Upendra @ Balveer vs State Of U.P. on 25 October, 2024

Author: Siddharth

Bench: Siddharth

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:172173-DB

Reserved On- 23.09.2024

Delivered On-25.10.2024

Case :- CRIMINAL APPEAL No. - 60 of 2011

Appellant :- Upendra @ Balveer

Respondent :- State of U.P.

Counsel for Appellant :- Ajay Sengar,S.P. Lal

Counsel for Respondent :- Govt. Advocate

Hon'ble Siddharth,J.

Hon'ble Syed Qamar Hasan Rizvi,J.

(Delivered by Hon'ble Siddharth,J.)

1. Heard Shri Amar Singh Kashyap, learned counsel for the appellant, Ms. Manju Thakur, learned A.G.A.-I for the State and perused the material on record.

2. The criminal appeal has been filed against the judgment and order dated 21.12.2010, passed by Additional Sessions Judge IIIrd, Jalaun, at Orai, in Sessions Trial No. 128 of 2009, State of U.P. Vs. Upendra @ Balveer and Others. By the said judgment and order, the appellant has been convicted under section 316 IPC for the period of five years rigorous imprisonment alongwith a fine of Rs. 1,000/-. The appellant has been further convicted under section 302 IPC for life imprisonment alongwith fine of Rs. 1,000/-; in default the payment of such fine, for an additional imprisonment of two months.

3. The prosecution case as per F.I.R. is that two years ago, deceased, Deepika, was married to appellant, Balveer, as per Hindu marriage rites. Dowry was given in marriage by the informant as per his capacity, but the husband of deceased, appellant, Balveer, his father, Raj Bahadur and Mother, Smt. Ramkali, were not satisfied with the dowry received in marriage. After marriage, they were demanding one motorcycle, a gold chain and Rs. 1 lakh and send the deceased back to her parental home. After the deceased informed the informant about the conduct of the aforesaid persons, he went to their house and stated that he lacks money to fulfil their demand and after leaving his daughter with them, he came back. They made many phone calls demanding dowry and on 20.05.2009, the aforesaid persons killed his daughter, information whereof was received by the informant on 20.05.2009 at 07:30 p.m. He reached there and lodged the F.I.R. against the accused persons on 21.05.2009 on the basis of written application at 01:00 p.m.

4. Charges were framed against accused under section 498-A, 304-B, 516 of IPC and ¾ of D.P. Act. They pleaded not guilty and sought trial.

5. The prosecution produced the following witnesses to prove the prosecution case:-

> (A). P.W.-1, Pooran Singh, informant and father of the deceased; P.W.-2, Smt. Guddi, mother of the deceased; P.W.-3, Kumari Priti, sister of the deceased; P.W.-4, Anup, uncle of the deceased; P.W.-5, Dr. A.V. Singh, who conducted the autopsy of the dead body of deceased; P.W.-6, Mahesh Chandra Pathak, Naib Tehsildar, who prepared the inquest report of the deceased; P.W.-7, Amar Singh, witness of inquest; P.W.-8, Arun Kumar Sirohi, Investigating Officer of the case; P.W.-9, Ram Kumar Singh, witness of inquest report; P.W.-10, another witness of inquest report; P.W.-11, Raju, another witness of inquest; P.W.-12, Ranveer, also inquest witness; P.W.13, Constable, Ram Bahadur, who registered the F.I.R. before the police station at Madhavgarh, District- Jalaun, and P.W.14-, Yashvant Singh, who noted the information given by Karan Singh, Chowkidar, of the village that Smt. Deepika, resident of Village- Malheta, had died on account of burning on 20.05.2009 and information in this regard was registered in G.D. No. 20 at 04:35 p.m.

6. Thereafter, statements of accused persons were recorded under sections 313 Cr.P.C., wherein they denied the allegations made against them.

