

Court No. - 44

A.F.R.

Case :- GOVERNMENT APPEAL No. - 2008 of 1987

Appellant :- State of U.P.

Respondent :- Krishna Kumar Kulshreshtha And Others

Counsel for Appellant :- A.G.A.,S.K.Kulshreshtha

Counsel for Respondents :- D.K.Kulshreshth,P.K.Singh

Hon'ble Dr. Kaushal Jayendra Thaker,J.

Hon'ble Nalin Kumar Srivastava,J.

(Per Justice Nalin Kumar Srivastava)

1. Accused persons Krishna Kumar Kulshreshtha, Sudhir Kumar Kulshreshtha and Akhilesh Kumar Kulshreshtha and Smt. Gayatri Devi Kulshreshtha were acquitted of the charges under Section 302/34 and 201 I.P.C. in Sessions Trial No. 488 of 1984 arising out of case crime no. 495 of 1985, P.S- Loha Mandi, District- Agra by the Court of Special Judge (Economic Offences), Agra by judgement and order dated 29.4.1987, feeling aggrieved of which this State appeal has been filed.

2. The prosecution story unfolded by the FIR in brief is that Smt. Beena Kumari Kulshreshtha @ Beena Kulshreshtha, daughter of the informant-Guru Dayal Prasad was married with accused Akhilesh Kumar Kulshreshtha on 9.5.1982 and as per his capacity the informant offered dowry to the in-laws of her daughter, however, the accused persons Akhilesh Kumar Kulshreshtha-husband, Krishna Kumar Kulshreshtha-father-in-law, Smt. Gayatri Devi-mother-in-law were dissatisfied with the dowry and Smt. Bina was subjected to cruelty and harassment for demand of

dowry by the aforesaid accused persons and also by her brother-in-law Sudhir Kumar Kulshreshtha. The deceased used to make complaint of these incidents to her mother and brother. On 13.11.1982 Girish Chand Kulshreshtha, the nephew of the informant went to the house of the deceased on the occasion of Dipawali and he found her normal and healthy, however, she appeared to be upset. On 15.11.1982 at about 5.15 pm. the informant got the information of the death of his daughter and after reaching the accused persons' house he found her dead. The wife of the informant was shocked and became unconscious. The informant took away his wife to his house and next day morning gave a written report to S.O. Loha Mandi, Agra alleging therein that the in-laws of his daughter have killed her by poisoning.

3. On the basis of the written report Ex.Ka-7, the FIR Ex.Ka-8 was lodged and G.D. Ex.Ka-9 was also prepared.

4. The investigation was handed over to S.I. Rama Shankar Sharma, who performed the proceedings of the investigation, recorded the statement of the witnesses and prepared site plan Ex.Ka-10 and subsequently the investigation was conducted by Inspector Shiv Bahadur Singh and then by Deputy S.P. Raj Pal Singh Rana, who recorded the statement of the witnesses and submitted charge sheet Ex.Ka-11 to the Court.

5. The accused persons appeared before the Court. After the case being committed to the Court of Sessions they were charged under Section 302/34 and 201 I.P.C. They denied of the charges and claimed to be tried.

6. In order to prove its case, the prosecution relied upon the oral testimony of P.W.1 Guru Dayal Prasad-the informant, P.W2- Girish Chand Kulshreshtha, cousin of the deceased, P.W.3 Rakesh

Kulshreshtha brother of the deceased, P.W.4- Bhagwan Das, Head Moharir, scribe of the FIR, P.W.5-Inspector Shiv Bahadur Singh second I.O of the case and P.W.6 Retired Deputy S.P. Raj Pal Singh Rana subsequent I.O.

7. To support the oral evidence, documentary evidence was also relied upon by the prosecution and in documentary evidence list Ex. Ka-1, letters Ex.Ka-2, Ex.Ka-3, Ex.Ka-4, Ex.Ka-5 and Ex.Ka-6, written report Ex.Ka-7, Chik FIR Ex.Ka-8, G.D. Ex.Ka-9 have been filed.

8. Learned trial Court after perusing the entire evidence on record and after hearing the oral submissions of the parties found that no case was made out against the accused persons and the prosecution has utterly failed to connect the accused with the guilt, and accordingly acquitted them of the charges under Section 302/34 and 201 I.P.C.

