

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (S.J.) No. 42 of 2018

1. Govind Yadav, S/o late Somsnath Yadav, resident of
Imli Khatal, Hinoo, P.O. & P.S.-Doranda, Dist. Ranchi.
2. Pankaj Yadav, S/o late Somnath Yadav, resident of
Imli Khatal, Hinoo, P.O. & P.S.-Doranda, District-
Ranchi Appellants
-Versus-
The State of Jharkhand Respondent
With

Cr. Appeal (S.J.) No. 41 of 2018

Munna Yadav, S/o late Somnath Yadav, resident of
Imli Khatal, Hinoo, P.O. & P.S.-Doranda, District-
Ranchi. Appellant
-Versus-
The State of Jharkhand Respondent

(Against the Judgment of conviction and order of sentence
dated 06.12.2017 and 11.12.2017 respectively passed by the
Judicial Commissioner-XVII-cum-FTC (CAW), Ranchi in
Sessions Trial No. 355 of 2015)

P R E S E N T

HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellants : Mr. Anand Kumar Sinha, Advocate
: Mr. Abhishek Sharma, Advocate
: Mr. Niranjan Kumar, Advocate
For the State : Mrs. Lily Sahay, A.P.P.
: Mr. Fahad Allam, A.P.P.

C.A.V. on 11.12.2023 : Pronounced on 17.01.2024

The instant Criminal Appeals are directed against the
judgment of conviction dated 06.12.2017 and order of sentence
dated 11.12.2017 passed by the Judicial Commissioner-
XVII-cum-FTC (CAW), Ranchi in Sessions Trial No. 355 of 2015
whereby and whereunder the accused Munna Yadav, Govind
Yadav and Pankaj Yadav were convicted for the offence under
Section 304(B)/34 and 201/34 of the Indian Penal Code and
sentenced to undergo Rigorous Imprisonment for 07 years with

fine of Rs.5,000/- each and in default of payment of fine, the appellants have to further undergo S.I. for six months each under Section 304B/34 of the Indian Penal Code.

Further the accused persons were sentenced to undergo Rigorous Imprisonment for 05 years each with fine of Rs.3,000/- each and in default of payment of fine, the appellants have to further undergo S.I. for 06 months each under Section 201/34 of the I.P.C. Both the sentences were directed to run concurrently.

2. The brief facts of the prosecution case leading to the Cr. Appeals are that the written information was given on behalf of the informant Manoj Kumar with the Police Station Sadar Doranda, District- Ranchi with these allegations that his sister Guddi Kumari was married with Munna Yadav at village Tilath, P.S. Piro, District-Bhojpur on 18.05.2013 according to Hindu rites and rituals. On 07.03.2019 Munna Yadav after Gauna took his sister to Imli Khatal Hinoo where for two or three months they resided. The whole family of Munna Yadav including Munna Yadav himself, Pankaj Yadav, Govind Yadav, Vikash Yadav, Raju Yadav, Sheela Devi all began to torture his sister for demand of golden chain and motorcycle in additional dowry. For non-fulfilment of the same, his sister was physically and mentally tortured, complaint of the same was made by his sister to him over the phone. On 21.10.2014 at 7 O'clock Munna Yadav informed over the phone to him that his sister was ill. Having received this information, he told to Munna Yadav that

he was coming in the morning. On 22.10.2014 at 4 O' clock he reached Ranchi to the house of Munna Yadav and asked about the whereabouts of his sister. Munna Yadav told him that his sister on account of the pain in her stomach died. He asked him to go away from his house and also began to assault him. It was told by him that his sister had been cremated. Accordingly, this F.I.R. was lodged which was registered on case crime No. 635 of 2014 under Sections 304B/201 read with Section 34 of I.P.C. against accused Munna Yadav, Pankaj Yadav, Govind Yadav, Vikash Yadav, Raju Yadav and Sheela Devi.

3. The Investigating Officer after having concluded the investigation, filed charge-sheet against the accused Munna Yadav, Govind Yadav, Pankaj Yadav for the offence under Sections 304B/201 read with 34 of I.P.C.

4. The cognizance was taken on the charge-sheet by the learned Magistrate and committed the case for trial to the Court of Judicial Commissioner, Ranchi who further transferred the same to the Judicial Commissioner, XVII, Ranchi.

