

HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

Criminal Appeal No.1580/2009

Chandresh Marskole

Vs.

The State of Madhya Pradesh

Counsel for the Appellant: Mr. H.R. Naidu, Ld. Adv.

Counsel for the Respondent: Mr. Piyush Bhatnagar,
State Ld. Panel Lawyer

Corum: **Hon'ble Mr. Justice Atul Sreedharan and
Hon'ble Ms. Justice Sunita Yadav**

J U D G M E N T

(Jabalpur, Dated: 04/05/2022)

Per: Atul Sreedharan, J:

The Appellant Chandresh Marskole, has filed this appeal aggrieved by the judgment and conviction dated 31/07/2009, passed in Sessions Trial No.06/2009 by the learned 8th Additional Sessions Judge, Bhopal, by which, the Appellant was found guilty of an offence U/s.302 of the I.P.C and sentenced to suffer rigorous

imprisonment for life. A fine of Rs.5000/- was also imposed upon him, which was deposited by the Appellant vide receipt No.59, book No.10430 on 31/07/2009 itself. He was also found guilty of an offence U/s.201 of the I.P.C and was convicted and sentenced to suffer rigorous imprisonment for a term of three years for the said offence.

For reasons given in this judgement, the case reveals a sordid saga of manipulative and preconceived investigation followed by a malicious prosecution, where the police have investigated the case with the sole purpose of falsely implicating the Appellant and perhaps, deliberately protecting a prosecution witness who may have been the actual culprit.

PROSECUTION'S CASE IN BRIEF:

2. The case is entirely pivoted on circumstantial evidence. There are no eye-witnesses to the alleged murder. There is, however, an alleged eye-witness Ram Prasad (PW-9), to the disposal of the body of the deceased, by the Appellant. The deceased is a girl named Shruti Hill. The Appellant was allegedly in a relationship with her and is alleged to have murdered and disposed of

her body. The motive for the crime has not been established.

3. On 19/08/08, the Appellant is alleged to have borrowed the Toyota Qualis vehicle, bearing No. MP04 HB 1550 belonging to Dr. Hemant Verma (hereinafter referred to as PW1), to go to Hoshangabad for some urgent work. PW1, is a Senior Resident at the Gandhi Medical College, attached to the Hamidia Hospital at Bhopal. The Appellant, at the material point of time was a student of M.B.B.S studying in the fourth (final) year and staying in room No.61 in "B" Block of the boy's hostel of Gandhi Medical College, Bhopal. PW1, though initially hesitant, gave in to the Appellant's request when he persisted. PW1 rang up his driver Ram Prasad (hereinafter referred to as PW9) and asked him to take the Appellant to Hoshangabad. Thereafter, the Appellant is said to have spoken to PW9 and asked him to get the vehicle to Boys Hostel "B" Block. Around 11.45 AM of 19/09/08, the Appellant is said to have met PW9 and introduced himself and brought a bedding from his room, which was placed in the dickey of the car and they commenced their journey towards Hoshangabad.

4. At around 12.10 p.m., when the vehicle reached Budhni Ghat, the Appellant is stated to have told PW9 to take the vehicle towards Pachmarhi. On the way to Pachmarhi, they stopped at Pipariya, had a cup of tea. When the vehicle reached near “Denwa Darshan Mazhar”, the Appellant told PW9 to stop the vehicle. The time was around 4.45 PM. The driver says that he went about two hundred and fifty feet away from the car to answer nature’s call, when he suddenly heard a “thud” sound and rushed towards the vehicle and found that the dickey of the vehicle was open and the bedding was missing. PW9 further says that he saw the Appellant standing near the railing just before the ravine and after that, the Appellant is stated to have told PW9 to proceed towards Pachmarhi.
5. At the *Nandan Dhaba Crossing* in Pachmarhi, the Appellant is alleged to have got down from the vehicle to speak to a boy. The conversation between the Appellant and that boy lasted for a minute and after that, the Appellant came to the car and told PW9 that the work for which the Appellant had come to Pachmarhi could not be done and asked PW9 to take the Appellant back to Bhopal.

6. PW9 says that they returned to Bhopal by 10.00 p.m. Thereafter, attempts were made by PW9 to contact PW1, but he was not available to take the call on 19/09/08.
7. In the evening of 20/09/08, PW9 met PW1 and informed him about what had happened the previous day and Dr. Hemant Verma (PW1) told Ram Prasad (PW9) not to tell anyone about the happenings of the previous day and that he (PW1) would inform the Police. In short, the case of the prosecution is that the Appellant committed the murder of the deceased and disposed of the dead body in the ravine at Pachmarhi, wrapped in the bedding, to avoid the discovery of the crime.

Submissions of Mr. H. R. Naidu, Ld. Adv for the Appellant

8. Learned counsel for the Appellant has commenced his arguments with grave allegations against the police and PW1 Dr. Hemant Verma. According to him, the Appellant has been falsely implicated by PW1 who, the learned counsel for the Appellant says, has close contacts with the higher echelons of the police establishment. He further says that the case, as he shall unfold before this court, reveals that PW1 Dr. Hemant Verma is the probable perpetrator of the crime

who committed the murder of the deceased and got the Appellant falsely implicated to save himself. The two crucial witnesses in this case are PW1 Dr. Hemant Verma and PW9 Ram Prasad, the driver of PW1.

9. The Ld. Counsel for the Appellant has drawn the attention of this court to Ex.P1, which is the first document in this case which has triggered the investigation. This is a letter which is addressed to I.G. Bhopal Range, through the SHO Kohefiza, Bhopal. The nature and contents of this document is such that it deserves to be reproduced in its entirety. The letter is dated 20/09/08, addressed to the Inspector General of Police, Bhopal Range, through SHO, P.S Koh-I-Fiza.

“Subject: Intimation regarding murder

Sir,

Chandresh Maskole, student of Final Year MBBS, resident of Room No.61, B Block Hostel, JMC, had come to borrow my personal car Qualis bearing No.MP-04-HB-1550 yesterday i.e., 19.9.2008 on account of a sudden requirement to go to

Hoshangabad. Upon my refusal, he implored with me and so I let him take the vehicle with my driver at 12:00 p.m. He had taken a bedding from the hostel and according to the driver Ram Prasad, when the vehicle reached near Budhni, the driver was told to take the vehicle towards Pachmarhi and in the jungle of Pachmarhi, he asked the driver to stop the vehicle and when the driver went to answer nature's call, a short distance away, he took the bedding out from the vehicle and threw it into the ravine, which bedding was heavy. He brought the vehicle back at 10:00 p.m. and according to the driver, the circumstances are suspicious. The student was in a relationship for quite some time with a girl from Pachmarhi who used to visit him in the boys' hostel and had spent the night also there. As I had to suddenly go out and when I returned in the evening my driver informed me and so I am giving the complete information to the police so that the

correct position can be unearthed, and the process of justice is assisted in dispensing justice and the murderer is not able to hoodwink the process of justice.” (Emphasis on “heavy” and “murderer” has been added by us, the relevance of which we shall discuss at a later point in this judgement)”.The original letter (Ex.P1) is in Hindi.

10. Ld. Counsel for the Appellant refers to the testimony of PW1 recorded before the learned trial court on 28/01/09. In examination-in-chief, the witness says that on 19/02/08 (apparently a typographical error and the same is to be read as 19/09/08) he was in the medical emergency Ward No.2 of Hamidia Hospital, Bhopal, as Senior Resident. The Appellant, a student at the Gandhi Medical College, was residing in B Block of the Boys' Hostel. In the morning of 19/09/08, between 10:00 and 10:30 AM, the Appellant approached PW1 and requested him to let the Appellant borrow his vehicle as he had to go to Hoshangabad. PW1 says that initially he refused, but on account of the Appellant's persistence, he gave in and asked his driver Ram Prasad (PW9), to take the Appellant to Hoshangabad. He further

states that the Appellant and the driver went away in the said vehicle and he (PW1), on account of some domestic work, went to Indore and returned in the morning of the next day i.e., 20/09/08 between 5:00 and 6:00 AM

11. The Ld. Counsel for the Appellant has submitted that police never interrogated PW1 as to what was the domestic work for which he went to Indore on 19/09/08, where he stayed in Indore and what was the mode of transport by which he went to Indore and whom he met there? He further states that police never questioned PW1 that if he had to go to Indore on 19/09/08, then why did he let the Appellant borrow his vehicle with driver to go to Hoshangabad? He further says that the Appellant and PW1 had a very strained relationship on account of campus politics, and it was unthinkable that the Appellant would want to borrow the vehicle of PW1 with whom his relations were inimical. According to the Ld. Counsel for the Appellant, the police deliberately did not investigate into the absence of PW1 from Bhopal on 19/09/08 and neither did they ascertain if PW1 actually went to Indore on 19/09/08 or did he go somewhere else?

- 12.** PW1 further states, that after relaxing for a while he went and joined his duties. When he returned from his duty between 3:00 and 4:00 PM, he met his driver Ram Prasad (PW9) at the hostel who informed him that the Appellant, instead of going to Hoshangabad, had gone to Pachmarhi and when the vehicle was passing a place near Pachmarhi called “Denva Darshan”, the Appellant asked PW9 to stop the vehicle. PW9 stopped the vehicle and went to answer the nature’s call when the Appellant threw the bedding from the vehicle into the ravine. In paragraph no.3, PW1 says that the driver (PW9) also informed him that the bedding was “very heavy” and which on being thrown landed with a “thud” at which time, the Appellant was standing near the railing before the ravine.
- 13.** PW1 further says that he went to the hostel of the Appellant to inquire and was informed by the Assistant Warden (Dr. Bhagwan Vaskel PW6) about a girl who was staying in the hostel between one to one and a half months, which information was given to the Assistant Warden (PW6) by some junior doctors. The Assistant Warden also told PW1 that some junior doctors informed him that this girl was missing since

past two to three days. Ld. Counsel for the Appellant has argued that the Assistant Warden PW6 Dr. Bhagwan Vaskel does not mention any of this in his testimony. Having gone through the testimony of PW6 Dr. Bhagwan Vaskel, we agree with the submission put forth by the Ld. Counsel for the Appellant.

