Court No. - 44 **A.F.R.**

Case :- CRIMINAL APPEAL No. - 6842 of 2009

Appellant :- Sageer And Naseer @ Jaheer
Respondent :- State of U.P.
Counsel for Appellant :- R.P. Tiwari,R.N.Maurya
Counsel for Respondent :- Govt. Advocate

Hon'ble Dr. Kaushal Jayendra Thaker,J.
Hon'ble Nalin Kumar Srivastava,J.

(Per Justice Nalin Kumar Srivastava)

1. This criminal appeal is directed against the judgement and order dated 4.11.2009 in Sessions Trial No. 949 of 2003 (Crime No. 323 of 2002) State Vs. Sageer and Ors, under Sections 304B I.P.C. and 3/4 Dowry Prohibition Act, P.S.- Ijjat Nagar, District-Bareilly convicting and sentencing the appellants under Section 304-B I.P.C. to undergo life imprisonment and under Section 3/4 Dowry Prohibition Act to undergo imprisonment for two years, further imposing fine of Rs. 10,000/- each and in default of payment of fine to undergo 2 months additional imprisonment.

2. The prosecution story as culled out from the FIR is that the deceased, the sister of the informant, was married with accused Sageer. The in-laws of the deceased were demanding colour T.V. and motorcycle as additional dowry and she was subjected to cruelty on account of that demand. She used to tell the incidents of cruelty to her family members, who expressed their inability to the accused persons but they did not pay any attention to it and the harassment continued. On 27.4.2002 on information by a villager,

the informant along with his family members reached the house of the accused persons where he found his sister bitterly burnt and she told that her husband Sageer, mother-in-law Jaitoon, brother-in-law Naseer and Ameer and sister-in-law Munija Begum caught hold her in the night about 9.00 pm. and her husband poured acid upon her in order to do away with her.

3. The FIR was lodged and investigation started. During investigation the injured died and Section 304-B I.P.C. was added to the matter.

4. The I.O. proceeded to record the statement of witnesses, performed inquest, sent the body of the deceased for autopsy, inspected the place of occurrence and submitted charge sheet against the accused persons

5. The accused persons appeared before the Magisterial Court, the case being exclusively triable by the Sessions Court was committed to the Court of Sessions by the Magistrate.

6. Charge under Section 304-B I.P.C. and 3/4 Dowry Prohibition Act was framed against the accused persons who denied of the charges and claimed to be tried.

7. The trial started and the prosecution in order to prove its case examined 12 witnesses in all as P.W.1 the informant/ brother of the deceased, P.W.2 Smt. Shahjahan, mother of the deceased, P.W.3 Altaf, brother of the deceased, P.W.4 Constable Dharampal Singh, Scribe of the FIR, P.W.5 S.D.M Karmveer Singh, witness of inquest report, P.W.6 Dr. A.K. Jain, who performed the autopsy of the dead body of the deceased, P.W.7 Dr. Kripal Singh, who prepared injury report of the deceased when she was alive, P.W.8 Tehsildar Shiv Bhajan, who recorded the dying declaration of the deceased, P.W.9 Rajendra Kumar Additional S.P. and second I.O. of the case, P.W.10

Constable Rakesh Dubey, who has been examined as secondary witness for the first I.O. S.I. Bihari Lal Yadav.

8. In documentary evidence, the prosecution relied upon written report Ex. Ka-1, application for post mortem Ex.-Ka-2, inquest report Ex.Ka-3, FIR Ex.Ka-4, G.D. Ex.Ka-5, specimen seal Ka-6, photo nash Ex.Ka-7, letter to R.I. Ex.Ka-8, letter to C.M.O. Ex.Ka-9, chalan lash Ex.Ka-10, autopsy report Ex.Ka-11, injury report Ex.Ka-12, dying declaration Ex.Ka13, charge sheets Ex.Ka-14, Ex.Ka-16 and site plan Ex.Ka-15.