9. Learned A.G.A. has submitted that the learned trial Judge has not appreciated the evidence on record in proper and legal manner. The judgement has been passed in haste. The circumstances of the case were going against the accused persons and the entire allegations of demand of dowry and cruelty and harassment of the deceased were proved by the witnesses of fact. Learned trial Judge ignoring it passed the acquittal order. It has been prayed that the impugned judgement of acquittal be set aside and the appeal be allowed.

10. Per-contra, learned counsel for the respondents/accused has contended that there is no legal or factual error in the impugned judgement. There was no evidence at all against any of the accused on record and since the deceased was died in the presence of the informant and his wife there was no question for the death being

unnatural or homicidal death. The trial Court has made no error in acquitting the respondents/ accused persons and hence the appeal is liable to be dismissed.

11. Before we embark on testimony and the judgment of the Court below, the contours for interfering in Criminal Appeals where accused has been held to be non-guilty, would require to be discussed.

12. The principles which would govern and regulate the hearing of an appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in catena of decisions. In the case of "**M.S. NARAYANA MENON @ MANI VS. STATE OF KERALA & ANR**", (2006) 6 S.C.C. 39, the Apex Court has narrated the powers of the High Court in appeal against the order of acquittal. In para 54 of the decision, the Apex Court has observed as under:

"54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well settled principles of law that where two view are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

13. Further, in the case of "**CHANDRAPPA Vs. STATE OF KARNATAKA**", reported in (2007) 4 SCC 415, the Apex Court laid down the following principles;

"42. From the above decisions, in our considered view, the following general principles regarding powers of the

appellate Court while dealing with an appeal against an order of acquittal emerge:

[1] An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

[2] The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

[3] Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

[4] An appellate Court, however, must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his

innocence is further reinforced, reaffirmed and strengthened by the trial Court.

[5] If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

14. Thus, it is a settled principle that while exercising appellate powers, even if two reasonable views/conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

15. Even in the case of "**STATE OF GOA Vs. SANJAY THAKRAN & ANR.**", reported in (2007) 3 S.C.C. 75, the Apex Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision, the Court has observed as under:

"16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A

duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with."

16. Similar principle has been laid down by the Apex Court in cases of "**STATE OF UTTAR PRADESH VS. RAM VEER SINGH & ORS.**", 2007 A.I.R. S.C.W. 5553 and in "**GIRJA PRASAD (DEAD) BY L.R.s VS. STATE OF MP**", 2007 A.I.R. S.C.W. 5589. Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

17. In the case of "**LUNA RAM VS. BHUPAT SINGH AND ORS.**", reported in (2009) SCC 749, the Apex Court in para 10 and 11 has held as under:

"10. The High Court has noted that the prosecution version was not clearly believable. Some of the so called eye witnesses stated that the deceased died because his ankle was twisted by an accused. Others said that he was strangled. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the postmortem and examined the witnesses had categorically stated that it was not possible that somebody would throw a person out of the bus when it was in running condition.

11. Considering the parameters of appeal against the judgment of acquittal, we are not inclined to interfere in this appeal. The view of the High Court cannot be termed to be perverse and is a possible view on the evidence."

18. It was also held by the Apex Court in the case of **"MOOKKIAH AND ANR. VS. STATE, REP. BY THE INSPECTOR OF POLICE, TAMIL NADU"**, reported in AIR 2013 SC 321, the Apex Court in para 4 has held as under:

"4. It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led in by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be reappreciate the entire evidence, though while hoosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. [Vide State of Rajasthan vs. Sohan Lal and Others, (2004) 5 SCC 573]"

19. It is also a settled legal position that in acquittal appeals, the appellate Court is not required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Apex Court in the case of **"STATE OF KARNATAKA VS. HEMAREDDY"**, AIR 1981, SC 1417, wherein it is held as under:

"...This Court has observed in *Girija Nandini Devi V. Bigendra Nandini Choudhary* (1967) 1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the Appellate Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

20. The Hon'ble Apex Court in **"SHIVASHARANAPPA & ORS. VS. STATE OF KARNATAKA"**, JT 2013 (7) SC 66 has held as under:

"That appellate Court is empowered to reappreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind that acquittal results into double presumption of innocence."

