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P. EKNATH

v.

Y. AMARANATHA REDDY @ BABU & ANR.

(Criminal Appeal No. 1792 of 2013)

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FEBRUARY 09, 2017

[PINAKI CHANDRA GHOSE AND R. F. NARIMAN, JJ.]

Penal Code, 1860 – ss. 302, 307, 324 – Double murder – Attempt to murder – Double murder of daughter aged 12 years and her father aged 50 years; double life attempts on two, inflicting severe injuries; and theft in the dwelling house by the sole accused – Conviction and sentence for offences punishable u/ss. 302, 307and 324 – However, acquittal by the High Court – On appeal, held: Material on record shows that the accused had the requisite motive for committing the offence – Weapon-sickle used can be convincingly linked to the injuries caused on the deceased – FSL report, credibility of witnesses, foot prints of the offender, narration of incident by the circumstantial witness, identification of the accused/weapon, presence of light in the murder scene, all leads to the guilt of the accused – High Court failed to appreciate the evidence brought before the Court and the facts of the case and set aside the order of the trial court by a non-reasoned order – Thus, the order passed by the High Court is perverse and not sustainable in the eyes of law, and is set aside.

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Allowing the appeal, the Court

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Per Pinaki Chandra Ghose, J.:

HELD: 1.1 It appears that except motive, the High Court did not give any other plausible reasons for setting aside the well reasoned order of the trial court. After going through the evidence placed before this Court, there is no reason to disbelieve the evidence of PWs 1 and 2- injured eye witnesses. The High Court did not even take into account the evidence of PWs 20-22 who just after the incident came to the spot in question. On considering the sketch of the spot, there is no doubt that deceased No.2 died on the ground floor, lying in a pool of blood, and the daughter

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aged 12 years old, was also lying dead in the middle of the staircase. It further appears that the reason behind this was that some loan was taken by the accused and was not returned to the deceased No.2 victim as a result whereof these ghastly murders took place. [Paras 15, 18] [399-E-H; 400-A] A

1.2 The evidence which was put forward by the doctor P.W.14 who conducted the autopsy on the dead body of the deceased No.2, as well as the doctor P.W.13 who further conducted autopsy over the dead body of the deceased No.1 clearly shows that all injuries were of a sharp edged weapon. There is no discrepancy with regard to the ocular evidence or the evidence of the doctors who deposed before the Court. The weapon (sickle) used by the accused was recovered at the instance of the accused himself, and the sickle also contained human blood in terms of the FSL Report. [Para 19][400-B-C] B C

1.3 It is found from the material available on record that the accused had the requisite motive for committing the offence and the weapon used i.e. the sickle, can be convincingly linked to the injuries caused on the deceased. The FSL report, credibility of witnesses, foot prints of the offender, narration of incident by the circumstantial witness, identification of the accused/weapon, presence of light in the murder scene, all leads to the guilt of the accused. [Para 21] [400-E] D E

1.4 The High Court failed to appreciate the evidence brought before the Court and the facts which ought to have been taken into consideration at the time of deciding the matter and without giving any reasons, set aside the well reasoned order of the trial court. Therefore, the order passed by the High Court is perverse and not sustainable in the eyes of law and the order passed by the High court is set aside. [Paras 23, 24] [400-G-H] F

<u>Per R. F. Nariman, J. (Concurring):</u>

The High Court completely ignored the testimony of PW-13 who conducted the autopsy over the dead body of deceased no.1, the young daughter, which testimony clearly showed that the daughter had been murdered by a sickle, all 9 injuries on her being incised injuries. The High Court erred in reading the G