9. After completion of prosecution evidence, the incriminating circumstances and evidences were put to the accused persons in their statements recorded under Section 313 Cr.P.C. wherein they told the whole prosecution story and evidence as false and fabricated and claimed to be innocent. Accused Sageer stated that at the time of incident he was at Bikaner in connection with his job and came back on 27.04.2002 on being informed by his mother by telephone regarding the incident of the burning of his wife. After coming back when he went to the hospital, the treatment of his wife was going on but the police arrested him in the same evening. He has further stated that he had married with Parveen in the year 2002 and they had a son, who is no more. He and his younger brother live separately in a rented house in the same village. His brother Naseer had gone to the house of his in-laws in the very night of the occurrence, who reached in the morning and got Parveen admitted in the hospital since his mother was alone in the night. Parveen could not be admitted in the hospital in the night. The police reached after lodging of the FIR. He does not know as to when Parveen died in the hospital. Co-accused Naseer has also narrated the same version in his statement under Section 313 Cr.P.C.

10. Co-accused Smt. Jaitoon, the mother-in-law of the deceased died during pendency of the trial and the case was abated against her vide order dated 21.11.2005.

11. We are of the considered opinion that a perusal and analysis of the oral evidence along with documentary evidence is desirable to reach the correct conclusion.

12. P.W.1, the informant has proved the written report Ex.Ka-1 and has narrated the story like this that about 4-1/4 years ago his sister Parveen was living in her matrimonial house. In the morning a villager informed him that his sister is lying ablaze in her house. When he reached there along with his family members he found Parveen unconscious and burnt. He came to the police station along with Parveen, dictated the report to Sharakat Khan and on the basis of that written report case was registered in the police station. He has proved the written report as Ex.Ka-1, however, he has stated that the written report was not read over him by the scribe. He has also stated that the factum of pouring acid upon Parveen was not dictated by him and also he did not dictate this fact that his sister had told him that the accused persons caught hold of her in the night and in order to kill her, his husband threw acid upon her. He has also proved his application given to S.P. City for performing the post mortem of the body of her sister as Ex.Ka-2. He has been declared hostile by the prosecution. He has denied all the allegations of demand of dowry and cruelty caused by the accused persons to her sister. In his cross-examination he has stated that his sister never told him about the demand of dowry or harrasment caused to her by the accused persons. He has also narrated that there was no electricity connection in the house of the accused persons and they used a *dibbi* of kerosene oil for light.

13. P.W.2 Smt. Shahjahan, the mother of the deceased has also not supported the prosecution version in her examination-in-chief and has been declared hostile. All the allegations against the accused persons in respect of demand of dowry and cruelty to her daughter and even her statement under Section 161 Cr.P.C. have been denied by her in her deposition.

14. P.W.3 Altaf is the brother of the deceased and following the statements of P.W.1 and P.W.2, he has also submitted that accused persons are innocent, they have never demanded dowry from her sister and never subjected any kind of cruelty to her. On the inquest report he has proved his thumb impression as Ex.Ka-3 and has denied that the I.O. had ever taken his statement under Section 161 Cr.P.C.

15. P.W.4 Constable Dharampal Singh is the scribe of the FIR, who has proved the Chik FIR and G.D. of the case as Ex. Ka-4, Ka-5 respectively.

16. P.W.5 S.D.M. Karmendra Singh has conducted the inquest proceedings and in his statement he has affirmed his signature over inquest report Ex.Ka-3 and has also proved the papers sent for the post mortem of the deceased as Ex.Ka-6, Ex.Ka-7, Ex.Ka-8, Ex.Ka-9 and Ex.Ka-10.

