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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

[Order XXII, Rule 2(1)]

SPECIAL LEAVE PETITION (Cri) NO. OF 2017

(Arising out of the final judgment dated 12.10.2017 passed by the Hon'ble High Court of Judicature at Allahabad in Criminal Appeal No. 293 of 2014 and 294 of 2014)

BETWEEN	IN THE TRIAL COURT	POSITION OF PARTIES BEFORE IN THE HIGH COURT	IN THIS COURT
Criminal Appeal No. 293 of 2014			
1 Khumkala Banjade W/o Late Hemraj Banjade c/o Samir Singh R/o 3553, Sector 29, GB Nagar, Noida – Uttar Pradesh - 201301	NA	NA	Petitioner
	VERSUS		
1 Nupur Talwar D/o Sh B.G. Chitnis R/o A-1/71, Azad Apartments, Aurobindo Marg, New Delhi – 110016	Accused	Appellant	Respondent no. 1
2 State of Uttar Pradesh Through its Standing Counsel	Complainant	Respondent no. 1	Respondent no. 3
3 CBI SCR-III/New Delhi CGO Complex, Lodhi Road New Delhi - 110003	Complainant CONTESTING PROSECUTO R	Respondent no. 2 CONTESTING APPELLANT	Respondent no. 4 CONTESTIN G RESPONDE NT

Criminal Appeal No. 294 of 2014

- | | | | |
|---|---|--|---|
| 1. Khumkala Banjade
W/o Late Hemraj
Banjade
c/o Samir Singh
R/o 3553, Sector 29, GB
Nagar, Noida – Uttar
Pradesh - 201301 | NA | NA | Petitioner |
| VERSUS | | | |
| 1. Rajesh Talwar
S/o Late J R Talwar R/o
A-1/71, Azad
Apartments, Aurobindo
Marg, New Delhi –
110016 | Accused | Appellant | Respondent
no. 2 |
| 2. State of Uttar Pradesh
Through its Standing
Counsel | Complainant | Respondent
no. 1 | Respondent
no. 3 |
| 3. CBI
SCR-III/New Delhi
CGO Complex, Lodhi
Road, New Delhi- 110003 | Complainant
CONTESTING
PROSECUTO
R | Respondent
no. 2
CONTESTING
APPELLANT | Respondent
no. 4
CONTESTING
RESPONDEN
T |

TO

THE HON'BLE CHIEF JUSTICE

OF INDIA AND HIS COMPANION
JUSTICES OF THIS HON'BLE COURT

THE HUMBLE PETITION OF

THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner above named has preferred the present petition against the order dated 12.10.2017 in Crl. Appeal No. 293/2014 and 294/2014 passed by the High Court of Judicature Allahabad at Uttar

Pradesh whereby the High Court acquitted the Respondent no. 1 & 2 for the murder of their daughter (Aarushi) and domestic help (Hemraj). The Hon'ble trial court sentenced both the respondents to life imprisonment while the Hon'ble High court acquitted both the respondents. The High Court failed to consider the incriminating oral and documentary evidence which ran consistent with the hypothesis of the guilt of the Respondent no. 1 & 2. The High Court failed to consider the complete unbroken chain of events which is essential in the cases based upon circumstantial evidence where only one inference of guilt of the accused would ensue by excluding all possible hypothesis of their innocence. The Hon'ble High Court also overlooked the clinching wealth of circumstances from which the guilt of both the accused had been made out to the extent human instruments can apprehend. The Hon'ble High Court also failed to consider that the prosecution proved the case beyond reasonable doubt while corroborating the tendered evidence against both the Respondents.

- 1A. That it is also pertinent to mention that both the respondent no. 1 and 2 have undergone sentence of 3 years 10 months and 22 days passed by the Hon'ble trial court.

2. QUESTIONS OF LAW

- A. Whether the High Court as a first Court of Appeal was justified in ignoring the conviction and sentence recorded by the Trial Court and not objectively scrutinizing the evidence?
- B. Whether the Hon'ble Court has erred in not appreciating the last seen theory and has established beyond reasonable doubt, a nexus sufficient to acquit the accused's?
- C. Whether the evidence appreciated by the Hon'ble Court has not broken the chain of circumstantial evidence and is suffice to convict the accused?

3. DECLARATION IN TERMS OF RULE 2 (2)

That the Petitioner states that no other petition seeking leave to appeal has been filed by them against the impugned final Order.

4. DECLARATION IN TERMS OF RULE 4

That the Annexures P-1 to P- 31 produced alongwith the Special Leave Petition are the true copies of the pleadings/documents which formed part of the records of the case in the Court below

- 5.** Aggrieved by the said order of the High Court, the Petitioner is filing the present SLP on the following amongst other grounds inter-alia which are set out without prejudice to each other:

GROUND

A. BECAUSE the instant case calls for the indulgence of this Hon'ble Court wherein the High Court instead of objectively scrutinizing the evidence as the first Court of Appeal, failed to appreciate the circumstantial evidence which has established a chain of events, full and complete, running consistent with the only inference about the guilt of the Respondents.

B. BECAUSE it is trite law that it is essential for the Appellate Court to reappraise the evidence adduced and come to an independent conclusion with regard to the guilt of the accused to prevent the miscarriage of justice. The Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice, often referred to as duty to vindicate and uphold the 'majesty of the law'. In the instant case, the Courts below forgot this cardinal principal. The Apex Court in **State of Rajasthan v. Islam & Ors., (2011) 6**

SCC 343 held as follows:

16: The principle to be followed by the appellate court considering an appeal against an order of acquittal is to interfere only when there are compelling and substantial reasons to do so. Thus, in such cases, this Court would usually not interfere unless:

(ii) The finding is perverse.

(iii) The order suffers from substantial errors of law and fact.

(iv) The order is based on misconception of law or erroneous appreciation of evidence.

(v) The High Court has adopted an erroneous approach resulting in miscarriage of justice.

(vi) Acquittal is based on irrelevant grounds.

(vii) The High Court has completely misdirected itself in reversing the order of conviction by the trial court.

(viii) The judgment is tainted with serious legal infirmities.”

C. BECAUSE it is pertinent to mention here that the Hon'ble High Court made an erroneous decision by not appreciating the trial court judgment and the evidences tendered in the Trial Court convicting both the Respondents for the heinous crime of double murder based upon circumstantial evidence and the unbroken chain of events.

D. BECAUSE the High Court has failed to appreciate the last seen theory in addition to other circumstantial evidence despite having concrete evidence in this regard that Umesh Sharma (PW15), driver of Respondent, who had categorically stated in his evidence that both the respondents were last seen together with both the deceased in Flat No. L-32, Jalvayu Vihar. The

same has been admitted by the Respondents in their statements made u/s 313 before the court. The theory of last seen has been explained by the Hon'ble Supreme Court in **Nizam & Ors Vs. State of Rajasthan 2016 (1) SCC 550 Para 18** as follows: *"Undoubtedly, "last seen theory" is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The "last seen theory" holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well-settled by this Court that it is not prudent to base the conviction solely on "last seen theory". "Last seen theory" should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.* Thus, the High Court has committed grave error in not considering the last seen theory and the evidence of the Prosecution Witness in this regard.

- E. BECAUSE the Hon'ble High Court has failed to appreciate that there is nothing to show that an outsider(s) came inside the house in the night after 9:30 P.M. That there is no material on record which suggests that any person was seen loitering near the flats in suspicious circumstances in the night when the

crime was committed. The same has been corroborated by the security guard PW9 who was on duty on the night of 15.05.2008 -16.05.2008. The Trial Court rightly held that the time span was so less that there is no chance of anyone entering the house.

