HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Criminal Appeal No. 6/2020

Mohan Lal S/o Okha Ram, Aged About 35 Years, By Caste Meghwal, R/o Mooli, Police Station Jhab, District Jalore (Raj.). (Lodged At Central Jail, Jodhpur).

----Appellant

Versus

State, Through P.P.

----Respondent

For Appellant(s) : Mr. Dinesh Vishnoi.
For Respondent(s) : Mr. B.R. Bishnoi, AGC.

HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE SAMEER JAIN

J U D G M E N T

Judgment pronounced on ::: 27/01/2022
Judgment reserved on ::: 22/11/2021

BY THE COURT : (PER HON'BLE MEHTA, J.)

The appellant herein has been convicted and sentenced as below vide judgment dated 11.11.2019 passed by the learned Additional Sessions Judge, Bhinmal, District Jalore in Sessions Case No.66/2013 (CIS No.229/2014):

Offences	**Sentences**	**Fine**	**Fine Default sentences**
Section 302 IPC	Life Imprisonment	Rs.10,000/-	5 Months' R.I.

2. Being aggrieved of his conviction and sentences, the appellant has preferred the instant appeal under Section 374(2) Cr.P.C.

3. Brief facts relevant and essential for disposal of the appeal are noted herein below:

4. The appellant Mohanlal was married to Smt. Jhamka (hereinafter referred to as 'the deceased') daughter of Sanwla Ram about 5 years before the incident. Smt. Jhamka was inflicted injuries at her matrimonial home on 05.07.2013 and was taken to the hospital where, she was declared dead. Shri Sanwla Ram (PW-6), father of the deceased, submitted a written report (Ex.P/11) to the SHO, Police Station Jhab on the very same day i.e. 05.07.2013 at the CHC, Sanchore alleging *inter alia* that his daughter Jhamka was married to the appellant herein, about 5 years ago. The maternal relatives *viz.* the husband Mohanlal, the sister-in-law Manju Devi and the brother-in-law Bhakhra Ram used to harass and humiliate his daughter on account of demand of dowry. Whenever she came to the maternal home, she complained of these incidents to him. The complainant alleged that he had given sufficient dowry but still, the deceased was being harassed in the matrimonial home. His younger brother Himmta Ram was informed by Chhagna Ram on mobile phone regarding the murder of Jhamka on which, all of them proceeded to the matrimonial home where they saw the dead body of Jhamka lying in the *Aangan* (courtyard). He alleged that his daughter had been murdered on account of demand of dowry.

On the basis of this written report (Ex.P/11), an FIR No.71/2013 came to be registered at the Police Station Jhab and investigation was commenced. The appellant and the co-accused persons were arrested. The usual recoveries were effected by the

I.O. acting in furtherance of the informations provided by the accused under Section 27 of the Indian Evidence Act. After concluding investigation, a charge-sheet came to be filed against the appellant Mohanlal for the offences punishable under Sections 498A & 302 IPC and in the alternative Section 304B IPC and against the accused Bhakhra Ram and Smt. Manju Devi for the offence punishable under Section 498A IPC. As the offences punishable under Sections 302 and 304B IPC were exclusively Sessions triable, the case was committed to the Court of the Additional Sessions Judge, Bhinmal for trial where charges were framed against the accused in the above terms. They pleaded not guilty and claimed trial. The prosecution examined as many as 22 witnesses and exhibited 27 documents to prove its case. In the statements recorded under Section 313 Cr.P.C., the accused denied the prosecution allegations. The accused Mohanlal took a specific plea of insanity in his explanation and stated that he was suffering from a bout of schizophrenia on the date of the incident. 5 witnesses were examined and 17 documents were exhibited in defence.