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A **evidence of PW-14 as a whole to conclude that injuries found on deceased no. 2 are not possible with a sharp edged weapon like a sickle, and that it is distinctly possible that they could have been caused with two distinct weapons. This reasoning ignores the hypothesis that a sickle has a blunt side which could cause "lacerated injuries". Further, as the trial court recorded, the**
B **doctor who used the expression "lacerated" actually meant "incised". Also, the fact that there were 14 wounds would not at all lead to the conclusion that they were caused with two distinct weapons-a complete surmise on the part of the High Court. The High Court mixed up the testimony of PWs-13 and 14 to conclude**
C **that the injuries sustained by both deceased nos. 1 and 2 were not possible with a weapon like a sickle. The High Court ignored vital evidence as to recovery of a blood stained sickle which was hidden under stones, and which was recovered with the complicity of the accused. To state that the accused carrying the sickle along with him is doubtful was to ignore this vital piece of evidence.**
D **Equally, with regard to the scene of offence in so far as the young daughter was concerned, to rely solely upon the Inquest Report and again to ignore the evidence of PWs-1, 3, 4, 5, and 6, (and the site plan referred), all of whom said consistently that the dead body of the deceased daughter was found on the staircase and**
E **not in the bedroom, was again to ignore the overwhelming evidence in favour of the dead body being found on the staircase. Further, based only on PW-22's evidence, that there was a zero watt bulb which alone was burning in the house, and to ignore the evidence of PWs-1, and 20 to 23 on the sufficiency of the lighting in the house together with the common sensical conclusion that**
F **if the accused and the deceased no.2 were speaking together, it could not have been in the dark, was to ignore vital evidence. The High Court completely ignored "the dying declaration" made by PW-2 immediately after the incident. The High Court did not set aside the finding of the trial court together with its reasoning**
G **based on evidence that the offence under Section 307 was made out, and yet set aside the conviction based on Section 307. [Para 12] [405-B-H; 406-A-C]**

Medical Jurisprudence on Toxicology by **Dr. K. S. Reddy – referred to.**

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1792 of 2013. A

From the Judgment and Order dated 17.08.2012 of the High Court of Judicature at Andhra Pradesh in Criminal Appeal No. 1025 of 2008.

Suyodhan Byrapaneni, Ms.Tatini Basu, Advs., for the Appellant. B

V. Sridhar Reddy, V. N. Raghupathy, Guntur Prabhakar, Ms. Prerna Singh, D. Mahesh Babu, Advs. for the Respondents.

The Judgments of the Court were delivered by

PINAKI CHANDRA GHOSE, J. 1. This appeal, filed by the appellant/Complainant is directed against the judgment and order dated 17.08.2012 passed by the Division Bench of the High Court of Andhra Pradesh at Hyderabad, whereby the High Court allowed the appeal filed by the accused (Respondent No.1 herein) and set aside the conviction and sentence imposed by the trial Court for the offences punishable under Sections 302, 307 and 324 IPC and acquitted him of the charges. C D

2. This case pertains to double murder of the deceased Pasupuleti Lohita, aged 12 years and the deceased Pasupuleti Venkatramana, aged 50 years and double life attempts on Pasupuleti Chandrakala and Pasupuleti Eknath, all residents of Prasanth Nagar, Madanapalle, and theft in the dwelling house by the sole accused Yerraballi Amaranatha Reddy @ Babu Reddy-Respondent No.1 herein. E

3. The relevant facts which are necessary for the purpose of deciding this appeal are narrated hereunder:

4. According to the case of the prosecution, on 18.09.2005, at about 10.00 p.m., the accused went to the house of P. Venkatramana (the deceased No.2) along with a sickle. While the deceased No.2 and the accused were talking and when the others had retired for the night, at about 1.30 a.m., the accused took out the sickle and attacked the deceased No.2 and hacked him indiscriminately. When P.W. 2 wife of deceased No.2 tried to intervene, he attacked her too and caused severe bleeding injuries. F G

5. P.W.1 (son of deceased No.2) witnessed the incident, and called his brother P.W.3 on the phone and informed him about the incident. As P.W.3 was sleeping, he could not understand the message of P.W.1, H

A so he called back. The accused lifted the phone and heard P.W.1 talking to P.W.3 and went to the bedroom of P.W.1 and attacked him and caused injuries which led to bleeding. When the deceased No.1 tried to run down the stairs, the accused caught her on the staircase and hacked her to death. Meanwhile, P.W.1 locked the doors of his bedroom. The accused also committed theft of Rs.2,500/- from the shirt of the B deceased.