- F. BECAUSE the Hon'ble High Court has failed to appreciate the fact that the burden of proof as envisaged u/s 106 of the Indian Evidence Act would lie upon the Respondents once the Prosecution has discharged their primary burden. In such cases the burden on the Prosecution is very limited. The Hon'ble Supreme Court in **Harijan Bhalu Teja v. State of Gujarat, (2016) 12 SCC 665** in Para19 observed that:

"Section 106 of the Evidence Act, 1872 provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Since it is proved on the record that it was only the appellant who was staying with his wife at the time of her death, it is for him to show as to in what manner she died, particularly, when the prosecution has successfully proved that she died homicidal death."

G. The Prosecution would discharge its primary burden as soon as they are able to establish that the circumstantial evidence collected during investigation leaves no room of doubt that the Respondent alone were inside the house on that fateful night. No outsider had come in the house between 10 p.m. and 6 a.m., nor there was any forced entry. The Prosecution has, succeeded to prove the aforesaid and has also, through the testimony of PW15 Umesh Sharma, the driver who saw the both the deceased alive with the Respondents at 10:00 p.m. on 15.05.2008 and the testimony of Bharti Mandal (PW10), who was first to reach the house at 6:00 am and found the house to be locked from inside.

H. The facts and circumstances of the present case, the circumstantial evidence collected during the investigation and also the evidence lead in the court, presence of both the Respondents in the house was established during the time when the murders took place. Once such is the situation, the burden shifts on the Respondent. The burden to

prove that the Respondent were sleeping or awake automatically shifts on the Respondent persons. The Court has wrongly presumed that it was incumbent on the prosecution to establish that the Respondent were awake.

- I. BECAUSE the Hon'ble High Court erroneously came to the conclusion that the statement of PW10 Bharti Mandal does not establish that the house of the Respondents were locked from inside and thus there is no possibility of an outsider entering the premises. Moreover, Respondent No.1 conduct as elaborated in the Statement has also not been given due regard. If we read the entire statement of Bharti, most of which is uncontroverted and accepted true, in unison, then the statement does not seem to be out of place.

- J. It is also clear that till such time they had not raised any hue and cry about the death of their daughter and conduct of Hemraj, as according to them Hemraj had gone to fetch milk. However as soon as Bharti came to the apartment they guided

her to the room of Aarushi, revealed her body which was fully covered with the bedsheet and started howling that Hemraj had killed Aarushi and ran away. This conduct of the Respondents will constitute to be a relevant fact u/s 8 of the Indian Evidence Act and would be an additional circumstance to prove their guilt.

K. BECAUSE, the Hon'ble High Court by drawing adverse inference for not giving suggestions to Bharti Mandal PW10 with reference to contradictions between her depositions and statements under section 161 Cr.PC and on the other hand the High Court relied on the statements under section 161 Cr.PC of the Prosecution Witness who were not even produced in the trial court.

L. BECAUSE the High Court has erroneously held that the internet activity on the night of the murders does not conclusively prove that the Respondent were not sleeping. As per the logs provided by the service provider, Airtel (exhibit ka.22), the starting of the internet activity session on 15.05.2008 is at 23:00:50 hrs and IP address (122.162.238.230) was created which continued up till 02:04:30 hrs on 16.05.2008. This proves that the internet activity which started at about 11 pm continued uninterrupted up to

02:04:30 hrs. Thereafter, again the internet activity started at 02:04:35 hrs on 16.05.2008 and a new IP address (122.162.52.96) was created which continued up to 03:02:16 hrs. Thereafter the activity started at 03:28:36 hrs on 16.05.2008 and a new IP address 122.162.238.122 was created which continued up to 03:34:07 hrs. Thereafter again the activity started at 03:41:01 hrs on 16.05.2008 and a new IP address (122.162.238.84) was created which continued up to 03:43:32 hrs. Thereafter the internet activity started at 06:01:51 on 16.05.08 and new IP address (122.162.238.53) was created which continued up to 06:04:55 hrs.

To understand this in a better position this activity is mentioned as under:

<u>Sl.No</u>	<u>Date</u>	<u>Time</u>	<u>Record type</u>	<u>IP address</u>
<u>1.</u>	15.5.2008	23.00.50	START	122.162.238.230
	16.5.2008	02.04.30	STOP	122.162.238.230
<u>2.</u>	16.5.2008	02.04.35	START	122.162.52.96
	16.05.2008	03.02.16	STOP	122.162.52.96
<u>3.</u>	16.05.2008	03.28.36	START	122.162.238.122
	16.05.2008	03.34.07	STOP	122.162.238.122
<u>4.</u>	16.05.2008	03.41.01	START	122.162.238.84

then it means that the user had physically switched OFF the modem and thereafter switched it ON. This shows that the internet router was physically switched ON/OFF during the intervening night of 15.05.08 / 16.05.08 i.e. when the murders took place. It is the admitted case of the Respondents that the router was installed in the room of Aarushi and Respondent switched it ON at around 23:00 hrs on 15.05.08 and it is also admitted case of the Respondent that they worked on the computer up till 23:45 hrs.

N. BECAUSE, the High Court also erred by not giving due regard to the fact that Aarushi's room was right next to the room of her Respondents. The common wall between the two rooms was covered with wooden panelling with both sides and that there was a hollow portion of size of a door in this wall. This would have made the existence of the proposition of sleeping the entire night rather impossible to occur.

O. BECAUSE the High Court has erroneously held that the Exhibits Ka-21 and Ka-22 were not admissible since they were not accompanied by a certificate u/s

65B of the Indian Evidence Act. That in the case of **Sonu vs. State of Haryana (2017) 8 SCC 570**, which reads as follows :

“32. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later.....

P. The High Court failed to appreciate the evidence on record that PW 17 Sri Deepak Kanda had introduced certain electronic documents on record. The CBI had filed an application being Application no. 151-Kha to allow the Certificate u/s 65B to accompany the aforesaid documents. However, the Application was rejected by the Court below and the certificate could not be brought on record. The trial court however allowed the testimony of the witness to continue and stated that the repercussion of non-attachment of a certificate u/s 65B on the testimony of the witness

would be adjudicated upon at a later stage. The Respondent filed their formal objections in the application. However, no objection was raised by them when the document was being exhibited. The only objection that the Respondents had was that the certificate attached in the application did not comply with the provisions in Section 65B. No objection was raised when the document was actually being exhibited and led as evidence for want of a certificate u/s 65B.

Q. The High Court failed to consider the fact that from the perusal of the reports of experts it has been conclusively established that no DNA was found in the pillow cover of Krishna by both the Labs i.e. CFSL, New Delhi and CDFD Hyderabad and both have found DNA of Hemraj in the pillow cover belonging to Hemraj. As submitted above, it is pertinent to mention here that the accused have not disputed blood of Hemraj on the pillow with pillow cover recovered from their own house. The Hon'ble Court has erroneously given the benefit of a typographical error to the Respondents and have also failed to

consider the explanation given by the Prosecution, explaining the error.

R. BECAUSE the Hon'ble High Court failed to appreciate the testimonies of various witnesses regarding unnatural conduct of the Respondents on the morning of 16.05.2008. PW 4 Sri Sanjay Chauhan, PW 10, Bharti Mandal, PW 12 Punish Rai Tandon, PW 29, Sri. Mahesh Kumar Mishra, PW 33, Sri Bacchu Singh and PW 34 Dataram Nauneria, all gave accounts of unnatural conduct of the Respondents, which is a very important incriminating circumstance against them.

S. BECAUSE, the Hon'ble High Court failed to appreciate that the Respondents failed to call the police as soon as they established the death of their daughter instead waited for Bharti PW10 to come and let her inform the neighbour and the Respondents even went on to call their parents but failed to inform the police it was PW12 Punish Rai Tandon on his enquiry that has the police been informed or not had to telephone the guard to call the police stating about such incident has taken place in Respondents flat. This clearly shows the conduct of the Respondents who were hiding and trying to destroy the evidence by letting in media and other person inside the premises.

