City Faridkot
09.06.98.”

3. After recording of the FIR, the investigation in the present case formally commenced. After usual investigation, the final report under Section 173 Cr.P.C. was presented against the respondents before the Court of Area Magistrate. Since, the offence was triable by the Court of Sessions, the case was committed to the

Court of Sessions Judge, Faridkot. Vide order and charge sheet dated 03.11.1998, charge under Sections 304-B, 498-A and 34 IPC was ordered to be framed against the respondents/accused.

4. During the course of the trial, the prosecution examined PW1 Piare Lal, Tehsildar. As per him, on 09.06.1998, on receipt of the application Ex.P1, he was deputed by SDM, Faridkot to record the statement of Kuldip Kaur, who had suffered burn injuries. He went to Medical College and Hospital, Faridkot, where the doctor had already opined on the application of the police Ex.P3 that the patient was fit to make the statement. He got himself satisfied that Kuldip Kaur was in a fit condition to make the statement and recorded her statement Ex.P2. She thumb marked on the same and the statement was recorded at 3.10 a.m. on 09.06.1998. Throughout the period, he recorded the statement, she was in her full senses. In his cross-examination, he stated that he did not know as to whether the Executive Magistrate can right any such statement or not. He had not given any separate note that he was satisfied that she was in fully senses to make the statement. He admitted that he had not mentioned a separate note that she remained in her senses during the making of the statement. He had not taken separate opinion from the doctor. PW2 Raj Rani Clerk proved the bed head ticket of Kuldip Kaur Ex.P4. The prosecution further examined PW3 Dr. K.K. Aggarwal, Assistant Professor, Forensic Medicine Department, G.G.S. Medical college, Faridkot, who had conducted the MLR of Kuldip Kaur on

01.00 p.m. on 16.06.1998. The patient was accompanied by her father Tejinder Singh. She was admitted at 10.15 p.m. on 08.06.1998 and the MLR was done as per the orders from the CJM on 16.06.1998. He found the following injuries on her person and stated as under:-

“1) There were superficial as well as deep burns present on whole of body except head axillae, part of face, right shoulder joint lateral part of right arm and fingers of both hands. White creame onitment was present here and there. Superficial slought was fallen off at places. Approximate percentage of burns was 90%.

The patient was kept under observation for surgeon's opinion and the probable duration was within one to two weeks. I have brought the original medico-legal register today in the court. Ex.P5 is the certified carbon copy of the MLR, which bears my signatures and is correct as per original. Ex.P5/1 is the pictorial diagrams showing the burns”.

5. PW3 Dr. K.K. Aggarwal also conducted postmortem examination at 08.15 a.m. on 18.06.1998 on the dead body of Kuldip Kaur and found the following injury:-

“There were superficial as well as deep burns present on whole of body except head part of face, right shoulder joint axillae lateral part of right arm, fingers of both hands and public region. Superficial slough was fallen

off at place. Pulse was present over burnt areas.

Approximate percentage of burns was 90%”.

6. In his opinion, the cause of death in this case was septicemia as a result of 90% burns which were sufficient to cause death in ordinary course of nature. In his cross-examination, he further stated that Kuldip Kaur was brought to emergency department at 10.15 p.m. on 08.06.1998 by her father Tejinder Singh, who also signed the MLR. He further stated that there was so many excess of septicemia.

7. The prosecution further examined PW4 Kussam Lata, who tendered into evidence a certified copy of the order dated 05.06.1998 passed by the Court of CJM, Faridkot in an application under Section 195 Cr.P.C. submitted by Kuldip Kaur and the same was exhibited as Ex.P10. Gurbachan Singh, Draftsman, prepared scaled map Ex.P12. SI Jalour Singh, PW6 had recorded the formal FIR Ex.P13. PW7 Inspector Mohinder Singh had sent the rukka in the present case.

8. The prosecution further examined PW8 Darshan Singh Grewal, S.D.M. Faridkot, who had deputed Piare Lal, Executive Magistrate to record the statement of Kuldip Kaur, who had suffered burn injuries in the present case. PW9 Tejinder Singh is the star witness of the prosecution. As per him, his daughter Kuldip Kaur was married to Labh Singh in the year 1992. She gave birth to two daughters. At the time of marriage, adequate dowry was given by

