IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE B. P. SHARMA

ON THE 14th OF JANUARY, 2026

CRIMINAL APPEAL No. 8682 of 2022

THE STATE OF MADHYA PRADESH

Versus

PURUSHOTTAM @ GUDDA

Appearance:

Shri Manasmani Verma - Government Advocate for the appellant/State.

Shri Kamlesh Kumar Mishra - Advocate for the respondent.

JUDGMENT

Per: Justice Vivek Agarwal

This Criminal Appeal under Section 378 of Cr.P.C. is filed by the State Government being aggrieved of the judgment dated 10.02.2022 passed by learned 1st Addl. Sessions Judge, Lakhnadaun, District Seoni (M.P.) in Sessions Trial No. 201100 of 2016, whereby learned trial Court has acquitted the accused from the charges under Sections 498-A, 304-B of IPC and under Section 3/4 of Dowry Prohibition Act.

2. Shri Manasmani Verma, learned Government Advocate submits that the marriage of deceased Milan Yadav was performed with accused Purushottam @ Gudda S/o Krishna Yadav on 27.04.2016. Milan Yadav died on 07.11.2016 due to burn injuries within less than 07 months of her marriage. It is thus, submitted that, there is a presumption

under Section 304-B IPC that death occurring under unnatural circumstances was a result of demand of dowry and cruelty on the basis of unfulfillment of demand of dowry. Thus, it is submitted that, present is a case, where FIR was promptly recorded on 14.11.2016, and the prosecution witnesses noted that there was a demand of dowry related harassment which resulted in death of deceased Milan, it is a fit case to show indulgence and reverse the finding of acquittal.

3. Shri Kamal Kumar Mishra, learned counsel for the accused submits that, if statements of prosecution witnesses are minutely examined, then they have not supported the prosecution case. They have in fact admitted that there was no demand of dowry. Milan and Purushottam were living in a very cordial manner as husband and wife. It is submitted that, allegation of the prosecution that there was demand of a Splendor Motorcycle is not substantiated though the evidence of the prosecution witnesses and therefore, acquittal does not call for any interference.

4. After hearing learned counsel for the parties and going through the records. Suraj Yadav (PW-1) stated that, Milan Yadav was his younger sister. In the month of November, this witness Suraj Yadav was at Tirodi, at his in-laws house, when he had received a call from his mother Girija Bai that in turn, Purushottam had informed her that Millan had put herself on fire. After receiving the phone call, this witness (PW-1) alongwith his wife Kiran had visited Seoni, where his mother Girija

Bai, cousin Deepak and other members of the family had come to Lakhnadaun and at Lakhnadaun when they reached Hospital, they were informed that Millan was taken for performance of postmortem. This witness has admitted that, at that time, they had stayed in the house of Purushottam. After postmortem, they had received the dead body and last rites were performed promptly.

5. In his cross-examination, this witness (PW-1) stated that, Milan had studied up to 6th-7th class. He further states that, after being satisfied that, Purushottam was a proper match for their sister, they performed marriage of Milan with Purushottam. In para-7 of his cross-examination, PW-1 admits that, at the time of marriage, there was no talk of exchange of dowry. He admits that, whatever was given at the time of marriage in the form of gift was voluntarily given. He further states that Milan stayed in her in-laws house for about six months and in between he and his family members had visited Lakhnadaun on 02-04 occasions. In para-8 of his cross-examination, this witness (PW-1) states that, whenever, he or his family members used to visit accused and Milan than their behavior used to be a cordial and they extended all courtesies. He admits that, their marital life for last 06-07 months was cordial. In para - 9, this witness admits that, there was no dispute or altercation between husband and wife. In para-10, this witness admits that two days prior to her death, Milan had visited them and Purushottam had visited them to take back Milan. They had given proper treatment to

Milan and her husband and had happily given them a send-off. In para-11 this witness admits that during the life time of Milan, they had never lodged any report in regard to demand of dowry. He admits that, even after death, he or his family members had not lodged any report in regard to demand of dowry. He further admits that, at the time of performance of third day's rituals and thirteen day's rituals, he and his family members had participated in them. In para-14, this witness admits that, at the time of cremation or thereafter, neither he himself, nor his family members had stated anything in regard to demand of a motorcycle and consequential harassment to Milan. He further admits that, there was no specific reasons for not participating in her third day rituals or thirteen days rituals. He admits that, no complaint was ever made to their community organization in regard to demand of dowry. He further admits in para-16 that after 08-10 days, police personnel had called him and had said that had prepared a case and then they were interrogated. Prior to such interrogation they had never lodged any report at Lakhnadaun or Seoni Police Station in regard to demand of dowry. In para-17 of his cross-examination, this witness states that, the day on which Milan died police personnel had recorded statement of this witness and his family members. At that time, this witness admits that, they had stated that Milan and her husband were residing cordially. Thus, it is evident that, this witness (PW-1) has not supported the case of prosecution.