17. P.W.6 Dr. A.K. Jain has performed the autopsy of the deceased. He has proved the autopsy report Ex.Ka-11. Following anti mortem injuries were found by him over the body of the deceased

मृत्यु पूर्व चोटें-

1- सतह से गहराई तक आंशिक रूप से भर चुका जला हुआ घाव गर्दन के सामने व पीछे की तरफ सीने व पेट के हिस्से

पर सामने की तरफ पेट के निचले हिस्से मे सामने दाहिनी तरफ, सिर के पीछे नीचे की तरफ , दोनों पैर आंशिक रूप से सीने के पीछे की तरफ।

2- पैडसोल सीने व पेट के पीछे की तरफ।

18. He had performed the autopsy on 4.7.2002 at 4.15 p.m. and has opined that the death was caused due to septicemia/ toxacemia.

19. P.W.7 Dr. Kripal Singh has medically examined the deceased, when she was alive. He was found that several burn injuries on various parts of the body of the injured as head, face, neck, below the elbow, chest, abdomen, thigh, hips etc. and she was burnt about 75%. He has proved the injury report as Ex.Ka-12.

20. P.W.8 Tehsildar Shiv Bhajan has recorded the dying declaration of the deceased on 27.4.2002 and has narrated that the doctor present over there had identified her and her family members were turned out by him at the time of recording the statement. He has also narrated that the statement was recorded after her medical examination by the doctor. He has proved the dying declaration as Ex.Ka-13 and read over it before the Court, wherein it was mentioned like this.

ब्यान परवीन पत्नी शकील आयु 20 वर्ष नि० परि बहोड़ा, इज्जत नगर, बरेली

"बहोशोहवास ब्यान किया कि दिनांक 26.4.02 को दोपहर के समय मेरे पति शकील पुत्र बाबू सास जैतुन पत्नी बाब , देवर लियाकत पुत्र बाबू, दूसरा देवर मतलो पुत्र बाबू आदि ने मिलकर मुझे पीटा तथा मुझ पर तेजाब डालकर मुझे जला दिया। ब्यान सुनकर तसदीक किये।"

21. P.W.9 Additional Superintendent of Police Rajendra Kumar is the second I.O. of the case. He has narrated the proceedings of investigation conducted by him and has proved the charge sheet as Ex.Ka-14.

22. P.W.10.Constable Rakesh Dubey has been examined as secondary witness for the first I.O. of the case S.I. Bihari Lal Yadav and he has proved his hand writing and signature over the site plan Ex.Ka-15 and charge sheet Ex.Ka-16.

23. The trial Court relying upon the aforesaid evidence found the dying declaration as cogent and reliable evidence and opined that the prosecution has proved its case beyond reasonable doubt and passed conviction order against the accused Sageer and Naseer under Section 304-B I.P.C. and Section 3/4 D.P. Act and sentenced them accordingly.

24. Heard Shri Ravi Shankar Tripathi, for the appellants, Shri N.K. Srivastava for the State and perused the record.

25. The learned counsel for the appellants has submitted that the prosecution is guilty of suppressing the genesis of the incident, therefore, an adverse inference ought to be drawn against the prosecution. Assailing the impugned judgement on various grounds, he has firstly taken us to the depositions of the witnesses P.W.1, P.W.2 and P.W.3, who are hostile witnesses and on the basis of their statements he has vehemently argued that the ingredients of Section 304-B I.P.C. which the prosecution is bound to prove to bring home the charge against the accused, are totally absent in the present matter and no case as such is made out against the appellants.

26. To appreciate the arguments advanced by the learned counsel for the appellants we have to keep in our mind the ingredients which the prosecution has to prove in order to convict the accused for the offence under Section 304-B I.P.C. The ingredients have been settled in a catena of judgements of Hon'ble Apex Court. In **Maya Devi Vs. State of Haryana (2015) 17 SCC 405** it has been held as herein under-

> *"In order to convict an accused for the offence punishable under* Section 304B *IPC, the following essentials must be satisfied:*
>
> *(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;*
>
> *(ii) such death must have occurred within seven years of her marriage;*
>
> *(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;*
>
> *(iv) such cruelty or harassment must be for, or in connection with, demand for dowry".*

27. Recently in State of **M.P. Vs. Joginder (2022) 5 SCC 401,** the Hon'ble Apex Court has reiterated the aforesaid principle.