T. BECAUSE, the High Court has not taken into account or examined the post mortem of Hemraj which establishes the weapons of offence namely Ex. 5 i.e. the golf club 4 and the scalpel are responsible for identical injuries both on Aarushi as well as Hemraj. The High Court has not taken into account the death of Hemraj which took place as a result of slitting of throat as per the Post Mortem report conducted by PW27 the wound is 30 cm long and the wound is crivolving the trachea whereas the pattern on Arushi's neck is same and the wound is 14cm x 6 cm and is above thyroid cartilage trachea partially incised which shows that no remorse was shown at the time of slitting the throat of Hemraj whereas at the time of Aarushi the wound was not as deep as that of Hemraj which shows that at the time of slitting the throat of Aarushi some remorse was shown.

U. BECAUSE the High Court has erroneously stated that as per the case of the prosecution, the victims were murdered by the Respondent by using Golf Club bearing no. 5 and thereafter their throats were slit by a surgical scalpel. However, it is pertinent to note that as per prosecution case the victims were first assaulted by the Golf Club and then murdered by slitting of the throat using a surgical scalpel, since the incised wound caused by the scalpel was an ante-mortem injury, i.e. just before the actual death.

Moreover, the Court has wrongly stated that the Golf Stick used was Golf Club bearing no. 5. As per the prosecution's case, the golf stick used as the weapon of assault was the golf stick marked as Exhibit no. 5, bearing no. 4 at the bottom. The dimensions of this club matched the dimensions of the injury as well. Therefore, the High Court has wrongly assailed the prosecution's case.

- V. BECAUSE the Hon'ble High Court has failed to appreciate the fact that the Respondent tried to conceal the fact of death of Hemraj and tried to obstruct the police from recovering the dead body of Hemraj on 16.05.2008 by breaking open of lock of the terrace.
- i) K.K. Gautam (PW-7), who deposed that on 17.5.2008 he was taken to the house of Respondents where Dr. Dinesh Talwar, brother of Respondent, showed me Aarushi's and Hemraj's room and also showed me the staircase from the house leading to the terrace and showed him the blood stains on the railing, stairs, lock, handle of the door of terrace and asked him to call police to break open the lock. From there the witness telephoned Sri Mahesh Mishra PW29. When lock was broken open in presence of police, the dead body of Hemraj was found on the terrace. There

were signs of dragging the dead body of Hemraj from the centre of the roof to the corner. It was covered with the panel of the desert cooler. There was also a pool of blood in the center of the roof and a grill dividing the two terraces which was covered with a big bed sheet. Dr. Dinesh Talwar was asked about the identity of the dead body to which he showed his ignorance. Mahesh Kumar Mishra (PW-29), Bachu Singh (PW-33) & Data Ram Naunoria (PW-34) also corroborated the statements of K.K. Gautam (P.W.7). Data Ram Naunoria (P.W.34) also deposed that Dr. Dinesh Talwar refused to sign the lock opening memo. Respondent also reached the place when the dead body of Hemraj was recovered from the terrace but he refused to identify it and only did so later reluctantly.

- ii) It is further pertinent to mention here that the Hon'ble High Court also failed to consider the testimony of PW29 Mahesh Kumar Mishra, SP City where in he said that the lock with latch etc. be removed as it is an evidence as he saw blood on the door & on the lock. He further testified that he had given instruction that a mechanic be found and asked to remove the lock with the latch and he never gave a statement where he said that the lock be broken.

W. BECAUSE the Hon'ble High Court failed to appreciate the fact that during the occurrence of crime the whole crime scene was redesigned/ reconstructed after committing the murder. Mahesh Mishra (PW-29), Bachu Singh (PW-33), Dutta Ram Nauneria (PW-34) and Chunni Lal (PW-1) have deposed that there was no blood on the toys, school bag, book (Three Mistakes of My Life) kept on the bed whereas there was blood on the bed and there were blood spatters on the wall behind the bed. The forensic reports of the book and the school bag which was sent for forensic tests and the testimony of PW6 corroborates that no blood was found on them as per the forensic reports. The toys on the bed of Aarushi were seen not to be dislodged as seen in the photos taken by PW1. It clearly portrays that a person from outside was not involved as such a person cannot reconstruct the crime scene and would not know how to keep the toys on the bed. This diabolic act is done by someone who knows the details and whereabouts of items in Aarushi's room and it would only be the Respondents who after committing the crime reconstructed the crime scene to hide their act of murdering their own daughter.

X. BECAUSE the Hon'ble High Court has failed to appreciate that the body of Aarushi was dressed up/tampered with. Dr. Sunil

Kumar Dohre (PW-5), who conducted the post mortem on the body of Ms. Aarushi(deceased) deposed that the mouth of the vaginal cavity was found open and vaginal canal was visible which means that during or after the process of rigor mortis, vaginal cavity was tampered with and in that situation vaginal cavity would remain in open condition. The same has been corroborated by Urmil Sharma (DW3) in her cross examination. Dr. B.K. Mohapatra (PW-6) deposed that on the portion of the bed sheet which was below Aarushi's pelvic area where patch of wetness is visible in the photos taken by PW1, he did not find any DNA. P.W. 33, P.W.29, P.W.34 and P.W.1 deposed that when they visited the scene of crime and saw the dead body of Aarushi, the trouser was lowered from waist, the T-shirt was slightly upper and the string of the trouser/pajama was unfastened.

Y. BECAUSE the Hon'ble High Court failed to appreciate the findings of the Trial court and passed an erroneous judgment. The High Court failed to consider the evidence on record and the presence of blood on the lock, railing and handle of the door of terrace and the wiping of blood on the staircase. Dr. Rajeev Varshney (PW-13) deposed that he found blood on the lock and he also observed blood on the stairs. Dr. Rohit Kochar

(PW-14) in his statement also deposed that he saw red coloured footprints which appeared to be wiped and blood on the handle of the door to the terrace. Dr. Sanjay Chauhan (PW-4) deposed that he climbed 2-3 steps of the staircase and found blood stains on the railing; that he observed that the blood stains were on the stairs which were going towards the terrace from the flat but there was no blood on the stairs going down below from the flat. P.W. 34, Dutta Ram Nauneria deposed that he found blood on the lock of the terrace door and asked for the key to which Respondent asked him not to waste time for key and instead they should look for Hem Raj.

Z. BECAUSE the Hon'ble High Court failed to appreciate that the weapon which was used for the heinous crime of murdering Miss Arushi and Hemraj was recovered from the house of the Respondents. Umesh Sharma (PW-15) in this regard deposed that while taking the Santro Car of Respondent for servicing he took out 2 golf sticks, one mop and bucket from the boot of the car and had put it in the servant's quarter/ Hemraj's room of Flat No. L-32 belonging to the Respondent. He also deposed that he participated in the identification of the golf clubs in the CBI office and signed the memo prepared there. Laxman Singh

(PW-16) deposed that he was witness when Umesh identified the golf sticks and the memo was prepared in his presence.

AA. BECAUSE the Hon'ble Court failed to appreciate the fact that the door of Aarushi's room was open when murders were committed. S.K. Singla (PW-24), Expert of CFSL, New Delhi deposed that he visited the scene of crime along with other experts and it was found that the door of Aarushi's room was having blood spots on the outer side of the door reaching to the conclusion that at the time of attack the door of Aarushi's room was open and in that situation blood came on the outer side of the door and on the wall on which this door was open. Dr. Rajender Singh (PW-27), CFSL Expert, had also deposed that during the incident the door of the room of Aaraushi was open.

