A GANDI DODDABASAPPA @ GANDHI BASAVARAJ

v.

STATE OF KARNATAKA

(Criminal Appeal No. 631 of 2012)

B FEBRUARY 28, 2017

[KURIAN JOSEPH AND A. M. KHANWILKAR, JJ.]

Penal Code, 1860:

C *s. 302 – Murder – By appellant-accused – Of his daughter – Motive attributed to commit the murder was that the accused was frustrated as his daughter had married a boy of lower caste – PW-18 (mother-in-law of the deceased) was the eye-witness – Trial Court discarding the evidence of PW-18 and holding that circumstantial evidence was not sufficient to convict the accused, acquitted him –*
D *High Court accepted the prosecution case and recorded finding of guilt against the accused, but convicted him for offence u/s. 304 (Part I) IPC and sentenced him to 10 years of imprisonment – Appeal to Supreme Court by the accused against his conviction – The court issued show cause notice to the accused for enhancement of sentence – Held: The entire version of PW-18 cannot be treated as*
E *untruthful – The version of PW-18 that she heard the cries of the deceased from public toilet; saw the accused coming out from the toilet with a blood stained sickle and throwing that sickle in a nearby dung-pit is reliable and truthful – This version is reinforced by the strong motive and further corroborated by seizure of blood-stained sickle and matching of blood group on the sickle and on the clothes*
F *of the deceased – However, none of the exceptions in s. 300 IPC is attracted in the present case, therefore, the case cannot be brought under first part of s. 304 IPC – The accused is liable to be convicted under s. 302 and is sentenced to undergo life imprisonment.*

Constitution of India:

G *Art. 142 – Criminal appeal before Supreme Court – Filed by accused – Challenging his conviction –* Suo-motu *notice issued by the court for enhancement of sentence – Permission to withdraw the appeal sought – Held: The appellant cannot be permitted to withdraw the appeal – The show-cause notice has to be taken to its*

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logical end being substantive proceedings ascribable to the jurisdiction of the appellate court u/s. 386 r/w. 397 and 401 of Cr.P.C and in the present case plenary jurisdiction of Supreme Court – It is the duty of the Court to decide the case, irrespective of the fact that the accused does not want to prosecute his appeal against conviction – Code of Criminal Procedure, 1973 – ss. 386 r/w 397 and 401.

Dismissing the appeal and making the show-cause notice for enhancement of sentence absolute, the Court

HELD: 1. This Court after hearing the parties and having been *prima facie* convinced, issued show cause notice to the appellant-accused for enhancement of sentence. In this backdrop, the appellant cannot be permitted to withdraw the appeal. The show cause notice will have to be taken to its logical end being substantive proceedings ascribable to the jurisdiction of the Appellate Court under Section 386 or read with Sections 397 and 401 of the Criminal Procedure Code, 1973 and, in this case, plenary jurisdiction of the Supreme Court. It is the duty of this Court to decide the case irrespective of the fact the accused does not want to prosecute his appeal against conviction. [Para 20] [74-C-E, G-H]

Vikas Yadav v. State of UP **(2016) 9 SCC 541;** *Khedu Mohton and Ors v. State of Bihar* **1970 (2) SCC 450 : [1971] 1 SCR 839;** *Deo Narain Mandal v. State of U.P.* **2004 (7) SCC 257;** *Pilot U.J.S. Chopra v. The State of Bombay* **[1955] 2 SCR 94 – relied on.**

2.1 The entire version of PW18 cannot be treated as untruthful. Her evidence that she had heard the cries of her daughter-in-law (deceased) from the public toilet "Appa Beda Appa" and thereafter she saw the accused coming out of the public toilet with a blood-stained sickle in his hand and throwing that sickle in the nearby dung pit after seeing PW18 when she asked him to stop and then running away from the spot, is reliable and truthful. There is no tangible reason to doubt this version of PW18. On accepting the same, it would necessarily follow that the accused alone was responsible for the killing of the deceased, which fact is reinforced by his strong motive to do so. Further, this version of PW18 stands corroborated from the other

A prosecution evidence including the seizure of blood stained sickle from the spot and the matching of blood group "B" on the sickle and on the clothes of the deceased. The conclusion reached by the High Court and in particular the finding of guilt against the appellant (accused) is the correct view. The High Court was right in holding that the trial court assigned flimsy reason to discard B the evidence of PW18 in its entirety. [Para 24] [77-E-H]

Vadivelu Thevar v. State of Madras AIR 1957 SC 614 : [1957] SCR 981 – relied on.