28. In the light of the aforesaid preposition, the evidence on record has to be scrutinized. The informant, who has denied the contents of his written report Ex.Ka-1 is certainly trying to hide facts from the Court. He has expressly stated that the written report was dictated by him to Sharakat Khan and whatsoever he has stated the same was written in it. He had identified his thumb impression upon the *tehrir* and has also clarified that in the police station he had given the same *tehrir* and the case was lodged thereupon. Subsequently, he turned hostile and denied the contents of Ex.Ka-1.

29. The law in respect of the hostile witness is absolutely settled in a catena of decisions. The Hon'ble Supreme Court and this High Court have held that the evidence of a hostile witness would not be rejected, if not spoken in favour of the prosecution but it can be subjected to close scrutiny and that portion of the evidence consistent with the case of prosecution may be accepted.

30. In **State Of Gujarat vs Anirudh Singhh and Another (1997) 6 SCC 514**, it has been held that virtually it is a legal duty of

the trial Judge or the appellate Judge to scan the evidence, test it on the anvil of human conduct and reach a conclusion whether the evidence brought on record even of the turning hostile witnesses would be sufficient to bring home the commission of the crime.

31. In **Rajesh Yadav and Another Vs. State of U.P. 2022 SCC Online SC 150** it has been held like this:

> *".....21.The expression "hostile witness" does not find a place in the Indian Evidence Act. It is coined to mean testimony of a witness turning to depose in favour of the opposite party. We must bear it in mind that a witness may depose in favour of a party in whose favour it is meant to be giving through his chief examination, while later on change his view in favour of the opposite side. Similarly, there would be cases where a witness does not support the case of the party starting from chief examination itself. This classification has to be borne in mind by the Court. With respect to the first category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness. Even a chief examination could be termed as evidence. Such evidence would become complete after the cross examination. Once evidence is completed, the said testimony as a whole is meant for the court to assess and appreciate qua a fact. Therefore, not only the specific part in which a witness has turned hostile but the circumstances under which it happened can also be considered, particularly in a situation where the chief examination was completed and there are circumstances indicating the reasons behind the subsequent statement, which could be deciphered by the court. It is well within the powers of the court to make an assessment, being a matter before it and come to the correct conclusion".*

32. The evidence of P.W.2 and P.W.3 stand on the same footings as is of P.W.1. The learned counsel for the appellants has failed to explain as to why the informant went to the police station with the deceased, who was ablaze at that time if she was not subjected to acid attack by her husband and in-laws. The learned counsel for the appellants has quoted the statements of P.W.1, who has tried to

explain the reason behind taking away her sister to the police station before got her admitted into the hospital. In his cross-examination P.W.1 has stated that some persons had told him that without the police intervention the persons who are got injured in accident or by burning are not admitted into the hospital and that is why he went to the police station for lodging of FIR before going to the hospital.

33. We are of the considered view that this statement of P.W.1 is false and fabricated. If the deceased was burnt accidentally and the informant wanted police intervention before any medical treatment he could have only inform the police regarding the incident of burning of his sister. He had no need to lodge an FIR in respect of that incident, merely an information was sufficient to take the police into action, if any how informant was under impression that the police ought to be informed prior to the injured taking to the hospital.

34. In **Bable vs State Of Chattisgarh AIR 2012 SC 2621** it has been held that "FIR by itself is not a substantive piece of evidence but it certainly is a relevant circumstance of the evidence produced by the Investigating Agency. Merely because the informant had turned hostile, it cannot be said that the FIR would lose of all its relevancy and cannot be looked into for any purpose". It is very important to note that after lodging of the FIR the investigation was started and culminated into a charge sheet.