BB. BECAUSE the Hon'ble High Court failed to appreciate the fact that the Respondents tried to influence the doctor by asking him to not mention about rape/sex in post mortem report. K.K. Gautam (PW-7) deposed that on 16.5.2008 at about 12 p.m. Dr. Sushil Choudhary a family friend of the Respondents asked him on phone that they wanted no reference of rape to be mentioned in the post mortem of Aarushi. Dr. Sushil Kumar Dohre (PW-5) deposed that while he was going to perform post mortem Dr. Dinesh Talwar made him to talk to one Dogra Sahib

to which he thought that he is Dr. T.D. Dogra of AIIMS, New Delhi. He talked to Dr. Dogra who asked him to take blood samples of Aarushi. Deepak (PW-19), Nodal Officer, Vodafone proved the call detail records which show that calls were made by Dinesh Talwar to Sushil Chodhary who further called K.K. Gautam as per Ex.Ka-24,25 and 27.

CC. BECAUSE the Hon'ble High Court has failed to appreciate its own findings while deciding the Bail Application of the Respondents where the High Court appreciated the findings of the Trial Court and dismissed the bail application of the Respondents.

DD. BECAUSE the Hon'ble High Court did not record their observation for their visit to the crime scene i.e. Flat L-32, Jalvayu Vihar without any notice to the lawyers either to defence or prosecution. Similarly, the High Court viewed the CD, which was part of the Case Diary and no order to that effect was passed by the Hon'ble Court as well.

That the Petitioner has not preferred any other similar petition against the impugned judgment seeking relief as is prayed for in this appeal.

That the annexure filed along with the Special Leave Petition are true typed copies of their respective originals.

6. Grounds for Interim Relief

N.A

7. MAIN PRAYER

In the light of the abovementioned facts and circumstances the Petitioner humbly pray before this Hon'ble Court as under:-

- A) Admit and allow the present Special Leave Petition setting aside the order dated 12.10.2017 in Crl. Appeal No.293/2014 and 294/2014 passed by the High Court of Allahabad at Uttar Pradesh.
- B) Pass any such further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

8. INTERIM RELIEF

NA

Drawn by

FILED BY

SIDDHANT SHARMA

RAJ KAMAL

(ADVOCATE)

ADVOCATES FOR THE PETITIONER

DRAWN ON:-14.12.2017

FILED ON: 15.12.2017

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (Cri) NO. OF 2017

IN THE MATTER OF:

Khumkala Banjade

...PETITIONER

VERSUS

Nupur Talwar & Ors

...RESPONDENT(s)

CERTIFICATE

Certified that the Special Leave to Appeal is confined only to the pleadings before the Court whose order is challenged and the documents relied upon in those documents. No additional facts, documents or grounds have been taken or relied upon in this Special Leave to Appeal. It is further certified that copies of the documents/annexures attached to the Special Leave to Appeal are necessary to answer the questions of law raised in the petition or to make the grounds urged in the Special Leave to Appeal for this Hon'ble Court. This certificate is given on the basis of instructions given by the Petitioner /persons authorized by the Petitioner whose affidavit is filed in support of this Special Leave to Appeal.

Dated: .12.2017

Raj Kamal

Advocate for the Petitioner

SYNOPSIS AND LIST OF DATES

That the instant case calls for the indulgence of this Hon'ble Court wherein the High Court instead of objectively scrutinizing the evidence as the first Court of Appeal, failed to appreciate the circumstantial evidence which has established a chain of events, full and complete, running consistent with the only inference about the guilt of the Respondents.

That it is a trite law that it is essential for the Appellate Court to reappraise the evidence adduced and come to an independent conclusion with regard to the guilt of the accused to prevent the miscarriage of justice. The Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice, often referred to as duty to vindicate and uphold the 'majesty of the law'. That it is pertinent to mention here that the Hon'ble High Court made an erroneous decision by not appreciating the trial court judgment and the evidences tendered in the Trial Court convicting both the Respondents for the heinous crime of double murder based upon circumstantial evidence and the unbroken chain of events.

That the High Court has failed to appreciate the last seen theory in addition to other circumstantial evidence despite having concrete evidence in this regard that Umesh Sharma (PW15), driver of

Respondent. The theory of last seen has been explained by the Hon'ble Supreme Court in **Nizam & Ors Vs. State of Rajasthan 2016 (1) SCC 550.**

That High Court failed to appreciate the fact that the burden of proof as envisaged u/s 106 of the Indian Evidence Act would lie upon the Respondents once the Prosecution has discharged their primary burden. In **Harijan Bhala Teja v. State of Gujarat, (2016) 12 SCC 665** the court held that that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

That High Court erroneously came to the conclusion that the statement of PW10 Bharti Mandal does not establish that the house of the Respondents were locked from inside and thus there is no possibility of an outsider entering the premises.

That High Court failed to take into consideration that even as per the evidence of PW-18 Bhupinder Singh Awasya, Scientist Cert-IN, a Govt. of India, the internet was active throughout the night which negates the contention of the Respondents that they had slept throughout the night.

That High Court failed to appreciate the testimonies of various witnesses regarding unnatural conduct of the Respondents on the morning of 16.05.2008. PW 4 Sri Sanjay Chauhan, PW 10, Bharti Mandal, PW 12 Punish Rai Tandon, PW 29, Sri. Mahesh Kumar Mishra, PW 33, Sri Bacchu Singh and PW 34 Dataram Nauneria, all gave accounts of unnatural conduct of the Respondents, which is a very important incriminating circumstance against them.

That High Court has failed to appreciate the fact that the Respondent tried to conceal the fact of death of Hemraj and tried to obstruct the police from recovering the dead body of Hemraj on 16.05.2008 by breaking open of lock of the terrace.

That High Court failed to appreciate the fact that during the occurrence of crime the whole crime scene was redesigned/reconstructed after committing the murder.

That High Court has failed to appreciate that the body of Aarushi was dressed up/tampered with. Dr. Sunil Kumar Dohre (PW-5), who conducted the post mortem on the body of Ms. Aarushi(deceased) deposed that the mouth of the vaginal cavity was found open and vaginal canal was visible which means that during or after the process of rigor mortis, vaginal cavity was tampered with and in that situation vaginal cavity would remain in open condition.

The High Court failed to consider the evidence on record and the presence of blood on the lock, railing and handle of the door of terrace and the wiping of blood on the staircase. Dr. Rajeev Varshney (PW-13) deposed that he found blood on the lock and he also observed blood on the stairs.

That Court failed to appreciate the fact that the door of Aarushi's room was open when murders were committed. S.K. Singla (PW-24), Expert of CFSL, New Delhi deposed that he visited the scene of crime along with other experts and it was found that the door of Aarushi's room was having blood spots on the outer side of the door reaching to the conclusion that at the time of attack the door of Aarushi's room was open and in that situation blood came on the outer side of the door and on the wall on which this door was open.

That High Court failed to appreciate the fact that the Respondents tried to influence the doctor by asking him to not mention about rape/sex in post mortem report. K.K. Gautam (PW-7) deposed that on 16.5.2008 at about 12 p.m. Dr. Sushil Choudhary a family friend of the Respondents asked him on phone that they wanted no reference of rape to be mentioned in the post mortem of Aarushi.

LIST OF DATES

16.05.2008 Ms. Aarushi daughter of Respondent No. 1 & 2, R/o L-32 Jalvayu Vihar, Sec-25, Noida was found murdered in her room. On the basis of written complaint received from Respondent No. 2, a case under crime-no. 695/08 was registered u/s 302 IPC at PS, Sect-20 Noida. Respondent No. 2 in his written complaint had alleged that his servant Hemraj Banjade (Deceased) had killed his daughter on the night of 15/16.05.2008 and that he was missing.