5. The trial court framed the charge against the accused Munna Yadav, Govind Yadav and Pankaj Yadav for the offence under Sections 304B/201 read with Section 34 of I.P.C. and alternate charge was also framed under Section 302 read with Section 34 of I.P.C. All the charge framed was read over and explained to all the accused persons who denied the charge and claimed for trial.

6. On behalf of prosecution to prove the charge against the accused persons in oral evidence examined P.W.1 Virendra Rai,

P.W.2 Manu Kumar, P.W.3 Bimla Devi, P.W.4 Manoj Kumar, P.W.5 Chandra Bhushan Singh.

7. In documentary evidence adduced Ext.1 signature of Manoj Kumar on written report, Ext.2 Endorsement on written report, Ext.3 Formal F.I.R., Ext.4 confessional statement of Munna Yadav, Ext.5 is the Notice dated 17.04.2015.

8. The statement of the accused persons under Section 313 of Cr.P.C. were recorded who denied the incriminating circumstances in the evidence against them and stated themselves to be innocent.

9. On behalf of accused persons in defence evidence examined D.W.1 Satyendra Singh, D.W.2 Jageshwar Singh Yadav, D.W.3 Balram Kumar Yadav and D.W.4 Aditya Raj.

10. The learned trial court after hearing the rival submissions of the learned Counsel for the accused and the learned Public Prosecutor for the State passed the impugned Judgment of conviction of all the three accused persons for the charge under Sections 304B/201 read with 34 of I.P.C. and sentenced with imprisonment of 07 years and a fine of Rs.5,000/- each for the offence under Section 304B. In default of payment of fine, additional imprisonment of simple of 06 months was directed to undergo while for the charge under Section 201 I.P.C. each of the accused were sentenced with rigorous imprisonment of 05 years and a fine of Rs.3,000/- each and in default of payment of fine 06 months additional imprisonment was directed to undergo. Both the sentenced were directed to run concurrently.

11. Aggrieved from the impugned Judgment of conviction and sentence Cr. Appeal (S.J.) No. 42 of 2018 is filed on behalf Govind Yadav & Pankaj Yadav and Cr. Appeal (S.J.) No. 41 of 2018 is filed on behalf of Munna Yadav in which appellants of both the Cr. Appeals had raised the plea that the impugned Judgment of conviction and sentence passed by the learned court-below is against the law because the same is based on the wrong appreciation of the evidence. The learned trial court has failed to scrutinize the evidence on record in a proper perspective. The prosecution case is based on hearsay evidence. There is no iota of evidence against the appellant-convicts to prove the alleged charge of 304B/201 read with 34 of I.P.C. The prosecution has absolutely failed to prove its case beyond reasonable doubt. The learned trial court has wrongly raised the presumption under Section 113(b) of Evidence Act against the appellants-convicts. There is no evidence in regard to demand of dowry and harassing the deceased for non-fulfilment of the same soon before death. The learned trial court has failed to appreciate the evidence taking into consideration the proximate cause of death which has no nexus with the alleged demand of dowry. The appellants are innocent. The testimony of the prosecution witnesses being based on hearsay cannot be read against the appellants-convicts holding them guilty for the charge alleged. The prosecution has not examined any independent witness to substantiate the allegations in regard to demand of dowry and harassing the deceased for the same. In view of the above prayed to allow the appeals and to set aside

the impugned Judgment of conviction and sentence passed against the appellants.

12. I have heard the learned Counsel for the appellants and the learned A.P.P. for the State and perused the material on record.

13. In order to decide the legality and propriety of the impugned Judgment of conviction and sentence passed by the learned court-below, the prosecution evidence adduced on record is reproduced here-in-below:-

14. On behalf of prosecution in oral evidence examined five witnesses.

14.1 **P.W.1 Virendra Rai** in his Examination-in-chief says that the deceased Guddi Kumari was married with Munna Yadav in the year 2013. Gauna was performed after six months of the marriage and thereafter she was taken to her in-laws house. Guddi died on account of delivery. Police has not interrogated him. This witness was declared hostile by the prosecution and was cross-examined. In cross-examination this witness denied the statement under Section 161 of Cr.P.C. given to the I.O.