2.2 As the evidence of PW18 has been corroborated by C other circumstances and prosecution evidence, that leaves no manner of doubt that the accused not only had strong motive to kill his daughter but was responsible for doing so and excludes the probability of someone else being responsible for the death of the deceased. The view taken by the High Court about the efficacy of evidence of PW18, keeping in mind other proved D circumstances and evidence of other prosecution witnesses, appears to be the only possible view and is the correct approach in the matter. The seizure panchnama and recovery of the articles cannot be disbelieved. Even the trial court has opined that the same have been proved by the prosecution witnesses. [Para 24] E [80-B-D]

2.3 The trial court opined that it was a case of homicidal death, but gave benefit of doubt to the appellant on the finding that there was no substantive evidence to indicate his complicity in the commission of offence. In that sense, there is no challenge F to the finding reached by the trial court that the death of the deceased was homicidal. [Para 25] [80-E-F]

2.4 The High Court has found that the fatal injuries suffered by deceased were established from the contents of the postmortem report proved by the doctor (PW 21). Further, PW G 21 opined that the injury found on the body of the deceased can be attributed to the sickle recovered from the scene of offence. He has further opined that the injuries were sufficient to cause her death. From the postmortem report and the evidence of PW 21, it is evident that the injuries were incised injuries and which resulted in loss of blood due to cutting of veins. Further, the H description of the injuries itself shows that bones were exposed

because of the injury. That means, it was a case of incised wound and not lacerations or superficial injury. The court cannot blindly accept the expression "lacerated", when pitted against the nature and depth of the cut injury as described in the report. The use of sickle during the assault, fortifies the conclusion reached by the Courts below about homicidal death and including that the injuries resulted in instant death of the deceased. [Para 26] [80-G-H; 81-A-C]

3.1 The High Court has made no attempt to explain as to how the case on hand would be covered by one of the five exceptions given in Section 300 of IPC. Unless the case falls under one of the specified exception, it cannot be brought under first part or second part of Section 304 of IPC. Even the defence of the appellant-accused, as evinced from his statement under Section 313 of Cr.P.C., is of complete denial and being falsely implicated. None of the exceptions in Section 300 of IPC is attracted in the present case. [Paras 28, 29] [82-E; 83-B-C]

Harendra Nath Mandal vs. State of Bihar **(1993) 2 SCC 435:[1993] 2 SCR 137 – relied on.**

3.2 The accused (appellant) committed murder of his daughter, who was in the advanced stage of pregnancy and for which he was liable to be punished with either imprisonment for life or death under Section 302 of IPC alone. In the peculiar factual background of this case, it is not a fit case to impose death penalty. The appellant is sentenced to undergo imprisonment for life. [Paras 29, 30] [83-D-E]

Case Law Reference

(2016) 9 SCC 541	**relied on**	**Para 13**
[1971] 1 SCR 839	**relied on**	**Para 20**
2004 (7) SCC 257	**relied on**	**Para 20**
[1955] 2 SCR 94	**relied on**	**Para 20**
[1957] SCR 981	**relied on**	**Para 22**
[1993] 2 SCR 137	**relied on**	**Para 28**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 631 of 2012.

From the Judgment and Order dated 03.06.2011 of the High Court

A of Karnataka Circuit Bench at Dharwad in Criminal Appeal No. 2259 of 2005.

Ms. Kiran Suri, Sr. Adv., S. J. Amith, (For Dr. (Mrs.) Vipin Gupta), Advs., for the appellant.

B Devadatt Kamat, AAG., V. N. Raghupathy, Javedur Rahman, Prakash Jadhav, Advs. for the respondent.

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J. 1. This criminal appeal arises from the judgment and final order passed by the High Court of Karnataka C dated 3rd June, 2011 in Criminal Appeal No. 2259 of 2005. The High Court has set aside the order of acquittal passed by the Sessions Court and instead convicted the appellant (accused) for an offence punishable under Section 304, Part I of the Indian Penal Code, 1860 (**'IPC'**) and sentenced him to undergo 10 (ten) years of rigorous imprisonment for D killing his daughter, Shilpa.

2. When this appeal was taken up for hearing on 8th September, 2016, the Court directed issuance of notice to the appellant (accused) for enhancement of sentence. That notice has been duly served on the appellant.

E 3. The factual circumstances leading to this appeal are as under:

a. One Ravi Kumar (PW16), from the Naik community and Shilpa, from the Lingayat community, were in love. Being from different castes and apprehending opposition to their marriage by the family of Shilpa, they F decided to elope and got married in 2002. They got their marriage registered before the Sub-Registrar, Hospet in 2003. Eventually, the couple returned to their village Taranagar to stay with the parents of Ravi Kumar (PW16), PW17 and PW18. When this marriage came to the knowledge of Shilpa's father, the accused, he bitterly opposed the same and reportedly berated PW16 and his family on several occasions, stating G that they had brought down the honour of his family and that he would "finish" his daughter for marrying into a lower caste.