7. P.W.-1, Pooran Singh, repeated the contents of the F.I.R. before the court in his examination-in-chief. In his cross-examination, he stated that after marriage his daughter had

separated from her father-in-law, mother-in-law and was residing with her husband, Upendra @ Balveer, the appellant. He further stated that his daughter never informed him about the demand of motorcycle, a gold chain and Rs. 1 lakh. His daughter came to his house 15 days after her marriage and went back to her matrimonial home after 2-4 days. Thereafter, he never went to meet her and only when her death took place, he got information. The matrimonial home of his daughter was a small and kaccha house. His daughter was suffering from the disease of hysteria and while cooking food she accidentally got burned and died. The accused persons have 1 - 1.5 bigha of land. They survive by doing the job of labourer. His daughter was living with her husband separately from her father-in-law and mother-in-law. He had not read the application made at the police station and had only signed the same. The accused persons were so poor that they were unable to demand Rs. 1 lakh and motorcycle. Because of financial problem father-in-law and mother-in-law of his daughter were living separately from the couple. The deceased and her husband used to work as labourers to eek-out their living. He was in a state of shock and crying when his signatures were taken on the application. Later, he came to know that the F.I.R. has been lodged on false allegations. He requested the police personnels in this regard, but they said, now nothing can be done. He should get it corrected from the Court.

8. P.W.-2, mother of the deceased, also did not supported the prosecution case at all and was declared hostile. In her cross-examination, she admitted that her daughter was suffering from disease of hysteria and used to run towards the fire. She might have got burned while cooking food after suffering the fit of hysteria.

9. P.W.-3 and P.W.-4 also deposed accordingly and were declared hostile.

10. P.W.-5, Dr. A.V. Singh, proved that on 21.05.2009, he was posted in District Hospital, Orai, on the post of Physician. He conducted the post mortem of the dead body of the deceased alongwith Dr. Madan Lal. In the post mortem superficial to deep burns were found present all over the body (100%) of deceased. Sealed bundle of seven articles were provided by the police wherein one piece of cloth, which was found inside the mouth of the deceased was also there apart from other burned clothes and jewellery found on the body of the deceased. Carbon particles were found in her bronchi.

11. P.W.-6, proved that he prepared the inquest report of the dead body of the deceased. He also proved the samples of the earth taken by the investigating officer, challan of dead body and documents prepared for sending dead body to post mortem house. He further proved that he found a kerosene lamp and matchstick box near the dead body. All the matchsticks in the box were burnt. The kerosene lamp was found at about 2 feet distance from the dead body of the deceased. There was a chappar nearby which was not burnt. He found cloth inside the mouth of the deceased. He stated that he did not took out cloth inside the mouth of the deceased in his possession hoping that it will come in the post mortem report.

12. P.W.-7, witness of inquest proceedings, stated that number of villagers had gathered after the incident. The mouth of the deceased was open and flies were going inside her mouth. On the direction of the people gathered there, the ladies had put a piece of cloth over mouth of the deceased to cover it so that the flies may be prevented from entering insider her mouth.

13. P.W.-8, Arun Kumar, Sirohi, Investigating Officer of the case, proved the proceedings of investigation conducted by him including the recording of the statements of the witnesses.

14. P.W.-9, proved that he had seen the dead body of the deceased. She was lying with her face towards the sky. Flies were sitting on her mouth. There was nothing in her mouth before he reached the place of incident. In cross-examination, he admitted that deceased had no grievance against her father-in-law and mother-in-law, who were living separately from the couple.

15. P.W.-10, another inquest witness, proved that he did not went near the dead body of the deceased because of the crowd of women. He further proved that the father and mother of appellant, Balveer, did not lived with the couple.

16. P.W.-11, also stated that he did not saw the dead body of the deceased. He only signed on the inquest report prepared by the Tehsildar and Inspector of Police. He also proved that the father and mother of the appellant used to reside separately from the couple.

17. P.W.-12, proved that at the time of inquest husband of deceased, her father-in-law and mother-law were present in the house. Later he came to know that she got burnt while cooking food. He further admitted that the father and mother of the appellant used to cook their food separately from the couple. The deceased died while cooking food at about 01:30 p.m.