14.2 **P.W.2 Manu Kumar** in his Examination-in-chief says that Guddi Kumari was his sister. She was married with Munna Yadav on 18.05.2013. Gauna was done on 07.03.2014. Thereafter she came to her in-laws house at Ranchi. After 2 to 4 months from the in-laws house his sister told over the phone that the vehicle and the golden chain was being demanded by Munna Yadav, Pankaj Yadav and Vikash Yadav and for the same reason she was being assaulted. Thereafter the daughter of the aunt of Munna Yadav told over the mobile phone that his sister

was no more. On 22.10.2014 they reached to the in-laws house of his sister and came to know that she died on account of illness and the dead body was also cremated. The case was also filed against them with the Police Station concerned. In cross-examination this witness says that he had received the information from the daughter of the aunt of Munna Yadav over the phone. The occurrence did not take place in his presence.

14.3 **P.W.3 Bimla Devi** in her Examination-in-chief says that her daughter Guddi Kumari was married with Munna Yadav on 26.05.2013. After Gauna she was taken to her in-laws house. Her daughter over the mobile phone had told that her husband and the family member had tortured her for demand of a vehicle and sikri (gold chain). For non-fulfilment of the same she was tortured by them. Munna Yadav told her son Manoj Yadav over the mobile phone that Guddi had died. They reached immediately to the in-laws house of her daughter. Her dead-body was not found and it was told that on account of pain at the time of delivery she died. In cross-examination this witness says that they had made no complaint in regard to demand of dowry on being told by her daughter. Munna Yadav used to torture her daughter even in sohaban. The information was given to them and they did not come to the in-laws house of Guddi.

14.4 **P.W.4 Manoj Kumar** in his Examination-in-chief says that his sister was married on 26.05.2013 with Munna Yadav and Gauna was done on 07.03.2014. His sister told him over the

phone that a demand of motorcycle and gold chain was made by Munna Yadav, Raju Yadav, Pankaj Yadav, Vikash Yadav and Sheela Devi and for non-fulfilment of the same her daughter had been tortured by them. On 18.10.2014 Munna Yadav took his sister to Imli Khatal Ranchi. On 19.10.2014 his sister told over the mobile phone that Munna Yadav had beaten her so much that she was not able to rise. He told his sister that he would come after two or three days. In the meantime, the daughter of aunt of Munna Yadav told on 21.01.2014 that Guddi had died. They came to Ranchi and the dead-body of his sister was not found and it was told that she had been cremated. The written information was given by him in his signature of the same is verified by him marked Ext.1. In cross-examination this witness says that he can put the signature but cannot write or read. This written information was written by his relative. The signature thereon is of him. There is no signature of his relative on this F.I.R. Before the occurrence the demand of dowry was made but no complaint of the same was made. His sister has made complaint to him in regard to demand of dowry made by the in-laws members. Munna Yadav never told them in regard to the illness of his sister. On the joint compromise petition there is signature of him but the same were got by the Advocate of Munna Yadav after having played fraud upon him.

14.5 P.W.5 Chandrabhushan Singh in his Examination-in-Chief says that on 22.10.2015 he was Sub-Inspector of Police at the Doranda Police Station then Station Officer of the Police Station concerned had recorded the

fardbayan of the informant. The investigation of the case was handed over to him on 22.10.2014. He recorded the restatement of the informant and also recorded the statement of the witnesses Manu Kumar, Bimla Devi, under Section 161 of Cr.P.C. Thereafter inspected the place of occurrence situated in Imli Khatal, Hinoo, Ranchi. He recorded the statement of independent witness Virendra Rai. He also went to Dr. S. Prasad in regard to treatment of deceased who told him that no treatment was given by him at his clinic. The notice is given to the Dr. S. Prasad in his hand writing and signature marked Ext.5. Thereafter he filed the charge-sheet. In cross-examination this witness says that the mobile phone over which the complaint was made in regard to the demand of dowry to the informant the same mobile phone was not seized by him nor he collected the call detail of the same. The F.I.R. was lodged in regard to cause of death of Guddi Kumari on the basis of the doubt. He had recorded the statement of Virendra Rai. He also recorded the statement of Manu Kumar, Bimla Devi and Manoj Kumar. He has not made the witness to Dr. S. Prasad in the charge-sheet.