6. Girija Bai (PW-2), mother of the deceased Milan Yadav, after having stated that, there was a demand of motorcycle, in para-5 of her cross-examination, she stated that, there was no demand of dowry at the time of marriage. She further stated that whatever gifts were given to Milan were given voluntarily. She further stated that, Milan stayed in her in-laws house for about six months. Her daughter and son-in-law were residing cordially. There was no dispute amongst them. She admits that, during the lifetime of her daughter, there was no dispute between accused and their family. In para-6 of her cross-examination, this witness admits that, after marriage Milan visited them at Seoni on 03 occasions. She used to stay there for 02-04 days and when accused used to come, then they used to send her in '*Vida*' in a cordial and happy atmosphere. She further admits that, she is stating for the first time in the Court as about the incident which took place. She denied her case diary statements (Ex.D-1).

7. Ravi Prakash Yadav (PW-3), stated that Milan was his sister. She was daughter of his real uncle. This witness was declared hostile. In his cross-examination, this witness admitted that, for the first time, he is stating before the Court that, Milan sustained burn injuries. In the cross-examination, this witness has not supported the prosecution story.

8. Chanda Yadav (PW-4), stated herself to be a real sister of Milan Yadav. She too has not supported the case of prosecution in her cross-examination. She admitted that, it was never stated in her case

diary statement (Ex.D-3) that on 05.11.2016, when Purushottam had visited them, then they had said that, they being poor persons will not be in a position to give Splendor Motorcycle in dowry.

9. Teena Prajapati (PW-5) is friend of Milan, after having stated that, Milan used to inform her about demand of dowry admits in cross-examination, that after marriage of Milan, this witness never visited her at Lakhnadaun. She denied her case diary statements contained in Ex.D-4 and expressed surprise that, how police recorded such case diary statement. She has also not supported the prosecution case.

10. Meera Gaur (PW-6) was declared hostile. She too has not supported prosecution case. Nandkishore Yadav (PW-7) stated that, Milan Yadav was his sister-in-law. He admitted that, police had obtained his signatures on 05-06 blank papers.

11. Dr. Rajesh Daheria (PW-10) stated that, he was posted as Medical Officer at Civil Hospital, Lakhnadaun. He had conducted postmortem. According to him, she died because of asphyxia on account of burn injuries which resulted in cardiorespiratory arrest.

12. Smt. Bhawana Marawi (PW-11), City Superintendent of Police, is the Investigating Officer of the case. She admits that, she had not enclosed marg investigation statements of Kiran Bai and Girija Bai. She further admits that, she had recorded the statements under Section 161 Cr.P.C. of the witnesses in her office. In para-17 of her cross-examination, this witness admits that, during investigation, when she had

interrogated neighbors of the deceased then, they had only informed her that, deceased sustained burn injuries but had not informed her anything about any harassment.

13. Thus, it is evident that, none of the prosecution witnesses, could substantiate the demand of dowry. None of the prosecution witnesses could substantiate any harassment related to dowry. Suraj Yadav (PW-1) & Girija Bai (PW-2) on the contrary, stated that, the relationship of Milan with Purushottam was very cordial till the end. It is true that death of a young married woman, within few months of marriage is most unfortunate, but every such death can not termed as dowry death.

14. When these facts are taken into consideration, then we are constrained to observe that, as informed by Shri Manasmani Verma, learned Government Advocate that such appeals are filed when proposal is forwarded by the Dy. Director, Prosecution to the Law Department and then, it is the Law Department which gives opinion for filing of appeals when the Advocate General's Office is bereft of its discretion and they are bound to file appeal.

15. We are constrained to observe that, neither the Dy. Director Prosecution, District Seoni, namely Shri Ramesh Kumar Uike applied his mind nor the Law Department which is bestowed with the work of giving free and fair opinion gave any fair opinion to file appeal but mechanically advise, filing of appeal which reflects poorly on the

functioning of the Law & Legislative Affairs Department of the State of Madhya Pradesh and reflects that there is an urgent need for a radical surgery in the department, because their Officers are acting in a mechanical manner and despite being Judicial Officers, have failed to discharge their function as Judicial Officer while giving opinion.

16. At this stage, Shri Manasmani Verma, learned Government Advocate draws attention of this Court towards the Provisions contained in Clause (b) of Section 378 (1) of Cr.P.C., he draws attention to the word 'may' used in this clause to say that, State Government may, in any case, direct the public prosecutor to present an appeal to the High Court. In view of such submissions, it is submitted that, since word 'may' is used, it is the discretion of the State Government.

17. When submission of Shri Manasmani Verma, learned Government Advocate is tested on the touchstone of the provisions contained in Section 378(1) of Cr.P.C., then it is well settled law that decisions of State Government to prefer or not to prefer an appeal against acquittal is administrative in nature. This point has been considered and dealt by the Hon'ble Full Bench of High Court of Punjab and Haryana in the case of ***Lal Singh Vs. State of Punjab; 1981CRLJ 1069***.