14. In paragraph No.4 of his testimony, PW1 says that when he was on his evening rounds, the Appellant sought permission to speak to him. At that time, PW1 states that he was in the company of Dr. Basant Sharma and Dr. Durgesh (both have not examined as witnesses for the prosecution). These two doctors, upon seeing the Appellant said that he is the same person who had brought a girl for admission to the hospital two or three times. Further, PW1 says that the Appellant met him in the Doctors' Duty Room alone and asked him, if PW1 suspected him. The Appellant is further stated to have told PW1 that he felt harassed and disturbed because of the girl. The Appellant is further alleged to have told PW1 that he had got the girl admitted several times into the hospital and that he had committed a mistake by going to Pachmarhi instead of Hoshangabad. In the evening when

PW1 was informed by his driver about the entire sequence of events of 19/09/08 he became suspicious and immediately informed the then I.G Bhopal, Mr. Shailendra Shrivastava that he suspected that the Appellant has committed “some” crime. Upon this, the I.G Shailendra Shrivastava told PW1 to bring the Appellant to the police station and that they would inquire from him. Upon this, PW1 told I.G Shailendra Shrivastava that the Appellant is in depression and that he may do something to himself upon which I.G Shailendra Shrivastava is stated to have told PW1 that he would send a team to the hostel which will meet PW1.

- 15.** Thereafter, the CSP and TI (of P.S. Kohefiza) came to the ward and met PW1. He further says that as he had already spoken to the I.G who instructed PW1 to prepare an application and give it to the team that comes to meet him. This application was given by PW1 to the TI of Police Station Kohefiza, which is Ex.P1. In paragraph no.7, the witness says that the team went to the room of the Appellant, knocked on the door and when the Appellant came out, the TI took the Appellant along with him.

16. Ld. Counsel for the Appellant has thereafter referred to the cross-examination and brought out omissions between the testimony of PW1 in court and Ex.P1. These contradictions are in paragraph nos.10 to 11 of the cross-examination. By referring to paragraph No.12, Ld. Counsel for the Appellant has submitted that there was close proximity between PW1 and I.G Shailendra Shrivastava, as PW1 says that he had rang up I.G Shailendra Shrivastava from his mobile number on the mobile of I.G Shailendra Shrivastava. Thereafter, Ld. Counsel has also referred and brought out the contradictions in the testimony of PW1 with his statement u/s. 161 Cr.P.C which is Ex.D1, recorded by the police on 24/09/08. These omissions with the 161 statement are reflected from paragraph nos.14 to 21 of the testimony of PW1.
17. The next witness of seminal importance, according to the Ld. Counsel for the Appellant, is PW9 Ram Prasad. He is the witness to the alleged disposal of the body of the deceased, by the Appellant. His statement was recorded before the learned trial Court on 30/01/09. The witness states that he works as a driver for Dr. Hemant Verma PW1, and that the vehicle he drives

belongs to Dr. Hemant Verma and bears the number MP-04-HB-1550.

- 18.** PW9 says that on 19/09/2008 between 10:30 and 11:45 in the morning, PW1 called him on his mobile phone and asked him to take the Appellant Chandresh Marskole to Hoshangabad. At around 11:45 am, the Appellant is stated to have approached PW9 and introduced himself and asked the witness to bring the vehicle to the Gate of D-Block hostel and that the Appellant brought a black coloured bedding and placed it in the dickey of the vehicle and they proceeded towards Hoshangabad around 12:10 pm. Near Budhni ghat, the Appellant told PW9 to drive fast as they have to go Pachmarhi upon which PW9 told the Appellant that his boss (PW1) had told him that the Appellant had to be taken to Hoshangabad. To this, the Appellant is said to have replied that he had some work at Pachmarhi and that they would return the same day. They had stopped at Pipariya, where they had a cup of tea and then proceeded towards Pachmarhi.
- 19.** Near the “Denwa Darshan Mazhar”, the Appellant asked PW9 to stop the vehicle. PW9 got down from the vehicle and went about two hundred and fifty feet away from the car to answer the natures

call. The time was 4:45 pm. PW9 heard a “thud” sound upon which he went near the vehicle and saw that the bedding that was kept in the vehicle was missing, and the dickey was open. He found the Appellant by the railing near the ravine. He, however, did not ask the Appellant as to what happened to the bedding.

- 20.** Thereafter, the Appellant asked PW9 to proceed towards Pachmarhi. At the “*Nandan Dhaba*” crossing in Pachmarhi, the Appellant got down from the vehicle to talk to a boy. After a minute, the Appellant came back to the car and informed PW9 that the work for which he had come could not be done and that they should return to Bhopal. They returned to Medical College at 10:00 pm. PW9 says that at all the toll points, it was the Appellant who paid the toll tax and kept the receipts with him.
- 21.** In paragraph 5, the witness says that he met PW1 in the evening of 20/09/08 and informed him about the events of the previous day upon which, PW1 told PW9 not to tell anyone about it and that PW1 will inform the police. Ld. Counsel for the Appellant submits that in his entire examination-in-chief, PW9 does not say one word about the weight and dimension of the bedding.

He does not say whether the bedding was heavy or light. This, the Ld. Counsel for the Appellant says assumes great significance when read along with the testimony of PW1, which is at variance with the statement of PW9. The Ld. Counsel says that if PW9 has not disclosed anything about the weight of the bedding to PW1, how did PW1 come to the inference that the bedding was heavy? In other words, Ld. Counsel for the Appellant has hinted that what was unknown to PW9 (whether the bedding was heavy or not) was known to PW1. This, he says is one of the factors that goes to points towards the involvement of PW1 in the crime and the false implication of the Appellant herein, with the assistance of the police.

- 22.** In order to buttress his argument, learned counsel for the Appellant has drawn our attention to paragraph 8 of Ram Prasad's (PW9) testimony, where he says that he never lifted the bedding. Suggestions were given in the cross-examination that there were four people in the vehicle and that at Pachmarhi, there is an entry of four people. The witness has answered in the negative to both these suggestions, however, learned counsel for the Appellant submits that he would draw the attention of this Court later,

to the statement of PW13, the in-charge of the Cantonment Board toll station at Pachmarhi, who proved Ex-P 26(c) which is a copy retained by the Cantonment Board, Pachmarhi, of the receipt issued by PW13 to PW9, which the Ld. Trial Court has taken on record after comparing with the original, which reflects that there were four people travelling in the vehicle, which the Ld. Counsel for the Appellant says would go to belie the entire testimony of PW9 and PW1. He further says that this is a document relied upon by the prosecution itself, is proved by the PW13 and, therefore, the same is binding on the prosecution as PW13 was not declared hostile by the prosecution.

- 23.** In order to further demonstrate the falsity of the prosecution case, Ld. Counsel for the Appellant has referred to paragraph 9 of Ram Prasad's (PW-9) testimony, in which, the witness says in cross-examination that the dickey of the vehicle has a lock and that once it is closed, the dickey cannot be opened without the key. The witness further states that from Bhopal till Pachmarhi, the witness drove the car and the key to the car was always with the witness and that PW9 never opened the dickey and that he stated so before

the police, but if it is not recorded thus in his statement u/s. 161 Cr.P.C, he does not know the reason why. In other words, learned counsel for the Appellant submits that when PW9 himself says that it is not possible for the dickey to be opened without the key once locked, and that the key was always with PW9 and that he never opened the lock of the dickey, it was impossible for anyone to open the dickey without the assistance of PW9 to throw the bedding in to the ravine. Ld. Counsel for the Appellant has further submitted that the prosecution's case is not that the dickey of the car was prised open forcibly. Therefore, the testimony of PW9 stands falsified.

- 24.** Ld. Counsel for the Appellant has thereafter referred to the Statement of PW13, Dhanraj Prasad Nagabanshi. He says that on 19/09/08, he was at Check-Post No. 65 of the Cantonment board, on the post of 'Moharar'. He says that he received a notice (Ex.P/25) from the SHO of Kohefiza seeking information with regard to the toll tax paid by vehicle MP.04 HB 1550 on 19/09/08 when it passed the check-post. He says that he gave the intimation to the Police Station that the aforementioned vehicle crossed the check-post during his duty hours on

19/09/08 at 4.45 pm and the driver gave his name as Ram Prasad. The witness further says that the driver Ram Prasad was given a receipt bearing No.90, from book no.120 towards the toll tax paid by him. The copy of the said receipt has been proved by this witness as Ex.P/26C and the intimation given by this witness to the police is Ex.P/27. The witness had bought the original book from which Ex.P/26C was cut and given to the driver (PW9) in which this witness has signed in the portion marked 'A-A' . In cross-examination this witness says that the receipt has been issued in his handwriting and that the receipt Ex P26C has been certified as true copy by the Chief Executive Officer of the Cantonment Board, Pachmarhi. It is relevant to State here that this document being a part of the prosecution's case has never been opposed by the Appellant for being taken on record as an exhibit by the prosecution.

- 25.** Ld. Counsel for the Appellant has drawn the attention of this Court to the portion marked 'B to B' in the receipt [Ex P26C] where, in the column "number of passengers" it is written 2 + 2" and in column pertaining to the tax received on behalf of all passengers the amount is given

as 4. In the column pertaining to parking charge, the amount given is 05 and the total amount that was received as tax payable for each of the passengers and for parking, is shown as 09. In his cross-examination PW13 says that the payment of the amount mentioned in Ex P26C, was made by the driver (PW9) and that the number of passengers were 2 plus 2, total 4. This witness has not been declared hostile and neither has he been subjected to further re-examination by the prosecutor and so, the statement given in cross-examination by PW13 is binding on the prosecution.

