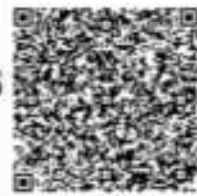


2024:PHHC:132269-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-189-2024 (O & M)
Date of decision: 04.10.2024

State of Haryana

..... Applicant

V/s

Rakesh Kokcha

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Ms. Shubhra Singh, Addl.A.G., Haryana,
for the applicant.

JASJIT SINGH BEDI, J.

The present application under Section 378(3) of Cr.P.C. has been filed for grant of leave to appeal against the judgment of acquittal dated 06.03.2023 passed by the Additional Sessions Judge, Narnaul.

2. In brief, the case of prosecution is that on 20.10.2021, complainant Santra (mother of deceased Ritu) came to the police station and gave information that her daughter Ritu had been hospitalized in SMS Hospital, Jaipur due to burn injuries. Upon this information, Suman, SI alongwith Happy, Constable and Diwan, SPO went to the hospital where inquiry about the MLR as well as ruqa regarding the patient was made

through police requisition Exh. P17 and she was informed that the patient was got admitted in the hospital on 17.10.2021 vide MRD No.36990 but no MLR was prepared. On this, the attending Medical Officer was asked, on police requisition Exh.P18, to prepare the MLR and to advise as to whether the patient was in fit state of mind to make a statement. Thereafter, on the said police requisition, the attending Medical Officer opined that the patient was fit to make a statement, after which, police requisition Exh.P19 was moved before the concerned Magistrate, Jaipur for recording the statement of the patient under Section 164 Cr.P.C. However, before the statement of the patient could be got recorded before the Magistrate, the complainant herself handed over a written complaint with the allegations that she was widow and was permanent resident of Khetri, Rajasthan but was presently residing in village Bhankhari, Narnaul, District Mohindergarh. The marriage of her daughter Ritu with Rakesh Kokcha resident of Shyam Colony, Narnaul was solemnized on 07.12.2020. They had given sufficient items in the marriage as per their capacity. However, after about one month of the marriage, her daughter started being tortured and ill-treated by her husband Rakesh and his mother Indira by constantly raising demand of more dowry in the shape of a vehicle. They had tried to reason with the husband of her daughter and his mother. With the intervention of respectables of her village and before the Panchayat, Rakesh had apologized for his mistakes and assured not to behave in a similar manner in future but about one month ago, her husband Madan Lal and son Sonu again came to Narnaul on a motorcycle to counsel the husband of her daughter as well as her mother-in-

law. Her husband Madan Lal was feeling mentally disturbed due to maltreatment of their daughter and, on the way back from Narnaul to Bhankhari, he met with an accident and died. After his death, Rakesh and his mother asked her daughter to purchase a vehicle for them out of the claim of compensation to be awarded on account of the death of her father. She was constantly nagged in this respect. Ultimately, on 17.10.2021, Rakesh and his mother set her daughter on fire because of which her daughter sustained 60% burn injuries. On the previous day, i.e., 19.10.2021, when she had gone to SMS Hospital to meet her daughter, then, her daughter disclosed that she had been set ablaze by Rakesh and his mother Indira. As the condition of her daughter was critical, so, the statement of her daughter be recorded at the earliest and a prayer was being made for taking legal action against both the culprits for torturing her daughter for and in connection with demand of dowry. Her daughter had said that she would give her statement in the presence of her mother (complainant). Her daughter had been set on fire with an intent to kill her.

3. On the basis of above-mentioned application Exh.P1 of the complainant, the formal FIR was registered under Sections 498A/307/34 IPC by Anil Kumar, HC. On the same day, i.e. 20.10.2021, statement Exh.P23 of patient Ritu was recorded by Ms. Abhipsa, Special Metropolitan Magistrate, Jaipur under Section 164 Cr.P.C on police requisition Exh.P19. On 28.10.2021, upon receiving information about the death of Ritu, Suman, SI again visited the hospital and post-mortem examination was got conducted in the same hospital. The cause of death was opined to be due to