35. The trial Court has appreciated the evidence of P.W.1, P.W.2 and P.W.3 and has opined that the witnesses are deliberately trying to hide the facts. He has also impressed upon Ex.Ka-2, which is an application given by the informant P.W.1 to S.P. City, Bareilly for performing the post mortem of the deceased alleging therein that it was a bride burning case and the accused persons killed the

deceased by acid attack. Why Ex.Ka-2 was given by him to the high police official, has no where been explained by P.W.1 in his entire deposition.

36. We are of the considered opinion that the learned trial Court has rightly impressed upon the evidentiary value of Ex.Ka-2 and has reached the correct conclusion.

37. While the FIR has been found a credible piece of evidence, we can successfully relied upon the contents found therein. It has been clearly mentioned in the FIR that the marriage took place two years before the occurrence and the in-laws of the deceased were in continuous demand of colour t.v & motor cycle and she was subjected to cruelty and harassment for demand of dowry, and the deceased always used to tell all the story to her family members, several times the accused persons kicked her out of the house and the informant and his family members kept on requesting them not to torture the deceased, but in vain.

38. The dying declaration of the deceased has been recorded by the Tehsildar P.W.8. The learned counsel for the appellants has vehemently argued that the dying declaration is not a fair and reliable piece of evidence in this matter and the circumstances surrounding it are suspicious.

39. The trial Court has examined the veracity of the dying declaration Ex.Ka-13 in detail in the impugned judgement. From the perusal of the whole deposition of P.W.8, we do not find any adversity in his statement. So far as the dying declaration is concerned, the doctor has given his certificate before recoding it that Mrs. Parveen is conscious to give her statement and after the statement is recorded he has again certified that Mrs. Parveen remained in her senses throughout the recording of statement.

40. Legal position of dying declaration to be the sole basis of conviction is that it can be done so if it is not tutored, made voluntarily and is wholly reliable. In this regard, Hon'ble Apex Court has summarized the law regarding dying declaration in **Lakhan vs. State of Madhya Pradesh [(2010) 8 Supreme Court Cases 514]**, in this case, Hon'ble Apex Court held that the doctrine of dying declaration is enshrined in the legal maxim *nemo moriturus praesumitur mentire*, which means, *"a man will not meet his Maker with a lie in his mouth"*. The doctrine of dying declaration is enshrined in Section 32 of Evidence Act, 1872, as an exception to the general rule contained in Section 60 of Evidence Act, which provides that oral evidence in all cases must be directed, i.e., it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases.

41. The law on the issue of dying declaration can be summarized to the effect that in case the court comes to the conclusion that the dying declaration is true and reliable, has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration and it has not been made under any tutoring/duress/prompting; it can be the sole basis for recording conviction. In such an eventuality no corroboration is required. It is also held by Hon'ble Apex Court in the aforesaid case, that a dying declaration recorded by a competent Magistrate would stand on a much higher footing than the declaration recorded by office of lower rank, for the reason that the competent Magistrate has no axe to grind against the person named in the dying declaration of the victim.

42. P.W.8 is absolutely independent witness. In the wake of aforesaid judgment of Lakhan (*supra*), dying declaration cannot be disbelieved, if it inspires confidence. On reliability of dying declaration and acting on it without corroboration, Hon'ble Apex Court held in **Krishan vs. State of Haryana [(2013) 3 Supreme Court Cases 280]** that it is not an absolute principle of law that a dying declaration cannot form the sole basis of conviction of an accused. Where the dying declaration is true and correct, the attendant circumstances show it to be reliable and it has been recorded in accordance with law, the deceased made the dying declaration of her own accord and upon due certification by the doctor with regard to the state of mind and body, then it may not be necessary for the court to look for corroboration. In such cases, the dying declaration alone can form the basis for the conviction of the accused. Hence, in order to pass the test reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused, who had no opportunity of testing the veracity of the statement by cross-examination. But once, the court has come to the conclusion that the dying declaration was the truthful version as to the circumstance of the death and the assailants of the victim, there is no question of further corroboration.