18. P.W.-13 and P.W.-14, are formal witnesses, who proved the lodging of F.I.R. and receipt of information of the death of the deceased at police station.

19. The accused persons in their statements recorded under section 313 Cr.P.C., clearly stated that they have been falsely implicated. No incident as alleged took place. It was a case of accident and not a case dowry death. The trial court by the impugned judgment and order acquitted Raj Bahadur and Smt. Ram Kali, the father-in-law and mother-in-law of the deceased, but convicted the appellant her husband, under sections 316 and 302 IPC.

20. After hearing the rival submissions, this Court finds that the Naib Tehsildar, P.W.-6, has deposed before the court that he saw the cloth in the mouth of the deceased, but he did not took it out hoping that it shall be seen at the time of post mortem. P.W.-5, Dr. A.V. Singh, did not found any cloth in the mouth of the deceased rather a piece of cloth was found in the bundle of articles produced by the police before the P.W.-5, the doctor. There is no statement of P.W.-5 proving that any cloth was found, inserted inside the mouth of the deceased at the time of post mortem. P.W.-6, further stated in his statement that where the dead body of the deceased was lying there were no signs of burning. There was kitchen inside the chappar (thatched roof) besides the dead body of the deceased. P.W.7 and P.W.-9 have clearly stated that the mouth of the deceased was open and flies were entering inside her mouth, therefore, the ladies of the village put a cloth on her mouth to cover the same and to prevent the flies from entering into her mouth. P.W.-9 clearly stated that there was nothing inside the mouth of the deceased. P.W.12, a neighbour of the deceased, clearly stated that the deceased got burnt while cooking food at about 01:30 p.m,. From the prosecution evidence, the charges under section 498-A / 304-B and ¾ D.P. Act could not be proved, but the trial court has

convicted the appellant for committing the offences under section 302 and 316 IPC because two months old fetus was found inside the womb of the deceased. The trial court has convicted the appellant on the basis of section 106 of the Indian Evidence Act, on the premise that since the deceased was residing with the appellant, he was required to prove how the alleged incident took place.

21. As far as the concept of Section 106 of Indian Evidence Act is concerned, that is misread by the learned trial Judge because when the offence like murder is committed in secrecy inside the house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of Section 106 Indian Evidence Act, there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quite and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution. Initial burden of proving that, as on the date of the alleged incident, the accused was present in the house or lastly seen with the deceased or that he was lastly in the company of the deceased at the time of the incident would be primarily upon the prosecution.

22. This High Court in the case of Santosh Vs. State of U.P. 2021 0 Supreme (All) 173, has discussed the law relating to Section 106 of Indian Evidence Act, which is quoted herein below:-

> "35. Recently, this Court in Dharmendra Rajbhar Vs. State of U.P. (Supra) in similar situation has considered legal position as far as Section 106 of the Act, 1872 is concerned. We do not want to burden our judgment with reproduction of the said findings and analysis except para 40 of the said judgment wherein the Court has held as under:-
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> "40. Section 101 to Section 114A of Chapter-VII of the Indian Evidence Act, 1872 deal with subject "OF THE BURDEN OF PROOF." Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proof to prove that fact is upon him. Section 106 is an exception to Section 101 of the Evidence Act which stipulates that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. Section 106 of the evidence act has to be read in conjunction with and not in derogation of Section 101 Evidence Act. Section 106 of the Indian Evidence Act does not relieve prosecution of it's primary and foremost duty to establish the guilt of the accused beyond all reasonable doubts independent of weaknesses of the defence. It is only when prosecution, for well perceptible and acceptable reasons, is unable to lead evidence because of circumstances beyond it's control including the reason that the fact required to be proved was "within the special knowledge of an accused alone" and prosecution could not have known it by due care and diligence, that Section 106 can be resorted to by shifting burden on the accused to disclose that fact which is "in his special knowledge" and if accused fails to offer any reasonable explanation to satiate judicial inquisitive scrutiny, he is liable to be punished. Section 106 is not meant to be

> utilized to make up for the prosecution's inability to establish its case by leading, cogent and reliable evidence."