b. In the days leading up to the alleged incident, Shilpa was pregnant (around nine months). She frequently used the public toilet near to her place of residence, often accompanied by her mother-in-law (PW18). H On the fateful day i.e. on 3rd October, 2003, at around 8 AM, Shilpa

wanted to go to the toilet. At the relevant time, PW18 was preparing 'rotis' for her husband (PW17) who was getting ready to go to work. PW 18 told Shilpa that she would join her as soon as she finishes that work. After finishing her task and washing her hands, PW18 started walking towards the public toilet. When she was near the house of one Hanumanthappa, she heard a cry of Shilpa "Appa Beda Appa" (Father, don't, father) coming from the toilet. PW18 rushed towards the toilet. She saw the appellant (accused) emerging from the toilet with a blood stained sickle. Upon seeing PW18, the appellant (accused) threw the sickle into a manure dung pit nearby and ran away. Hearing the commotion, PWs1 to 4 soon arrived at the spot and along with PW18, entered the public toilet. They found Shilpa lying on the ground, facing upwards, in a pool of blood with a cut to her neck. PW18 then lodged a complaint with PSI (PW24), who then registered the FIR. The appellant absconded after the incident and was eventually arrested 20 (twenty) days later. After the investigation was complete, the appellant was charge sheeted for killing his daughter Shilpa and committed to trial before the Sessions Court.

c. During the trial, prosecution led evidence of 25 (twenty five) witnesses including the experts. The eye witnesses who had arrived at the spot of the incident turned hostile with the exception of PW18, whose testimony has been found to be truthful and reliable by the High Court.

d. The Sessions Court, vide judgment dated 28th February, 2005, acquitted the accused *inter alia* on the ground that mere intent on the part of the accused to commit the crime was not sufficient to record a finding of guilt. The Sessions Court discarded the evidence of PW18. It held that the evidence of PW 18 was replete with improvements on her previous statement and was unreliable. Further, the circumstantial evidence was not enough to convict the accused.

e. In appeal by the State, the High Court accepted the prosecution's case that the accused was a frustrated father because of his daughter having married to Ravi Kumar (PW16) who belonged to lower caste and was the motive to commit the crime. Further, even if there was a little exaggeration of the events by PW18 during her evidence, the same could be ignored and that the circumstantial evidence was sufficient to convict the accused. The High Court also relied on the post mortem report and serology report which *inter alia* stated that blood stains on the sickle matched with those on the clothes of the deceased. The High

A Court recorded a finding of guilt against the appellant but went on to convict the appellant for offence under Section 304 Part I of IPC and sentenced him to 10 years of imprisonment. This order of conviction and sentence has been challenged by the appellant.

4. As aforesaid, when this appeal was heard on the earlier B occasion this Court issued a show cause notice to the appellant for enhancement of sentence. At the commencement of hearing of this appeal and on the show cause notice, Ms. Suri the learned senior counsel for the appellant (accused), sought leave of the Court to withdraw the appeal. She submits that as a consequence of withdrawal of the present appeal against conviction filed by the accused, the notice for enhancement of C sentence (issued on 8th September 2016) would automatically get disposed of. As we declined the prayer for withdrawal of appeal, the learned senior counsel addressed us on the merits of the case.

5. On merits, Ms. Suri first submits that the prosecution has failed to prove the intent of the accused in committing the crime. Merely D because the accused was unhappy about his daughter's inter-caste marriage, that by itself cannot be the basis to infer motive to commit the crime. Besides, the witnesses who have deposed about the threats given by the accused to PW16 and his family, have turned hostile. PW 17 (father of Ravi Kumar (PW 16)), during his cross examination, has E stated that the accused and he were on good terms and that it was not true that he had been warned about the accused planning to kill the deceased. The evidence of PW18's (mother of Ravi Kumar (PW 16)), is the only incriminating evidence in this regard and there is nothing to corroborate the same. PW17's evidence is hearsay. Additionally, none of the witnesses have spoken about any pre-planning on the part of F accused to commit the alleged crime. The accused never kept relations with his daughter nor did he even meet her after she returned to the village post-marriage. The accused never filed any complaint against PW16 and his family nor did he seek to hold any panchayat in respect of the inter-caste marriage. The accused could not have known when the G deceased would go to the toilet nor could he have known that, on the date of the incident, she alone will visit the toilet. Finally, there was nothing to show that the accused had procured the sickle (which is a common household object) for the sole purpose of killing the deceased. Thus, there is nothing to show that there was any intent on the part of the accused to commit the alleged crime.

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6. Ms. Suri further submits that the entire case of the prosecution rests on the evidence of PW18. There are material contradictions, inconsistencies and omissions in the evidence given by PW18 which led the trial court to record that she was not an eye witness and that the case has to be considered on circumstantial evidence. The evidence shows that PW18 exaggerated her case in a bid to secure the conviction of the accused. Ms. Suri points out that in the FIR (Exh. P-18) filed immediately after the incident, PW18 has alleged that she merely saw the accused coming out of the toilet with a blood stained sickle in his hand whereas in her deposition stated that she actually saw the accused cutting Shilpa's neck with a sickle. This clearly shows an attempt of PW18 to improve her case. However, the High Court erred by terming such discrepancy as a "little exaggeration" when it is infact a material improvement. This is further substantiated by reading the evidence of Doctor (PW 21), where he states that the cause of Shilpa's death was cardio-pulmonary arrest due to severe haemorrhaging and that the death may have occurred 5-10 minutes after the actual assault due to bleeding. This is contrary to the version of PW18 that when she reached near the toilet, she saw the accused attack Shilpa. There was no way that Shilpa would have bled to death by the time PW18 reached the toilet, considering the distance between the toilet and from where PW18 allegedly witnessed the incident. This only proves that PW18 did not actually witness the accused committing the crime since Shilpa was already dead when PW18 reached the spot and that the alleged crime would have happened some time before. PW18 tried to cover up this discrepancy in her evidence by stating that Shilpa was still alive after the attack and that she gave her some water in a tumbler, whereafter she died. The presence of this tumbler was never mentioned prior to her giving evidence. This change in stance cannot be accepted in absence of corroborating evidence. Further, the distance from Hanumathappa's house, from where PW18 allegedly witnessed the incident or heard the deceased's cries, was atleast 1 furlong (200 metres) from the toilet. PW18 could not possibly have seen the accused committing the crime from such a distance. Even the fact that PW18 heard the deceased scream "Appa Beda Appa" or "Father, don't, father" is unbelievable. Whereas, PW16 states in evidence that PW18 told him that the deceased screamed "Ooh I am pregnant please don't do anything to me", thus clearly indicating a discrepancy in PW18's evidence. Finally, PW18's evidence that she was alone when she saw the accused commit the crime is directly contradicted by PW16's