him to his daughter. She remained happy there for about 2/3 years. After the birth of two daughters, they started harassing his daughter by demanding more dowry. The accused were demanding a sum of Rs. 50,000/- initially but he was not in a position to fulfill their demands. Due to non fulfillment of their demand, the accused had turned his daughter out of their house. Thereafter, his daughter filed a petition under Section 125 Cr.P.C. in the Court at Faridkot. Even, a Panchayat was taken to the house of the accused but in vain. His daughter had filed a petition under Section 125 Cr.P.C., in which, the maintenance at the rate of Rs. 700/- per month was fixed for his daughter and her daughters. One of the daughter of Kuldip Kaur, since deceased, was living in the house of accused. On the third day of awarding the maintenance by the Court, his daughter started living in sadness and on the third day at about 06.00 p.m., she set herself ablaze by sprinkling kerosene oil on herself. She was feeling that she had been turned out by her in-law for ever. Mohinder Kaur was alone present at the time of the incident. She had set herself ablaze for the reason that doors of her in-laws' house had been closed for her for ever. In his cross-examination, he stated that his daughter had told/express before him that gates of her in-laws' house had been closed for her for ever. Major Singh was not his brother. Major Singh was a mediator of the marriage of his son. He admitted that in the writing Ex.DA, his signatures are there. However, he did not admit the contents of the writing Ex.DA. He did not disclose the facts as

mentioned in the writing Ex.DA to the medical officer who recorded the entry at his instance. He further admitted that application under Section 125 Cr.P.C. was given on 28.11.1997 when she was residing at Faridkot after coming out from the house of the accused. He admitted that Tejinder Singh, Jagtar Singh and Santokh Singh Pws were neighbourers of his fields and he had cordial relations with them.

9. The prosecution further examined PW10 Tara Singh, who was the neighbour of Tejinder Singh. He stated that Kuldip Kaur was married at about 07/08 years ago with Labh Singh accused. After 3 ½ years of marriage, she gave birth to her second daughter and then the relations between the accused and Kuldip Kaur, since deceased, became strained. There were visible difference between them. The accused had been demanding money from her. After the accused demanded money, then Kuldip Kaur came to her parental house, where she stayed for 1 ½ years and filed an application under Section 125 Cr.P.C. against all the three accused for grant of maintenance. The maintenance was fixed by the Court at the rate of Rs. 700/- per month and she lost her heart, on the third day of fixing maintenance by the Court. She committed suicide by sprinkling kerosene oil on herself.

10. The prosecution further examined PW11 Jagtar Singh, who was also neighbour of Tejinder Singh. He also supported the statement of PW10 Tara Singh. The prosecution further examined

PW12 Dr. Anita, who declared Kuldip Kaur fit to make statement at about 1.00 a.m. on 09.06.98 and her statement was recorded by Piare Lal. The prosecution further examined Dr. Manjit Singh, SMO, GGS, Medical College and Hospital, Faridkot, who declared the patient fit to make statement at 01.00 a.m. on 09.06.1998 and also proved the bed head ticket of Kuldip Kaur. Kuldip Kaur died at 05.32 p.m. on 17.06.1998 and he informed the police in this regard. The prosecution further examined PW14 Inspector Gurcharan Singh, who was the Investigating Officer in this case initially. He had prepared the challan under Section 173 Cr.P.C. Still further, the prosecution examined PW15 ASI Surjit Singh, who was also associated with the process of investigation initially. In his cross-examination, he stated that he received the rukka from the doctor in the evening, but he could not say about the exact time. He reached the hospital within 10/15 minutes on receipt of rukka. He got the opinion of the doctor about fitness after about 3/4 hours. He gave application to doctor about the fitness of the patient before going to SDM. He had recorded the statements of Tejinder Singh and Tara Singh initially.

11. After the conclusion of the evidence, the statements of all the accused were recorded under Section 313 Cr.P.C. Labh Singh, respondent No. 1 stated that he had been falsely involved and raised following defence:-

“I am Innocent. Ghawa Singh and his wife Kaldip Kaur were separated in mess and cultivation from me. There

was no demand of any dowry or articles and harassment on my part. Kuldip Kaur deceased was married since more than seven years before her death. Kuldip Kaur deceased used to reside for more than 1 ½ years with her grand mother at Faridkot, before her death. She filed a petition under Section 125 Cr.P.C. against me in the year 1997. Tejinder Singh, her father and Major Singh her uncle i.e. of the deceased, had taken her to G.G.S. Medical College, Faridkot for treatment, where they both made statement before the doctor that Kuldip Kaur had received burn injuries accidentally and there is no fault of any body and they don't want to proceed against any body and they don't want to proceed against any body for her burns. Both Tejinder Singh and Major Singh had signed their statement before the doctor. Later on, they concocted a false story. Kuldip Kaur did not make any statement before the Tehsildar. The marriage card is fictitious one. I have been falsely implicated in this case by making all relations as false witnesses”.