23. In our case, it is established fact that the appellant and his deceased wife used to reside in same house. Hence, the burden to prove factum of the death of the deceased cannot be shifted on the shoulders of the appellant unless the prosecution first of all discharged its burden by proving the fact that at the time of alleged occurrence or at the time when the deceased was put on fire, the appellant was also inside the house. Learned AGA, in this regard, has contended that appellant has not taken the plea that he was not in the house when the incident took place but this was the negative burden on the appellant accused. The prosecution has not brought forward any evidence which could at least establish the fact that at the time of occurrence, the appellant was inside the house. Hence, there is no applicability of Section 106 of Indian Evidence Act in this case.

24. Another aspect of the case is that the appellant was charged under sections 498-A, 304-B , 316 IPC and ¾ of D.P. Act, by the trial court, but the trial court has not found the charges under sections 498-A, 304-B and ¾ of D.P. Act proved against the appellant, but has convicted the appellant under section 302 and 316 IPC.

25. This Court finds that the appellant and also the acquitted accused were not questioned regarding commission of offence of murder of the deceased in their examination under section 313 Cr.P.C. The charge was altered only at the time of judgment. Therefore, the accused were not put to notice and opportunity of hearing regarding the altered charge under section 302 IPC. There is no doubt about the power of the trial court of altering of charge at any stage, but it cannot be done in a manner which is prejudicial to the interest of the accused. This Court in the case of Ramayan(Appellant) Vs. State of U.P., (Respondent), passed in Jail Appeal No. 6157 of 2016, had considered this aspect as follows:-

> "16. Learned counsel for the appellant has contended that the charge could not have been altered in the fashion and in the manner in which it has been done which has acted prejudicial to the appellant herein and learned counsel has relied on the decision in R. Rachaiah Vs. Home Secretary, 2016 0 Supreme (SC) 383 and decision of this Court in Criminal Appeal No.234 of 2017 (Dharmendra Rajbhar Vs. State of U.P.), decided on 19.1.2021 so as to contend that accused requires to be given benefit of doubt as the prosecution has failed to prove the circumstances connecting accused to death of deceased.
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> 17. Learned counsel for the State has vehemently submitted that the burden of proof has been shifted on the accused as per Section 106 of the Evidence Act, 1872 as the death was unnatural and at the dwelling place of husband.
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> 18. Investigation of the case had taken place and the charge-sheet was laid under Section 498A, 306 of IPC but as we can see, convicted the accused under Section 302 of IPC after altering the charge.

19. It is further submitted by learned counsel for the appellant that once Trial Court came to the conclusion that no offence was committed under Section 498A of IPC, the presumption under Section 113-B of Evidence Act, 1872 could not be raised.

20. It would be pertinent to reproduce Section 216 of Cr.P.C. regarding alteration of charge which reads as follows:

"216. Court may alter charge.

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

21. The question which arises before us is that when no cogent evidence to convict the accused despite that the learned Judge has relied on what can be said to be his own conjectures which are not borne out even on interpretation of Section 106 of the Evidence Act, 1872 (hereinafter referred to as 'Act, 1872') which reads as follows:

"106. Burden of proving fact especially within knowledge.--When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

21. Section 113B and 114 of the Act, 1872 reads as follows:

".1[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).]."

114. Court may presume existence of certain facts. --The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

22. Provisions of Section 106 and 114 of Act, 1872 were raised by the learned Judge below but oral and other reliable evidence would not permit this Court to raise such presumption as the said presumption is rebuttable. The fact that the deceased died in the matrimonial home is not in dispute but whether it was accused who authored the act which would fulfill the ingredients of Section 300 of IPC and whether it would fall within its purview, such presumption cannot take place of proof. The learned judge with utmost respect could not have convicted the accused under Section 302 of I.P.C. on evidence which was not laid or rather the evidence which was led, was never put to him under Section 313 of Cr.P.C statement and, therefore, he was taken off guard. The presumption under Section 106 of Act, 1872 will not also come to the aid of the prosecution as it was not proved beyond reasonable doubt that the charge which was added did not even mention the satisfaction of the learned Judge below and the conviction was not from major to minor but was from minor to major offence.