6. On the information furnished by P.W.3, police came to the scene of offence and recorded the statement of P.W.1 and Crime No. 115 of 2005 under Sections 302 and 307 IPC was registered. P.W.23 held inquest over the dead body of the deceased No.1 and got the scene C of offence photographed and sent the deceased No.2 and P.W.2 to the hospital for treatment. While undergoing treatment, deceased No.2 died in the hospital and an inquest was held on his dead body. The body was also sent for postmortem examination.

7. On 15.10.2005, P.W. 23 arrested the accused and recorded D his confessional statement in the presence of P.Ws 11 and 12 and seized the sickle used in the commission of offence at his instance. The accused also showed the place where he burned his blood stained shirt.

8. P.W. 13 doctor, who conducted the autopsy over the dead body of the deceased No.1, opined that the deceased died due to injury E to skull bones, cervical vertebrae leading to internal and external haemorrhage, shock and death. P.W. 14, the doctor who conducted the autopsy over the dead body of the deceased No. 2, opined that the deceased would appear to have died due to shock and haemorrhage due to multiple injuries to the vital organs by a sharp object. P.W. 23 sent the F material objects to FSL for examination and on receipt of the report from the FSL and on completion of the investigation, filed a charge sheet against the accused. The learned Sessions Judge has framed charges under Sections 302, 307 and 380 IPC against the accused.

9. In order to establish the said charges, the prosecution examined G P.Ws 1 to 23. The trial Court, after taking into consideration the evidence adduced, both oral and documentary, held that the prosecution has been able to establish the guilt of the accused beyond reasonable doubt, and convicted the appellant for offences punishable under Sections 302, 307 and 324 IPC and sentenced him to undergo imprisonment for life and to also to pay a fine of Rs. 5,000 with default stipulation.

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10. Being aggrieved, the accused preferred an appeal before the High Court and the said Court, after hearing the parties, allowed the appeal and set aside the conviction and sentence imposed by the trial Court for the offences punishable under Sections 302, 307 and 324 IPC and acquitted him.

11. The appellant-Complainant preferred this appeal, by way of special leave.

12. We have heard Mr. Suyodhan Byrapaneni, the learned counsel appearing for the appellant-Complainant and Mr. V. Sridhar Reddy, learned counsel appearing for the accused/Respondent No.1 and Mr. Guntur Prabhakar, the learned counsel appearing for the State at considerable length.

13. Learned counsel appearing for the appellant contended that the High Court erred in acquitting the accused without taking into consideration the well reasoned judgment of the Trial Court completely ignoring the evidences of P.Ws 1 and 2, who were the eyewitnesses and also the injured witnesses in the incident.

14. Per contra, learned counsel appearing for the accused contended that the High Court is right in coming to its conclusion by observing that the prosecution has failed to establish the motive for the commission of offence by the accused.

15. After hearing the contentions of the parties and carefully perusing the records of the case and after going through the judgments of both the trial Court as well as the High Court, it appears to us that except motive, the High Court has not given any other plausible reasons for setting aside the well reasoned order of the Trial Court.

16. Further, after going through the evidence which has been placed before us, there is no reason to disbelieve the evidence of PWs 1 and 2 who are injured eye witnesses. The High Court has not even taken into account the evidence of PWs 20, 21 and 22 who just after the incident came to the spot in question.

17. We have also considered the sketch of the spot which has been shown to us, and there is no doubt that deceased No.2 died on the ground floor, lying in a pool of blood, and the daughter who is 12 years old, was also lying dead in the middle of the staircase.

A 18. It further appears that the reason behind this is that some loan was taken by the accused and was not returned to the deceased No.2 victim as a result whereof these ghastly murders have taken place.