15. Before the appraisal of the evidence on record, it would be pertinent to give certain **statutory provisions** which are reproduced here-in-below:

Section 304-B of I.P.C. 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 or 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.

Section 201 of I.P.C. Causing disappearance of evidence of offence, or giving false information to screen offender.- Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention given any information respecting the offence which he knows or believes to be false;

if a capital offence.- shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.- and if the offence is punishable with ¹[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.- and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Section 113-B of Evidence Act. Presumption as to dowry death. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

16. F.I.R. of this case was lodged by **P.W.4 Manoj Kumar**, the brother of deceased. In his Examination-in-chief he proved the contents of the F.I.R. which is marked Ext. 1 in which he has deposed that he **has received the phone call from his sister in which she had made complaint in regard to demand of motorcycle and gold chain made by members of in-laws house. It was also told by his sister that on 19.10.2014**

Munna Yadav had beaten her too much that she was not able rise and he told his sister that he would come within two or three days. In the meantime, he received the phone call from the daughter of his aunt on 21.01.2014 that his sister had died. He reached to the in-laws house of his sister and came to know that his sister had been cremated without being informed to him. This witness also stated in his cross-examination that he made no complaint of the alleged demand of dowry to any authority.

17. **P.W.2 Manu Kumar** is also the brother of deceased. He also stated that deceased was married with Munna Yadav on 18.05.2013. After 2 to 4 months of marriage a demand of vehicle and gold chain was made and for non-fulfilment of the same she was assaulted. Thereafter the information was received that his sister had died. They reached to in-laws house and came to know that his sister had been cremated.

18. **P.W.3 Bimla Devi** is the mother of deceased. Same kind of statement is given by this witness.

19. From the testimony of these three witnesses, it is proved that the deceased was married with Munna Yadav on 18.05.2013 and these three witnesses have stated that after three months of marriage a demand of motorcycle and gold chain were made and for non-fulfilment of the same, she was tortured. On 22.10.2014 they came to know that Guddi Kumari had died.

20. From the testimony of these witnesses who are the family member of deceased, **it is found that said demand of dowry &**

torture made by the accused persons was known to these witnesses over the mobile phone; But there is no evidence on record in regard to the phone call being made by the deceased over the mobile phone of these witnesses. The I.O. during investigation neither took in possession the mobile phone of the deceased or the mobile phone of these witnesses over which they have received the complaint in regard to the demand of dowry and torturing her. Even there is no CDR details collected by the I.O. during investigation.

Investigating Officer Chandrabhushan Singh was examined as P.W.5. This witness in his statement says that the investigation of this case was handed over on 22.10.2014. He recorded the restatement of the informant and also recorded the statement of the other witnesses Manu Kumar, Bimla Devi under Section 161 of Cr.P.C. He also recorded the statement of the independent witness Virendra Rai. In cross-examination this witness says that **the mobile phone over which the complaint was made in regard to demand of dowry to the informant, the same mobile phone was not seized by him nor he collected call detail of the same.**

21. So far as the testimony of independent witness Virendra Rai is concerned, he was examined as P.W.1 on behalf of prosecution. This witness in his Examination-in-chief stated that the Police did not interrogate him and this witness was declared hostile did not support the prosecution story. He also denied the statement given to the I.O. under Section 161 of Cr.P.C.

22. Therefore, from the evidence on record the demand of the dowry and harassment being made by the accused persons is not proved from the statement of the witness examined on behalf of the prosecution.

23. So far as the cause of death is concerned on this issue the Investigating Officer **P.W.5 Chandrabhushan Singh has stated that he went to Dr. S. Prasad in regard to treatment of the deceased and it was told by the Doctor to him that deceased was not treated by him at his clinic. It is the prosecution case that the deceased was cremated without any information being given to the members of parental house of deceased. Consequently, neither the inquest nor the postmortem was possible to conduct. Therefore, the cause of death of the deceased is also not proved whether the death of deceased **Guddi Kumari was unnatural**. This plea is raised on behalf of prosecution since the deceased was cremated without prior information to the parental house of the deceased. In order to make the evidence disappear in regard to the cause of death the deceased was cremated by the accused persons.**

24. Offence under Section 304B of I.P.C. the following ingredients are to be made out:

- i. Death is caused by any burns or bodily injury or occurs otherwise than under normal circumstances
- ii. Death was caused within seven years of marriage
- iii. It is shown that soon before the death she was subjected to cruelty or harassment by her husband or any relative of her husband
- iv. Such harassment or cruelty was in connection with demand of a dowry.