True Copy of the Complaint dated 16.05.2008 is annexed herewith as **ANNEXURE P1. (page no.**

311 to 312)

16.05.2008 After completion of Panchnama proceedings of the dead body of Aarushi, the body was send for postmortem which was conducted by Dr. Sunil Dohare PW5.

True copy of the Postmorterm report dated 16.05.2008 is annexed herewith as **ANNEXURE**

P2. (page no. 313 to 318)

17.05.2008 During the course of Investigation, broke open the lock of the terrace of the house of Respondent's and found the body of Hemraj, servant of Respondent's, who was alleged to have killed Aarushi. 5. The post mortem of deceased Hemraj was conducted.

True copy of the Seizure memo of one Number lock related to Criminal Case No. 695/2008 under section 302/201, P.S. Sector 20, Noida dated 17.05.2008 annexed herewith as **ANNEXURE P-3 (Page no. 319 to 321)**

True Copy of Postmortem report of Hemraj dated 17.05.2008 is annexed herewith as **ANNEXURE P-4. (Page no. 322 to 328)**

23.05.2008 During investigation, U.P. Police, arrested Respondent No. 2 for alleged murder of Aarushi & Hemraj.

24.05.2008 Respondent No. 2 was produced in the court at Ghaziabad for alleged murder of Aarushi and Hemraj.

- 25.05.2008 The court granted three day's police custody that was extended till 30.05.2008. Thereafter, Respondent No. 2 was then sent to judicial custody on 30.05.2008.
- 29.05.2008 The Govt. of Uttar Pradesh issued a notification no. 1937-VI-P-3-2008-15(48) P/2008, Lucknow, giving consent for transfer of investigation of this case to CBI.
- 31.05.2008 Thereafter a notification was issued by DOPT, Govt. of India, New Delhi whereby the investigation of this case was transferred to CBI. In pursuance of these notifications case crime no. 695/08 mentioned above was registered by CBI as RC1(S)/2008/SCR-III/CBI/New Delhi.
- 02.06.2008 The CBI investigating authorities obtained custody remand of Respondent No. 2.
- 13.06.2008 The compounder of Respondent No. 2, Krishna Thadarai was arrested by the CBI.
- 14.06.2008 Based on the disclosure made by Krishna, the CBI conducted a raid at the premises of Krishna and made a seizure of number of articles, including a 'khukri' with sheath and blood stained purple colour pillow cover.
- 27.06.2008 Rajkumar was arrested by the CBI. Rajkumar was the domestic help of Dr Praful Durrani & Dr Anita

Durrani, who are close family friends of the Respondents.

- 11.07.2008 CBI arrests Vijay Mandal, the driver and domestic help employed with Sh Puneesh Tandon, a neighbor of Respondents. During the initial investigation by CBI of suspect servants namely, Krishna, Rajkumar and Vijay Mandal, intensive investigation was carried out regarding their possible involvement. However, no evidence was found against these servants and their role was conclusively ruled out. Investigations by CBI revealed crucial and telling circumstances and details that pointed toward the involvement of the Respondents in the crime.
- 29.12.2010 The CBI filed a final report under Section 173 of the Cr.P.C. before the Court of Special Judicial Magistrate (CBI), Ghaziabad District Courts with a prayer that the case be closed.
- 09.02.2011 The Special Judicial Magistrate (CBI), Ghaziabad District Courts rejected the prayer of CBI for closure of the case and while taking cognizance, summoned both Respondents to face trial for commission of offences under Sections 302/201/34 of the Indian Penal Code, 1860, for the murders of their domestic help Hemraj Banjade and their daughter Aarushi Talwar.
- 18.03.2011 Vide the Judgement and Order dated 18/3/11, the Hon'ble Allahabad High Court rejected the

challenge mounted by Dr Rajesh and Nupur Talwar/the Respondents against the summoning order dated 9th February 2011 by means of Criminal Revision Petition bearing No. 1127 of 2011.

06.01.2012 The Hon'ble Supreme Court of India dismissed SLP (Crl.) No. 2892/2011 preferred by Dr Rajesh Talwar and Dr Nupur Talwar against the order of summoning dated 9th Feb 2011.

25.05.2012 After committal of the case to the Court of Learned Additional Sessions Judge, Shri Shyam Lal, the Learned Trial Court framed charges against Respondent's under Sections 302/201/34 of the Indian Penal Code, 1860.

08.06.2012, The chief examination and cross examination of
21.06.2012, PW-1 Shri Chunni Lal Gautam dated 08.06.2012,
29.06.2012, 21.06.2012, 29.06.2012, 02.07.2012, alongwith
02.07.2012, 10.07.2012

alongwith

10.07.2012 True Copy of the deposition of PW -1 Shri Chunni Lal Gautam dated 08.06.2012, 21.06.2012, 29.06.2012, 02.07.2012, alongwith 10.07.2012. is annexed herewith as **ANNEXURE P5. (page no. 329 to 365)**

18.07.2012 True Copy of the deposition of PW -4 Shri Sanjay Chauhan dated 18.07.2012.is annexed herewith as **ANNEXURE P-6. (page no. 366 to 378)**

24.07.2012
alongwith
25.07.2012

True Copy of the deposition of PW –5 Shri Sunil Dohrey dated 24.07.2012 alongwith 25.07.2012 .is annexed herewith as **ANNEXURE P-7. (page no. 379 to 405)**

31.07.2012,
07.08.2012,
08.08.2012,
14.08.2012,
21.08.2012,
22.08.2012,
23.08.2012,
24.08.2012,
27.08.2012,
28.08.2012
alongwith
29.08.2012

True Copy of the deposition of PW –6 Shri B. K. Mahapatra dated 31.07.2012, 07.08.2012, 08.08.2012, 14.08.2012, 21.08.2012, 22.08.2012, 23.08.2012, 24.08.2012, 27.08.2012, 28.08.2012 alongwith 29.08.2012 is annexed herewith as **ANNEXURE P-8. (page no. 406 to 521)**

30.08.2012

True Copy of the deposition of PW –7 Shri K. K. Gautam dated 30.08.2012 is annexed herewith as **ANNEXURE P-9. (page no. 522 to 531)**

31.08.2012.

True Copy of the deposition of PW –9 Shri Virendra Singh dated 31.08.2012. is annexed herewith as **ANNEXURE P-10. (page no. 532 to 539)**

03.09.2012
alongwith

True Copy of the deposition of PW –10 Smt. Bharti Mandal dated 03.09.2012 alongwith

- 04.09.2012. 04.09.2012. is annexed herewith as **ANNEXURE P-11. (page no. 540 to 551)**
- 07.09.2012. True Copy of the deposition of PW –12 Shri Puneesh Rai Tondon dated 07.09.2012. is annexed herewith as **ANNEXURE P-12. (page no. 552 to 565)**
- 10.09.2012
alongwith
11.09.2012 True Copy of the deposition of PW –13 Dr. Rajiv Kumar Varshney dated 10.09.2012 alongwith 11.09.2012. is annexed herewith as **ANNEXURE P-13. (page no. 566 to 575)**
- 11.09.2012,
alongwith
12.09.2012, True Copy of the deposition of PW –14 Dr. Rohit Kochhar dated 11.09.2012 alongwith 12.09.2012 is annexed herewith as **ANNEXURE P-14. (page no. 576 to 586)**
- 14.09.2012
alongwith
18.09.2012. True Copy of the deposition of PW –15 Shri Umesh Sharma dated 14.09.2012 alongwith 18.09.2012. is annexed herewith as **ANNEXURE P-15. (page no. 587 to 602)**
- 18.09.2012. True Copy of the deposition of PW –16 Shri Laxman Singh dated 18.09.2012. is annexed herewith as **ANNEXURE P-16. (page no. 603 to 609)**
- 08.10.2012,
11.10.2012,
alongwith True Copy of the deposition of PW –17 Shri Deepak Kanda dated 08.10.2012, 11.10.2012, alongwith 16.10.2012 is annexed herewith as