19. The evidence which has been put forward by doctor P.W.14 who conducted the autopsy on the dead body of the deceased No.2, as B well as the other doctor P.W.13 who further conducted autopsy over the dead body of the deceased No.1 clearly shows that all injuries were of a shart edged weapon. In our considered opinion, there is no discrepancy with regard to the ocular evidence or the evidence of the doctors who deposed before the Court. The weapon (sickle) which was used by the accused was recovered at the instance of the accused himself. The C said sickle also contained human blood in terms of the FSL Report which was produced before the Court at the time of hearing of the matter in question.

20. After taking into consideration and summing it up together, it appears to us that the High Court did not take into account all these D facts which were brought before us had been placed before the High Court at the time of hearing of the appeal.

21. We have been able to find out from the material available on record that the accused had the requisite motive for committing the offence and the weapon used i.e. sickle can be convincingly linked to E the injuries caused on the deceased. The FSL report, credibility of witnesses, foot prints of the offender, narration of incident by the circumstantial witness, identification of the accused/weapon, presence of light in the murder scene, all leads to the guilt of the accused.

22. Learned counsel for the respondent cited before us some F judgments which, in our opinion, cannot be helpful to the respondent in the facts and circumstances of this case.

23. In our opinion, the High Court has failed to appreciate such evidence which was brought before the Court and further the facts which ought to have been taken into consideration at the time of the matter to G be decided by the High Court and without giving any reasons, set aside the well reasoned order of the Trial Court.

24. Therefore, the order passed by the High Court is perverse and not sustainable in the eyes of law and we set aside the order passed by it affirming the order passed by the trial Court.

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25. Accordingly, the appeal is allowed. A

26. We direct the concerned Police Authorities to take custody of the respondent forthwith to serve out the remainder of sentence imposed by the Trial Court.

R. F. NARIMAN, J. (Concurring) 1. A concurring judgment is usually written because a Judge feels that he can reach the same conclusion, but by a different process of reasoning. In the present case, the reason I have penned this concurrence is because the impugned judgment of the Division Bench of the Andhra Pradesh High Court, dated 17th August, 2012, has been characterized by my learned brother as "perverse". "Perverse" is not a happy expression, particularly when used for a judgment of a superior court of record. I am constrained to observe this because in the facts of the present case, there has been a heinous double murder, as has been pointed out by my learned brother. And, despite an extremely well-considered judgment by the trial court, dated 31st July, 2008, the High Court has acquitted the respondent-accused before us. I entirely agree that this judgment is "perverse", and wish to give my own reasons as to why it is so. B C D

2. The skeletal facts necessary to understand the present case have already been set out by my learned brother. The salient features of the case are that the accused entered the family home of deceased no. 2 on 18th September, 2005 at about 10.00 P.M. PW-2, being the wife of the deceased no. 2, a grievously injured eyewitness in the present case. She cooked some food for him, and then went to bed along with her two children by about 11.00 P.M. At about 1.30 A.M. on 19th September, 2005, she heard a tremendous commotion, and found the accused hacking away at her husband with a sickle. She also witnessed the accused hacking away at her daughter, who was a young girl of tender age. The accused succeeded in his attempt at murdering both her husband and her daughter. She narrowly escaped death only because she feigned unconsciousness, but ultimately did become unconscious. Her 14 year old son also escaped being murdered, and was also seriously injured, because he bolted himself inside a bedroom, and contacted his brother by phone who came to the scene of the crime some time later. What is interesting to note is that, at 3.57 A.M. on 19th September, 2005, PW-2 recorded what was supposed to be a dying declaration to the duty doctor Shri R. Chennaiah, at the Area Hospital, Madanapalle. This dying declaration reads as follows: E F G H

A "On 18.9.2005 night 10.00 hours, we came out after meals and babu locking the gate (my babu name Ekanth). At that time Babu Reddy, Yerracherlopalli came. At that time preparing meals and asked him to take meals prepared chapathi and given him. My husband and himself sat by discussion. I went and slept. After about 1.00 hours, I woke up on hearing sounds and saw B Babu Reddy hacking my husband P.Venkatramana with sickle. I went to rescue and he hacked me. I lost my conscious. Again hacked my husband as having life. On hearing sounds, my children Ekanth, Lohita and sister son Manoj woke up. Hacked my daughter Lohitha. My son Ekanth bolted the door. Babu C Reddy having money dealings with my husband. Babu Reddy due amount. I caught the legs but not left me. Though I am having conscious and acted as unconscious. He left me as I died. My son Ekanth phoned to Sreedhar and Sreedhar came after phone call."