shock brought about as a result of dry heat flame burn injuries and its consequences. On the basis thereof, Section 304B IPC was added. Thereafter, the dead body was handed over to the in-laws of the deceased for the last rites. On 22.11.2021, marriage invitation card/photos/list of dowry articles, which were handed over by the brother of deceased, were taken into police possession vide memorandum Exh.P10. After that, Section 406 IPC was added. On 23.11.2021, accused Rakesh was arrested. During investigation, facts were verified by Muniya, SI and other senior police officers. On verification, Indira (mother of accused Rakesh) was found innocent. Therefore, she was kept in column No.2 and Sections 307/34 IPC were also deleted. On 25.11.2021, pursuant to the disclosure statement of the accused, dowry articles including jewellery were recovered from the matrimonial home of sister of accused Rakesh in village Lambi Bass, District Gurugram which were identified by the complainant vide identification memorandum Exh.P5 and after taking the same into police possession vide memorandum Exh.P13, the dowry articles were handed over to the complainant family vide memorandum Exh.P4. After the completion of investigation, challan report under Section 173 Cr.P.C was prepared on 14.01.2022 and was filed against the accused by Yudhvair Singh, Sub Inspector/SHO on 28.01.2022.

4. Since the offence punishable under Section 304B IPC was exclusively triable by the court of Sessions, hence, the case was committed to the Sessions Court. On having found a prima-facie case punishable under

Sections 498A/304B/406 IPC against the accused, he was charge- sheeted accordingly.

5. The prosecution, in order to substantiate the charge against the accused, examined as many as eleven witnesses.

6. PW-1 Santra-complainant, PW-2 Lal Chand son of Ghanshyam Dass, uncle of the deceased, PW-3 Surender Kumar son of Lal Chand, cousin of the deceased and PW-5 Sonu, brother of the deceased, had deposed that the deceased had been treated with love and affection. She had died on account of accidental burns when thinner had fallen upon her when she was burning garbage outside her house.

7. PW-4 Devender, Head Constable, PW-6 Satyapal, Constable, PW-8 Muniya Devi, SI and PW-9 Yudhvir Singh, SI conducted various facets investigations and submitted the report under Section 173 Cr.P.C.

8. PW-7 Suman, SI was the Investigating Officer. She deposed that on 20.10.2021, the mother of deceased Ritu visited the police post and informed that her daughter was admitted at SMS Hospital, Jaipur due to burn injuries, whereupon, she alongwith Constable Happy reached at SMS Hospital, Jaipur. She moved application Exh.P17 before the concerned doctor to obtain the copy of the MLR but till that time, the MLR was not prepared. She then moved application Exh.P18 before the concerned doctor to prepare the MLR and also requested him to give an opinion as to whether Ritu was fit for giving statement or not. She also moved an application Exh.P19 before the concerned Area Magistrate to record the statement of Ritu under Section 164 Cr.P.C. However, in the meantime, the mother of the

deceased moved application Exh.P1 before her and on the basis of the contents of the said application, she recorded police proceedings Exh.P20 and sent the same through Constable Happy for registration of the FIR. Thereafter, the statement of Ritu was recorded by the Duty Magistrate in the hospital itself and they returned to Narnaul. On 28.10.2021, after receipt of information from SMS Hospital, Jaipur, she reached there and handed over a letter from the office of SP, Narnaul to the concerned Medical Officer to get postmortem examination on the dead body of deceased Ritu. After postmortem, the concerned doctor handed over one sealed parcel to her and then, the dead body was handed over to the father-in-law of the deceased for her last rites. On 22.11.2021, the brother of deceased handed over invitation card, photographs and list of dowry articles which were taken into possession vide memorandum Exh.P10. On 23.11.2021, she arrested the accused and prepared rough site plan Exh.P21 after visiting the place of occurrence. On 24.11.2021, the accused was thoroughly interrogated who, upon interrogation, suffered disclosure statement Exh.P11 and in pursuance of his disclosure statement, the accused led the police party to the place of occurrence and got demarcated the same memorandum Exh.P12. On 25.11.2021, the accused, in pursuance of his disclosure statement, got recovered dowry articles vide recovery memorandum Exh.P13 and she prepared rough site plan Exh.P22. The dowry articles were got identified from the mother and brother of the deceased vide memorandum Exh.P5 and then, the same were handed over to them vide memorandum Exh. P4.

under Section 161 Cr.P.C and deposited the case property in the Malkhana at the relevant time.

9. PW-10 Ms. Abhipsa, Special Metropolitan Magistrate, NI-2, Jaipur testified about the dying declaration Exh.P23 which was suffered by the deceased on 20.10.2021 thereby disclosing as to how she came to sustain burn injuries.