- 16.10.2012 **ANNEXURE P-17. (page no. 610 to 623)**
- 11.10.2012,
16.10.2012
alongwith
18.10.2012 True Copy of the deposition of PW –18 Shri Bhupendra Singh Awasya dated 11.10.2012, 16.10.2012 alongwith 18.10.2012 is annexed herewith as **ANNEXURE P-18. (page no. 624 to 635)**
- 18.10.2012
Alongwith
22.10.2012 True copy of the PW-19 Shri Deepak dated 18.10.2012 Alongwith 22.10.2012 is annexed herewith as **Annexure P-19 (Page no. 636 to 645)**
- 16.11.2012
alongwith
20.11.2012. True Copy of the deposition of PW –24 Shri Suresh Kumar Singhla dated 16.11.2012 alongwith 20.11.2012. is annexed herewith as **ANNEXURE P-20. (page no.646 to660)**
- 02.1.2013
alongwith
16.01.2013 True Copy of the deposition of PW –27 Dr. Rajendra Singh dated 02.1.2013 alongwith 16.01.2013. is annexed herewith as **ANNEXURE P-21 (page no. 661 to 673)**
- 30.1.2013
alongwith
31.01.2013 True Copy of the deposition of PW –29 Shri Mahesh Kumar Mishra dated 30.1.2013 alongwith 31.01.2013 is annexed herewith as **ANNEXURE P-22 (page no.674 to 699)**
- 06.2.2013. True Copy of the deposition of PW –32 Shri Richhpal Singh dated 06.2.2013. is annexed herewith as **ANNEXURE P-23 (page no.700 to 709)**
- 21.2.2013 True Copy of the deposition of PW –33 Shri

alongwith
22.02.2013

Bachhu Singh, SI dated 21.2.2013 alongwith
22.02.2013 is annexed herewith as **ANNEXURE
P-24 (page no. 710 to 727)**

06.3.2013,
07.03.2013,
12.03.2013
alongwith
13.03.2013

True Copy of the deposition of PW –34 Shri Data
Ram Nauneriya dated 06.3.2013, 07.03.2013,
12.03.2013 alongwith 13.03.2013 is annexed
herewith as **ANNEXURE P-25 (page no.
728 to 763)**

02.4.2013
alongwith
03.04.2013

True Copy of the deposition of PW –37 Shri Vijay
Kumar dated 02.4.2013 alongwith 03.04.2013 is
annexed herewith as **ANNEXURE P-26 (page
no. 764 to 782)**

09.4.2013.

True Copy of the deposition of PW –38 Shri
Mohinder Singh Dahiya dated 09.4.2013. is
annexed herewith as **ANNEXURE P-27 (page
no. 783 to 797)**

16.4.2013,
17.04.2013,
18.04.2013,
22.04.2013,
23.04.2013
alongwith
24.04.2013

True Copy of the deposition of PW –39 Shri AGL
Kaul dated 16.4.2013, 17.04.2013, 18.04.2013,
22.04.2013, 23.04.2013 alongwith 24.04.2013 is
annexed herewith as **ANNEXURE P-28. (page
no. 798 to 856)**

- 04.05.2013 Statements under section 313 Cr.PC of Respondents were recorded by the Ld. Trial Court.
- 24.6.2013 The Defense evidence commenced and DW-3 testified before the Ld. Trial Court and cross examination were carried out.
True Copy of the DW-3 of Dr. Urmil Sharma dated 24.06.2013 is annexed herewith as **ANNEXURE P-29 (page no. 857 to 864)**
- 25.11.2013 The Learned Trial Court passed the order on and
26.11.2013 sentence, sentencing the Respondents for life under section 302 read with section 34, for 5 year's imprisonment under section 201 read with section 34 for destruction of evidence. All the sentences were directed to be served concurrently. True copy of the Chronological judgement Learned Trial Court being Sessions Trial No. 477 of 2012 passed on dated 25.11.2013 and 26.11.2013 is annexed herewith as **ANNEXURE P-30 (page no. 865 to 1132)**
- xx.01.2014 The Respondents Dr Rajesh Talwar & Dr Nupur Talwar challenged their conviction in the Hon'ble Allahabad High Court by means of Criminal Appeal No. 293 of 2014 is annexed herewith as

ANNEXURE P 31. (page no. 1133 to 1187)

- 12.10.2017 The Hon'ble Allahabad High Court reversed the judgement of the Learned Trial Court of conviction of the Respondents Dr. Rajesh Talwar and Dr. Nupur Talwar on erroneous grounds.
- 15.12.2017 Hence the present petition.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
Crl. M.P. of 2017
IN
SPECIAL LEAVE PETITION (Cri) NO. OF 2017

IN THE MATTER OF:

Khumkala Banjade ...PETITIONER

VERSUS

Nupur Talwar & Ors ...RESPONDENT(s)

**APPLICATION FOR EXEMPTION FROM FILING OFFICIAL
TRANSLATION**

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE HON'BLE
SUPREME COURT OF INDIA
THE HUMBLE PETITION OF
THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner above named has preferred the present petition against the order dated 12.10.2017 in Crl. Appeal No. 293/2014 and 294/2014 passed by the High Court of Judicature Allahabad at Allahabad whereby the High Court acquitted the Respondents for murder of their daughter

(Aarushi) and domestic help (Hemraj) and against the judgement of the Trial Court convicting the Respondents for life. The High Court failed to consider that there incriminating oral and documentary evidence which ran consistent with the hypothesis of the guilt of the Respondents. The High Court failed to consider the complete unbroken chain of events which is essential in the cases based upon circumstantial evidence where only one inference of guilt of the accused would ensue by excluding all possible hypothesis of their innocence. The Hon'ble High Court also overlooked the clinching wealth of circumstances from which the guilt of both the accused had been made out to the extent human instruments can apprehend. The Hon'ble High Court also failed to consider that the prosecution proved the case beyond reasonable doubt while corroborating the tendered evidence against both the Respondents.

- 2.** That the entire facts and circumstances of the case are not narrated here for the sake of brevity and the facts and circumstances narrated in the accompanying appeal shall be treated as part and parcel for the purposes of adjudication of the instant application for exemption from filing official translation.
- 3.** That in the above matter, ANNEXURES P-1 to P-31 and impugned order dated 12.10.2017 (page-11) para 10 were in Hindi. In order to save time, the Petitioner has privately got the translation of the above documents done from a competent person who is fully conversant with both the languages. Every care has been taken to ensure that these are correct translations.

4. It is, therefore, in the interest of justice prayed that Petitioner be exempted translation from an official translator and take the same documents on record.
5. The present application is bonafide and in the interest of justice.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to:

- a) exempt the Petitioner from filing official English Translations of Annexures P-1 to P-31 and impugned order dated 12.10.2017 (page-11) para 10.
- b) pass such further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL IN DUTY BOUND EVER PRAY.

Drawn by

FILED BY

SIDDHANT SHARMA

RAJ KAMAL

(ADVOCATE)

ADVOCATES FOR THE PETITIONER

DRAWN ON:-14.12.2017

FILED ON: 15.12.2017

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (Cri) NO. OF 2017

IN THE MATTER OF:

Khumkala Banjade

...PETITIONER

VERSUS

Nupur Talwar & Ors

...RESPONDENT(s)

OFFICE REPORT ON LIMITATION

1. The petition is within time.
2. The petition is barred by time and there is delay of ____days in filing the same against the order dated _____ and the petition for condonation of ____days delay has been filed.
3. There is delay of ____days in re-filing the petition and petition for condonation of ____days in re-filing has been filed.