After hearing the arguments advanced by the learned Public Prosecutor and the defence counsel and, upon appreciating the evidence available on record, the learned trial court drew a conclusion that the allegation of harassment meted out to the deceased on account of demand of dowry was not substantiated. Accordingly, all the three accused Mohanlal, Manju Devi and Bhakhra Ram were acquitted of the offence punishable under Section 498A IPC. The accused i.e. Mohanlal was acquitted from the offence punishable under Section 304B IPC. However he was convicted for the offence under Section 302 IPC and was awarded

life imprisonment by the impugned judgment dated 11.11.2019 which is assailed in this appeal.

5. Shri Dinesh Vishnoi, learned counsel representing the appellant, has advanced a solitary argument for assailing the impugned Judgment. He urged that the accused was suffering from insanity well before and even on the day of the incident and thus, he is entitled to the benefit of plea of insanity by virtue of Section 84 of the IPC. In support of this contention, Shri Vishnoi drew the Court's attention to the statements of the defence witnesses Dr. Ashok Kumar (DW-1), Dr. Surendra Kumar (DW-2), Dr. Ghanshyam Das Koolwal (DW-3), Arjun Singh (DW-4) and Dinesh Kumar (DW-5) and urged that upon an overall appreciation of statements of these witnesses, it is established beyond all manner of doubt that the appellant was suffering from Psychosis NOS/ schizophrenia since the year 2007 onwards. Referring to the statement of Dr. Ghanshyam Das Koolwal (DW-3), Associate Professor, MDM Hospital, Jodhpur, learned counsel Shri Vishnoi urged that the medical expert proved the prescription slip, establishing the fact that Mohanlal was suffering from Psychosis and was under treatment of the doctor since the year 2010. He urged that the learned trial court adopted an absolutely hyper-technical approach while ignoring the evidence of the Medical experts. He further urged that the trial court was thoroughly unjustified in relying upon the pleadings of the bail applications filed on behalf of the accused appellant in order to draw an adverse inference against him. He contended that even if it is assumed for the sake of arguments that the accused appellant was responsible for causing the fatal injuries to his wife then also,

apparently, since the accused was suffering from insanity, he deserves benefit of Section 84 IPC and is entitled to an acquittal.

6. Per contra, learned Public Prosecutor, vehemently and fervently opposed the submissions advanced by the appellant's counsel and urged that the material prosecution witness Karsan Ram (PW-4) clearly stated that upon receiving information of the violent incident, he reached the place of incident and saw that Mohanlal was present in the house and the dead body of Smt. Jhamka was lying there in a pool of blood. Learned Public Prosecutor drew the Court's attention to the FSL report (Ex.P/25) and pointed out that the *Odhani* taken off from the body of the deceased, the blood smeared soil collected from the place of incident and the trousers of the accused were subjected to Forensic examination and all tested positive for presence of 'B' Group human blood which establishes beyond all manner of doubt that the accused appellant was responsible for inflicting the fatal injuries to Smt. Jhamka. He contended that the murder was committed inside the matrimonial home and as the presence of the accused in the house has been established by unimpeachable evidence, by virtue of Section 106 of the Indian Evidence Act, the burden would shift on to the accused to explain as to in what manner his wife received the fatal injuries in his presence. The accused, upon being questioned under Section 313 Cr.P.C., did not deny his presence in the house and took a lame plea of insanity, which was not proved by any plausible evidence. On these arguments, the learned Public Prosecutor urged that the prosecution has proved its case against the accused appellant

beyond all manner of doubt by reliable evidence and thus, the impugned Judgment does not warrant any interference.

7. We have given our thoughtful consideration to the submissions advanced at bar and, have gone through the impugned Judgment and the material available on record.