A evidence when he states that at the time of the incident, the toilet would have a queue outside it. Thus, the testimony of PW 18 is not fully reliable and cannot be accepted without corroboration.

7. Ms. Suri further submits that evidence of PW 17 would reveal that a false FIR was registered against the accused merely on suspicion of PW18. Additionally, the FIR was filed by PW18 in consultation with one Rudrappa, a political rival of the accused. This is substantiated by the fact that while the incident occurred at 8 AM, the FIR itself was registered only around 10:30 AM and the inquest held between 11:30PM to 1:30PM. Further, the evidence of PW 18 that the police did not register the FIR at the first instance is directly contradicted by PW 25, who states that the FIR was indeed recorded at the first instance. There is reason to believe that PW18 took time to consult Rudrappa before registration of FIR. The evidence of PW18 is wholly unreliable. The allegations in the FIR registered at the instance of PW18 are based on suspicion and motivated.

8. Ms. Suri further submits that the description of injuries on the deceased's body were lacerated wounds. That was not possible by sickle allegedly used in the commission of crime by the appellant. Further, during cross examination, the doctor who prepared the medical report deposed that such laceration wounds could be caused by a fall on a rough surface. The doctor also deposed that sharp weapon such as sickle generally cause incised wounds but in the present case, the injury was a lacerated wound. An injury caused by a sharp weapon such as a sickle would always be oblique and not perpendicular. Most pertinently, the injury found on the deceased was not mentioned to be an oblique injury. Additionally, the medical report did not find any fingerprints of the accused on the sickle, raising doubt as to whether the said sickle was used at all much less by the accused. Further, PW18 clearly states in her evidence that she did not see any blood stains on the clothes of the accused nor did she herself have any blood stains on her clothes. If the accused had used the sickle to cause injury to Shilpa, then obviously there would have been sprinkling of blood on his clothes but PW18 herself negates this possibility.

9. Ms. Suri further submits that while the serology report discloses blood on the sickle belonging to "B" Group, there is no evidence on record to show that either the victim's blood or the accused's blood was "B" Group. This has not been explained by the prosecution. Further,

after the sickle was seized, the same was sealed by the SHO and signed by PWs12 and 13. There was no mention of distinguishing signs to differentiate the sickle in question from any other sickle. Since PW12 and 13 turned hostile, the only identifying factor left was the seal and the fact that the sickle was kept in proper custody is not established. This too is challenged as the sickle was seized on 3rd October, 2003 but sent to the forensic lab on 16th October, 2003, without a whisper as to its location during the intervening period. Further, the sickle was sent to the lab by an unauthorised person who was not examined. Additionally, the serologist who received the sickle was not examined to prove that the sickle he received was the same one with the SHO's seal on it. After the sickle was sent to PW21 for further examination, PW21 opened the same when he was alone in the OPD and then resealed the same with his personal seal. This personal seal was not identified by the witness during evidence. Thus, the High Court could not have relied on the serology report because the prosecution failed to prove that the sickle identified by PW18 was the same sickle seized by the police. Thus, it could not be proved beyond reasonable doubt that the accused had used the sickle or that the sickle was the instrument used to cause Shilpa's death.

10. Ms. Suri also submits that the clothes of the deceased were seized after the incident but not sealed in the hospital. The clothes were brought to the police station by PW19 and sealed by the inspector, PW25 along with pancha PW14. However, evidence of PW 14 reveals that he did not know the contents of the said panchnama.

11. Ms. Suri submits that the High Court could not have interfered with the judgment of the Sessions Court since the Sessions Court had considered the entire evidence on record. Even if the High Court was of the opinion that two reasonable views were possible from the evidence on record, it has failed to record how the finding of the Sessions Court was untenable.

12. In summation, Ms. Suri submits that evidence of PW 18 should be disregarded. In which case, there is no other direct evidence to establish the involvement of the accused in the commission of the crime. The circumstantial evidence available is weak and the prosecution has failed to complete the chain of circumstantial evidence. The intent of the accused to commit the death of his daughter has not been established beyond reasonable doubt. Thus, the accused cannot be convicted on the

A basis of either the ocular evidence or the circumstantial evidence. Therefore, the High Court judgment must be set aside.