D 3. Ultimately, the learned Sessions Judge framed charges under Sections 302, 307, and 380 of the Indian Penal Code, inasmuch as there were two murders and two attempts at murder of two other persons who narrowly escaped with their lives.

4. The trial court convicted the accused both under Section 302 E for the double murder, as well as Section 307 for the attempt to murder PW-1 and PW-2, and the accused was convicted and sentenced to life imprisonment on both counts.

5. In appeal to a Division Bench of the High Court, the accused was acquitted of the offence under Section 302 as well as the offence F under Section 307.

6. The reasoning of the High Court in acquitting the accused of this heinous double murder and the heinous attempt at another double murder leaves much to be desired. In its reasoning, the High Court judgment begins with the evidence of PW-13 and PW-14. It must not be G forgotten that PW-13 is the doctor who conducted the autopsy over the dead body of deceased no.1, who was the murdered daughter in the present case. PW-14, on the other hand, conducted the autopsy over the dead body of deceased no. 2, who was the father and the head of the family.

H 7. After setting out the evidence of PW-13 and PW-14, the High

Court examined only the evidence of PW-14, and stated that despite the fact that the doctor opined that the deceased would have appeared to have died of shock and hemorrhage due to multiple injuries caused to the vital organs, and despite stating the above injuries could be caused by a sharp edged weapon like a sickle, in his cross-examination he admitted that the injuries are "lacerated" injuries. The trial court has correctly appreciated this evidence, and stated that what was really meant was that the injuries were caused by a sharp object. However, the High Court came to the conclusion, based on Medical Jurisprudence on Toxicology by Dr. K.S. Reddy, that "lacerated" injuries could only be caused with a blunt object. The High Court then went on to state that in his re-examination the doctor stated that "lacerated" injuries could be caused if the reverse side of a sickle is used, which is blunt.

8. On this evidence, the High Court concluded that injuries found on deceased no. 2 are not possible with a sharp edged weapon like a sickle. It also went on to conclude that given the number of injuries, it is also possible that it could have been done with two distinct weapons. Both the aforesaid reasons are perverse. There was no gainsaying that the blunt edged side of a sickle could possibly have been used. Be that as it may, the theoretical possibility that the injuries could have been caused with two distinct weapons is purely in the nature of surmise. But this does not end the matter. What is seriously wrong with the judgment under appeal is that it conveniently forgets the entire testimony of PW-13. In so far as PW-13's testimony is concerned, there is no doubt whatsoever that all 9 injuries caused on deceased no. 1, who was the daughter, were incised injuries and that they were all caused with a sharp edged weapon being a sickle. The High Court judgment conveniently forgets about PW-13, and then lumps PW-13 and PW-14 together to arrive at the astounding conclusion that the injuries sustained by deceased nos.1 and 2 are not possible with a sickle and that further, more than one weapon might have been used.

9. The High Court then goes on to discuss whether the accused could be said to have carried the sickle along with him at all. It arrives at the conclusion that the accused carrying the sickle along with him is itself doubtful. This is done without at all adverting to the fact that the sickle was recovered under a pile of stones only because the accused led the police to the hiding place of the sickle. Further, it also ignored the FSL report which made it clear that there was human blood found on the

A said sickle. And this omission becomes even more egregious in that the High Court, in passing, while narrating the facts, has itself observed:

> "On 15.10.2005, PW.23 arrested the accused at Neerugattuvaripalle and recorded his confessional statement in the presence of PWs.11 and 12 and seized the sickle used in the commission of offence from the heap of stones at Ammacheruvemitta and the accused also shown the place where he has burnt his blood stained shirt."