8. At the outset, we may state that the fact regarding Smt. Jhamka having been inflicted the sharp weapon injuries in the matrimonial home leading to her death was not disputed by the learned defence counsel. Inspite thereof, we have gone through the evidence of Dr. Omprakash (PW-12), member of Medical Board constituted at the CHC, Sanchore which conducted autopsy upon the dead body of Smt. Jhamka and issued the postmortem report (Ex.P/16) while taking note of sharp weapon wounds behind the skull, on the left shoulder, behind the neck and on the abdomen. The skull bone was fractured. All the injuries were antemortem and sufficient in the ordinary course of nature to cause death. Thus, the fact regarding Smt. Jhamka having expired by the sharp weapon injuries inflicted to her inside the matrimonial home, is well established. The defence did not dispute presence of the accused inside his house at the time of the incident. The accused was arrested on 06.07.2013 vide arrest memo (Ex.P/4). The pair of trousers worn by the accused was collected from his body and was sent to the FSL with the blood stained apparel of the deceased and a report (Ex.P/25) was received establishing that all the articles including the trousers, were stained with 'B' Group human blood. As per this evidence and by resorting to the reverse burden of proof under Section 106 of the Indian Evidence Act, we

have no hesitation in holding that the appellant inflicted the fatal sharp weapon injuries to his wife Smt. Jhamka. Hence, we have no hesitation in concluding that the trial court was perfectly justified in holding that the appellant herein inflicted the blows by a sharp weapon to Smt. Jhamka thereby causing her death. The injuries were sufficient in the ordinary course of nature to cause death and hence, the offence punishable under Section 302 IPC is well established from the material placed on record by the prosecution.

9. Now, we proceed to consider the plea of insanity, advanced on behalf of the appellant. In this regard, it may be stated here that during the course of trial, the accused appellant was subjected to medical examination for assessing his mental condition. Dr. Ashok Kumar (DW-1) was a member of the Medical Board constituted at the MDM Hospital, Jodhpur on 04.03.2016. While deposing on oath, doctor stated that he, along with other members of the Board, examined the accused Mohan Lal and issued the Medical Report (Ex.D/7) as per which, the accused was found suffering from Psychosis NOS disease by the effect whereof, he could be expected to behave abnormally and experience hallucinations. Once this illness afflicts a human being, life long treatment is required to control the disease. The doctor stated that prescription slips of 2-4 years earlier were presented to him. The court put certain queries to the doctor which are reproduced below for the sake of ready reference:

> "प्रश्न 1 :– क्या इस प्रकार की बीमारी में मरीज कार्य की प्रकृति और उसके परिणाम समझने में सक्षम हो सकता है अथवा नहीं ?

उत्तर – सामान्यतः कार्य की प्रकृति व परिणाम समझ सकता है, किंतु असामान्य स्थिति में कार्य की प्रकृति व परिणाम समझे यह आवश्यक नहीं है।

प्रश्न 2 :– इस प्रकार की बीमारी में नियमित इलाज लेने पर बीमारी पर क्या असर रहता है?
उत्तर – नियमित इलाज लेने पर बीमारी सामान्यतः नियंत्रण में रहती है।

प्रश्न 3 :– मरीज के बीमारी प्रारंभ होते समय व बीमारी के गंभीर होने के समय उसके द्वारा कार्य की प्रकृति व परिणाम समझने की क्षमता पर क्या असर पड़ता है ?
उत्तर – प्रारंभिक अवस्था में और बीमारी की अवधि बढ़ते रहने और लंबे होने पर कार्य की प्रकृति व परिणाम समझने की क्षमता कम भी हो सकती है एवं ज्यादा भी हो सकती है, उसमें परिवर्तन होता रहता है।

प्रश्न 4 :– आपने जब मरीज को चैक किया या उसका इलाज किया, तब उसकी क्या स्थिति थी ?
उत्तर – हमने जब मरीज का परीक्षण किया, तब नियमित इलाज लेते रहने से उसकी बीमारी नियंत्रण में थी।"

10. Dr. Surendra Kumar (DW-2) was also one of the Members of the Medical Board. He also gave evidence in tune with Dr. Ashok Kumar. The doctor also proved the prescriptions and slips (Ex.D/8 to Ex.D/13) presented to him when the medical examination of the accused was undertaken. Reply to question No.6, which was put to the doctor, is relevant and the same is reproduced herein below for the sake of ready reference:

"प्रश्न 6 :– क्या मरीज के आस पास की परिस्थिति और वातावरण से उसकी बीमारी पर असर पड़ सकता है ?
उत्तर – अचानक स्थिति में परिवर्तन होने और टेंशन बढने पर इस प्रकार की बीमारी का दौरा पड़ सकता है चाहे मरीज नियमित इलाज ले रहा हो। फिर कहा कि संभावना कम रहती है।"

11. Dr. Ghanshyam Das Koolwal appeared in the witness box as Defence Witness No.3 and stated that he was posted as Associate Professor in the MDM Hospital, Jodhpur on 28.04.2010. On that day, he treated the patient named Mohanlal. The prescription slip was proved as Ex.D/14. The patient again came to him on 22.05.2011 and the prescription slip (Ex.D/15) was issued. As per the observation of the medial expert, Mohanlal was suffering from Psychosis NOS for which, he was being provided treatment. The doctor explained that Psychosis is a kind of mental ailment due to which, a patient could experience hallucinations, act abnormally, display unnatural anger and indulge in violence. In reply to a question asked by the Court, the doctor answered that a patient, who suffers the bout of insanity, would not be in a position to understand the consequences of his acts.

12. Shri Arjun Singh (DW-4) stated in his evidence that he resides in the neighbourhood of the accused Mohanlal. He stated that Mohanlal was suffering from mental ailment for the last 10 years and was undergoing treatment.

13. While dealing with the plea of insanity advanced on behalf of the accused, the trial court made the following observations in its Judgment:

> "38. इस प्रकार पत्रावली पर उक्त तीनों ही चिकित्सा संबंधी साक्षी द्वारा जिरह में की गई स्वीकारोक्ति व न्यायालय द्वारा पूछे प्रश्नों के उत्तर में जो तथ्य दिये है, उससे स्थिति स्पष्ट है कि नियमित ईलाज लेने पर उक्त बीमारी नियंत्रण में रहती है और ईलाज के दौरान दोरा पड़ने की संभावना कम रहती है, अचानक दोरा पड़ने की संभावना ईलाज के दौरान नहीं रहती है। डी.ड. 1 व डी.ड. 2 की रिपोर्ट घटना के तीन साल बाद की है। घटना के समय की वास्तविक स्थिति ये गवाह नहीं बता सकते, क्योंकि घटना के समय ठीक पूर्व और पश्चात् इनके द्वारा मुलजिम मोहनलाल की मानसिक स्थिति का परीक्षण नहीं किया गया है।"

The conclusion of the trial court was that as the prescription slips proved on behalf of the accused did not correspond to the date of incident, it could not be concluded beyond all manner of doubt that the accused was suffering from such mental ailment which could entitle him to the benefit of Section 84 of the IPC which reads as below:

> *"**84. Act of a person of unsound mind**.—Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."*

14. Having considered the entirety of material available on the record, the evidence of the medical experts and the prescription slips which have been proved by these experts, we are of the firm opinion that there is unimpeachable documentary as well as oral evidence which establishes beyond all manner of doubt that the accused was being provided treatment for the mental ailment since the year 2010 onwards. A Medical Board was constituted to examine the accused under the order of the court in the year 2016, and even at that time, he was found suffering from Psychosis NOS.

15. Psychosis, Not Otherwise Specified (NOS) is a categorisation of symptoms within general diagnosis of Psychosis. *Modi's Medical Jurisprudence and Toxicology* grades Psychosis as an acutely severe mental disorder, where the patient loses contact with reality along with absolute lack of empathy and absence of insight.

16. The aspect of mental unsoundness and the plea of insanity by virtue of Section 84 of the IPC was examined *in extenso* by Hon'ble the Supreme Court in the case of ***Devidas Loka Rathod vs. State of Maharashtra***, reported in ***AIR 2018 SC 3093*** and it was observed as below:

> "10. The law undoubtedly presumes that every person committing an offence is sane and liable for his acts, though in specified circumstances it may be rebuttable. The doctrine of burden of proof in the context of the plea of insanity was stated as follows in ***Dahyabhai Chhaganbhai Thakkar v. State of Gujarat,*** (1964) 7 SCR 361 :
>
> > "(*1*) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.
> > (*2*) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code: the accused may rebut it by placing before the court all the relevant evidence oral, documentary or circumstantial, **but the burden of proof upon him is no higher than that rests upon a party to civil proceedings.**
> > **(*3*) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.**"
> >
> > *(Emphasis supplied)*
>
> *11. Section 84 of the IPC carves out an exception, that an act will not be an offence, if done by a person, who at the time of doing the same, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or what he is doing is either wrong or contrary to law. But this onus on the accused, under Section 105 of the Evidence Act is not as*

stringent as on the prosecution to be established beyond all reasonable doubts. The accused has only to establish his defence on a preponderance of probability, as observed in ***Surendra Mishra vs. State of Jharkhand,*** *(2011) 11 SCC 495, after which the onus shall shift on the prosecution to establish the inapplicability of the exception. But, it is not every and any plea of unsoundness of mind that will suffice. The standard of test to be applied shall be of legal insanity and not medical insanity, as observed in* ***State of Rajasthan vs. Shera Ram,*** *(2012) 1 SCC 602, as follows* **:**

> "19. ……..Once, a person is found to be suffering from mental disorder or mental deficiency, which takes within its ambit hallucinations, dementia, loss of memory and selfcontrol, at all relevant times by way of appropriate documentary and oral evidence, the person concerned would be entitled to seek resort to the general exceptions from criminal liability."

12. The crucial point of time for considering the defence plea of unsoundness of mind has to be with regard to the mental state of the accused at the time the offence was committed collated from evidence of conduct which preceded, attended and followed the crime as observed in ***Ratan Lal vs. State of Madhya Pradesh,*** (1970) 3 SCC 533, as follows:

> "2. It is now wellsettled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this ties on the accused. In D.G. Thakker v. State of Gujarat it was laid down that "there is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code, the accused may rebut it by placing before the Court all the relevant evidence – oral, documentary or circumstantial, but the burden of proof upon him is no higher than that which rests upon a party to civil proceedings".

13. If from the materials placed on record, a reasonable doubt is created in the mind of the Court with regard to the mental condition of the accused at the time of occurrence, he shall be entitled to the benefit of the reasonable doubt and consequent acquittal, as observed in ***Vijayee Singh vs. State of U.P.,*** *(1990) 3 SCC 190*.

14. We shall now consider the sufficiency of other medical and defence evidence to examine if a reasonable doubt is created with regard to the mental state of the appellant at the time of commission of the assault on a preponderance of probability, coupled with the complete lack of consideration of the evidence of P.W.14. Merely because an injured witness, who may legitimately be classified as an interested witness for obvious reasons, may have stated that the appellant was not of unsound mind, cannot absolve the primary duty of the prosecution to establish its case beyond all reasonable doubt explaining why the plea for unsoundness of mind taken by the accused was untenable.

….

17. C.W.1 was also examined by the defence as D.W.3 and deposed that he had no materials with regard to the previous history of the appellant, that none of his relatives were present at the time of such examination, and he could not therefore say anything regarding any preexisting mental disorder of the appellant.

18. D.W.1, the sister of the appellant, and his mother D.W.2, had stated that the appellant had to be tied up at times and was unable to take care of himself, including clothing on his person. The prosecution did not deny the fact of a treating Psychiatrist at Akola, by the name of Dr. Kelkar, mentioned by the witness. The appellant and his family were poor people and could hardly be expected to meticulously preserve medical papers or lead expert evidence as observed in ***Ratan Lal*** (supra). Merely because five years later in the witness box the witness may have stated that there was no complaint from the police with regard to the conduct of the appellant in custody, the trial judge manifestly erred in his conclusion with regard to the mental state of the appellant at the time of occurrence by testing it on the touchstone of the present demenaour in court and present conduct of the appellant, without any reference to the medication that was being provided to the appellant while in custody. Naturally, if the appellant was being provided proper medical treatment during custody, his condition would certainly improve over time.