25. From the evidence on record, there is evidence that the death was caused within seven years of marriage; but there is no cogent evidence in regard to the demand of dowry and torturing the deceased by the appellants-convicts soon before death or any time during subsistence of marriage except the statement of the prosecution witnesses P.W.4 Manoj Kumar, P.W.2 Manu Kumar and P.W.3 Bimla Devi who had come to know in regard to demand of dowry and harassment and torture of the deceased by the convicts-appellants by the phone calls made by the deceased. **The phone calls also being not proved by the prosecution; the demand of the dowry and harassment is not proved.** So far as the cause of death is concerned whether death was caused otherwise than under the normal circumstances there is no evidence on behalf of the prosecution to that effect the reason for the same is explained that deceased was cremated without prior information to the members of in-laws house. Therefore, all the ingredients of Section 304B of I.P.C. being not proved from the prosecution evidence, the offence under Section 304B of I.P.C. is not made out against the appellants-convicts.

25.1 The Hon'ble Apex Court held in ***Bakshish Ram & Another Vrs. State of Punjab (2013) 4 SCC 131:***

14. A perusal of Section 304-B clearly shows that if a married woman dies 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 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 the death. The conditions

precedent for establishing an offence under this section are:

- (a) *that a married woman had died otherwise than under normal circumstances;*
- (b) *such death was within seven years of her marriage; and*
- (c) *the prosecution has established that there was cruelty and harassment in connection with demand for dowry soon before her death.*

This section will apply whenever the occurrence of death is preceded by cruelty or harassment by the husband or in-laws for dowry and death occurs in unnatural circumstances. The intention behind the section is to fasten guilt on the husband or in-laws though they did not in fact caused the death.

25.2 Any death occurring otherwise than under the normal circumstances can be homicidal, suicidal or accidental. **If the ingredients of Section 304B of I.P.C. are made out then the accused is deemed to have caused the death of woman; but is entitled to rebut this statutory presumption of having caused dowry death.** Presumption under Section 113B is presumption of law which is mandatory.

25.3 Herein Section 113B of the Evidence Act also becomes relevant. So far as presumption under Section 113B of Evidence Act is concerned, the certain legal provisions of the Hon'ble Apex Court would be pertinent to reproduce hereunder:

25.4 The Hon'ble Apex Court held in ***Shindo v. State of Punjab***, (2011) 3 SCC (Cri) 394:

9. We also notice that the High Court was dealing with an appeal against acquittal. Undoubtedly, in a case of dowry death under Section 304-B, a presumption of Section 113-B, Evidence Act, does arise against the accused. However, the presumption is relatable to the fact that the prosecution must first spell out the ingredients of the offence and then only can a presumption arise. In the present case we find that the death was an unnatural one and had taken place within seven years of the marriage but the third ingredient that any demand for dowry had been made soon before

the death has not been proved. In this view of the matter the presumption under Section 113-B of the Evidence Act cannot be raised.

25.5 The Hon'ble Apex Court held in **Gurdeep Singh vrs. State of Punjab AIR 2011 SC page 3616:**

6. We find in the present case that there is no evidence of unnatural death. It is the prosecution story that the deceased had been poisoned. It has, however, come in the evidence, and in particular, in the report of the Forensic Science Laboratory dated 21st August, 1995, that on an analysis of the bones and ashes no poisonous substance had been found to be present. In this view of the matter, the mere fact that the deceased happened to be a young woman would not lead to the inference that she had died an unnatural death. Likewise, we find that the evidence of demand for dowry or goods soon before death is also lacking. Admittedly, the only evidence of any demand was of Rs. 25,000/- made one year prior to the incident and as per the defence evidence of D.W. 2 and D.W. 4, the money for the execution of the sale deed had been taken out from the bank a day earlier. In the light of these two factors it has been held in paragraph 25 of the above cited case as under: Indisputably, in order to attract Section 304B, it is imperative on the part of the prosecution to establish that the cruelty or harassment has been meted out to the deceased 'soon before her death'. There cannot be any doubt or dispute that it is a flexible term. Its application would depend upon the factual matrix obtaining in a particular case. No fixed period can be indicated therefor. It, however, must undergo the test known as 'proximity test'. What, however, is necessary for the prosecution is to bring on record that the dowry demand was not too late and not too stale before the death of the victim."