43. In **Ramilaben Hasmukhbhai Khristi vs. State of Gujarat, [(2002) 7 SCC 56],** the Hon'ble Apex Court held that under the law, dying declaration can form the sole basis of conviction, if it is free from any kind of doubt and it has been recorded in the manner as provided under the law. It may not be necessary to look for corroboration of the dying declaration. As envisaged, a dying declaration is generally to be recorded by an Executive Magistrate with the certificate of a medical doctor about the mental fitness of

the declarant to make the statement. It may be in the from of question and answer and the answers be written in the words of the person making the declaration. But the court cannot be too technical and in substance if it feels convinced about the trustworthiness of the statement which may inspire confidence such a dying declaration can be acted upon without any corroboration.

44. From the above precedents, it clearly emerges that it is not an absolute principle of law that a dying declaration cannot form the sole basis of conviction of an accused when such dying declaration is true, reliable and has been recorded in accordance with established practice and principles and if it is recorded so then there cannot be any challenge regarding its correctness and authenticity.

45. In dying deceleration of the deceased, it is also relevant to note that deceased died after more than two months of recording it. It means that she remained alive for more than two months after making dying declaration, therefore, truthfulness of dying declaration can further be evaluated from the fact that she survived for more than two months after making it from which it can reasonably be inferred that she was in a fit mental condition to make the statement at the relevant time.

46. From the above, it is also clear that the deceased was subjected to cruelty and was made a victim of acid attack soon before her death.

47. Hence, we find that all the ingredients to bring home charge against the accused under Section 304-B I.P.C are fulfilled and the prosecution has successfully established all the conditions in order to enable it to ask for conviction of the accused persons in the present case of dowry death.

48. The provisions of Section 113 B of Indian Evidence Act come into picture at this juncture. Section 113 B of Indian Evidence Act reads like this.

> *"[113B. 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 has 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. Explanation.—For the purposes of this section, "dowry death" shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).]"*

49. A bare perusal of the aforesaid provisions makes it clear that if the prosecution succeeds in establishing the pre-conditions to obtain a benefit of presumption under Section 113B of the Indian Evidence Act in a case under Section 304-B I.P.C. it will be presumed that the accused has committed the offence and the burden of proof is shifted upon the accused that he was innocent.

50. It is pertinent to mention here that no defence evidence has been adduced by the accused persons. In his statement under Section 313 Cr.P.C., accused Sageer has taken a defence that he was at Bikaner in the fateful night and after getting information from his mother he came back in the morning but at the same time his brother co-accused Naseer in his statement has stated that accused Sageer had gone to Bareilly for labour work. It is a major contradiction. Secondly, co-accused Naseer has stated that when he saw the deceased (then injured) ablaze he immediately went away to the house of the in-laws of accused Sageer and stayed there at night and returned in the morning. The statement is totally unnatural. When the mother of the accused persons was alone in the house and the deceased was in bitterly burnt condition why co-accused Naseer went away to the house of the in-laws of accused

Sageer and why he did not make any effort to provide medical treatment to the deceased immediately, are the questions un-answered by the defence.

51. The trial Court has fairly discussed these aspects in his judgement and has found that the accused persons are telling a lie and moreover, no defence evidence to prove the aforesaid narrations has been adduced by the appellants, which makes their statement totally false. They have failed to discharge their burden of proof under Section 113 B of Indian Evidence Act after a presumption was raised against them.

52. At the same time we have also found that the medical evidence is quite clear and corroborates the facts and circumstances of the case, the minor contradictions will have to be ignored and they cannot form the dent in the prosecution of the accused persons/ appellants. All the family members of the deceased have become hostile as witnesses but this fact also has failed to provide any help to the appellants. The dying declaration goes *in toto* in favour of the prosecution and, therefore, there is no doubt left in our mind about guilt of the present appellants and we concur with the finding of the learned trial Court. However, the question which falls in our minds is whether on re-appraisal of the peculiar facts and circumstances of the cases, the sentence of life imprisonment imposed by the trial Court is proper or not.