The same stand was taken by other co-accused, namely,

Ghawa Singh and Kuldip Kaur.

12. After the statements under Section 313 Cr.P.C. the respondents/accused examined DW1 Dr. Kanwal Mohinder Dev Singh, who had attended the deceased on 08.06.1998. She was entered on emergency emergency OPD Register and Major Singh made entry Ex.DA. The patient was usually examined by him. Her B.P. was 110/70 and the pulse was 84 per minute regular. MLR was to be made by Forensic Department, for which, the call was sent to

Dr. Sandhu. He admitted that he did not mention in the information sent to the police vide Ex.PA, the names of all the persons, who brought the patient.

13. Learned State counsel as well as learned counsel for the petitioner in CRR 2482 of 2022 vehemently argued that the trial Court had not correctly appreciated the evidence in the present case. In the present case, the dying declaration, which was recorded by PW1 Piare Lal, Executive Magistrate, Kuldip Kaur, since deceased, had levelled serious allegations against the respondents/accused and there was no ground to disbelieve her statement. Further the statement of PW9 Tejinder Singh clearly showed that soon before her death, Kuldip Kaur, since deceased was subjected to cruelty, in connection with demand of dowry and she died an unnatural death within 07 years of her marriage. Thus, the ingredients of the offence under Section 498-A and 304 Part B were complete in the present case. Still further, the maintenance was granted to her by order dated 05.06.1998 and she committed suicide in the house of her father on 08.06.1998. Labh Singh, her husband was not ready to rehabilitate her. Thus, the ample evidence was led to prove the cruelty on the part of the respondents.

14. On the other hand, learned counsel appearing on behalf of respondent No. 3 Kuldip Kaur submitted that she was sister-in-law (Jethani) of Kuldip Kaur, since deceased. Even she never demanded any dowry and could not have been a beneficiary of dowry in any

manner. Even, as per the admitted case of the prosecution, there was no demand of dowry at the time of marriage and for the last 03 years, she was never subjected to cruelty by anyone. Even, she was staying with her parents since last 1½ years and there was no question of harassment by the respondents. Still further, the dying declaration was recorded by an Executive Magistrate and despite availability of a Judicial Magistrate, he was not called by the police to record the statement of Kuldip Kaur, since deceased. This fact also shows that the investigation was tainted and dying declaration was not reliable.

15. We have heard the learned counsel for the parties and perused the record.

16. In fact, Section 304-B defines “dowry death” and provides for punishment for dowry demands and it reads as under:-

“304–B. Dowry death. —(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death.

Explanation. —For the purpose of this sub– section, ‘dowry’ shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than

seven years but which may extend to imprisonment for life.”

*Section 304B (1) defines ‘dowry death’ of a woman. It provides that ‘dowry death’ is where death of a woman is caused by burning or bodily injuries or occurs otherwise than under normal circumstances, within seven years of marriage, and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband, in connection with demand for dowry. Sub- clause (2) provides for punishment for those who cause dowry death. Accordingly, in **Major Singh v. State of Punjab, (2015) 5 SCC 201**, a three-Judge Bench of this Court held as follows:*

“10. To sustain the conviction under Section 304-B IPC, the following essential ingredients are to be established:

(i) the death of a woman should be caused by burns or bodily injury or otherwise than under a ‘normal circumstance’;

(ii) such a death should have occurred within seven years of her marriage;

(iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(iv) such cruelty or harassment should be for or in connection with demand of dowry; and

(v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.”

17. Keeping in view the aforesaid definition, we have to examine whether the ingredients of Section 304-B IPC were fulfilled in the present case. We also have to examine whether Kuldip Kaur,