23. The submission of learned A.G.A. is that no objection was raised at the time of alteration of charge.

24. We may hasten to mention here that the charge was added at the fag end of the trial. The accused could not have thought that the said alteration of charge would be acted upon within seven days and the trial would culminate into returning the finding of punishment to him under Section 302 of IPC though the evidence was not completing the right of 1872, Act.

25. In our case, we can safely hold that the alteration of charge was bad and reliance is placed on the decision in R. Rachaiah (Supra) which will apply in full force.

26. In judging the question of prejudice as of guilt, the Trial Court was supposed to act with a broad vision and look to the substance and not to the technicalities. The main concern should be to see

whether accused has/had a fair trial though he may know or not of what he was being tried for, once the evidence is over, he would not have a fair chance of cross-examination of the witnesses for the new charge added which is under Section 302 of I.P.C. and no evidence was recorded so as to bring home charge of Section 302 of IPC. No doubt the stage of framing new charge under Section 216 of the Cr.P.C. can be at any stage, but the charge for alteration or addition has to be so that the accused is put to circumstance which are against him. The basic feature for framing and/or altering charge in criminal trial is based on principle of fair play.

27. The charges which were levelled and in absence of any evidence, being proved and when there was no charge of murder, the Trial Court could not have altered the charge at the fag end of the Trial and raised presumption as to commission of offence under Section 302 of IPC.

28. The object and scope of altering the charge and the principles therein have been summarized by the Apex Court in Nallapareddi Sridhar Reddy Vs. State of A.P., (2020) 12 SCC 467, which are applicable in our case.

29. In this case, the learned Trial Judge perused the charges and suddenly after most of the witnesses were examined and when it appeared that he could not base the conviction, on the basis of presumption under Section 106 and 114 of the Evidence Act, 1872, he altered the charge to Section 302 of I.P.C.

30. The Apex Court in R. Rachaiah Vs. Home Secretary, 2016 0 Supreme (SC) 383 has held that alteration of charge in violation of mandate as per Sections 216 and 217 of Cr.P.C., and conviction recorded under altered charges seriously causes prejudice to the accused. Thereafter, this impropriety of the Trial Court stands vitiated and there could have been no conviction under altered charge namely under Section 302 of IPC."

26. We can safely conclude that accused-appellant was not given opportunity to defend himself against the charge for which he was convicted. It is sorry state of affair that learned trial judge altered the charge even after recording the statement of accused-appellant under Section 313 Cr.P.C., therefore, the charge was fitted according to the prosecution evidence. There is no doubt that charge can be altered at any stage of the trial but in such a case, the learned trial court should give proper and fair opportunity to the accused to defend himself against the altered charge so that his interest may not be prejudiced. He must get the opportunity of fair trial.

27. In our case, accused is highly prejudiced for not getting the fair and proper opportunity to defend himself against the altered charge and the impugned judgment and order is liable to be set aside.

28. In this case, we find that none of the prosecution witnesses of fact supported the prosecution case at all. They admitted it to be case of accident. P.W.-1, clearly admitted that accused were so poor that the demand of Rs. 1 lakh, one gold chain and a motorcycle was not for them to make. Yet the trial court convicted the appellant disregarding evidence on record and on wrong appreciation of relevant law, but rightly acquitted the father and mother of appellant of all charges.

29. In view of above, we are of the firm view that the judgment and order of the trial court cannot be sustained and is hereby set aside.

30. The appellant has already undergone about 13 years of imprisonment before being released on bail on 21.10.2022 for no fault on his part for which he is entitled to heavy compensation from State, but due lack of statutory framework, we are helpless.