53. We have given our thoughtful consideration to the request made by the learned counsel for the appellants that they have been languishing in jail for many years in this case and keeping in view the incarceration of the accused persons they should be released as undergone.

54. While considering the aforesaid aspects our attention is drawn towards the fact that it is a case of septicemial death and the death of the deceased is occurred after more than two months of the occurrence.

55. 'Proper Sentence' was explained in **Deo Narain Mandal Vs. State of UP [(2004) 7 SCC 257]** by observing that Sentence should not be either excessively harsh or ridiculously low. While determining the quantum of sentence, the court should bear in mind the 'principle of proportionality'. Sentence should be based on facts of a given case. Gravity of offence, manner of commission of crime, age and sex of accused should be taken into account. Discretion of Court in awarding sentence cannot be exercised arbitrarily or whimsically.

56. In **Ravada Sasikala vs. State of A.P. AIR 2017 SC 1166,** the Supreme Court referred the judgments in **Jameel vs State of UP [(2010) 12 SCC 532], Guru Basavraj vs State of Karnatak, [(2012) 8 SCC 734], Sumer Singh vs Surajbhan Singh, [(2014) 7 SCC 323], State of Punjab vs Bawa Singh, [(2015) 3 SCC 441], and Raj Bala vs State of Haryana, [(2016) 1 SCC 463]** and has reiterated that, in operating the sentencing system, law should adopt corrective machinery or deterrence based on factual matrix. Facts and given circumstances in each case, nature of crime, manner in which it was planned and committed, motive for commission of crime, conduct of accused, nature of weapons used and all other attending circumstances are relevant facts which would enter into area of consideration. Further, undue sympathy in sentencing would do more harm to justice dispensations and would undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to nature of offence and

manner of its commission. The supreme court further said that courts must not only keep in view the right of victim of crime but also society at large. While considering imposition of appropriate punishment, the impact of crime on the society as a whole and rule of law needs to be balanced. The judicial trend in the country has been towards striking a balance between reform and punishment. The protection of society and stamping out criminal proclivity must be the object of law which can be achieved by imposing appropriate sentence on criminals and wrongdoers. Law, as a tool to maintain order and peace, should effectively meet challenges confronting the society, as society could not long endure and develop under serious threats of crime and disharmony. It is therefore, necessary to avoid undue leniency in imposition of sentence. Thus, the criminal justice jurisprudence adopted in the country is not retributive but reformative and corrective. At the same time, undue harshness should also be avoided keeping in view the reformative approach underlying in our criminal justice system.

57. Keeping in view the facts and circumstances of the case and also keeping in view criminal jurisprudence in our country which is reformative and corrective and not retributive, this Court considers that no accused person is incapable of being reformed and therefore, all measures should be applied to give them an opportunity of reformation in order to bring them in the social stream.

58. The dictum given in the recent judgment of State of M.P Vs. Jogendra (supra) (para-20) can be followed in the facts and circumstances of this case. Hence, we conclude that as the convicts have been in jail for more than 12 years i.e sufficient for them, hence they may be set free if not required in any other offence. As

far as Section 3/4 D.P. Act is concerned, they have already undergone the punishment and if the fine is not paid, the default sentence would also have been over by now which would begin from the date after the period awarded by the trial court is over. As far as Section 304-B of I.P.C. is concerned, we punish all accused to 12 years of imprisonment. The fine is maintained as imposed by the trial Court and default sentence will be 6 months imprisonment. If the convicts have served out their sentence they be released, if not wanted in other offence.

59. The default sentence shall begin after 12th year of incarceration.

60. Accordingly, the appeal is **partly allowed** with the modification of the sentence as above.

61. Record and proceedings be sent back to the Court below forthwith.

62. A copy of this order be sent to the jail authorities for following this order and doing the needful.

Order Date :- 28.9.2022
Fhd

(Nalin Kumar Srivastava,J.) **(Dr. Kaushal Jayendra Thaker, J.)**