since deceased, was subjected to cruelty in connection with demand of dowry, “soon before her death”. In the present case, it is admitted case of the prosecution that Kuldeep Kaur was married to Labh Singh about 06 years ago. Tejinder Singh PW9 is the prime witness of the prosecution. He nowhere stated in his deposition that there was demand of dowry at the time of marriage of Kuldeep Kaur, his daughter. He rather stated that she remained happy in her matrimonial home for a period of about 02/03 years, after her marriage. He further stated that after 03 years, the respondents/accused had started demanding money from her. Even PW10 Tejinder Singh also stated that after 3½ years of marriage, the relation between the respondents/accused and Kuldeep Kaur, since deceased, became strained. PW9 Tejinder Singh and PW10 Tara Singh clearly stated that Kuldeep Kaur had moved an application for grant of maintenance under Section 125 Cr.P.C. and she was granted the maintenance at the rate of 700/- per month w.e.f. 05.06.1998. On the third day of awarding the maintenance by the Court, Kuldeep Kaur started living in sadness and on the third day, at about 06.00 p.m., she had set herself ablaze by sprinkling kerosene oil on herself, in her parental home. She had set herself ablaze for the reasons that the doors of her in-laws’ home had been closed for her for ever. PW9 Tejinder Singh also admitted that his daughter had expressed before him that the gates of her in-laws house had been closed for her for ever. Thus, it is apparent that the main reason for committing the suicide by Kuldeep

Kaur was her depression as she felt that the doors of her in-laws' had been closed for her for ever as the application under Section 125 Cr.P.C. had been decided in her favour, three days prior to the offence. From the statements of PW9 Tejinder Singh and PW10 Tara Singh, it is also apparent that 1 ½ years prior to the commission of suicide, Kuldip Kaur was stayed with her parents in her parental home. Thus, by any stretch of imagination, it cannot be said that she was subjected to cruelty by the respondents in any manner. Even otherwise, from the evidence of the prosecution itself, it is apparent that there was no demand of dowry and Kuldip Kaur had committed suicide as she was under an impression that the doors of the house of her in-laws' had been closed for her for ever. Even otherwise, it is highly unbelievable that a lady would be harassed in connection with demand of dowry after 06 years of her marriage, when she was not harassed for dowry in her initial 03/04 years of her marriage.

18. In fact, while discussing the ingredients of the offence under Section 304-B, the Hon'ble Supreme Court has held in the matter of *Harjit Singh Vs. State of Punjab, 2006 AIR (Supreme Court) 680 and 2006(1) SCC 463* as follows:-

19. In the case of unnatural death of a married woman as in a case of this nature, the husband could be prosecuted under Section 302, Section 304-B and Section 306 of the Indian Penal Code. The distinction as regards commission of an offence under one or the other provisions as mentioned hereinbefore came up for

consideration before a Division Bench of this Court in Satvir Singh & Ors. v. State of Punjab and another, 2001 (4) RCR (Criminal) 355 (SC):[(2001) 8 SCC 633], wherein it was held :

"Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened "soon before her death." The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to

emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is vide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death".

20. Yet again in ***Hira Lal and Others v. State (Govt. of NCT) Delhi, 2003(3) RCR (Criminal) 830 (SC): [(2003) 8 SCC 80]***, this Court observed that "The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however,

to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence".

19. Still further in the present case, the occurrence had taken place at 07.00 p.m. on 08.06.1998 and as per the testimony of PW3 Dr. K.K. Aggarwal, Kuldip Kaur, since deceased, brought to the hospital at about 10.15 p.m. on 08.06.1998. Still further, as per the said doctor, the patient was conscious, even though she had suffered burn injuries. Even, her statement was recorded at 05.10 a.m. on 09.06.1998. Even, she was admitted in Medical College and Hospital at Faridkot and the police had ample time to call a Judicial Magistrate to get her statement/dying declaration recorded. In fact, there is no legal bar regarding recording of the dying declaration by the Executive Magistrate, however, when the Judicial Magistrate was easily available, the Investigating Officer should have move an application for appointment of the Judicial Magistrate for recording her statement. Moreover, in the present case, it is apparent that the complainant had twisted the whole facts and had set up the new facts. Still further, we have also gone through the findings recorded by the

trial Court and we are of the considered opinion that view taken by the trial Court was a probable and proper view and we do not find any necessity of overturning the judgment passed by the trial Court.

20. It has been held by the Hon'ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”**, **2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

*“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974** -*

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at

variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

In Ramesh Babulal Doshi v. State of Gujarat, 1997(3)

RCR (Criminal) 62 : 1996 CriLJ 2867, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it

were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

21. Still further in **Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another]**, decided on 11.07.2022, Hon'ble the Supreme Court has held as under:-

*"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:*

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused.

Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering

acquittal.

Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

22. In view of the above discussion, impugned judgment dated 09.09.2002 passed by the Court of Additional Sessions Judge (Adhoc) Faridkot, is ordered to be upheld. The appeal and revision are accordingly dismissed.

23. All pending applications, if any, are disposed off, accordingly.

24. Trial Court record be sent back to the trial Court.

25. All concerned may be intimated.

(GURVINDER SINGH GILL)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

31.05.2024
amit rana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No