10. PW-11 Dr. Gyan Parkash Guar, Medical Jurist, SMS Hospital, Jaipur conducted the autopsy on the dead body of deceased Ritu on 28.10.2021 on police requisition. He proved the postmortem report Exh. P26.

11. The statement of the accused was recorded under Section 313 of Code of Criminal Procedure. He denied all the allegations of the prosecution and claimed false implication.

12. In defence, one witness, namely, Dr. Amit Kumar Sharma, Assistant Professor, Plastic Surgery and Burn Ward, SMS Hospital, Jaipur was examined as DW-1 on behalf of the accused, whereas, medical record including bills Exh.D1 to Exh. D38 pertaining to deceased were put to the witness PW-2 (uncle of deceased) during his cross-examination.

13. DW-1, the Medical Officer testified that on 17.10.2021, he was one of the members of the treating team, head of which was Dr. G.S. Kalra. On that day, patient Ritu wife of Rakesh Kumar, resident of Narnaul was admitted in their ward at about 09:57 A.M. The patient, on asking, had herself given the alleged history of suffering "flame burn over face, neck, anterior and posterior, bilateral upper limbs and lower limbs as well as over

buttocks at about 07:00 A.M. on 17.10.2021 at her house at Narnaul, when she was burning garbage when it caught her clothes". The patient was immediately brought directly to their SMS Hospital, Jaipur with a complaint of pain and burning sensation over various parts of the body. There was no history of vomiting, convulsion and loss of consciousness. The patient was conscious and bilateral air entry was present. All the details regarding the condition and treatment provided to the patient were mentioned in her Treatment Record/Bed Head Ticket, certified copy of which was Exh.DX. Specific endorsement regarding the history and manner of receiving burn injuries, as stated by the patient herself, was incorporated in Bed Head Ticket at page Nos.3 and 4 from Portion A to A1. As per record, patient Ritu was brought to their hospital by her husband Rakesh Kumar and that her mother Santra was also accompanying them. The Medical Officer identified his signatures at Point-A on the front page of Exh.DX in the column meant for the name and signature of unit head.

14. Based on the evidence led, the respondent-accused came to be acquitted vide judgment dated 06.03.2023 passed by the Additional Sessions Judge, Narnaul.

15. The aforementioned judgment is under challenge before this Court.

16. The learned counsel for the appellant-State contends that the deceased died an unnatural death within seven years of her marriage and soon before her death there was harassment on account of demand of dowry.

Therefore, offence was clearly made out. The dying declaration which had

been recorded by the Magistrate had been disbelieved without any cogent reason whatsoever. Merely because the family members of the deceased turned hostile was not sufficient to acquit the accused in view of the attending facts and circumstances. She, therefore, prays that leave to appeal be granted.

17. We have heard the learned counsel for the parties and examined the record.

18. Section 304-B IPC read with Section 113-B of the Evidence Act, would show that for establishing an offence under Section 304-B IPC the following condition must be fulfilled.

- a. That a married woman had died by burns or bodily injury or otherwise than under normal circumstances;
- b. Such death was within seven years of her marriage;
- c. The victim was subjected to cruelty and harassment by her husband or any relative of her husband for or in connection with demand for dowry soon before her death.

If all the aforesaid ingredients are proved to be existing, the court shall presume that such a person has caused dowry death by drawing a presumption under Section 113-B of the Indian Evidence Act

19. What would constitute "soon before death" depends upon the facts and circumstances of each case and no period can be fixed to indicate the term "soon before". The concept of reasonable time is the best criteria to be applied for appreciation and examination of such case and it is for the Court to decide, on the facts and circumstances of each case whether the

harassment in a particular case was “soon before death” of the deceased-wife.

20. The first point to be determined is as to whether the deceased died an unnatural death. The prosecution has to rule out the possibility of a natural or an accidental death so as to bring it within the purview of the “death occurring otherwise than in normal circumstances”.