18. Hon'ble Supreme Court in the case of ***State of J & K Vs. Shubam Sangra (2022)20 SCC 1***, in para 42 & 43 has noted as under:

"42. It is a well settled principle of interpretation that

the word ‘may’ when used in a legislation by itself does not connote a directory meaning. If in a particular case, in the interests of equity and justice it appears to the court that the intent of the legislature is to convey a statutory duty, then the use of the word ‘may’ will not prevent the court from giving it a mandatory colour. This Court in ***Bachahan Devi Vs. Nagar Nigam, Gorakhpur, reported in (2008) 12 SCC 372***, held as under:

> “18. It is well settled that the use of the word “may” in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word “may” as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word “may”, the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well settled that where the word “may” involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and

suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word "may" should be interpreted to convey a mandatory force. As a general rule, the word "may" is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word "shall", which ordinarily is imperative as it imposes a duty. Cases, however, are not wanting where the words "may", "shall" and "must" are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances."

43. Similarly, this Court in ***Dhampur Sugar Mills Ltd. Vs. State of U.P. reported in (2007) 8 SCC 338***, held:

"36. ….In our judgment, mere use of word "may" or "shall" is not conclusive. The question whether a particular provision of a statute is directory or mandatory cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the court must

> examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue."

19. Thus, it is evident that, while filing an appeal against acquittal, State is required to apply its mind and there is no unfettered discretion bestowed to the State to file appeals against acquittal in a mechanical manner. This exercise of unfettered discretion without being backed by any reason and grounds amounts to not only multiplicity of litigation for which State is the biggest culprit, but also it impinges on the aspect of finality of judgment and has an impact of causing anxiety and uncertainty in the mind of the litigant. Such discretion should be exercised only when there exist compelling and substantial reasons to interfere with the judgment of acquittal.

20. The Hon'ble Calcutta High Court, in the case of the ***Deputy legal Remembrancer on behalf of the Government of Bengal Vs. Karuna Baistobi & another 1894(22) Supreme(Cal) 76; equivalent citation 1895 ILR (Cal)164*** has noted that the "law restricting the right of appeal against a judgment of acquittal prevents personal vindictiveness from seeking to call in question judgments of acquittal by way of appeal. The Government shall interfere only where there is a grave miscarriage of justice".

21. Hon'ble Calcutta High Court noted that "The law by limiting the right of appeal against judgments of acquittal to the Local Government, prevents personal vindictiveness from seeking to call in question judgments of acquittal by way of appeal, and evidently intends that such interference shall take place only in cases where there has been a miscarriage of justice so grave as would induce the Local Government to move in the matter. We think it is a most salutary principle, quite as necessary for the well being of society as the repression and punishment of crime, that interference with judgments of acquittal should take place only in cases where there has been a miscarriage of justice of a grave nature".

22. Similarly in the case of ***Emperor Vs. Sakharam Manaji Vanjari 1919 SCC OnLine Bom. 151; AIR 1920 Bom 217***, it is held that the power of appeal is one that should be exercised sparingly by Government and though the discretion to exercise that power appertains to Government, yet the High Court may in its discretion, refuse to grant leave.

23. However, when word 'may' as used in Section 378(1)(b) of Cr.P.C. is taken into consideration, then law is well settled that though word 'may', may grant discretionary power to be exercised by the State, but it will not absolved the State from taking into account, considerations which are relevant for the purpose of the statutory question, then its action will be invalid.

24. In the case of ***Nasir Ahmad Vs. Assistant Custodian General, Evacuee property, AIR 1980 SC 1157***, it is held that at time statute conferring discretion on an authority may seek to structure discretion by expressly laying down the considerations which have to be taken in to account by the concerned authority for exercising the discretion. In such a case, if the power is exercised without taking into account these considerations, then its act will be invalid. It has been ruled that, a decision arrived at by an authority ignoring the factors or guidelines laid down in the statute will be clearly invalid.

25. It is also well settled that, many a times, statutes conferred discretionary powers but do not mentioned the considerations regulating its exercise. Even in a case where the statute does not prescribes any considerations, but confers powers in a general way, the Court may still spell out, the relevant considerations from the subject matter, scope and purpose of the statute in question for the exercise of the power, and quash an order if the concerned authority does not take these into account. It is the function of the Courts to assess whether the authority have ignored any relevant consideration in taking a decision in exercise of its discretionary power.

26. When tested, then statute itself provides that unless there is a case of grave miscourage of justice, Government should not lightly order for filing an appeal against the judgment of acquittal. But in the present case, we fail to see that any application of mind was made before

deciding to file appeal and such acts of indiscretion on the part of the concerned Dy. Prosecution Officer and the officials of the Law Department calls for imposition of exemplary cost of Rs.50,000/- on the State for filing an appeal without there being any basis or without they be able to show that there is any grave injustice caused to the victim.

27. Accordingly, we dismissed this Criminal Appeal with a cost of Rs.50,000/-, which may be recovered from the concerned delinquent officials, who gave opinion to file this Criminal Appeal in a mechanical manner. Let this cost be deposited in the Red Cross Society, Jabalpur for utilization of poor persons.

(VIVEK AGARWAL)
JUDGE

(B. P. SHARMA)
JUDGE

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