31. For the hundreds of innocent persons, who are wrongfully prosecuted but later acquitted after years, our justice delivery system takes little pains to make amends. True that under the public law remedy, some isolated adjudications came by way of writ jurisdiction, but it failed to shape a set formula for development of this branch of compensation jurisdiction. Article 21 of the Constitution says, `no person shall be deprived of his life and personal liberty except in accordance with procedure established by law'. The loss of productive years of life, feeling of loss of freedom, the negation by society, damage to identity, dignity, and reputation, shame, fear etc. cause multiple psychic disorders for this hapless lot. The damage to health, loss of income, loss of property, litigation expenses, loss of family life, loss of opportunities for education and career progression, stigmatization etc., add to this horrible count. Above all, the emotional and physiological harm caused to the family of accused takes unimaginable proportions given the stigma carried forward for generations. Instances are not rare where marriage proposals get turned down for incarceration of kindred even in the ancestral line. True that at times, positive overtures in constitutional jurisdictions have addressed this issue. But still now no concrete judicial mechanism to have uniform application in cases of wrongful prosecution took shape in our jurisprudence to do some reparation.

The Delhi High Court in Babloo Chauhan @ Dabloo V. State Government of NCT 247 (2018) DLT 31 directed the Law Commission to undertake a comprehensive examination of the issue of wrongful prosecution and suggest a mechanism for compensation and rehabilitation of victims of wrongful prosecution.

32. The Law Commission in its 277th Report recommended for a legal and statutory frame work for establishing a mechanism for adjudicating up on claims for wrongful prosecutions. Commission proposes a statutory obligation on the State to compensate the victims of wrongful prosecution with the right to be indemnified by the erring officers. The proposal for establishment of special courts for speedy disposal of claims for compensation is another notable suggestion by the Commission. A Draft Bill containing amendments to Code of criminal Procedure was annexed with the Report. The Bill seeks to incorporate definitions to `malicious prosecution' and `wrongful prosecutions', in addition to insertion of Chapter XXVII A containing procedural rules for laying claims. The definition of malicious prosecution as an "act of instituting the prosecution complained of without any existing reasonable or probable cause", to a great extent dissuades police over zeal in sponsored prosecutions. The all-encompassing narration of misdeeds constituting the act of 'wrongful prosecution' in the definition clause in the Bill is sufficient to ward off ambiguity in any form and provide clear pointers to the adjudicatory authority in deciding on the claim for compensation for wrongful prosecution. Making false or incorrect record or document, making false statement before officer authorized to take evidence, giving false evidence, fabricating false evidence, suppression of

exculpatory evidence, filing a false charge, committing a person to confinement etc. are instances of inculpatory misdemeanours leading to a wrongful prosecution, which fortunately find a distinctive place in the exhaustive definition given to 'wrongful prosecution' in the Draft Bill.

33. Commission has considered Article 14(6) of the International Covenant on Civil and Political Rights 1966 (ICCPR) delineates the obligation of States in cases of miscarriage of justice resulting from wrongful prosecutions. It says "when a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new and newly-discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him." Article 9(5) of the ICCPR further underscores this right by declaring that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". The United Nations Human Rights Committee explained the obligations contained in Article 14 of ICCPR: "It is necessary that States parties enact legislation ensuring that compensation as required by this provision can in fact be paid and that payment is made within a reasonable period of time." As nearly as 168 State parties, including India, have ratified ICCPR. But the incorporation of this international obligation into domestic legal frame work has been done only by a few countries.