21. Further, in the case of **"STATE OF PUNJAB VS. MADAN MOHAN LAL VERMA"**, (2013) 14 SCC 153, the Apex Court has held as under:

"The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was

taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convincing the accused person."

22. The Apex Court recently in **Jayaswamy vs. State of Karnataka, (2018) 7 SCC 219**, has laid down the principles for laying down the powers of appellate court in re-appreciating the evidence in a case where the State has preferred an appeal against acquittal, which read as follows:

"10. It is by now well settled that the Appellate Court hearing the appeal filed against the judgment and order of acquittal will not overrule or otherwise disturb the Trial Court's acquittal if the Appellate Court does not find substantial and compelling

reasons for doing so. If the Trial Court's conclusion with regard to the facts is palpably wrong; if the Trial Court's decision was based on erroneous view of law; if the Trial Court's judgment is likely to result in grave miscarriage of justice; if the entire approach of the Trial Court in dealing with the evidence was patently illegal; if the Trial Court judgment was manifestly unjust and unreasonable; and if the Trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of the ballistic expert etc. the same may be construed as substantial and compelling reasons and the first appellate court may interfere in the order of acquittal. However, if the view taken by the Trial Court while acquitting the accused is one of the possible views under the facts and circumstances of the case, the Appellate Court generally will not interfere with the order of acquittal particularly in the absence of the aforementioned factors.

.....It is relevant to note the observations of this Court in the case of **Ramanand Yadav vs. Prabhu Nath Jha & Ors., (2003) 12 SCC 606**, which reads thus:

"21. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that

miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not."

23. The Apex Court recently in **Shailendra Rajdev Pasvan v. State of Gujarat, (2020) 14 SC 750**, has held that the appellate court is reversing the trial court's order of acquittal, it should give proper weight and consideration to the presumption of innocence in favour of accused, and to the principle that such a presumption stands reinforced, reaffirmed and strengthened by the trial court and in *Samsul Haque v. State of Assam, (2019) 18 SCC 161* held that judgment of acquittal, where two views are possible, should not be set aside, even if view formed by appellate court may be a more probable one, interference with acquittal can only be justified when it is based on a perverse view.

24. However, in our view it is desirable to have a glance upon the oral evidence adduced by the prosecution before appreciating the submissions of both the sides.

25. P.W.1 Gurudayal Prasad, who is the father of the deceased has proved the factum of marriage between the deceased and the accused Akhilesh Kumar Kulshreshtha, and also narrated that the in-laws/ accused persons were not satisfied with the dowry given by him and his daughter was subjected to cruelty for demand of dowry. He has also proved some letters written by accused persons and the deceased herself and also list of demand given by in-laws of his daughter at the time of *gauna*. He has further stated that when he

was informed about death of his daughter, he went to the house of accused persons along with his wife. Her in-laws never informed about any sickness of his daughter and even his nephew Girish Chand Kulshreshtha, who met the deceased at her house found her in a healthy condition. His wife started weeping looking at the dead body of her daughter and said that the death has not natural and she has been murdered. The in-laws of the deceased killed his daughter for demand of dowry and did not even perform the autopsy of her dead body. Written report has been proved as Ex.Ka-7 by P.W.1 and he has also explained that due to treatment and care of his wife he could not move to the police station on the same day.

26. P.W.2- Girish Chand Kulshreshtha, who is the nephew of the informant has stated that on 13.11.1982 in the evening he had gone to meet Beena at her matrimonial house on the occasion of Dipawali. The accused persons met there and on his request the deceased was also called, who was looking mentally upset but not sick. Her mother-in-law told that she will never visit to her parental house, now.

27. P.W.3-Rakesh Kulshreshtha, the real brother of the deceased, has stated that his sister had complained to him regarding demand of scooter and fridge made by her in-laws. He had gone to the place of the accused persons on 27.10.1982 and 11.11.1982 and on the later occasion the mother-in-law of his sister scolded him and also complained of not giving anything on the occasion of *Karwachauth*. When he met Beena there she told him not to come over there and also said that if they chose to kill her, they will do so in one day. He found Beena in a sound state of health at that time.