- 26.** Ld. Counsel for the Appellant has referred to the site map (Ex P2), which shows the room of the Appellant is room No. 61 on the second floor of the hostel. He further submits that it is highly improbable that the Appellant, a reasonable person, would risk discovery of his crime by moving the body of the deceased wrapped in a bedding during the daytime when he knows that he could be seen by any of the boarders or students.
- 27.** Ld. Counsel for the Appellant has also referred to Ex.P3, which is the seizure memo of the car. By adverting to the same, the learned counsel for the Appellant submits that though the vehicle is owned by PW1, the seizure has been effected

from the driver Ram Prasad Lodhi (PW9) on 03/10/08, which is nearly fifteen days after the incident and nine days after the registration of the FIR. He says the delay is not explained by the Police and besides the Car, the mat in the dickey of the car was also seized, which, according to the police had certain stains. He, thereafter, refers to Ex P59, which is the FSL report. Article-D is the black mat taken from the car, which the FSL report reveals, tested positive for blood of human origin, but the blood group could not be ascertained. He submits that this evidence is actually planted by the police in order to implicate the Appellant and had themselves contaminated the mat in the vehicle with someone else's blood. We shall deal with this contention when we appreciate the evidence.

- 28.** The Ld. Counsel for the Appellant also submits that the Appellant was in illegal detention of the police from 20/09/08 till he was formally arrested on 25/09/08 at 1400 hrs (Ex.P53–arrest memo). He refers to the testimony of PW1 who categorically states that the Appellant was taken by the Police on 20/09/08 itself (paragraph 7 of P.W.1's testimony) and there is nothing to show that the police ever released the Appellant

thereafter. He also referred to Ex.P49, which is a notice under 160 Cr.P.C allegedly given to the Appellant herein to join investigation for the recovery of the body by the Police on 21/09/08, which the Appellant says is farce as when this notice was issued, the Appellant was already in the custody of the police. Likewise, he says that the memorandum of the Appellant under section 27 of the Evidence Act was a document that was created by the police on 25/09/08 by which the Appellant is said to have given a statement under section 27 of the Evidence Act at 2.50 pm which, according to the Ld. Counsel for the Appellant is yet again a farce as the police had adequate information on 20/09/08 itself as to where the body was disposed of by way of Ex.P1.

- 29.** Ld. Counsel for the Appellant submits that the motivated investigation by the Police is reflected by the fact that the first person that PW1 communicated with is Mr. Shailendra Shrivastava, the then Inspector General of Police, Bhopal Range. He says that Mr. Shailendra Shrivastava was necessarily a witness in this case, and it was required for him to be questioned whether it was he who had advised PW1 on how to prepare the complaint (Ex

P1). He further says that it was required to be elicited from Mr. Shailendra Shrivastava the extent that he was personally involved in the investigation of the case. Ld. Counsel for the Appellant has also argued that the police fabricated evidence to show that the Appellant had, in the past, taken the deceased to two hotels and stayed there with her. One is Hotel Shagun at Bhopal, and the other is Hotel Nataraj in Pachmarhi. We shall refer to these hotels and their relevance when we discuss the evidence.

30. In short, the Ld. Counsel for the Appellant has argued that the case against the Appellant is a trumped up case on account of previous enmity with PW1, arising from campus politics and that PW1, using his influence with the then IG Mr. Shailendra Shrivastava was the main culprit who had committed the murder of the deceased and with the tacit complicity of the police, falsely implicated the Appellant.

Mr. Piyush Bhatnagar Ld. Panel Adv. for the State.

31. Ld. Panel Advocate for the State on the other hand submits that the Appellant has been rightly convicted. The evidence though circumstantial, is not of such

nature so as to prove the guilt against the Appellant beyond reasonable doubt. He has further argued that submissions put forth on behalf of the Appellant that he is a victim of false implication on account of the proximity that PW1 enjoyed with the police, is fanciful and baseless. He has also argued that the testimony of PW1 and PW9 clearly disclose the incidents of 19/09/08.

- 32.** He submits that statements of the aforementioned witnesses establish that the Appellant had borrowed the vehicle of PW1 along with the driver Ram Prasad. PW9 Ram Prasad is a witness to the Appellant bringing down a rolled bedding which he carried on his shoulder and loading the same into the vehicle. The Ld. Panel Advocate further submits that act of the Appellant in suddenly changing the destination from Hoshangabad to Pachmarhi shows that the Appellant had planned it all so meticulously that he lied to PW1 in order to borrow the vehicle of PW1, ostensibly to attend to some urgent work he had in Hoshangabad, while he actually wanted to take the vehicle towards Pachmarhi to dispose of the body of the deceased as discreetly as possible.
- 33.** He further says that the act of the Appellant in asking the driver to stop at “Denwa Darshan” and surreptitiously throwing the bedding along with the body of the deceased into the ravine there, and which

body was subsequently recovered from the same spot by the police on 22/09/08, upon the disclosure of the Appellant, proves beyond a shadow of doubt that it was the Appellant who had murdered the deceased and disposed of her body.

- 34.** By way of corroborative evidence, the Ld. Panel Lawyer has referred to the evidence brought on record of Hotel Shagun in Bhopal and Hotel Nataraj in Pachmarhi to show that the Appellant was well known to the deceased and that they were intimately involved during which time, they had stayed together in the aforementioned hotels. He has also referred to the testimony of PW7 George S. Hill, the father of the deceased Shruti Hill to show that the deceased and the Appellant were in a relationship and wanted to marry each other. Reference has also been made to the testimony of PW22 Sanjay, who was the accountant at the Hoshangabad Jesalpur toll station. He confirms the to and fro passage of the Qualis vehicle on 19/09/08. Similarly, attention has also been drawn to the statement of PW13 Dhanraj Prasad Nagabanshi, the clerk on duty at toll point No. 65 of the Cantonment Board, Pachmarhi who confirms the passage of the vehicle in question through his toll station in the evening of 19/09/08.
- 35.** Ld. Panel Advocate has also referred to Ex P59, the report of the Forensic Science Laboratory, which detected human blood on the mat of the car on which

the bedding was placed. He has also referred and relied upon Ex.P13, the post-mortem report, to show that the Appellant had strangled the deceased. He has also drawn the attention of this Court to Ex.P17, which according to him, is the out-patient department slip pertaining to the treatment of the deceased which was seized in four pieces from the room of the Appellant.

FINDINGS

36. Heard the Ld. Counsels for the parties, examined the record of the Ld. Trial Court. The main witnesses for the prosecution are PW1 and PW9. Neither of them are eyewitnesses to the murder itself. In fact, there are no eyewitnesses in this case. In the order of relevance, PW9 Ram Prasad is the first witness. He is the driver of PW1 Dr. Hemant Verma, and thereafter PW1, Dr. Hemant Verma. The testimony of PW1 and PW9 have been referred to in paragraphs 9 to 23 *supra* as arguments of the Ld. Counsel for the Appellant. However, we feel it necessary to summarise their testimony.

PW9 – Ram Prasad – Summary of his testimony

37. The testimony of PW9 has been discussed in detail in paragraphs 17 to 23 *supra* and the same may be summarised as follows: **In his examination in chief** he says that **(a)** he drove the Appellant to Pachmarhi and brought him back to Bhopal, **(b)** that on route to Pachmarhi, the Appellant stopped at ‘Denwa Darshan’

and he heard a thud sound and **(c)** upon returning to the vehicle, he found the dickie open and the bedding missing and the Appellant was standing near the railing before the ravine. **In cross examination**, this witness stated that **(d)** he never lifted the bedding when it was being loaded into the car, **(e)** that besides him and the Appellant, no one else was in the vehicle, **(f)** the dickie of the vehicle once locked can only be opened with a key, **(g)** when he went to answer nature's call at 'Denwa Darshan', the key to the vehicle was with him. **What this witness has not stated at all in his testimony is (h)** that he had ever touched the bedding, **(i)** that the bedding was heavy, and **(j)** that he ever suspected that a body was wrapped in the bedding or that the Appellant had committed an offence.

PW1 Dr. Hemant Verma

- 38.** PW1 Dr. Hemant Verma was the Senior Resident at Hamidiya Hospital during the relevant period. He was senior to the Appellant. The testimony of this witness is seminal to the outcome of this appeal, and it would reveal whether the trial of the Appellant and his subsequent conviction, was just and proper or, whether the Appellant was a victim of malicious prosecution of the highest order. Therefore, an extensive reproduction and discussion of this witness's testimony is called for in addition to what has been reproduced in paragraphs

9 to 16. In his testimony, the witness says that between 10 and 10.30 AM of 19/09/08 (wrongly typed as 19/02/08 in paragraph 1 of the testimony), the Appellant approached him and told him that he (Appellant) wanted to borrow his (Dr. Hemant Verma's) car as he had to go to Hoshangabad on some personal work. The witness initially refused but, on account of the Appellant's insistence, the witness asked his driver Ram Prasad (PW9) to take the Appellant to Hoshangabad in his (PW1's) personal vehicle, a Toyota Qualis bearing registration number MP-04-HV-1550. After the Appellant left, PW1 says that he left for Indore for some domestic work. He further says that he returned from Indore between 5 and 6 AM the next day i.e., 20/09/08, rested a while and then reported for duty.

- 39.** Interestingly, the witness does not state what his work was at Indore and why, if he himself had to go to Indore on 19/09/08 (which is 180 Kms from Bhopal), did he let the Appellant borrow his vehicle? He does not even state as to where he stayed at Indore, whom he met and what was his mode of transportation from Bhopal to Indore and back. Added to this, the police do not feel the necessity of interrogating this witness on these aspects. The relevance of all this has been dealt by us at paragraph 66.4 of this judgement.

40. In paragraph 2 of his testimony this witness says that when he returned to his hostel after duty hours, his driver (PW9) informed him that the doctor (Appellant) who had borrowed the vehicle to go to Hoshangabad, instead went to Pachmarhi and on the way, near “Denwa Darshan” asked PW9 to stop the vehicle and when PW9 went to answer nature’s call, he heard a “thud” sound upon which he returned to the vehicle to find the bedding kept in the dickey of the car missing and he saw the Appellant standing near the railing before the ravine. Thereafter, PW1 was told by PW9 this they went on to Pachmarhi and then returned to Bhopal around 10 PM.
41. Paragraph 3 of PW1’s in-chief testimony is extremely important and so we feel it necessary to reproduce it in its entirety. PW1 says **“the driver also informed me that the bedding taken by the Accused was very heavy which when thrown fell with a thud sound and the Accused was standing near the railing. Then I told him to sit outside the hostel and inform me as soon as Chandresh arrives. Then I went to the hostel of the Accused and enquired there and was told by the Assistant Warden that a girl has been staying in the hostel for nearly a month and a half and some junior doctors had informed him that the girl was not seen since the past two to three days”**. Here is it

pertinent to mention that the driver Ram Prasad (PW9) does not state in his in-chief testimony that the bedding was “very heavy”. In paragraph 8 of the cross examination, PW9 says categorically that he never lifted the bedding. Thus, the statement of PW1 that PW9 informed him that the bedding was “very heavy” could not have been told to PW1 by PW9 and the same is a lie. Therefore, the statement of PW1 in paragraph 3 of his testimony that he was told by PW9 that the bedding was “very heavy” was false and so, the fact that the bedding was indeed “very heavy” as the body of the deceased was placed in it, was a fact within the exclusive knowledge of PW1 which makes PW1 the man who knew too much and perhaps the perpetrator of the offence. However, evidence to indict Dr. Hemant Varma or even pass a definitive observation to that effect is not possible today on account of absence of confirmative evidence.