(SECTION OFFICER)

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Cri. M.P. of 2017

IN

SPECIAL LEAVE PETITION (Cri) NO. OF 2017

IN THE MATTER OF:

Khumkala Banjade

...PETITIONER

VERSUS

Nupur Talwar & Ors

...RESPONDENT(s)

**APPLICATION SEEKING PERMISSION TO FILE SPECIAL
LEAVE PETITION**

To

**THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA**

**THE SPECIAL LEAVE PETITION OF
THE PETITIONER ABOVENAMED:**

MOST RESPECTFULLY SHEWETH:

1. That the Petitioner above named has preferred the present petition against the order dated 12.10.2017 in Cri. Appeal No. 293/2014 and 294/2014 passed by the High Court of Judicature Allahabad at Allahabad whereby the High Court

acquitted the Respondents for murder of their daughter (Aarushi) and domestic help (Hemraj) and against the judgement of the Trial Court convicting the Respondents for life.

2. That the accompanying petition is part and parcel of the present application, however the facts stated therein are not being repeated here for the sake of brevity and in order to avoid repetition of the same facts.
3. That the petitioner is a de-facto complainant and the wife of one of the deceased namely Hemraj and is aggrieved from the judgement passed by the order dated 12.10.2017 in CrI. Appeal No. 293/2014 and 294/2014 passed by the High Court of Judicature Allahabad at Allahabad.
4. It is, therefore, in the interest of justice prayed that Petitioner may be permitted to file the present petition.
5. The present application is bonafide and in the interest of justice.

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

PRAYER

- (a) Kindly Permit the Petitioner to file the Special Leave
Petition before this Hon'ble Court
- (b) Pass such other and further orders as this Hon'ble Court
may deem fit and proper.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL IN
DUTY BOUND EVER PRAY.**

Drawn by

Filed by

SIDDHANT SHARMA

RAJ KAMAL

(ADVOCATE)

ADVOCATES FOR THE PETITIONER

DRAWN ON:-14.12.2017

FILED ON: 15.12.2017

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Crl. M.P. of 2017

IN

SPECIAL LEAVE PETITION (Cri) NO. OF 2017

IN THE MATTER OF:

Khumkala Banjade

...PETITIONER

VERSUS

Nupur Talwar & Ors

...RESPONDENT(s)

**APPLICATION FOR CONDONATION OF DELAY IN
RE-FILING IN SLP WITH AFFIDAVIT**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA

& HIS COMPANION JUSTICES OF THIS HON'BLE COURT

HUMBLE APPLICATION OF THE PETITIONER ABOVE-

NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner above named has preferred the present petition against the order dated 12.10.2017 in Crl. Appeal No. 293/2014 and 294/2014 passed

by the High Court of Judicature Allahabad at Allahabad whereby the High Court acquitted the Respondents for murder of their daughter (Aarushi) and domestic help (Hemraj) and against the judgement of the Trial Court convicting the Respondents for life.

2. That the petitioner has preferred the present application for condonation of delay of days in re-filing the accompanying petition as the annexure were in vernacular language in Tamil so extra time took in translation.
3. That the applicant is not repeating the facts and circumstances of the case as detailed in the accompanying petition with the prayer that the same be read as part and parcel of the present application.
4. This Hon'ble Court vide its order dt. 12.10.2017, granted a period of 4 weeks to the Petitioner to refile the present petition, however due to time consumed in getting the annexures translated,

there was an additional delay of few days that delayed the Petitioner in refilling the present SLP.

5. That the delay so occasioned in re-filing the accompanying SLP is neither deliberate nor intentional but has occasioned due to factors beyond the control of the petitioner herein and the same may be condoned in the interest of justice.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) condone the delay of days in re-filing the accompanying petition;
- b) Pass any other order(s) in the interest of justice.

Drawn by

FILED BY

SIDDHANT SHARMA
(ADVOCATE)

RAJ KAMAL
ADVOCATES FOR THE PETITIONER

DRAWN ON:-14.12.2017

FILED ON: 15.12.2017

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SLP (Crl.) NO. OF 2017

IN THE MATTER OF:

Khumkala Banjade

...Petitioner

VERSUS

Nupur Talwar & Ors

...RESPONDENT(s)

AFFIDAVIT

I, Khumkala Banjade, age about 50 years old W/o Late Hemraj Banjade C/o Samir Singh R/o 553, Sector 29, GB Nagar, Noida - Uttar Pradesh - 201301, presently at New Delhi do hereby solemnly affirm and state as under:

1. That I am the appellant in the aforesaid matter and I am well conversant with the facts and circumstances of the case and competent to swear this Affidavit.
2. That I have read and understood the contents of the List of Dates at page to annexed to the SLP (Crl.) as well as the contents of the SLP (Crl.) in para nos. to at pg. to now shown to me and state that the contents thereof are true and correct to my knowledge and belief. I have also read and understood the contents of the Crl. M.P.s para nos. to at pg. to filed along with the SLP (Crl.) and state that contents thereof are true and correct.
3. That I have not filed any other SLP (Crl.) against the impugned judgment and order in this Hon'ble Court.

4. That the annexure filed along with the SLP (Crl.) are true typed copies of their respective originals.
5. That my counsel has explained the contents of the appeal to me in vernacular language being Hindi & I state that the contents of the same are true & correct to the best of my knowledge & information.

DEPONENT

VERIFICATION

Verified at New Delhi on this ____ day of _____2017 that the contents of the aforesaid affidavit are true to the correct of me knowledge and nothing material has been concealed therefrom.

DEPONENT

(b) Sub classification: **1402**

5. Not to be listed before: **N/A**

6. Similar-Pending matter: **No Similar Matter pending**

7. **Criminal Matters:**

(a) Whether accused/convict has surrendered: Yes No

(b) FIR No. **crime-no. 695/08** Date: **16.05.2008**

(c) Police Station: **Sect-20 Noida.**

(d) Sentence Awarded: **Life Imprisonment**

(e) Sentence Undergone: **Period of Sentence undergone including period of detention/ custody under gone) 3 years, 10 Months, 22 days (Both the respondent)**

8. **Land Acquisition Matters:**

(a) Date of Section 4 notification: **N/A**

(b) Date of Section 6 notification: **N/A**

(c) Date of Section 17 notification: **N/A**

9. **Tax Matters** : State the tax effect: **N/A**

10. **Special Category** (first petitioner/appellant only): **N/A**

Senior citizen > 65 years SC/ST Woman/child Disabled Legal

Aid case In custody

11. Vehicle Number (in case of Motor Accident Claim matters):

12. Decided cases with citation: **N/A**

AOR for petitioner(s)/appellant(s)

Raj Kamal, (Advocate)

Registration No. 2077

M: 9873748646

Email: rajkamal.adv@gmail.com

Date:15.12.2017

New Delhi

Case is not listed this week

DEALING SECTION: X

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

SLP (Cri.) NO. OF 2017

IN THE MATTER OF:

Khumkala Banjade

...APPELLANT

VERSUS

Nupur Talwar & Ors

...RESPONDENT(s)

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Total:

Filed On: 15.12.2017

RAJ KAMAL,
(Advocate)
AOR for petitioner(s)/appellant(s)
Registration No. 2077
117, C. K. Daphtary Chambers,
Supreme Court of India, New Delhi
#+91 9873748646/ 011-23074068
M: 9873748646
Email: rajkamal.adv@gmail.com

FIR DETAILS

1	Diary No.	
2.	Date Of Lodgment Of FIR/Complaint	
3.	Date Of Occurrence	
4.	Police Station Address With State	
5.	Date Of Filing Of Charge Sheet/Challan	
6.	Whether Tried By The Court Of Magistrate	
7.	Whether Tried By The Court Of Sessions	