- 28.** P.W.4-Head Moharir Bhagwan Das has proved the Chik FIR and G.D. Of the case as Ex.Ka-8 and Ex.Ka-9 respectively prepared on the basis of the written report of the informant.
- 29.** P.W.5-Shiv Bahadur Singh the second I.O. of the case has proved the functioning of the investigation conducted by him and also by the first I.O. Ram Shankar Sharma and has also proved site plan Ex.Ka-10 prepared by the first I.O. Ram Shankar Sharma.
- 30.** P.W.6-retired Deputy S.P. Raj Pal Singh Rana has been the last I.O. Of the case, who has also proved the remaining formalities of the investigation and the charge sheet as Ex.Ka-11.
- 31.** After the closing of the prosecution evidence the statement of the accused persons were recorded under Section 313 Cr.P.C. and all the incriminating circumstances and evidences were put to them. They denied the alleged occurrence and also denied the genuineness of so called letters proved in the evidence and they expressly stated that the deceased died in the presence of the informant and his wife and at that time she was sick and due to illness was unable to move even. They have also stated that the whole story is false and fabricated only to grab money from the accused persons.
- 32.** D.W.1 Amar Nath Lavania, D.W.2 M.L. Bansal have also been examined in defence.
- 33.** The accused persons have also relied upon the documentary evidence, letter written by the informant Ex.Kha-1, letter by the accused Krishna Kumar Ex.Kha-2, medical prescription Ex.Kha-3 and Ex.Kha-4.
- 34.** Heard learned counsels for the parties and perused the record.
- 35.** Submissions of the learned A.G.A. takes us through the deposition of the witnesses of fact i.e. P.W.1, P.W.2 and P.W.3. The

statement made by P.W.1 reveals that on the fateful day the informant along with his wife had visited the house of the accused persons where he met her daughter who appeared in the state of sickness, however, not serious. He has admitted this fact that at that time accused Sudhir Kumar Kulshreshtha had told him that she was suffering from loose motion and fever and treatment of some Hakeem was going on. It is pertinent to mention here that in the written report the informant did not mention this fact that on the fateful day that is to say on 15.11.1982 the informant had visited the house of the accused persons before the death of her daughter. This fact was admitted by him in his cross-examination. Learned counsel for the respondents has impressed upon this statement where also finds that the informant is trying to hide the correct facts of the case deliberately. A genuine question arises that when on the fateful day the informant himself found her daughter in a state of unsound health why this fact was not disclosed by him in the written report prepared by him. Thus it makes us to opine that the prosecution is trying to hide the genesis of the incident. In **Pankaj Vs. State of Rajasthan (2016) 16 Supreme Court Cases 192**, it has been held that “it is a well settled principle of law that when the genesis and the manner of incident is doubtful, the accused cannot be convicted.” No doubt this principle of law applies to this case.

36. P.W.2 has also given contradictory statement in respect of the physical health of the deceased in the light of his statement under Section 161 Cr.P.C.

37. P.W.3 had visited the matrimonial house of the deceased four days before the occurrence and he had found her fit and healthy. He has also stated that it appeared that the accused persons wanted to kill her and this fact was narrated by him to his father. It is pertinent

to mention here that in the deposition of P.W.1 nothing is found to this effect that he was informed by his son that the accused persons wanted to kill the deceased. It is also a material contradiction which falsify the oral evidence adduced by the prosecution.

38. The trial Court has pointed out the material contradictions found in the depositions of the prosecution witness of fact.

39. In **Neel Kumar @ Anil Kumar Vs. State of Haryana (2012) 5 SCC 766** (at page 774), the Apex Court held “It is the duty of the accused to explain the incriminating circumstance proved against him while making a statement under Section 313 CrPC. Keeping silent and not furnishing any explanation for such circumstance is an additional link in the chain of circumstances to sustain the charges against him. Recovery of incriminating material at his disclosure statement duly proved is a very positive circumstance against him”. The argument put forth by the learned counsel for the respondents is that the accused persons in their statement under Section 313 Cr.p.C. not only explained the incriminating circumstances but also adduced oral and documentary evidence to prove the same. It has also been submitted by the learned counsel for the respondents that specific defence has been taken by the accused persons that the death of the deceased was natural and she died due to sickness. They provided medical help to her and she had been under treatment of doctor. They have relied upon the statement of D.W.1 and D.W.2 and also the documentary evidence i.e. medical papers in this regard, which the trial Court has found to be trustworthy and genuine. D.W. 2 Dr. M.L. Bansal has treated the deceased for lose motion and vomiting and advised to consult any senior physician as she was in a state of serious dehydration and the accused persons also called a senior physician.