- 42.** In paragraph 4 of his in-chief, the witness says that in the evening when he was on his rounds, the Appellant sought permission to speak with him and so the witness called him. Accompanying the witness were the RMO Dr. Basant Sharma and Dr. Durgesh, who upon seeing the Appellant informed PW1 that the Appellant is the same person who used to bring the girl for admitting her to the hospital and that he did so two or three times. It is pertinent to mention here that Dr. Basant Sharma

and Dr. Durgesh were never examined as prosecution witnesses to prove this fact and therefore, the reference to what Dr. Basant Sharma and Dr, Durgesh told PW1, is hearsay and thereby irrelevant. The Appellant asked the witness privately in the doctor's duty room if PW1 "suspected" him and told him that he was feeling troubled by the girl and that he made the mistake of going to Pachmarhi instead of Hoshangabad. Thereafter, PW1 says that he told the Appellant to go and study as he had a paper the next day. PW1 also says that the Appellant appeared depressed. However, in cross examination. PW1 has been contradicted on this part in paragraph 17 as the same is an omission in his police statement and he has stated so for the first time only in his Court testimony.

- 43.** Paragraph 5 and 7 of PW1's testimony is important as it reveals that the Appellant was taken into custody by the police on the 20/09/08 and remained in the custody of the police till 25/09/08, the date on which the Appellant was formally arrested. PW1 says that when he came to know from PW9 what the Appellant had done, he immediately contacted IG Shailendra Shrivastava and told him that he suspects that the Appellant has committed an offence. IG Shailendra Shrivastava told PW1 that he would get the Appellant interrogated at the police station the next day. Upon this, PW1 told IG

Shailendra Shrivastava that the Appellant is in depression and that he might harm himself. To this IG Shrivastava told PW1 that he is sending a team and that PW1 must remain in the ward itself to coordinate with the team. Thereafter, PW1 says that the CSP and TI met him in the ward and upon the instructions of IG Shailendra Shrivastava, PW1 gave a written application to the TI of P.S. Koh-e-Fiza which is Ex-P1. Thereafter, the TI told PW1 to lead them to the room of the Appellant lest he runs away. In paragraph 7 of his testimony, PW1 says that the TI knocked on the door of the Appellant's room and when he opened the door, the Appellant was taken away by the TI. The testimony in paragraph 5 and 7 of PW1 reveals firstly, that the witness knew IG Shailendra Shrivastava intimately as can be inferred from the fact that PW1 called the IG directly on his mobile phone (paragraph 12 of the cross examination) rather than dialling 100 and reporting the offence and secondly, it reveals that the Appellant was taken into custody by the TI of P.S. Koh-e-Fiza on 20/09/08 itself and thereafter, there is no material to show that the Appellant was ever released by the police before showing the formal arrest of the Appellant on 25/09/08. The contents of paragraph 4 and 5 of the in-chief have been proved as omissions in the police statements during the cross examination of PW1.

44. To summarise the testimony of PW1, he has stated **in his examination in chief** that **(a)** he lent his vehicle to the Appellant on 19/09/08 along with his driver PW9 to go to Hoshangabad, **(b)** that he (PW1) travelled to Indore on 19/09/08 for personal work, **(c)** that he returned from Indore on the morning of 20/09/08 **(d)** that, he was informed by PW9 in the evening of 20/09/08 of what had transpired on 19/09/08 and that he asked PW9 not to disclose the information to anyone else and that he (PW1) would do the needful, **(e)** that he spoke to IG Shailendra Shrivastava on 20/09/08 on the mobile of IG Shrivastava and informed him about the incident, **(f)** that he wrote the complaint dated 20/09/08 addressed to the IG Bhopal Range (Shailendra Shrivastava) disclosing the murder of a girl by the Appellant and the disposal of the body wrapped in a bedding (Ex.P1), that **(g)** he was informed by the Assistant Warden Dr. Bhagwandas Vaskel (PW6), who himself was informed by “some junior doctors”, about a girl who was staying in the hostel for about one to one and half months and that she was missing since the past two to three days (PW6 himself does not state any of this in his testimony before the Trial Court), and **(h)** Dr. Basant Sharma and Dr. Durgesh (both not examined as witnesses for the prosecution) told PW1 that the Appellant had brought a girl for admission to the hospital two or three times. **What this witness has**

not stated at all in his testimony is **(i)** how he arrived at the conclusion that a girl was murdered by the Appellant and her body disposed of in a bedding on 19/09/08, as his knowledge was allegedly based upon the information given by PW9, who himself does not make any allegation of murder against the Appellant or the disposal of the body in a bedding, **(j)** as to how he came to know that the bedding was “very heavy”, as PW9 in his testimony has stated that he never lifted the bedding and that he doesn’t know if the bedding was heavy, **(k)** he does not state why he had to travel to Indore on 19/09/08, how he travelled to Indore (as he had given his private car to the Appellant to travel to Hoshangabad on 19/09/08), or whom he met there, **(l)** he does not state why he had lent his vehicle to the Appellant on 19/09/08 if he (PW1) himself had to undertake a journey to Indore which is 180 Kms away from Bhopal, on the same day. This is relevant as there is nothing to show if there existed a close friendship between PW1 and the Appellant that PW1 would have put himself to inconvenience by lending his car to the Appellant when PW1 himself had to travel to Indore on the same day.

- 45.** PW13 is Dhanraj Prasad Nagabanshi. His testimony is terse but shreds the prosecution’s narrative to tatters. His testimony has been discussed in detail in

paragraphs 22, 24 and 25 *supra*. He is a natural and neutral witness produced by the prosecution. The prosecution's consistent narrative has been that on 19/09/08, it was only the Appellant and PW9 who travelled in the vehicle from Bhopal to Pachmarhi and back. PW13 however has categorically proved that there were four persons who were travelling in the Toyota Qualis on 19/09/08. On that date, he was the clerk at toll station 65 of Pachmarhi Cantonment and he issued Ex.P26C (the original is Ex.P26 which was seen by the Trial Court and returned to the witness and the copy taken on record and marked as Ex,P26C) which is the toll receipt. At 4.45 pm on that day, vehicle bearing number MP-04-HV-1550, reached the toll station and the driver gave his name as Ram Prasad (PW9) to PW13 who issued the receipt for the toll tax, which according to PW13 was paid by Ram Prasad, PW9 herein, and the number of passengers in the vehicle was 2+2 total 4. PW13 was never declared hostile by the prosecution, and neither was he re-examined by the prosecutor. His evidence is binding on the prosecution, and it reveals that the very substratum of the prosecution's case is downright insidious. Thus, his testimony reveals that it was not just the Appellant and PW9 who travelled in the said vehicle till Pachmarhi on 19/09/08, but there were two others in the same vehicle about whom, the entire prosecution narrative is silent and therefore, there is a

miasma surrounding the prosecution's case whether the Appellant actually travelled in the vehicle on 19/09/08 or whether it was four others, including PW9 Ramprasad. PW13's testimony, which is unopposed by the prosecution, demolishes the fulcrum of the prosecution's case and renders the entire testimony of PW1 and PW9 false, motivated and dubious.

- 46.** The Ld. Trial Court unfortunately has not dealt with the testimony of PW13 with the seriousness that it deserved. Though it has referred to the testimony of PW13 and also referred to Ex.26C proved by PW13, which is the copy of the receipt issued by PW13 to PW9, the driver of the vehicle. However, it is the appreciation of this vital piece of evidence by the Ld. Trial Court that is found wanting. The Ld. Trial Court has referred to that part of the PW13's testimony where the witness categorically states there were four persons travelling in the vehicle. However, the Ld. Trial Court wishes it away in paragraph 32 of the judgement by saying that PW13 does not clarify how there were four persons in the vehicle and that the PW13 has stated so only on the basis of the receipt in which the witness has written 2+2. The Ld. Trial Court does not arrive at the finding whether that part of the statement of PW13 is erroneous. The judgement leaves the question of the

number of persons in the vehicle undecided by not venturing to give a finding on the same.

- 47.** We have scrutinised Ex.P26C threadbare. It is a copy of the receipt issued by PW13 to PW9 (Ram Prasad) on 19/09/08. On the top left hand side of the receipt is the toll tax per person which is one rupee. The toll tax for a car/jeep is five rupees. The first column is the date on which the receipt was issued which also reflects the date on which the vehicle crossed the toll tax barrier. This date is 19/09/08. The second column is the time at which the vehicle crossed the toll barrier which is noted by PW13 as 4.45 pm. the third column is for the type of vehicle and its registration number. The fourth column required the name of the owner of the vehicle or the driver, wherein the name of PW9 Ram Prasad is entered. Column seven requires the number of passengers in the vehicle to be entered and this is written down as "02+02". The eighth column requires the total tax levied for the passengers which is entered as "04". The tenth column requires the tax levied on the vehicle which is entered as "05". The twelfth column is for the total tax levied as per "8,10", which is the sum of the tax levied on the passengers and the vehicle. This amount is written down by PW13 as "09" which is rupees four for the passengers (@ of one rupee per passenger) and rupees five for the vehicle. This witness's testimony

reveals that in his examination in chief, the witness has proved Ex.P26C and in cross examination he states that the payment for the toll tax was made by the “driver” (PW9 Ram Prasad) and the number of passengers was “2+2 total 4”.