ADVOCATE FOR THE PETITIONER

(RAJ KAMAL)
Advocate, Supreme Court (Code - 2077)

**117, C. K. Daphtary Chambers,
Supreme Court of India, New Delhi
#+91 9873748646/ 011-23063806
Email: rajkamal.adv@gmail.com**

Date : 15.12.2017

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (Cri) NO. OF 2017**

(Arising out of the final judgment dated 12.10.2017 passed by the Hon'ble High Court of Judicature at Allahabad in Criminal Appeal No. 293 of 2014 and 294 of 2014)

IN THE MATTER OF:

Khumkala Banjade ...PETITIONER

VERSUS

Nupur Talwar & Ors ...RESPONDENT(s)

With

CrI. M.P. of 2017

**APPLICATION FOR EXEMPTION FROM FILING OFFICIAL
TRANSLATION**

CrI. M.P. of 2017

APPLICATION SEEKING PERMISSION TO FILE SLP

CrI. M.P. of 2017

**APPLICATION FOR CONDONATION OF DELAY IN
RE-FILING IN SLP WITH AFFIDAVIT**

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(PAPER-BOOK)

(For Detailed Index Kindly See Inside)

ADVOCATE FOR THE PETITIONER : RAJ KAMAL

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Crl. M.P. of 2017

IN

SPECIAL LEAVE PETITION (Cri) NO. OF 2017

IN THE MATTER OF:

Khumkala Banjade

...PETITIONER

VERSUS

Nupur Talwar & Ors

...RESPONDENT(s)

AFFIDAVIT

I, Hemant Kumar, S/o Harish Chander age about 32 years old R/o 41/1A, Gali No. -2 East Azad Nagar, Delhi -110051 do hereby solemnly affirm and state as under:

1. That the instant Crl. M.P. for condonation of delay in re-fining the instant TP has been drafted by me on instruction of the petitioner and as such am well aware of the facts and circumstances of the case and hence, am competent to swear this affidavit.
2. That I have carefully gone through the contents of the Crl. M.P. from page 1194 to 1196 para 1 to 5 which has been drafted by me on instruction of the petitioner and state that the contents of the same are true and correct on the basis of information received by the Petitioner.

DEPONENT

VERIFICATION

Verified at New Delhi on this day of 2018 that the contents of the aforesaid affidavit are true to the best of my knowledge and nothing material has been concealed therefrom.

DEPONENT

**IN THE HON'BLE OF JUDICATURE AT
ALLAHABAD
CRIMINAL APPEAL NO. 293 OF 2014
UNDER SECTION 374 (2) OF CRIMINAL
PROCEDURE CODE**

District Ghaziabad

MEMO OF PARTIES

IN THE MATTER OF

Dr. Nupur Talwar

D/o Shro B.g. Chitnis

R/o A-171, Azad Apartments, Aurobindo Marg,

New Delhi-110016

...Appellant

Versus

1. State of Uttar Pradesh
Though its Standing Counsel
2. Central Bureau of Investigation
SCR-III, New Delhi, CGO Complex, Lodhi Raod, New Delhi

...Respondent

Criminal Appeal no. 294 of 2014

Dr. Rajesh Talwar

R/o A-171, Azad Apartments, Aurobindo Marg,

New Delhi-110016

...Appellant

Versus

1. State of Uttar Pradesh
Though its Standing Counsel
2. Central Bureau of Investigation
SCR-III, New Delhi, CGO Complex,
Lodhi Raod, New Delhi

...Respondent

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CrI. M.P. of 2017

IN

SPECIAL LEAVE PETITION (CrI) NO. OF 2017

IN THE MATTER OF:

Khumkala Banjade

...PETITIONER

VERSUS

Nupur Talwar & Ors. Etc.

...RESPONDENT(s)

APPLICATION FOR SEEKING CONDONATION OF

DELAY IN FILING SLP

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF
THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:-

1. That the Petitioner above named has preferred the present petition against the order dated 12.10.2017 in CrI. Appeal No. 293/2014 and 294/2014 passed by the High Court of Judicature Allahabad at Uttar Pradesh whereby the High Court acquitted the Respondent no. 1 & 2 for the murder of their daughter (Aarushi) and domestic help (Hemraj). The Hon'ble trial court sentenced both the respondents to life

imprisonment while the Hon'ble High court acquitted both the respondents. It is also pertinent to note that both the respondents have only undergone a period of 3 years 10 months and 22 days. The High Court failed to consider the incriminating oral and documentary evidence which ran consistent with the hypothesis of the guilt of the Respondent no. 1 & 2. The High Court failed to consider the complete unbroken chain of events which is essential in the cases based upon circumstantial evidence where only one inference of guilt of the accused would ensue by excluding all possible hypothesis of their innocence. The Hon'ble High Court also overlooked the clinching wealth of circumstances from which the guilt of both the accused had been made out to the extent human instruments can apprehend. The Hon'ble High Court also failed to consider that the prosecution proved the case beyond reasonable doubt while corroborating the tendered evidence against both the Respondents.

2. That the entire facts and circumstances of the case are not narrated here for the sake of brevity and the facts and circumstances narrated in the SLP shall be treated as part and parcel for the purposes of adjudication of the instant application.
3. That due to translation of volummouns records in the above petition. There is delay of 4 days in filing the instant

SLP which this Hon'ble Court may condone in the interest of justice.

4. That when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. In the case of *N. Balakrishnan v. M. Krishnanmurthy* MANU/SC/0573/1998 : 2008(228)ELT162(SC), it was held by the Hon'ble Supreme Court that Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the Court has to go in the position of the person concerned and to find out if that delay can be said to have resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case as sufficient. The same was upheld by the Hon'ble Supreme Court in the cases of *Nagaland v. Lipok AO* 2005(183)ELT337(SC).
5. That the Hon'ble Supreme in **STATE (NCT OF DELHI) V/S AHMED JAAN**, (2008) 14 SCC 582 has observed that the proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is

one of the circumstances to be taken into account in using the discretion.

6. That in light of the facts and circumstances of the case, it is thus submitted that the delay of 4 days in refilling of the instant SLP be condoned in the interest of justice.

PRAYER

It is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Condone the delay of 4 days in filing the present special leave petition before this Hon'ble Court;
- b) Pass any such further order or orders as this Hon'ble Court may deem fit in light of the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL IN DUTY BOUND EVER PRAY.

DRWAN BY

FILED BY

SIDDHANT SHARMA

RAJ KAMAL

(ADVOCATE)

ADVOCATES FOR THE PETITIONER

DRAWN ON:-14.12.2017

FILED ON: 15.12.2017

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Crl. M.P. of 2017

IN

SPECIAL LEAVE PETITION (Cri) NO. OF 2017

IN THE MATTER OF:

Khumkala Banjade

...PETITIONER

VERSUS

Nupur Talwar & Ors

...RESPONDENT(s)

AFFIDAVIT

I, Siddhant Sharma, S/o Jiwan Kumar Sharma, aged about 26 years, 11-B, Mathura Road, Jangpura-B, New Delhi-110014 do hereby solemnly affirm and state as under:

1. That the instant Crl. M.P. for condonation of delay in re-fining the instant TP has been drafted by me on instruction of the petitioner and as such am well aware of the facts and circumstances of the case and hence, am competent to swear this affidavit.
2. That I have carefully gone through the contents of the Crl. M.P. from page 1194 to 1196 para 1 to 5 which has been drafted by me on instruction of the petitioner and state that the contents of the same are true and correct on the basis of information received by the Petitioner.

DEPONENT

VERIFICATION

Verified at New Delhi on this day of 2018 that the contents of the aforesaid affidavit are true to the correct of me knowledge and nothing material has been concealed therefrom.

DEPONENT