21. It is evident that PW-11 Dr. Gyan Parkash Guar, Medical Jurist, SMS Hospital, Jaipur conducted the autopsy of deceased Ritu. The cause of death of the deceased was opined to be due to shock on account of burn injuries and their complications. As would be evident from the statement of the accused recorded under Section 313 Cr.P.C., it is an admitted position that the death of the deceased was by burn injuries. There is no dispute that death by burn injuries is an unnatural death otherwise than under normal circumstances and would be covered under the first ingredient for an offence under Section 304-B IPC. Therefore, it has to be held that Ritu wife of Rakesh had died under suspicious circumstances or otherwise than under normal circumstances.

22. The next point to be determined is as to whether the deceased died within seven years of marriage or not.

23. The prosecution witnesses, i.e., PW-1 complainant, PW-2 uncle, PW-3 cousin and PW-5 brother. They deposed that the deceased was married with accused Rakesh on 07.12.2020, i.e., one year prior to the incident. The accused has also not disputed this fact. Since it has come in evidence of the prosecution that the deceased died on 28.10.2021, as such, it

is established that deceased Ritu died within seven years of her marriage with accused Rakesh.

24. The main question which remains to be answered is as to whether soon before her death, there was a demand of dowry by the accused and whether for that purpose the deceased was done to death by burning.

25. PW-1, Santra, complainant and mother of the deceased, PW-2 Lal Chand, PW-3 Surender and PW-5 Sonu, the uncle, cousin and brother respectively of deceased Ritu, all deposed that the husband and in-laws of Ritu used to keep her nicely and she was living happily with them. All of them deposed that she never made any complaint regarding her ill- treatment on account of any additional dowry. All of them deposed that the husband and in-laws of Ritu had never raised any demand for dowry from Ritu. It was stated categorically that Ritu had been a victim of an accidental death as her clothes caught fire while she was burning garbage and she had confided in them in the hospital about the circumstances in which she came to sustain burn injuries and how her husband had come to her rescue. They denied that the husband or any other member from his family had committed any offence against Ritu. They were declared hostile at the request of the Public Prosecutor for the state and during cross-examination of these witnesses by the Public Prosecutor, they stated that they had heard and understood their respective statements recorded under Section 161 Cr.P.C. but denied the same by stating that no such statements were ever made by them to the police. They denied the suggestion that they had resiled from their earlier statements made to the police because of a compromise. During cross-

examination by the defence, these witnesses admitted that they had attended the funeral ceremony in the matrimonial home of the deceased and the accused family had performed all the Hindu rites at the time of Kriya in the presence of friends and family of both sides. They admitted that both sides of the families had enjoyed good reputation and they had cordial relations with each other. The witnesses admitted that the accused had kept Ritu nicely and he used to behave with her affectionately. They admitted that Ritu never moved any application to the police against Rakesh or his family during her lifetime. The witnesses admitted that the accused had borne all the expenses incurred on the treatment of Ritu and were not responsible for the death of Ritu in any manner.

26. Apparently, in previous statements made during investigation before the police, the above-mentioned witnesses named the accused as the perpetrator of the crime. However, allegations in relation to cruelty or harassment in the context of dowry were totally denied when they testified in the Court on oath during trial. Complainant PW-1 stated clearly that her signatures had been obtained by the police on some papers on the pretext of completion of investigation formalities.

27. PW-7, the Investigating Officer testified about the steps of investigation which were taken by her from time to time after she was entrusted with the case file on 20.10.2021. However, in cross- examination, the Investigating Officer admitted that the mother of the deceased did not move any application in Police Post, Government Hospital, Narnaul on 20.10.2021 when first time she met her and she also did not give the details

of burn injuries received by her daughter Ritu. She admitted that the complainant did not even disclose about the manner in which the deceased had sustained burn injuries. She admitted that before she moved application Exh.P17 to Exh.P19 in SMS Hospital, Jaipur before the concerned doctor, no written or oral complaint had been made before her by any member of the family of Ritu. She admitted that it had come up during investigation that the family members including females visited the SMS Hospital, Jaipur and met with the patient. She admitted that it had come up during investigation that the mother of the deceased had been informed about the condition of her daughter by the accused himself and that she met them at Hero-Honda Chowk, Narnaul and had gone in the Ambulance with them to SMS Hospital, Jaipur. She admitted that it had come up during investigation that the accused had tried to extinguish the flames and he had been provided treatment for burn injuries on his hands. She admitted that while the deceased was alive, she did not make any statement before her and before the statement under Section 164 Cr.P.C. no substantive evidence was available with police against any person since 17.10.2021 till registration of FIR on 21.10.2021. Importantly, the Investigating Officer did not join any person from the locality/area of the accused family in the investigation in order to ascertain the truthfulness or otherwise of allegations levelled by the complainant.