- 48.** Thus, Ex.P26C, a document of the prosecution, proved by a witness for the prosecution (PW13), proves beyond a shadow of doubt that there were four persons travelling in the vehicle on 19/09/08 which crossed the toll barrier at the Pachmarhi cantonment. With the testimony of PW13 and Ex.P26C, the prosecution has shot itself in the foot. PW13 has not been declared hostile and neither has he been subjected to further examination by the prosecutor in order to seek a clarification as regards the number of persons travelling in the vehicle on 19/09/08 which according to PW13 was four while the consistent case of the prosecution was that there were only two passengers i.e., PW9 Ram Prasad and the Appellant/Accused. The statement of PW13 introduces two more passengers about whom the prosecution is completely silent but, was under a duty to investigate and find out who the other two passengers were and most importantly, give an explanation to the Trial Court about it. However, the prosecution does not even fleetingly dwell upon the same or explain the anomaly.

Medical and Scientific evidence

49. The post-mortem report is Ex.P13. It has been proved by PW5, Dr. Jayanti Yadav who performed the post-mortem of the deceased Shruti Hill. PW5 records *“Received a bundle covered with blue and white coloured plastic sheet tied with green nylon rope. On opening it contains a bedding having green, red & cream coloured cloth, red and black printed bed sheet and a black holdall and dead body of a female in advanced stage of decomposition. Wearing – (1) black lowers (2) black T shirt (3) grey underwear (4) white brassiere (5) bichhia on left 2nd toe (6) maroon nail paint on (Rt) big toe. A black beaded mangalsutra received along with body. Head region covered with green polyethene sheet. C Epidermis peeled off completely C greenish discolouration present on chest and abdomen. Degloving of palm and soles present. Head and face bones are broken into multiple pieces. Tissue partly missing over (Rt) forearm and both legs. Nails are loosened, well groomed. Pubic hairs are trimmed. Complete degloving of palm and soles present. 3rd instar maggots crawling all over the body. Head is separated and flap of skin of neck region present more wider on posterior aspect. Skin of neck is well preserved.”* (Emphasis added)
50. As regards antemortem injuries, PW5 records on page five of the PM report *“(1) contusion present over nape*

(back) of neck in midline 7cm posterior to lower end of left pinna 13x5 cm vertical extending upwards. This area is relatively hard – sub cutaneous tissue show ecchymosis. Ecchymosis is also evident on inner aspect of skin flap.

(2) Multiple semilunar shaped abrasions (4 in number) present over postero lateral aspect on left side of size 1x0.2 cm each present 2cm over lower end of left pinna, 1cm posterior to mid of left pinna, 3 cm posterior to upper end of left pinna and 1 cm above and 3cm posterior to upper end of left pinna. Ecchymosis present underneath all these abrasions which are hard and dry. These abrasions appear to be nail marks. (3) Semilunar abrasions of size 1.2x0.2 cm vertical present over mid of neck on posterior aspect 4cm below the level of lower end of pinna ecchymosis evident underneath in subcutaneous tissue. (4) semilunar abrasions of size 1x0.2 cm present on (Rt) side of neck on the lateral aspect 5cm above the level of clavicle ecchymosis evident over subcutaneous tissue underneath. (5) contusion present over (Rt) shoulder tip in 10x7 transverse area on anterior aspect. Ecchymosis present underneath over tissue. (6) contusion present on anterior aspect of left shoulder 4x2 cm vertical ecchymosis present underneath on the tissues. (7) Multiple transverse parallel scar marks present over flexor aspect of left forearm. 2 of these are recent with gaping evident present just above the wrist

underneath the recent mark skin shows ecchymosis in margins”.

- 51.** As regards post-mortem injuries, PW5 records “(1) skull is separated and fractured into multiple pieces. All pieces show no ecchymosis, including maxilla and mandible. (2) post-mortem separation of cervical vertebrae present between C5 and C6, surrounding tissues are pale. (3) Ribs fractured at multiple places on both sides in multiple plane. Surrounding tissues are pale. (4) postmortem fracture present at distal end of (Rt) radius and ulna, (Rt) tibia and fibula, both sacroiliac joint and sacrum & left clavicle at lateral end, left humerus bone also show post mortem fracture. Tissue missing over postero lateral aspect of both legs and (Rt) forearm.”
- 52.** The cause of death arrived at by PW5 is “*Evidence of ante mortem injuries present over neck, shoulders and scalp consistent with throttling (manual strangulation) and homicidal in nature*”. The post-mortem report (Ex.P13) reveals that the antemortem injuries are in the nature of abrasions and contusions which could not have caused large voluminous discharge of blood from the body as may be evident when the injury is a lacerated or an incised wound. The major injuries noticed in the form of shattering of the skull and fractures are all post-mortem in nature.

- 53.** The vehicle allegedly used in disposing off the body of the deceased is the Toyota Qualis bearing number MP-HB-1550. The owner of the car is Dr. Hemant Varma (PW1) but the same is seized from the driver PW9 on 03/10/08, fifteen days after the incident. Ex.P3 is the seizure memo of the car and a rubber matting purportedly bearing marks of “secretion” on the matting. Interestingly, the owner of the vehicle (PW1) is a witness to the seizure. Ex.P59 is the FSL report. The matting seized from the car is Article D and it tests positive for human blood, though the blood group was unidentifiable on account of the stain having disintegrated.
- 54.** The alleged discovery of human blood from the mat of the car is highly suspicious. Firstly, there is no answer from the prosecution as to why there was a delay of fifteen days in seizing vehicle while it was in the possession of PW1 or PW9 all the while? Secondly, Ex.P13, which is the post-mortem report reflects that all the antemortem injuries are in the nature of abrasions and contusion which could not have resulted in a copious flow of blood from the body, on to the bedding in which the body was wrapped and then on to the mat of the car. The shattering of the skull and separation of the head from the torso are all post-mortem events which stands established by the post-mortem report as

(see paragraph 51 *supra*), and in all probability occurred when the body was thrown into the ravine. Had the injuries which are shown as post-mortem injuries been antemortem, that would have certainly resulted in a copious flow of blood from the body and the presence of blood on the mat of the vehicle during transportation, would have been a plausible occurrence. Thirdly, PW9 Ramprasad does not say that he saw any blood stains on the bedding while it was being loaded into the dickey of the car by the Appellant and neither does he say that he saw any stains on the mat when he had an occasion to close the hatch of the vehicle at “Denwa Darshan” and fourthly, the usage of the word “secretion” in Hindi by the police in the seizure memo is extremely uncharacteristic who otherwise use the phrase “khood jaise dhabbe” to describe “blood like stains” whenever it is seen on an article that has been seized. Thus, all these factors surrounding the seizure of the vehicle and the mat, on which human blood has been found, is highly contrived and smacks of manipulation by the police in fabricating and introducing extraneous evidence during the fifteen days that they had the vehicle in their possession, before showing its seizure.

- 55.** Ex.P59, the FSL report reveals that there was human semen and sperms found on article A4 (underwear worn by the deceased) and C3 (the bedsheet in which the body

was wrapped) but the same was not subjected to a DNA test which, if positive, could have thrown light on the case with regard to the last person(s) to have had sex with the deceased. This was all the more important as the case was based entirely on circumstantial evidence.

- 56.** The testimonies George Hill (PW7) and Varun (PW22), the father and brother of the deceased respectively, along with the testimonies of Sushma (PW16) and Pragya (PW17), who were acquaintances of the Appellant or the deceased, have only established that the Appellant and the deceased were known to each other. PW7 and PW22 have stated that the deceased informed them that she was in a relationship with the Appellant and wanted to marry him. In fact, PW7 George Hill, the father of the deceased, states in paragraph 2 of his testimony that the deceased had told him that she was in love with the Appellant and wanted to marry him. He also says that the Appellant had once spoken to him on phone and told him (PW7) that he wanted to marry the deceased and he loved her very much.
- 57.** The statement of George hill goes to show that the deceased and the Appellant were deeply in love with each other and wanted to get married. This fact gets further corroboration from the post mortem report where the doctor says that “a black beaded mangalsutra received along with body” of the deceased (paragraph 49

supra). The recovery of the mangalsutra along with the body reflects that the deceased had got married before she died. As far as the question as to whom she married, is an inference which must be drawn from the testimony of George Hill who states that the deceased and the Appellant were in love with each other, and that the Appellant wanted to marry the deceased. Thus, in all probability than not, the fact that the deceased and the Appellant got married to each other before her murder is a reasonable inference to draw from the circumstance of the mangalsutra being recovered along with the body and the testimony of PW7 George Hill.

- 58.** Therefore, the prosecution has not been able to prove any motive on the part of the Appellant to murder the deceased. The Prosecution, however has also relied on the memorandum of the Appellant u/s 27 of the Evidence Act and the recovery of a torn OPD slip of the deceased, pieces of bangles, a bible and the photograph of the late mother of the deceased from the hostel room of the Appellant to corroborate their theory that the Appellant committed the murder of the deceased in the hostel room and in the scuffle, the bangles worn by her broke, fragments of which were supposedly seized by the police from the room occupied by the Appellant. The independent witness to the memorandum u/s. 27 is Ifthikaruddin (PW27). The memorandum u/s. 27 is

Ex.P55. Ifthikaruddin has turned hostile. In paragraph 2 of his testimony (upon his cross examination by the prosecutor) he states that the Appellant did not make any statement in his presence relating to the article seized from his room (from mark “c” to “c” of the memorandum). Thus, the so called corroborative pieces of evidence seized at the behest of the Appellant pursuant to his alleged memorandum u/s. 27 of the Evidence Act is highly suspicious and not worthy of reliance as a circumstance against the Appellant.

A botched up investigation or a maliciously motivated investigation conducted with intention of falsely implicating the Appellant and protecting the actual perpetrator of the offence?