34. Criminal Justice Act 1988 is the statute in England following ratification of ICCPR by the United Kingdom. Sections 133, 133A, 133B of the Act, in its combined synergy, provide for creation of a mechanism under the Secretary of State for determination and disbursement of compensation to victims of miscarriage of justice. A person who has suffered imprisonment consequent to wrongful conviction can approach the Secretary of State for Compensation if conviction is reversed or pardoned on the ground of miscarriage of justice. The emergence of a new fact proving beyond reasonable doubt that the person has not committed the offence was the expanded version and norm for `miscarriage of justice' under the UK Law. But in 2011, in R (on the application of Adams) V. Secretary of State for Justice, the UK Supreme Court widened the scope of 'miscarriage of justice and the notion of innocence', by ruling that even those who cannot prove innocence beyond reasonable doubt also can lay claim for compensation. The Criminal Cases Review Commission (CCRC) working in the UK undertakes the exercise of review of the cases with possibility of miscarriage of justice working in the criminal courts in the UK. It can gather field information related to a case and carry out its own investigation for finding out the real truth in a pending case or a disposed case and accordingly apply for review of conviction, if miscarriage is found out. The UK Police Act 1996 makes the Chief Officer of Police liable in respect of any unlawful conduct of constables under his direction and control in the performance of functions, with clauses for payment of compensation. The distinguishing feature of UK compensation regime is that it fixes a compensation slab taking periods of imprisonment as bench marks to do full justice according to variables.

35. The United States Code deals with federal claims from persons unjustly convicted of an offence against the United States and imprisoned. Claimant is eligible for relief on grounds of pardon for innocence, reversal of conviction or of not being found guilty at a new trial or rehearing. The US

Court of Federal Claims is the adjudicatory forum under the statute. The length of incarceration is the yardstick or variable for the determination of compensation. All States in the US have their State laws providing for compensation to victims of wrongful prosecution. While some States lay down fixed amount of compensation to be paid depending on period of incarceration, others have given discretion to the forum to decide compensation based on individual fact dossiers. In the State of Illinois, a tabular compensation formula based on period of incarceration is adopted. Non-monetary compensation is given for assisting victims in rehabilitation and reintegration into the society including transitional services like housing assistance, job training, assistance in terms of job search and placement services, referral to employees with job openings, physical and mental health services for enabling victims to reintegrate into society. Other Common Wealth countries like Canada, New Zealand and Australia have infused ICCPR treaty obligations for compensation into their domestic jurisprudence by appropriate legislations.

36. In the absence of clear statutory frame work in consonance with the commitments under ICCPR, the Indian courts have paraphrased in its numerous decisions what actually is miscarriage of justice resulting from wrongful prosecution, particularly in its constitutional remedy jurisdictions. Right to fair trial, an attribute of Article 21 of the Constitution, is the barometer for its forensic evaluation of wrongful prosecution. Journey from the Maneka Gandhi AIR 1978 SC 597 case to S Nambi Narayanan v. Siby Mathews & others AIR 2018 SC 5112 marks the evolution of jurisprudence on violation of fundamental rights, particularly compensation for wrongful prosecutions. The apex court as early as in 1983, while ordering compensation for illegal detention, observed in Rudul Shah vs State of Bihar 1983 AIR 1086: "one of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation." Bhim Singh v. State of J&KAIR 1986 SC 494 was another case in the episodic judgments followed in the compensation jurisdiction, where for an illegal arrest and detention the Supreme Court awarded , 50,000 as compensation to the sufferer. Nilabati Behera v. State of Orissa 1993 AIR 1960 underlined the principle that sovereign immunity is not available in an action for compensation for violation of fundamental rights, where the adjudication is under Article 32 and 226 of the Constitution. Consumer Education and Research Center & others V. Union of India reiterated the above principle. However, Supreme Court rejected the plea for compensation for the accused who were in jail for a decade and more but were subsequently acquitted in Sulemenbhai Ajmeri & Ors. V. State of Gujarat, 2014 SCC 716 popularly called, Akshardham Temple Case.

37. Private Law Remedy for the tort of malicious prosecution is not an effective remedy for victims for the inherent improbability in its successful finale. Given the tardy pace of civil litigation and the expenses like court fees and other litigation costs involved, private law remedy sounds not meaningful and user friendly for the victims.