13. In reply Mr. Kamat, submits that the crime in question is a clear case of honour killing and that in ***Vikas Yadav v. State of UP***,[1] this Court has held that strictest punishment must be given in case of honour B killings.

14. Mr. Kamat fairly submits that the case rests on circumstantial evidence. He submits that motive of the accused would be crucial in proving his guilt. There is sufficient material on record to establish that accused had intention to commit the crime. Mr. Kamat pointed out from C the evidence of PW18 that after the marriage of PW16 and Shilpa, the accused never came to meet the couple at the house of PW18 as they belonged to lower caste. Further, the accused repeatedly threatened PW16 and 17 that he would finish his daughter as she had ruined the family name. PW18 would always accompany Shilpa when she went to the toilet as she feared that the accused would make good on his threats. D All this goes to show that there was a clear motive behind the accused's actions. The High Court has found that the accused was frustrated because his daughter abruptly left him to marry PW16. Resultantly, the bottled up emotion and turmoil erupted on the day of the incident. If the accused had not committed the crime, he would not have absconded for E 20 (twenty) days after the incident.

15. Mr. Kamat further submits that the High Court was right in discarding the discrepancy/improvement in the evidence of PW18 of having seen the accused assaulting his daughter. Even if the improvements in PW18's evidence are discarded, the chain of circumstances clearly F establish the link of the accused to the crime. In addition to PW18's evidence, the High Court has relied upon the chain of circumstances including the strong motive of the accused to commit the crime. It is well established that a conviction can be secured on the basis of circumstantial evidence.

G 16. Mr. Kamat further submits that the defence has not challenged PW18's evidence that she saw the accused coming out from the public toilet with a blood stained sickle in his hand and throwing it in the nearby dung pit on seeing PW 18. PW18's evidence that she was just behind the public toilet, near Hanumanthappa's house when she heard Shilpa's

H [1] (2016) 9 SCC 541

screams, has not been challenged. Hanumanthappa's house was behind the public toilet and not at a distance of 1 furlong. Hence, the evidence of PW18, that she heard Shilpa screaming and saw the accused coming out of the toilet with a blood stained sickle, is credible evidence.

17. Mr. Kamat further submits that the defence has failed to challenge PW18's statement that she saw the accused with a sickle in his hand and that he threw it into a nearby dung pit and ran away, which fact is corroborated by retrieval of the blood stained sickle from the dung pit. Even the trial court has accepted the prosecution case, of seizure of blood stained sickle from the spot as proved.

18. Mr. Kamat then refuted the plea of the accused that the nature of wounds inflicted upon the deceased could not have been caused by a sickle. Mr. Kamat took us through the doctor's evidence (PW21) and pointed out the description of external injuries:

> *"1) Lacerated wound on the neck on left side on anterior part measuring about 6 cm x 3 x 3cm., blood was lost, blood vessels and muscles are seen and veins were injured and the blood was lost from the wound.*
>
> *2) Lacerated wound over the left shoulder joint on superior part about 7x3x8cm., no bleeding from the wound.*
>
> *3)Lacerated wound on the right cheek, about 2 cm x 0.5 cm., no bleeding*
>
> *4) Lacerated wound on the right forearm on the lower 13 on lateral aspect about 5cm x 3cm x 2cm., bones and tendon are exposed. Blood was lost from the wound."*

Mr. Kamat submits that in light of the aforesaid statement, it is clear that the injury suffered by the deceased was not a lacerated wound as loosely stated by the doctor but rather a deep and incised wound. Mr. Kamat submits that a lacerated wound can be caused by forceful application of blunt weapon to the body surface or due to fall from a height. In contrast, an incisive wound is caused when soft tissue is struck or pressed by a weapon or instrument having a sharp and pointed edge, resulting in bleeding. In the present case, the evidence clearly shows that the wound was deep and the underlying veins, tendons and bones of the deceased could be seen. That itself is sufficient to prove that the wound inflicted upon the deceased was an incised wound and inflicted by the sickle in

A question. Further, the doctor has deposed that the injuries inflicted by the sickle in question could have caused death of the deceased.

19. Mr. Kamat further submits that the evidence also shows that the blood found on the sickle matched with the blood group on the deceased's clothes. Even if there was no report to prove the blood type B of the deceased, the evidence that the blood on the sickle was the same as that found on Shilpa's clothes proves beyond reasonable doubt that the sickle found in the pit was used in the commission of crime. He submits that the appeal filed by the accused be dismissed and the notice for enhancement of sentence be made absolute.