28. The dying declaration of Ritu is Exh.P23 and was sought to be proved by the prosecution through the deposition of Ms. Abhipsa (PW-10),

the then Special Metropolitan Magistrate/Duty Magistrate, Jaipur. Since it is

an admitted position that the prosecution case is based primarily upon the dying declaration Exh.P23, the same requires consideration.

29. Ritu was taken to SMS Hospital, Jaipur where she was initially examined by Dr. Amit Kumar Sharma (DW-1) in Casualty on 17.10.2021. On receiving information from the mother of Ritu on 20.10.2021, the Investigating Officer PW-7, on the same day at about 8:30 P.M., applied to the Duty Magistrate at Jaipur to record Ritu's statement. Based on the same, Ms. Abhipsa, the then Special Metropolitan Magistrate/Duty Magistrate, reached at Burn Ward of SMS Hospital, Jaipur at 8:55 P.M., applied to the Doctor-In-charge, namely, Dr.Pehli Garg to certify if Ritu was mentally and physically fit to make a statement or not. The Doctor certified at 9.20 P.M. that she was fit for statement. Thereafter, Ritu's statement was recorded which is marked as Exh. P23. It was marked with right leg thumb impression of Ritu and signed by the Magistrate at 9:55 P.M.

30. PW-10 Ms. Abhipsa, Special Metropolitan Magistrate, N1-2 Jaipur stepped into the witness box and stated that on 20.10.2021, while she was posted as Vishisth Mahanagar Magistrate (NI Act Cases) Karam Sankha-2, Jaipur Mahanagar Partham, she had received a telephonic call from SI Suman to the effect that Ritu wife of Rakesh resident of Haryana was admitted in SMS Hospital, Jaipur in a serious condition and therefore, her dying declaration needed to be recorded. Accordingly, she visited the hospital where SI Suman alongwith relatives of the patient met her. SI Suman moved a written request regarding recording of dying declaration of Ritu and she also identified the patient. Thereafter, she obtained the fitness

certificate from Medical Officer, namely, Dr.Pehli Garg. At around 9.30 P.M., after putting some preliminary questions to the patient to assess her mental capacity, she had recorded the dying declaration Exh.P23. She also endorsed certificate Exh.P24 regarding fitness of the patient at the time of and during recording of her statement. She stated that in this regard, zimni order passed by her was Exh. P25.

31. It is a settled principle of law that if the dying declaration is by a person who is conscious and the same was made and recorded after due certification by the doctor, it cannot be ignored. Therefore, it is to be ascertained in the facts of the present case whether the dying declaration inspires the confidence of the court.

32. The sole question which needs to be examined is whether the patient Ritu was conscious and was in a fit mental condition to make her statement. Dr. Pehli Garg, who was on duty being the treating doctor, was present in the Ward at the relevant time and who had given an opinion regarding the fit mental condition of the patient was neither arrayed as a witness nor was she examined by the prosecution for reasons best known to it to prove on record about the mental fitness of Ritu at the time of, during and till the end of recording of statement of patient Ritu before the Duty Magistrate. During the course of cross-examination of PW-10, it has come in her evidence that no oath was administered to the patient prior to the recording of her statement. It has come in her evidence that the treating/concerned doctor had left the ward after issuing the fitness certificate and the said statement of patient Ritu was not attested by that

doctor. It has come in her evidence that the concerned doctor gave the opinion regarding physical condition of the patient but did not give the opinion about mental fitness of the patient. Meaning thereby, there was no medical opinion, while statement Exh.P23 was being recorded, that the patient was conscious and was in a fit state of mind. A bare look at the statement Exh. P23 indicates that there was no opinion in writing which was given by the doctor on duty prior to the recording of the statement and likewise, there was no opinion in writing which was given by the doctor on duty after recording of the statement of patient by the Duty Magistrate PW-10. On the contrary, the Duty Magistrate directly recorded the statement of patient without obtaining any medical opinion in writing from the doctor on duty and she has conceded that since the doctor did not give opinion about the mental fitness of the patient, that was why, she herself had mentioned in statement Exh.P3 from portion A to A1 that the patient appeared to be in fit state to make statement on the basis of responses elicited to preliminary questions No.1 to 3 put to the patient by her and thereafter, she recorded the statement of the patient. The Duty Magistrate PW-10 neither certified at the end that the patient was in a conscious state and of sound mind to give her declaration nor certified that except herself and the Duty Doctor, no other person was present at the patient-deponent side at the time of recording the statement. It is also important to note that it has nowhere come in the evidence of the Duty Magistrate PW-10 that she had again obtained the opinion of the doctor on duty regarding the fitness of the patient after recording the statement that she remained in a fit state of mind and was