D.W.2 has proved the aforesaid facts. The factum of illness of the deceased has also been proved by D.W.1, who is a tenant in the same house, where the respondents live. In **Munshi Prasad and Ors. Vs. State of Bihar (2002) 1 SCC 351**, the Hon'ble Apex Court held that "the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution — a lapse on the part of the defence witnesses cannot be differentiated and be treated differently than that of the prosecutors' witnesses".

40. Learned A.G.A. has submitted that the fact of demand of dowry and cruelty and harassment towards the deceased by the accused persons is proved by the documentary evidence adduced by the prosecution and in this respect some letters have also been filed along with the list which are marked as Ex. Ka-1 to Ex.Ka-6.

41. The trial Court after appreciating the oral and documentary evidence on record has not found the aforesaid documents filed by the prosecution as reliable and genuine and in view of the trial Court the weight given to the oral and documentary evidence of the prosecution was not sufficient to prove the guilt of the accused in this case.

42. Reliance has been placed on **Rishikesh Singh Vs. State of U.P. AIR 1970 ALLD 51 (Full Bench)**, a leading case on the subject, by the learned counsel for the respondents wherein it has been held that "If upon the evidence adduced in the case whether by the prosecution or by the accused a reasonable doubt is created in

the mind of the Court as regards one or more of the ingredients of the offence including *mens rea* of the accused he would be entitled to be acquitted."

43. In **V.D.Jhangan vs State Of Uttar Pradesh AIR 1966 SC 1762**, it was observed like this. "It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability."

44. Learned counsel for the respondents has vehemently argued that the burden/ onus in this case is not upon the accused persons/ respondents but whatsoever has been stated by them in their statement under Section 313 Cr.P.C., oral and documentary evidence to support that version has been produced by them which has been supposed to be cogent and reliable by the trial Court, thus there is a preponderance of probability in favour of the innocence of the accused persons/ respondents.

45. Learned counsel for the respondents takes us to the factum of the genuineness of the FIR. It has been argued that the FIR is a result of consultation and after thought. According to the version of the FIR, on 15.11.1982 when the informant visited the place of the accused persons, he was shocked to see the dead body of his daughter and his wife fell down and became unconscious. She got her home and as he remained busy in the treatment and care of his wife, he could not inform the police about the incident. The learned counsel for the respondents has vehemently argued that P.W.3 is the real son of the informant. The suspicious death of the daughter of the informant was a very serious matter for him but surprisingly he

even did not sent his son P.W.3 Rakesh Kulshreshtha to inform the police about the suspicious death of the deceased.

46. In the facts and circumstances of the case, we find force in the contention of the learned counsel for the respondents and it appears that there was a deliberate delay in lodging of the FIR which seems to be result of due consultation and after thought.

47. We find ourselves in agreement with what has been submitted by the learned counsel for the respondents.

48. On the basis of the aforesaid discussion and relying upon the case laws cited above, we find that the learned trial Judge has committed no error in passing an acquittal order in favour of the accused persons/ respondents. As a matter of fact, no person has seen the occurrence and on the basis of the analysis of oral and documentary evidence on record, we find that no incriminating circumstances to connect the respondents with the alleged offence is proved. Hence, we concur with the finding given by the learned trial Court. Hence, the non-conviction of the respondents under Section 302/34 and 201 I.P.C. is upheld.

49. Hence, in view of the matter & on the contours of the judgment of the Apex Court, we concur with the learned trial Judge. The appeal sans merits and is dismissed. The record and proceedings be sent back to the Court below. The bail and bail bonds are cancelled.

50. We are thankful to learned A.G.A. and the learned counsel for the respondents for ably assisting the Court.

Order Date :- 30.9.2022

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(Nalin Kumar Srivastava,J.)

(Dr. Kaushal Jayendra Thaker, J.)