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10. With regard to the scene of the offence, in so far as the dead body of the female child was concerned, the High Court refers only to the inquest report Exh.P7 to conclude that since the evidence of PW-1 and PW-2 state that the body of the girl child was on the staircase, and the inquest report states that it was found in the middle of the bedroom of the children, there is contradictory evidence with regard to the finding of the dead body of deceased no. 1. Here again, the High Court falls into grievous error in completely ignoring the evidence of PW-3, 4, 5, and 6, all of whom consistently record that the dead body of the girl child was found only on the staircase. Further, in the rough sketch that was drawn by the Investigating Officer and exhibited as Exh.P-16, it is also made clear that the dead body of the deceased female child was found only on the staircase.

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11. Also, with regard to the amount of light that was there in the house in order that the injured eye-witnesses could be said to have successfully identified the accused, the High Court refers only to the evidence of PW-22, S.I. of the Police, to state that "a zero watt bulb was burning in the bedroom". From this it concludes that "only a zero watt bulb was burning in the house" whereas both the eye-witnesses stated that there was power supply and illumination of lights. Here again, the High Court falls into grievous error in completely ignoring the consistent testimony of PWs-20, 21, and 23, all of whom state that there was more than sufficient light in the house at the time of the incident. Further, it is clear that both deceased no.2 and the accused were sitting and talking till the incident occurred, and this they obviously did with the lights on in the house.

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12. What is also ignored by the High Court is the entire discussion of the trial court on the heinous hacking away at the two injured eye-witnesses, and the dying declaration recorded at 3.57 A.M. shortly after

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the incident by PW-2 in the hospital before the Doctor-in-charge. Without setting aside the finding of the trial court based on the necessary evidence, the High Court went on to upset the conviction under Section 307.

To summarize therefore –

(i) The High Court completely ignored the testimony of PW-13 who conducted the autopsy over the dead body of deceased no.1, the young daughter, which testimony clearly showed that the daughter had been murdered by a sickle, all 9 injuries on her being incised injuries;

(ii) The High Court has erred in reading the evidence of PW-14 as a whole to conclude that injuries found on deceased no. 2 are not possible with a sharp edged weapon like a sickle, and that it is distinctly possible that they could have been caused with two distinct weapons. This reasoning ignores the hypothesis that a sickle has a blunt side which could cause "lacerated injuries". Further, as the trial court records, the doctor who used the expression "lacerated" actually meant "incised". Also, the fact that there were 14 wounds would not at all lead to the conclusion that they were caused with two distinct weapons – a complete surmise on the part of the High Court;

(iii) The High Court mixes up the testimony of PWs-13 and 14 to conclude that the injuries sustained by both deceased nos. 1 and 2 are not possible with a weapon like a sickle;

(iv) The High Court ignores vital evidence as to recovery of a blood stained sickle which was hidden under stones, and which was recovered with the complicity of the accused. To state that the accused carrying the sickle along with him is doubtful is to ignore this vital piece of evidence;

(v) Equally, with regard to the scene of offence in so far as the young daughter was concerned, to rely solely upon the Inquest Report and again to ignore the evidence of PWs-1, 3, 4, 5, and 6, (and the site plan referred to above), all of whom said consistently that the dead body of the deceased daughter was found on the staircase and not in the bedroom, is again to ignore the overwhelming evidence in favour of the dead body being found on the staircase;

A (vi) To conclude, based only on PW-22's evidence, that there was a zero watt bulb which alone was burning in the house, and to ignore the evidence of PWs-1, and 20 to 23 on the sufficiency of the lighting in the house together with the common sensical conclusion that if the accused and the deceased no.2 were speaking together, it could not have been in the dark, is again to ignore vital evidence;

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(vii) The High Court has completely ignored "the dying declaration" made by PW-2 immediately after the incident; and

(viii) The High Court has not set aside the finding of the trial court together with its reasoning based on evidence that the offence under Section 307 was made out, and has yet set aside the conviction based on Section 307.

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13. In the result, it must be declared that the Division Bench judgment of the Andhra Pradesh High Court cannot but be characterized as perverse on all counts, and must therefore be set aside.

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Nidhi Jain Appeal allowed.