C 20. We would first deal with the request of the appellant to permit him to withdraw this appeal. We have no hesitation in saying that this Court after hearing the parties and having been prima facie convinced, issued show cause notice to the appellant for enhancement of sentence. In this backdrop, we cannot permit the appellant to withdraw the appeal. We say so because the show cause notice issued to the appellant D (accused) in terms of the order dated 8th September, 2016, will have to be taken to its logical end being substantive proceedings ascribable to the jurisdiction of the Appellate Court under Section 386 or read with Sections 397 and 401 of the Criminal Procedure Code, 1973 (CrPC) and, in this case, plenary jurisdiction of the Supreme Court. The show E cause notice for enhancement of sentence must proceed on the principle underlying the exposition of law in ***Khedu Mohton and Ors Vs. State of Bihar***[2]. In that case, the complainant died during the pendency of appeal against acquittal before the High Court and therefore, it was urged by the accused that the said appeal had abated. This Court rejected that plea of the accused, having found that the appeal abates only on the F death of the accused. The Court then observed that once an appeal against acquittal is entertained by the High Court, it becomes the duty of the High Court to decide the same irrespective of the fact the appellant does not choose to prosecute it or is unable to prosecute it for one reason or the other. Applying the same analogy to a suo motu show cause notice G for enhancement of sentence issued by this Court after hearing both sides, it will be the duty of this Court to decide the same irrespective of the fact the accused does not want to prosecute his appeal against conviction. It may be apposite to also refer to the decision of this Court in ***Deo Narain Mandal v. State of U.P.***[3] In paragraph 5 of the reported

[2] 1970 (2) SCC 450

H [3] 2004 (7) SCC 257 (Para 5)

decision, this Court opined that since notice of enhancement of sentence was issued it is but proper in law that the court should hear the accused on merits of the case also even though the accused had not pressed his appeal on merits before the High Court. In that case, the accused had preferred appeal against reduced conviction before this Court. It is well established position in law that during the hearing of notice for enhancement of sentence, as held by this Court in ***Pilot U.J.S. Chopra Vs. The State of Bombay***[4], the accused will have the right also to show cause against his conviction when showing cause why his sentence should not be enhanced. Realising this position, the counsel for the appellant vehemently argued for acquittal of the appellant.

21. That takes us to the merits of the finding of guilt recorded by the High Court against the appellant. The High Court opined that the conclusion reached by the trial court regarding the sufficiency of evidence against the appellant is founded on flimsy grounds. The High Court, however, analysed the entire evidence afresh and found that even though the prosecution's case would rest solely on the evidence of the sole witness (PW 18), yet considering the other circumstances which corroborate her evidence a finding of guilt against the appellant can be safely recorded. In that, the prosecution has established the circumstance of PW 18 having seen the accused (appellant) coming out of the public toilet with a blood stained sickle and throwing the said sickle in the nearby dung pit after seeing PW18. The High Court held that the evidence of PW 18 was otherwise truthful and credible. Additionally, the High Court has taken into account the evidence about the conduct of the accused and his strong motive to commit the crime, as revealed by the other prosecution witnesses. The High Court also noted that the evidence of blood stains found on the sickle matches with the blood group B found on the clothes worn by the deceased Shilpa, as is substantiated from the serology report. The High Court also took notice of the inquest panchnama (Exh. P-6) proved by PW 25; seizure of articles (Mos. 4 to 6) proved by PW 25; seizure panchnama of sickle (Exh. P8) proved by PWs 18 and 25; seizure of blood stained clothes and pair of Chappals of deceased Shilpa (Ex. P-9) proved by PWs 25, 14 and 19; and the evidence of PW 21 and also PW 25 who proved the panchnama (Exh. 21) regarding showing of sickle to PW21 Dr. Ramasetty.

22. The High Court held that the chain of events and the

[4] 1955 (2) SCR 94 (3 Judges)

A circumstances clearly established the involvement of accused in the commission of crime. The High Court found the evidence of PW18 was truthful and credible to record finding of guilt against the appellant, applying the principle expounded by the Supreme Court in ***Vadivelu Thevar Vs. State of Madras***[5]. The High Court also considered the evidence of PW 21 and the postmortem report to conclude that the

B sickle recovered was used to commit the crime and the injury caused to Shilpa was possible by use of such weapon and resulting in her death. Accordingly, the High Court did not agree with the conclusion of the trial court to acquit the appellant by giving him benefit of doubt. Instead, the High Court recorded finding of guilt against the appellant for the murder

C of his daughter Shilpa (who at the relevant time was in the advanced stage of pregnancy) out of vengeance and frustration. The High Court, however, proceeded to convict the appellant under Section 304 part I of the I.P.C. on the finding that the crime was committed by the appellant who was a frustrated father as his daughter married a boy from the lower caste, which frustration he could not contain and had erupted on

D the day of incident when he assaulted his own daughter. The correctness of this view will be considered a little later.