capable of giving a statement. The Duty Magistrate could not have come to a definite conclusion in the absence of a certificate by the doctor certifying the state of mind of the patient Ritu that existed before, during and after recording the alleged dying declaration. In the absence of medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be perilous to accept the subjective satisfaction of a Magistrate who opined that the patient admitted the statement to be correct after the same was read over to her. It is a case of circumstantial evidence and the only circumstance relied upon by the prosecution is the purported dying declaration. The two stages, namely, being conscious and being in a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind. The certificate appended to the dying declaration at the end by the Duty Magistrate PW-10 was not in compliance with the requirement of law in as much as the doctor on duty failed to certify that the injured was in a fit state of mind at the time of and during recording of the dying declaration. In addition, the complainant PW-1 and PW-10 both admitted that there were some relatives in SMS Hospital, Jaipur by the side of Ritu and in the circumstances, there are apprehension of their tutoring the deceased. In view of these facts and circumstances, it would be unsafe to rely upon the dying declaration Exh.P23 as true and genuine and made when the patient was in a fit state of mind.

33. Further, there is nothing to indicate in the dying declaration that Ritu (since deceased) was held by any of the accused and/or she was prevented from running out of the courtyard or prevented from raising a

noise. The house in question was situated in a thickly populated area and several houses were situated adjacent to each other. There was sufficient opportunity and time to the injured to escape from the room and also to raise an alarm. The courtyard opened directly in a public street of *Aabadi deh*. The conduct of the accused Rakesh is also relevant as he tried to extinguish the fire and sustained burn injuries in the process. As testified by the Investigating Officer PW-7, the husband (accused Rakesh) was also brought in the hospital on the same day and on his medical examination, it was found that he had received burn injuries on his hands. If the accused had indeed, set Ritu on fire, he would not have tried to extinguish the same but would have tried to escape or run away.

34. From the very beginning, the defence of the accused is that deceased had caught fire accidentally while she was burning garbage outside her house and this defence has been found to be probable and has also been proved from the evidence of DW-1 Dr.Amit Kumar Sharma when he testified that the patient, on asking, had herself given the alleged history of sustaining burn injuries when she was burning garbage and it caught her clothes and that the patient was conscious. Indisputably, the mother of Ritu had come to the hospital alongwith her daughter Ritu and accused Rakesh, as is also found mentioned in MLR Exh.P2 issued by SMS Hospital, Jaipur. After her death, Ritu was not only cremated in the presence of her parental family but it was with their concurrence that the body was cremated. It is significant to note that DW-1 admitted during Court-examination, that the specific endorsement regarding the history and manner of receiving the burn

injuries, as stated by the patient herself, was incorporated in Bed Head Ticket Exh.DX at page No.3 and No.4, now marked as Portion A to A1 and that as per their original record, patient Ritu was brought to their hospital by her husband Rakesh Kumar and her mother Santra was also accompanying them.

35. In the absence of evidence of dowry demand, even though the death was caused otherwise than under ordinary circumstances, the death of the deceased was not a dowry death within the meaning of Section 304-B IPC. Therefore, the presumption provided by Section 113-B of Indian Evidence Act would not come into play.

36. As to how an application for leave to appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in ***Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427*** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should

assign reasons for differing with the decision of the trial court.”

37. In view of the aforementioned discussion and keeping in view the law laid down in ***Kallu @ Masih & Ors. Case (supra)***, we find no reason to interfere with the well reasoned judgment dated 06.03.2023 passed by the Additional Sessions Judge, Narnaul whereby accused-respondent/Rakesh Kokcha has been acquitted. Therefore, the application for seeking grant of leave to appeal stands dismissed, and leave to appeal is declined.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

October 4th, 2024
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No