38. Police Officers knowingly framing a person disregarding any direction of law, [Section 166 Indian Penal Code (IPC)] knowingly disobeying any direction of law regarding investigation [Section 166A(b)], framing or preparing documents to cause injury to any person (Section 167 IPC) invite criminal liability under Indian Penal Code. Chapter XI of the IPC contains punishments for various offences affecting administration of justice. Every event of a wrongful prosecution takes within its

act of commission various prosecutorial misdeeds like fabricating false evidence, (Section 193 IPC) giving false evidence (Section 191 IPC), giving false information as to the commission of offence (Section 203 IPC), destruction of exculpatory evidence (Section 204 IPC), malicious prosecution (Section 211 of IPC), corruptly or maliciously filing report (Section 219 of IPC), maliciously confining person (Section 220 IPC) etc. Any possible act contributing to a wrongful prosecution can be dealt with on the criminal side for securing the conviction of erring state officials and private complainants launching malicious prosecutions as well. This enumeration of culpable conducts in Chapter IX and XI of IPC can be a handy indicia for constitutional courts and other civil courts to decide as to how a wrongful prosecution happens particularly in the context of deviation from the direction of laws relating to investigation, enquiry and trial.

39. Instead of creation of special courts to deal with claim for compensation as mooted by the Law Commission, pragmatism and convenience demand that the task may be done by the court acquitting the accused, be it trial, appellate or revisional court. Like the provision for compensation to victims of crime (Sections 357 and 357 A Code of Criminal Procedure/ or corresponding section 395 B.N.S.S. and 396 B.N.S.S), an empowering clause can be conferred on the court acquitting the accused, to decide on claims for compensation in a summary and speedy manner.

40. A false accusation and the trauma that follows are imponderable events for any law court to compensate in terms of money. A virtual death occurs to the personhood of the individual arraigned in the process making it impossible for him to come back to ordinary life with order of acquittal. The lost years of free life cannot be given back to or re-enacted to please him. He and his family suffer for the cause of administration of criminal justice. Cash for casualty has little role to purge the sovereign of this unpardonable sin.

41. Considerable amount of public money, time and efforts of number of persons are consumed in preparation and submission of reports by Law Commissions. The government rarely accepts recommendations of Law Commissions. The data on record shows that only about 1/3rd of such reports have been only accepted by the Government. The 277th Report of Law Commission ought to have been accepted by the Government since the trial courts often convict accused in case of heinous offences due to fear of higher courts even in is clear cases of acquittal. They are fearful of wrath of the higher courts in such cases and only to save their personal reputation and carrier prospects such judgment and order of conviction are passed. This unfortunate side of our system was considered by this court in Criminal Appeal No. 6367 of 2010 (Virendra Singh and Others Vs. State of U.P and Others) decided on 12.09.2024. In such cases innocent individuals are subjected to trauma of unwanted incarceration in jail for number of years before their bail applications are allowed or their criminal appeals are decided by the High Court/Supreme Court. If ultimately they are acquitted, they find themselves unfit in their family and society, their place in the family gets filled by other members of the family, property is usurped by the other family members and they are seldom seen as a welcome member in the family after being in long incarceration in jail. The State can provide some pecuniary compensation to such accused which may provide them some solace and they would not be seen as a burden on their family after being acquitted of the unfounded charges levelled against them. The family of such persons also goes through the time and money consuming process of contesting trial, which is so tedious that it itself is not less than a major punishment. Sometimes

the family looses all its means of survival in defending its near and dear one in courts at different level.

42. As yet the government has not implemented the recommendations of 277th report of Law Commission hence violation of Articles 14 and 21 of the Constitution of India for wrongly prosecuted and punished would continue unabated. Even in the much hyped Bhartiya Nagrik Suraksha Sanhita, 2023 there is nothing in consonance with Articles 14 and 21 of the Constitution of India for such unfortunate ones.

43. The Court has no other option but to simply allow this criminal appeal, having set aside the judgment and order of trial court earlier.

44. The criminal appeal is allowed.

45. The appellant is on bail. His bail bond is cancelled and sureties are discharged.

46. Let the record of trial court be returned and this judgment be notified to the trial court within two weeks.

Order Date :- 25.10.2024 Abhishek