23. We shall first examine the correctness of the finding of guilt recorded by the High Court. Before that, we must advert to the approach of the trial court in giving benefit of doubt to the appellant. The trial

E court found that the inquest panchanama (Exh.P-6) was proved by PW 25. Even the seizure panchanama (Exh.P-7) regarding articles (Mos. 4 to 6), namely, blood stained earth, plain earth and 6 bangle pieces respectively, is proved by PW25. The seizure panchanama (Exh. P-8) regarding blood stained sickle from the manure pit near the public toilet

F where the dead body of Shilpa was lying, has been proved by PW25 and PW18. The trial court also found that the prosecution has proved the seizure of articles (Mos. 1 to 3) under panchanama (Exh. P-9) of nighty, petty coat and pair of Hawai Chappals respectively found on the dead body of Shilpa. The trial court also found that the sealing of blood stained sickle under (Exh. P-21) and identification thereof by PW 21 has been

G proved by the evidence of PWs 21 and 25. The trial court did not find any infirmity in the prosecution evidence, in particular of PWs 18, 16 and 17, that the appellant was belligerent with his daughter Shilpa for having married to PW 16 and wanted to finish her. The trial court, however, opined that even though all these circumstances were to be

H [5] AIR 1957 SC 614

accepted as proved, even then the same were not sufficient to record a finding of guilt against the appellant. For, the evidence of PW18 was not trustworthy. The trial court noted that PW18 was the sole witness who claimed to have seen the accused coming out of the public toilet with the blood stained sickle in his hand and throwing the same in the nearby dung pit. That evidence, however, was not corroborated by any independent witness. More so, PW18 improved or exaggerated her version by deposing to have actually seen the accused (appellant) assaulting his daughter Shilpa (Daughter-in-law of PW18). On this reasoning, the evidence of PW18 was not accepted by the trial court in its entirety. This approach of the trial court has been found to be flimsy by the High Court. The High Court, however, found that on proper scrutiny of the evidence of PW18 she proved the clinching circumstance against the appellant of having seen him coming out of the public toilet where his daughter Shilpa was found dead, with a blood stained sickle in his hand and throwing that sickle in the nearby dung pit after seeing PW18 and running away from the spot.

24. The moot question, therefore, is whether the approach of the trial court or that of the High Court with reference to evaluation of evidence of PW18 is correct. After having gone through the evidence of PW18, we have no hesitation in accepting the finding of the High Court that the entire version of PW18 cannot be treated as untruthful. Her evidence that she had heard the cries of her daughter in law Shilpa from the public toilet "Appa Beda Appa" and thereafter she saw the accused coming out of the public toilet with a blood stained sickle in his hand and throwing that sickle in the nearby dung pit after seeing PW18 when she asked him to stop and then running away from the spot, is reliable and truthful. There is no tangible reason to doubt this version of PW18. On accepting the same, it would necessarily follow that the accused alone was responsible for the killing of Shilpa, which fact is reinforced by his strong motive to do so. Further, this version of PW18 stands corroborated from the other prosecution evidence including the seizure of blood stained sickle from the spot and the matching of blood group "B" on the sickle and on the clothes of deceased Shilpa. The conclusion reached by the High Court and in particular the finding of guilt against the appellant (accused) is the correct view. We agree with the High Court that the trial court assigned flimsy reason to discard the evidence of PW18 in its entirety. The High Court was also right in applying the principle expounded in the decision of this Court in the case of ***Vadivelu Thevar (Supra)***

A which has held that the prosecution can rest its case on the basis of sole witness in certain situations. The High Court relied on the following observations from the said decision:

> *"(11) In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the Court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that "no particular number of witnesses shall, in any case, be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act 1872, there have been a number of statutes as set out in Sarkar's 'Law of Evidence' – 9th Edition, at pages 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s.134 quoted above. The section enshrines the well recognized maxim that 'Evidence has to be weighed and not counted'. Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused*

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person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) wholly reliable

(2) wholly unreliable

(3) neither wholly reliable nor wholly unreliable.

(12) In the first category of proof, the court should have no difficulty in coming to its conclusion either way – it may convict or may acquit on the testimony of a single witness, it is found to be above reproach or suspicion of interestedness, in competence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But,

A *where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."*

B

In the present case, the evidence of PW18 has been corroborated by other circumstances and prosecution evidence. That leaves no manner of doubt that the accused not only had strong motive to kill his daughter but was responsible for doing so and excludes the probability of someone else being responsible for the death of Shilpa. The counsel for the C appellant no doubt attempted to persuade us to discard the evidence of PW 18 in its entirety, as has been done by the trial court. However, we are not inclined to accept that argument. We find that the view taken by the High Court about the efficacy of evidence of PW18, keeping in mind other proved circumstances and evidence of other prosecution witnesses, D appears to be the only possible view and is the correct approach in the matter. We have no hesitation in rejecting the argument of the appellant to disbelieve the seizure panchnama and recovery of the articles. For, even the trial court has opined that the same have been proved by the prosecution witnesses.

E 25. In view of the external injuries on the body of Shilpa, the trial court opined that it was a case of homicidal death, but gave benefit of doubt to the appellant on the finding that there was no substantive evidence to indicate his complicity in the commission of offence. In that sense, there is no challenge to the finding reached by the trial court that the death of Shilpa was homicidal. Considering the finding of guilt F recorded by the High Court and upheld by us, it must necessarily follow that it is a case of culpable homicide amounting to murder. An attempt was made to challenge the opinion of PW 21, that the injuries cannot be attributed to the sickle recovered from the scene of offence and in any case, the injuries were not inflicted with the intention to cause death of G Shilpa. The High Court has dealt with similar argument advanced before it, but has negatived the same and in our opinion rightly.