19. The trial judge erred in proper consideration and appreciation of evidence, virtually abjuring all such evidence available raising doubts about the mental status of the appellant at the time of commission of the offence, so as to leave his conviction as a foregone conclusion. The trial judge

unfortunately did not consider it necessary to put further questions to P.W.14 with regard to the hospitalisation of the appellant immediately after the occurrence and why the prosecution had not placed the necessary evidence in this regard before the court. The truth therefore remained elusive, and justice thus became a casualty. The Trial Judge therefore erred in his duty, as observed in ***State of Rajasthan vs. Ani alias Hanif and others,*** *(1997) 6 SCC 162 as follows*:

> "12. Reticence may be good in many circumstances, but a Judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be a bout or combat between two rival sides with the Judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. A Judge is expected to actively participate in the trial, elicit necessary materials from witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth. The corollary of it is that if a Judge felt that a witness has committed an error or a slip it is the duty of the Judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence collecting process. It is a useful exercise for trial Judge to remain active and alert so that errors can be minimized."

20. The Appellate Court also had a duty to consider the nature of the evidence led by P.W.14 and the other medical evidence available on record with regard to the appellant. Unfortunately, it appears that the Appellate Court also did not delve into the records in the manner required, as observed in ***Rama and others vs. State of Rajasthan,*** (2002) 4 SCC 571

> "*(4) …… It is well settled that in a criminal appeal, a duty is enjoined upon the appellate court to reappraise the evidence itself and it cannot proceed to dispose of*

the appeal upon appraisal of evidence by the trial court alone especially when the appeal has been already admitted and placed for final hearing. Upholding such a procedure would amount to negation of valuable right of appeal of an accused, which cannot be permitted under law."

17. Keeping in view the above pronouncement of Hon'ble the Supreme Court wherein, various earlier precedents were considered, it is clear that the burden on the defence to prove the plea of insanity is only to the extent of establishing the same by preponderance of probabilities and such a defence need not be proved beyond all manner of doubt. Thus, the conclusion drawn by the trial court that the defence failed to prove that the accused was affected with such mental ailment, which prevented him from understanding the consequences of his acts, is totally unjustified.

18. In wake of the discussion made herein above, we are persuaded to accept the plea of insanity advanced on behalf of the appellant to overturn his conviction as recorded by the trial court by the impugned Judgment. The findings recorded *(supra)* by the trial court on the aspect of plea of insanity advanced by the defence, are not sustainable in light of convincing and unimpeachable oral and medical evidence available on record and keeping in view the authoritative pronouncement by Hon'ble the Supreme Court in the case of ***Devidas Loka Rathod (supra)***. The impugned Judgment cannot be sustained.

19. As an upshot of the above discussion, the appeal deserves to be accepted. The impugned Judgment dated 11.11.2019 passed by the learned Additional Sessions Judge, Bhinmal, District Jalore

in Sessions Case No.66/2013 (CIS No.229/2014), is hereby quashed and set aside. The appellant is acquitted of the charges. He is in custody. He shall be released from prison forthwith if not wanted in any other case. After his release from prison, the appellant shall be provided care and support befitting his right to life under Article 21 of the Constitution of India.

In view of our conclusions and findings based on the medical evidence with regard to the appellant, it is considered necessary to give further directions under Section 335 or 339 of the Cr.P.C., as the case may be, so that the appellant is not exposed to vagaries and receives proper care and support befitting his right to life under Article 21 of the Constitution of India.

A copy of this order be sent to the District legal Services Authority, Jalore for doing the needful.

The appeal is allowed in the above terms.

20. However, keeping in view the provisions of Section 437-A Cr.P.C., the appellant is directed to furnish a personal bond in the sum of Rs.40,000/- and a surety bond in the like amount before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing of a Special Leave Petition against the present judgment on receipt of notice thereof, the appellant shall appear before the Supreme Court.

21. Record be returned to the trial court forthwith.

(SAMEER JAIN),J **(SANDEEP MEHTA),J**

Tikam Daiya/-