59. The first act on the part of PW1 Dr. Hemant Varma after he receives information about the events of 19/09/08 from his driver PW9 Ram Prasad, is to contact the then Range IG Bhopal, Mr. Shailendra Shrivastava directly on the mobile number of the officer (paragraph 5 and 12 of PW1’s testimony). This clearly reflects that PW1 knew the then IG Mr. Shailendra Shrivastava intimately to be in possession of his mobile number. However, no adverse inference can be drawn against PW1 or the officer in question exclusively because of this fact. But the initiation of the investigative process is at the behest of IG Shailendra Shrivastava. PW1 states in paragraph 5 of his testimony that the IG asked him to bring the Appellant to the police station on the next day but later

sent a police team on the same day to the hostel after PW1 told the IG that the Appellant is in a state of depression and that he may do something to himself.

- 60.** Ex.P1, the first document which set the ball rolling in this case is authored by PW1. The contents of Ex.P1 have been reproduced in paragraph 9 *supra*. It has been prepared as per the information given to PW1 by PW9. Before the document is discussed, and the investigation carried out by the police is analysed, it is essential to give a brief timeline.

19/09/08 The date on which the Appellant along with PW9 went in the Qualis of PW1 to Denva Darshan and allegedly disposed of the body. Also, the date on which PW1 travelled to Indore.

20/09/08 Ex.P1 prepared by PW1 and handed over to the police – Police arrived at the hostel and took away the Appellant with them (paragraph 7 of PW1’s testimony).

22/09/08 Ex.P5 is the inquest proceedings u/s. 174 Cr.P.C – date shows over writing – The opinion of the witnesses to the recovery of the body is that a post mortem is essential to reveal the cause of death – witnesses also state that the Appellant informed them that he had strangled the deceased and wrapped her body in the bedding and thrown it from the railing – **Important** – The FIR has not been registered as on this date – Proved, that the Appellant was in the custody of the police even though he has not yet been arrested – date shows overwriting.

- Ex.P6 is the notice to the inquest witnesses – date shows overwriting.
- Ex.P7 – Memorandum of identification of the body – body identified by the Appellant by confession while in police custody– this document once again proves that the Appellant was in the custody of the police as on 22/09/08 which is before the registration of the FIR and his arrest - date shows overwriting – PW3 D.S. Sengar ASI prepared this memorandum of identification and in cross examination he admits to the overwriting with regard to the date and time but offers no explanation.
- Ex.P9 – Dehati Nalisi registered at P.S. Pachmarhi of inquest proceeding 0/08 – body identified as that of deceased – date shows overwriting – time shows overwriting
- Ex.P10 is the site map.

23/09/08 Ex.P11 is the request for post-mortem prepared by PW3 ASI D.S. Sengar – **the date and time at which the body is dispatched from Pachmarhi to Bhopal is 23/09/08 at 12.15 PM.**

- Ex.P12 is the identification memorandum of the deceased Shruti Hill. The body has been identified at site in Pachmarhi by George Hill, the father of the deceased on **23/09/08 at 5.30 PM.** The body has been identified at Pachmarhi by George Hill five hours and fifteen minutes after the body was dispatched from Pachmarhi – Either Px.P11 or P12, is fabricated.

24/09/08 Ex.P13 – post-mortem report – body received at Gandhi Medical College, Bhopal at 3.30 PM.

61. Before this Court enters into a discussion with regard to the nature of investigation by the police in this case, it is necessary to examine the meaning of “investigation” in relation to unearthing an offence. The law dictionary defines the term **Investigate** as “**1. To inquire into (a matter) systematically; to make (a suspect) the subject of a criminal inquiry...**”¹. The word **Investigation** is defined as “**the activity of trying to find out the truth about something, such as a crime, accident, or historical issue; esp., either an authoritative inquiry into certain facts, as by a legislative committee, or by a systematic examination of some intellectual problem or empirical question, as by mathematical treatment or by use of scientific method**”². (Emphasis added). Section 2(h) of the Cr.P.C defines investigation as “**investigation**” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf”.

¹ Black’s Law Dictionary – 10th edition

² Black’s Law Dictionary – 10th edition

62. The police consider the investigative process to be limited to the registration of an FIR, recording the statements of the witnesses under section 161 of the Cr.P.C, preparing the site plan, recording the 27 memorandum of the accused, preparing the memorandum of seizure etc., and filing the final report before the Magistrate. Where there are conflicting statements of the witnesses, it does not consider it necessary to confront the witnesses afresh with the contradictions of the other witnesses to ascertain who is being truthful and who is not. That task, the police feels is the exclusive domain of the Court, and this is where they are mistaken. It is also the duty of the police to ascertain the truthfulness of a witness statement with cross reference to other evidence it may have gathered in the course of investigation, and it is this process which is called as interrogation. Interrogation is not merely of the accused/probable suspect but also of the witnesses. Intelligent and persuasive interrogation unravels the truth. The police is expected to appreciate the scientific evidence and evaluate how it fits in the backdrop of statements of the material witnesses. Most importantly, the police must never commence an investigation with presuppositions as then, it would only gather the evidence in order to support its hypotheses more so, in a case to be proved by circumstantial evidence.

- 63.** The initiation of an investigation is not a witch hunt but an endeavour to unravel the truth. Its purpose is not to secure the conviction of the suspect/alleged accused as much as it is to ensure that it aids the Courts in arriving at a just decision. This also includes the duty to inform the Court that it is trying the wrong person as an accused when, evidence of his innocence is unearthed on a later date. An investigation must be fair, and it must consider not only the version of the incident given by the victim but also investigate into the defence of the accused.
- 64.** The supreme court has consistently held that investigation must be free from “objectionable features” or infirmities which may give rise to a grievance that accused was a victim of unfair investigation carried out with an ulterior motive. It required ethical conduct on the part of the investigating agency and voiced concern that an investigating officer who is not sensitive to the constitutional mandates would end up violating the personal liberty of the average citizen and so, a heavy responsibility is placed upon the police to ensure that innocent persons are not charged on account of false implication. According to the Supreme Court, the concept of fair investigation and fair trial are concomitant to the preservation of fundamental right of the accused under Article 21 of the Constitution of

India. It has also been held that an accused is presumed to be innocent till proved guilty and before that stage, the accused is entitled to a fair investigation and a fair trial with the prosecution expected to play a balanced role. The investigation according to the Supreme Court must be fair, transparent and expeditious to ensure compliance with the basic rule of law. The Supreme Court has held that a trial based on a partisan, motivated, one-sided or biased investigation cannot be a fair trial as, while the trial itself may be procedurally correct, the essence and purpose thereof may be vitiated by an unfair or ineffective investigation.³

- 65.** Thus, a fair investigation untainted by bias, presuppositions, malafide and performed with professional objectivity, taking into account every single piece of evidence both, against the accused and in his favour and thereafter arriving at an informed opinion on the necessity of sending the accused to stand trial or otherwise, is not merely an adherence to the statutory requirements of a fair investigation but also an essentiality on the anvil of constitutional morality and the rule of law. A report under s. 173(2) Cr.P.C is not a formality. It is a statement by the police that it has

³ Babubhai Vs. State of Gujarat (2010) 12 SCC 254 Para 32; State of Bihar Vs. P.P. Sharma (1992) Supp(1) 222 para 57 and 61; Navinchandra Majithia (2000) 8 SCC 323 paras 17-18; Nirmal Singh Kahlon (2009) 1 SCC 441; Manu Sharma Vs. State (NCT of Delhi) (2010) 6 SCC 1 para 197; Mithilesh Kumar Singh Vs. State of Rajasthan (2015) 9 SCC 795.

diligently investigated the allegations against the accused and is of the opinion that the accused is prima facie guilty of having committed the offence as alleged or not guilty of the same, for reasons stated in the said report.

- 66.** In the present case, the following would reveal the nature of the investigation done by the police:-

66.1 The statement u/s. 161 Cr.P.C of PW9 Ram Prasad is recorded by the police on 21/09/08. He states that the Appellant had brought down the bedding from his hostel on 19/09/08 and loaded it onto the dickey of the car. He does not say that he had either helped the Appellant in loading the bedding into the dickey of the car or that he had even touched the bedding. Thus, when this witness says in his police statement that the bedding was heavy, the police ought to have asked him as to how he knew that the bedding was heavy if he had not assisted the Appellant in loading the same into the car? However, no such question is asked to this witness (in his Court testimony the witness specifically states in para 8 that he never touched the bedding). No question is put to this witness by the police as to how, the Appellant managed to open the hatch of the dickey at Denwa Darshan which was locked and the key to which

was with him (PW9)? Ex.P26C was given by PW13 to the police on 25/10/08 and it revealed that there were four occupants in the car including PW9. However, no supplementary statement of PW9 is taken by the police enquiring who the two other occupants of the car were, as PW9 only says that besides himself, the other occupant was the Appellant. Thus, the police statement of PW9 (Ex.D3) reflects that the police recorded it as has been given by the witness and there was no interrogation of PW9 which may have revealed if he was truthfully stating the events of 19/09/08.

66.2 PW1, Dr. Hemant Varma's police statement leaves much to be desired, and he too ought to have been interrogated by the police. Whatever has been stated by PW1 to the police on 20/09/08 (Ex.P1) and his police statement recorded on 24/09/08 is ostensibly based upon the information that he received from PW9. According to his police statement and Ex.P1, Dr. Hemant Varma had gone to Indore on 19/09/08 for some personal work. The police never interrogated PW1 as to what was the personal work for which he went to Indore on 19/09/08? where he stayed at Indore? and what was the mode of transport by

which he went to Indore and whom he met there? The police never questioned PW1 that if he had to go to Indore on 19/09/08, then why did he let the Appellant borrow his vehicle with driver to go to Hoshangabad? The police deliberately did not investigate into the absence of PW1 from Bhopal on 19/09/08 and neither did they ascertain if PW1 actually went to Indore on 19/09/08 or did he go somewhere else? The police also do not question PW1 as to how he arrived at the conclusion on 20/09/08 itself that (a) the Appellant was a murderer and (b) what was the reason for PW1 was to mention in Ex.P1, that the Appellant was in a relationship with a girl and that the bedding probably contained the body of Shruti Hill? as these facts were never told by Ram Prasad (PW9) to Dr. Hemant Varma. Ram Prasad (PW9) only says that the circumstances in which the bedding was allegedly disposed of by the Appellant was suspicious. He does not even fleetingly indicate in his police statement that he suspected the bedding to contain human remains let alone the remains of a girl and if that be so, how does Dr. Hemant Varma indicate by necessary implication in

his letter dated 20/09/08 (Ex.P1) addressed to the SHO P.S Kohefiza that the Appellant is a murderer and the body may be that of the deceased Shruti Hill? Dr. Hemant Varma ought to have been interrogated intensively by the police on this aspect, but he never was.