25.6 The Hon'ble Apex Court held in **Ramaiah @ Rama vrs State of Karnataka AIR 2014 SC. 3388:**

24. We are conscious of the fact that it SC3397 was an unfortunate demise of Laxmi who died within 6 months of the marriage. However, at the same time, whether her death was accidental as claimed by the defence or it was a suicide committed by Laxmi, is not clearly established.

Had the allegations of demand of dowry and harassment of Laxmi were established thereby making it an offence under Section 498-A of IPC, things would not have been different. However, when we do not find dowry demand and harassment of Laxmi to be established, the inferences drawn by the High Court taking the aid of Section 113-B of the Evidence Act also deserve to be discarded. Section 113-B of the Evidence Act reads as under:

"Presumption as to dowry death:- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death".

A plain reading of the aforesaid provision would demonstrate that to attract the presumption as to dowry death stated in the aforesaid provision, it is necessary to show that soon before her death, she had been subjected by such persons to cruelty or harassment for, or in connection with, any demand for dowry. When this essential ingredient has not been established in the present case, the question of drawing any presumption by invoking of the aforesaid provision would not arise.

26. Herein from the evidence on record neither there is cogent evidence in regard to demand of dowry nor the harassment or subjecting the deceased to cruelty for the said demand of dowry. Moreover, there is no evidence in regard to unnatural death of the deceased. **The only grave suspicion has been created on behalf of prosecution that the deceased was cremated without giving any information to her parental house. As such contended that the death of victim was unnatural. The suspicion however grave & strong cannot take the place of proof.** Certainly not informing to the members of the parental house of the deceased prior to cremation of the deceased gives rise to doubt; but the same cannot take the place of proof.

26.1 The Hon'ble Apex Court held in ***State through C.B.I. vrs. Mahender Singh Dahiya AIR 2011 SC 1017:***

19. Undoubtedly, this case demonstrates the actions of a depraved soul. The manner in which the crime has been committed in this case, demonstrates the depths to which the human spirit/soul can sink. But no matter how diabolical the crime, the burden remains on the prosecution to prove the guilt of the accused. Given the tendency of human beings to become emotional and subjective when faced with crimes of depravity, the Courts have to be extra cautious not to be swayed by strong sentiments of repulsion and disgust. It is in such cases that the Court has to be on its guard and to ensure that the conclusion reached by it are not influenced by emotion, but are based on the evidence produced in the Court. Suspicion no matter how strong cannot, and should not be permitted to, take the place of proof. Therefore, in such cases, the Courts are to ensure a cautious and balanced appraisal of the intrinsic value of the evidence produced in Court.

27. From the overall evidence on record a different view culled out; therefore the benefit of the same would go to the accused.

27.1 The Hon'ble Apex Court held in ***Jitendra Kumar Mishra @ Jittu vrs. State of Madhya Pradesh 2024 Live Law (SC) page 21:***

17. We are conscious of the fact that the appellate court should be slow in interfering with the conviction recorded by the courts below but where the evidence on record indicates the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and that a plausible view, different from the one expressed by the courts below can be taken, the appellate court should not shy away in giving the benefit of doubt to the accused persons.

28. In view of the appreciation of the evidence on record as given hereinabove, the prosecution case is not proved beyond reasonable doubt. The impugned Judgment of conviction and

order or sentence passed by the court-below needs interference.

Accordingly, Cr. Appeals deserve to be allowed.

29. **The Cr. Appeals are allowed.** The impugned Judgment of conviction and order of sentence passed by the court-below **is quashed and set aside.**

30. The appellants/convicts are acquitted from the charge levelled against them. Their bail bonds are hereby cancelled and the sureties are discharged from liabilities.

31. Let the record of court-below be sent back along with the copy of the Judgment.

(Subhash Chand, J.)

Jharkhand High Court, Ranchi
Dated the 17.01.2024
P.K.S./A.F.R.