26. The High Court has found that the fatal injuries suffered by deceased Shilpa were established from the contents of the postmortem report proved by the doctor (PW 21). Further, PW 21 opined that the H injury found on the body of Shilpa can be attributed to the sickle recovered

from the scene of offence. He has further opined that the injuries were sufficient to cause her death. Although the counsel for the appellant was at pains to persuade us that the description of the injuries by PW 21 were merely lacerated wounds, but on close scrutiny of the inquest panchnama, the postmortem report and the evidence of PW 21, it is evident that the injuries were incised injuries and which resulted in loss of blood due to cutting of veins. Further, the description of the injuries itself shows that bones were exposed because of the injury. That means it was a case of incised wound and not lacerations or superficial injury. The court cannot blindly accept the expression "lacerated", when pitted against the nature and depth of the cut injury as described in the report. The use of sickle during the assault, fortifies the conclusion reached by the Courts below about homicidal death and including that the injuries resulted in instant death of Shilpa.

27. Taking overall view of the matter, we are of the considered opinion that the finding of guilt recorded against the accused (appellant) by the High Court is unexceptionable and does not warrant any interference.

28. The next question is: whether the conviction recorded by the High Court under Section 304 Part I of the IPC can be sustained. The High Court considered that issue in paragraphs 20, 21 and 22 which reads thus:

> *"20. If the Court is convinced about the truth of the prosecution story, conviction has to follow. The question of sentence has to be determined, not with reference to the volume or character of the evidence adduced by the prosecution in support of the prosecution case but with reference to the fact whether there are any extenuating circumstances which can be said to mitigate the enormity of the crime. If the Court is satisfied that there are such mitigating circumstances, only then, it would be justified in imposing the lesser of two sentences provided by law. In other words, nature of the proof has nothing to do with the character of the punishment. The nature of the proof can only bear upon the question of conviction – whether or not the accused has been proved to be guilty. If Court comes to the conclusion that the guilt has been brought home to the accused & conviction follows.*

A

21. In the case on hand, we notice that the accused is a frustrated father. The deceased is none other than his daughter. The father brings up his daughter with all love and affection. But however, one fine morning she leaves him to marry another person. It is no doubt true that every grown up daughter is required to go out of the house after marriage. But however, the way, how it is down or performed is one factor, which is required to be taken into consideration.

B

22. In the case on hand both the deceased as well as PW16 were in love since their school days. She elopes and gets married before a Sub-Registrar. Indeed, any father would certainly be frustrated with such a situation and the emotions and the turmoil, which he undergoes, are bottled up. Thus, we are of the view that all those bottled up emotions have erupted on the day of the incident and he took the extreme step of killing his daughter. We are of the view that the case of the prosecution can be brought under Section 304 Part I of Indian Penal Code."

C

D

From the extracted portion of the impugned judgment, it is evident that the High Court has made no attempt to explain as to how the case on hand would be covered by one of the five exceptions given in Section 300 of IPC. Unless the case falls under one of the specified exception, it cannot be brought under first part or second part of Section 304 of IPC (see ***Harendra Nath Mandal Vs. State of Bihar***[6]). The first exception will be attracted only if it is possible to hold that the accused whilst deprived of the power of self-control by grave and sudden provocation, caused death. From the established facts on record, it is seen that the appellant followed his daughter Shilpa into the women's public toilet of the village and assaulted her. The fatal injuries resulted in her instant death. The first exception, therefore, will have no application. The second exception will be attracted in cases where the accused, in the exercise in good faith of the right of private defence, exceeds the power given to him by law and caused injuries resulting in death of the victim without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence. Even this exception will have no application to the fact situation of the present case. The third exception will be attracted in case of a public servant or

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[6] (1993) 2 SCC 435

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person aiding a public servant acting for the advancement of public justice. This exception has no application to the present case. The fourth exception is attracted when the crime is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Even this exception has no application to the fact situation of the present case. The fifth exception is attracted when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent. Significantly, the defence of the appellant as evinced from his statement under Section 313 of Cr.P.C. is of complete denial and being falsely implicated.

29. Suffice it to observe that none of the exceptions in Section 300 of IPC is attracted in the present case. It would necessarily follow that the accused (appellant) committed murder of his daughter Shilpa who was in the advanced stage of pregnancy and for which he was liable to be punished with either imprisonment for life or death under Section 302 of IPC alone. In the peculiar factual background of this case, we do not find it a fit case to impose death penalty.

30. A fortiori, the appeal preferred by the appellant deserves to be dismissed; and the show cause notice issued by this Court for enhancement of sentence is made absolute – thereby convicting the appellant (accused) for offence punishable under Section 302 of IPC and sentencing him to undergo imprisonment for life.

31. Accordingly, appeal filed by the accused is dismissed and the show cause notice for enhancement of sentence is made absolute by recording conviction of the appellant under Section 302 of IPC and imposing sentence of imprisonment for life.

Kalpana K. Tripathy Appeal dismissed.