66.3 The FSL report had disclosed that there was human sperm in the panties (FSL Article A4) worn by the deceased and in the blanket in which the body was wrapped. However, the police do not send the same for a DNA analysis as it ought to have. If the evidence revealed that it was the Appellant's sperm, it would not have been of much consequence as the consistent evidence of the prosecution points to a romantic relationship existing between the deceased and the Appellant and that in all probability they were married (as is revealed by the presence of a mangal sutra which was sent along with the body and noticed by the doctor who performed the post-mortem). However, if the DNA revealed that it was not the sperm of the Appellant, the scope of the investigation could have been enhanced.

66.4 The largest hole in the prosecution's case is Ex.P26C. This is the receipt issued by

PW13 at the Pachmarhi toll barrier which reflects that there were four passengers in the Qualis and not two as stated by PW9. PW13 in cross examination has clearly stated that there were four persons travelling in the vehicle and that the receipt was issued to the driver Ram Prasad (PW9). This receipt should have set the alarm bells ringing in the mind of the Investigating Officer. He should have resorted to more strenuous interrogation of PW9 to unravel the truth. Once Ex.P26C revealed that there were four passengers in the Qualis and not two, it should have become apparent to the IO that PW9 was lying. That coupled with the fact that Dr. Hemant Varma gave no proof of his absence from Bhopal and his presence at Indore on 19/09/08, as he did not provide any proof of journey from Bhopal to Indore on 19/09/08 and neither did he produce any witness who could have given a statement to the police establishing his presence at Indore on 19/09/08. The conduct of Dr. Hemant Varma and his claim of absence from Bhopal on 19/09/08 when analysed in the circumstance of Ex.P26C and the statement of PW13, should have goaded the IO to subject Dr. Hemant Varma to rigorous interrogation with regard to his alleged absence from Bhopal and his presence at Indore on 19/09/08 in order to either

confirm or eliminate the presence of Dr. Hemant Varma as one of the four occupants of the Qualis. The IO does not even ask Dr. Hemant Varma as to why he gave his Qualis to the Appellant to go to Hoshangabad when Dr. Hemant Varma himself had to travel to Indore on the same day? The IO should have also realised that there was no material unearthed in the course of the investigation to reveal that the relationship between Dr. Hemant Varma and the Appellant was extremely close that Dr. Hemant Varma chose to sacrifice his own comfort of travelling in his car to Indore and instead offered the same to the Appellant to go to Pachmarhi? On the contrary, the letter dated 20/09/08 (Ex.P1) written by the Dr. Hemant Varma to the SHO of PS Kohefiza clearly reveals that from the very outset itself, Dr. Hemant Varma was referring to the Appellant as a murderer even before the body was recovered. All these aspects of the case ought to have made a vigilant investigator to examine the role of Dr. Hemant Varma critically to ascertain, if his role in this case was more insidious than innocent, as was sought to be made out by the police which attributed the role of a witness to him. The omission on the part of the IO of not questioning Dr. Hemant Varma (PW1) and his driver Ram

Prasad (PW9) in the light of Ex.P26C is not inadvertent but deliberate. The police knew that the entire case of the prosecution was based on the testimony of PW1 and PW9 and as per their version, on 19/09/08, only two persons travelled in the Qualis to Pachmarhi and back and they were the Appellant and PW9. The emphatic evidence revealed by Ex.P26C that there were four persons in the Qualis threw the investigation into a disarray. Obviously PW9 knew for sure that there were four persons in the vehicle. The driver Ram Prasad's continued silence and his negation of the suggestion put forth by the defence that there were four people in the vehicle, was to protect them.

66.5 The police kept the Appellant in illegal custody from 20/09/08 till his arrest on 25/09/08. Dr. Hemant Varma in his court testimony as PW1, states in paragraph 7 that the TI of PS Kohefiza took away the Appellant with him on 20/09/08. There is no material on record to show that the police ever released Appellant after he was taken away from the hostel on 20/09/08. In order to arrive at this conclusion, we took into consideration Ex.P7 which is a memorandum of identification of the dead body. The document reveals that the identification was effected by the

Appellant on 22/09/08 at 1330 hrs, in the presence of witnesses Ramprasad and Rajendra in which the Appellant has confessed that he has murdered the deceased in his hostel room by strangling her and thereafter disposed of her body at Denwa Darshan. On that date, the FIR was not registered, and neither was the Appellant arrested. The next document relied upon by us is inquest report Ex.P5 dated 22/09/08 in which also the Appellant has confessed to his crime in the presence of the witnesses to the inquest proceedings. The FIR is Ex.P51 and it has been registered on 24/09/08 and the Appellant was formally arrested on 25/09/08 and the memorandum of arrest is Ex.P53. Thus, it is clear from the prosecution's documents that the Appellant has been in the custody of the police since 20/09/08 till he was formally arrested on 25/09/08. Before his arrest, he was made to confess to the crime during the period he was in custody of the police as is reflected by Ex.P5 and 7 which clearly reveals the malice with which the police was conducting its investigation against the Appellant. The police was well aware of the inherent fallacies and shortcomings in their investigation which have been discussed hereinabove and yet, it went ahead and prosecuted

the Appellant knowing fully well that he had no role to play in the crime.

66.6 The police was outrightly partisan in its investigation. It did not investigate the offence from the standpoint of the Appellant at all. Its bias is reflected from Ex.P5 and Ex.P7 where it got the Appellant to confess to his crime before witnesses on 22/09/09 even before the FIR was registered on 24/09/08 and before the Appellant was arrested on 25/09/08. The timeline establishes that the Appellant was in the continuous custody of the police from 20/09/08. This is also proved by the testimony of PW1 Dr. Hemant Varma who states that the Appellant was taken away from the hostel by the police on 20/09/08. The conduct of the police clearly reveals that it was bent upon convicting the Appellant and the statement of the Appellant u/s. 313 Cr.P.C is telling. In response to question No.2, the Appellant has answered that PW1 Dr. Hemant Varma is vengeful towards him due to campus politics. In question No. 130, the Appellant is informed by the Court that PW6 Dr. Bhagwan Waskle stated that the Appellant was staying in the boys' hostel since 2003 to which the Appellant answers that it is correct to say so but that due to campus politics, PW6 and the

Appellant are opposed to each other. Likewise, the Appellant, in his answer to question No. 135 says that PW17 Pragyesh Navlakhe is also inimical terms with him on account of campus politics. Lastly, in response to question 198 where the Appellant is asked as to why the prosecution witnesses are against him, the Appellant replies that on account of political rivalry, he has been implicated on the basis of suspicion and that Dr. Hemant Varma has got him falsely implicated. The Appellant further says that Dr. Hemant Varma knows senior officers in the police and with their help has fabricated evidence against the Appellant and has got him implicated so as to spoil the Appellant's career and to ensure that the Appellant is unable to study in the college.

66.7 In this regard, it is painful to note that the Ld. Trial Court has not cared to reflect upon the case of the Appellant as per his statement u/s. 313 Cr.P.C. Recently, a two judge bench the Supreme Court held that it is necessary for the Trial Court to deal with a parallel hypothesis set up by the accused in the following words, **“Section 313 CrPC cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be**

considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2) CrPC. The importance of this right has been considered time and again by this Court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) CrPC the Court is duty-bound under Section 313(4) CrPC to consider the same. The mere use of the word “may” cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available, is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 CrPC, in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on the court in dispensation of justice

to adequately consider the defence of the accused taken under Section 313 CrPC and to either accept or reject the same for reasons specified in writing”⁴. This judgement was once again followed by a three judge bench of the Supreme Court where it held, “**Under the Code of Criminal Procedure, 1973, after the prosecution closes its evidence and examines all its witnesses, the accused is given an opportunity of explanation through Section 313(1)(b). Any alternate version of events or interpretation proffered by the accused must be carefully analysed and considered by the trial court in compliance with the mandate of Section 313(4). Such opportunity is a valuable right of the accused to seek justice and defend oneself. Failure of the trial court to fairly apply its mind and consider the defence, could endanger the conviction itself [*Reena Hazarika v. State of Assam*, (2019) 13 SCC 289, para 19 : (2019) 4 SCC (Cri) 546] . Unlike the prosecution which needs to prove its case beyond reasonable doubt, the accused merely needs to create reasonable doubt or prove their alternate version by mere preponderance of**

⁴ *Reena Hazarika v. State of Assam* - (2019) 13 SCC 289 – para 19

probabilities [M. Abbas v. State of Kerala, (2001) 10 SCC 103, para 10 : 2002 SCC (Cri) 1270] . Thus, once a plausible version has been put forth in defence at the Section 313 CrPC examination stage, then it is for the prosecution to negate such defence plea”⁵.

66.8 However, the Ld. Trial Court has not even fleetingly dealt with the version put forth by the Appellant in his statement u/s. 313 Cr.P.C. It was incumbent upon the Ld. Trial Court to deal with the allegation levelled by the Appellant in his answer to question No. 198, that Dr. Hemant Varma was close to the police authorities. In fact, this assertion of the Appellant assumed great significance as Dr. Hemant Varma (PW1) has himself stated in paragraph 12 of his Court testimony that he contacted IG Bhopal Mr. Shailendra Shrivastava directly on his mobile phone which reflects the close relationship between Dr. Hemant Varma and the then IG Bhopal Mr. Shailendra Shrivastava, as the personal mobile number of such a senior official is not in the public domain that anyone and everyone can have access to it. Moreover, PS Kohefiza that conducted the entire investigation was under the jurisdiction of Mr. Shailendra

⁵ **Parminder Kaur Vs. State of Punjab – (2020) 8 SCC 811 – paragraph 22**

Shrivastava, the then IG Bhopal and therefore, his influence in the case, though no more than a lingering presence like Du Maurier's Rebecca, was enough for the Trial Court to find that the entire investigation showed signs of manipulation though the same may not be directly attributable to Mr. Shailendra Shrivastava. However, the Ld. Trial Court has unfortunately not even referred to the contentions of the Appellant in his statement u/s. 313 Cr.P.C.

66.9 The enthusiasm shown by the police in conducting this case in a tearing hurry, adds to the suspicion. A speedy trial is most desirable but when a case is investigated, charge sheeted and concluded in less than a year, the same, in the light of other circumstances and the average time usually taken to conclude a trial in this state, makes the cloud even more dense. The incident is of 19/09/08 and the judgement of the Trial Court convicting the Appellant is dated 31/06/09. In less than one year, twenty seven witnesses are examined and sixty documents are exhibited on behalf of the prosecution. A tad too efficient to not arouse suspicion.

67. Thus, from the material on record, we find the conduct of the police is malicious and the investigation has been

done with the intention of securing the conviction of the Appellant for an offence he did not commit and perhaps, for shielding Dr. Hemant Varma (PW1) whose involvement in this offence is strongly suspected though there is no material to hold affirmatively against him as he was not on trial. The proximity between Dr. Hemant Varma and the then IG Bhopal Mr. Shailendra Shrivastava, and the fact that PW1 Dr. Hemant Varma's involvement in the case was far more than that of an innocent bystander in view of what has been discussed by us hereinabove, the investigation ought to have been done by a neutral agency like the Central Bureau of Investigation in the first place.

- 68.** This is a case that has been deliberately botched up and the Appellant falsely implicated to protect perhaps, the actual perpetrators of the offence who may have been known to the higher echelons of the state police. **Under the circumstances, the appeal succeeds, and the judgement of conviction dated 31/07/09 passed in S.T No. 6/09, imposing on the Appellant the sentence of rigorous imprisonment for life for the offence of murder punishable u/s. 302 IPC and for three years for an offence u/s. 201 IPC, is set aside. The Appellant shall be set at liberty forthwith.**

Should the Appellant be compensated to meet the ends of justice?

- 69.** On the day the Appellant was arrested i.e., 25/09/08, he was a student of 4th year M.B.B.S. He was at the cusp of becoming a doctor. The Appellant is a Gond (as reflected in his arrest memo Ex.P53) and thereby a Scheduled Tribe. After his formal arrest on 25/09/08, the Appellant has continuously remained in jail, first as an undertrial and thereafter as a convict. He has wasted more than thirteen precious years of his life. He was 23 years of age on the date of his arrest and today he is 36. No amount of monetary compensation can ever replenish the period of youth he has lost for no fault of his. He has been a victim of truth being sacrificed at the altar of a motivated and malicious investigation. Whether his being a member of the scheduled tribe had anything to do with the fate he suffered cannot be stated with certainty but the indignity, discrimination and oppression, that members of the scheduled castes and scheduled tribes face in the state is a “notorious fact” and does not require any extraneous evidence to be led to prove the same.
- 70.** We have already examined the law relating to a fair and impartial investigation in paragraphs 61 and 65 *supra*. Every investigation by the police is expected to be fair, unbiased and objective. In the course of an investigation, there may be cases where the police files a chargesheet against a suspect under the belief that it

is prosecuting the right man. However, such an accused may ultimately be acquitted by the Trial Court or acquitted by the appellate Court by when, the accused may have spent the best part of his life in jail. However, where the loss of liberty is a consequence of the Courts belatedly taking a different view, and not agreeing with the case put forth by the prosecution, then certainly it would not be a case of malicious prosecution but one, where the accused has suffered on account of systemic delays. In such cases, the State must consider making provision to rehabilitate such persons after their release.

- 71.** However, where the investigation is motivated with malice and influence right from the very outset, and the same is done with the purpose of falsely implicating an innocent person, and where the record of the case itself reveals such malice, such a proceeding would surely be a malicious prosecution. The discharge of state functions with malicious intent or in a manner malafide, cannot clad the state with the armour of sovereign immunity.
- 72.** As far as the question relating to compensation is concerned, one view is that the Appellant be relegated to seek remedy under private law by an action in tort against the state. The other is that he be compensated for violation of his fundamental right to a fair and

unbiased trial. In **Rudul Sah Vs. State of Bihar**, the Supreme Court was seized of a case where the Petitioner (under Art. 32) was kept in jail for 14 years after he had served his sentence and was awarded compensation by the Supreme Court where in paragraph 10, the Supreme Court held, “..... **The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers**”⁶. This was perhaps one of the earliest cases where the Supreme Court had an occasion to deal with right of a person whose fundamental right has been infringed by state action.

73. A Division Bench of this Court in **Hardeep Singh Vs. State of M.P. & Ors.**,⁷, while considering the quantum of compensation in a case where the Appellant was claiming compensation for delay in trial and also for loss in prestige and dignity on account of photographs of his

⁶ (1983) 4 SCC 141 – Rudul Sah Vs. State of Bihar & Anr..

⁷ 2008 SCC OnLine MP 501– Hardeep Singh Anand Vs. State of M.P. & Anr.,

being published in a handcuffed state in the police station, awarded the Appellant a compensation of Rs. 70,000/- and held in paragraph 16 **“During the five years of delay in the trial from 15-3-1999 to 6-5-2004 caused by the State, the Appellant's liberty was not affected inasmuch as he was not under imprisonment but was on bail. Hence, the Appellant will not be entitled to a huge amount of compensation as claimed by him. Nonetheless, the Appellant was handcuffed without a valid justification and his dignity as a human being had been seriously affected. In the circumstances, an expeditious trial and his acquittal would have restored his personal dignity as early as possible. But the State instead of taking timely steps to produce and examine the prosecution witnesses delayed the trial for long five years. In the facts and circumstances of the case, we award a compensation of Rs. 70,000/-(Rupees seventy thousand only) to the Appellant. This compensation will be without prejudice to any claim that the Appellant may make in a civil Court for damages. In the result, the impugned order passed by the learned single Judge is set aside and the appeal is allowed. We accordingly direct the respondent No. 1-State to pay the Appellant a sum of Rs. 70,000/-(Rupees seventy thousand only) as compensation within a period of**

three months from today". The Appellant Hardeep Singh Anand was not satisfied with the quantum of compensation and approached the Supreme Court which enhanced the compensation to Rs. 2,00,000/-⁸.

74. In Nilabati Behera Vs. State of Orissa, the Supreme Court dealt with a case of a youth who died in police custody. In paragraph 34, the Supreme Court held **"The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law**

⁸ (2012) 1 SCC 748 – Hardeep Singh Anand Vs. State of M.P

by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making ‘monetary amends’ under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of ‘exemplary damages’ awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law”⁹.

75. In *D.K. Basu Vs. State of West Bengal*, the landmark case pertaining to civil liberties, powers of the police to arrest and custodial violence, the Supreme Court laid down guidelines to be followed mandatorily by the police while effecting an arrest. It also laid down that where the actions of the police are malicious and result in the abridgement of the fundamental rights of the citizen, the

⁹ *Nilabati Behera v. State of Orissa* - (1993) 2 SCC 746 - para 34

victim could be compensated for such infringement and held **“The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the *established* violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen”**¹⁰.

¹⁰ D.K. Basu v. State of W.B., - (1997) 1 SCC 416 – para 44

76. The Supreme Court also went into the question of relegating the victim to the rigours of the civil courts to sustain an action in tort or whether it would be appropriate for a Constitution Court to compensate the victim, independent of his right to sue the State for tortious liability, where the act of the State or its instrumentalities were malicious. While delving so, the Supreme Court held **“The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim — civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds**

of the family members of the deceased victim, who may have been the breadwinner of the family”¹¹.

- 77.** More recently, the Supreme Court in **Nambinarayanan Vs. Siby Mathew**¹², awarded a compensation of rupees fifty lakhs to the former ISRO scientist Nambinarayanan who was indicted by the Kerala Police and exonerated by the Central Bureau of Investigation. However, during the course of investigation, which the Supreme Court concluded was malicious, Nambinarayanan had to spend about fifty days as an undertrial.
- 78.** In comparison to the fate suffered by Nambinarayanan, the Appellant’s fate is almost one of eternal damnation. The Appellant in this case, a Gond tribal, who with much difficulty, thanks to the provision for affirmative action in the Constitution, made it to a State run Medical College and was in the fourth (final) year of M.B.B.S and was on the verge of becoming a full-fledged doctor, a support for his family and a source of inspiration for his community. However, on account of this case, his entire life has been thrown into a disarray. He has spent over four thousand seven hundred and forty days in prison, first as an undertrial after being taken into custody on 20/09/08 (formal arrest was on 25/09/08) and thereafter as a convict. Even by modest

¹¹ **D.K. Basu v. State of W.B., - (1997) 1 SCC 416 – para 45**

¹² **(2018) 10 SCC 804**

accounts, the Appellant would have earned at least rupees three lakhs per annum, whether he be in the service of the State or in private practice. Therefore, in the unique factual circumstances of this case, we hold that the Appellant is eligible for compensation on account of the violation of his fundamental right to life under Article 21 of the Constitution of India.

- 79. In view of what we have held hereinabove, the fact that the Appellant has spent more than thirteen years awaiting justice and, in the facts and circumstances unique to this case, we award the Appellant a compensation of Rs. 42,00,000/- (rupees forty two lakhs), which shall be paid by the State within ninety days from the date of this order. Thereafter, it shall attract an interest of 9% per annum till the date of payment. This does not preclude the Appellant in proceeding against the State for an action in tort for malicious prosecution. If he succeeds in the same, the amount of compensation paid to the Appellant in compliance of this order shall be adjusted accordingly.** The record of the Trial Court shall be preserved for a period of three years from the date of this order. A copy of the entire Trial Court record shall be provided to the Appellant free of cost if he so demands. The District Legal Services Authority concerned shall accord all such

assistance to the Appellant as required, to enable him to prosecute his claim before the Court of appropriate jurisdiction, if the Appellant so desires to pursue such a remedy.

80. The Appeal is disposed of.

(Atul Sreedharan)
Judge

(Sunita Yadav)
Judge