(2017) 03 GUJ CK 0160

GUJARAT HIGH COURT

Case No: 1177 of 2012

NARANBHAI BABUBHAI BHUVA		APPELLANT
	Vs	
STATE OF GUJARAT		RESPONDENT

Date of Decision: March 22, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 482 - Saving of inherent powers of High Court
- Indian Penal Code, 1860, Section 114, Section 302, Section 201, Section 392, Section 404 - Abettor present when offence is committed - Punishment for murder - Causing disappearance of evidence of offence or giving false information to screen offender - Punishment for robbery - Dishonest misappropriation of property possessed by deceased person at the time of his death
- Evidence Act, 1872, Section 27 - How much of information received from accused may be proved
- Code of Criminal Procedure, 1898, Section 439, Section 431 - High Courts powers of revision - Abatement of appeals

Hon'ble Judges: Akil Kureshi, Biren Vaishnav

Bench: Division Bench

Advocate: SONA SAGAR, HK PATEL

Judgement

1. This appeal is filed by the original accused no.1 in Sessions Case No.44/2010 to challenge the judgment of the learned Additional Sessions Judge, Gondal, dated 1.5.2012.

2. Briefly stated, the prosecution case was that deceased Kankuben had gone to the house of the two accused i.e. the present appellant and accused no.2 Rekhaben to deliver dried cow dung cakes (in rural households typically used for cooking fire and other

similar purposes). At that time she was wearing gold and silver ornaments. The two accused with the intention of robbing her of such ornaments killed her by strangulation. Her dead body was then covered in a bag and thrown inside a gutter where it was found nearly eight days later in a highly decomposed condition. Both the accused were therefore, charged with offences punishable under sections 392, 302, 201 read with section 114 of the Indian Penal Code. The accused had sold the gold and silver ornaments in the market. They were therefore, charged with offence punishable under section 404 read with section 114 of the IPC. A charge to this effect was framed at exh.115.

3. Rajubhai Maisurbhai Mevada, PW13, exh.43, the husband of the deceased, deposed that he was engaged in selling milk. He was also doing agricultural work at his own field at village Sardhar. On the day of the incident, at about 5 O'' clock in the evening, he had gone to his village. His wife had gone to deliver cow dung cakes. At 6 O'' clock, his son Ranmal called him and told him that the mother had not returned. He therefore, returned to Rajkot from Sardhar and looked for his wife. His brother Dhirubhai and others joined him in the search. They could not find her. When they asked his daughter, she told them she knew where her mother usually goes to give the cakes. She showed the place which was a small room in a flat complex. They found their cakes lying outside. The room was locked. Upon inquiry, they found that Naranbhai Babubhai accused no.1 and his wife accused no.2 had disappeared since previous night. They also contacted Vajubhai, the owner of the flat, who told them that Naranbhai was his relative and he occupied the said flat with his wife but did not know where presently they were. They could be at Ram park at Junagadh. At the said place also, they were not found. The witness stated that his wife was wearing gold and silver ornaments at the time when she disappeared. He gave the approximate weight and description of such ornaments. He had informed Bhaktinagar police station about missing of his wife. 23.2.2017 He further deposed that about eight days later, the dead body of his wife was found from a gutter near Shapar petrol pump. From the clothes worn by her wife and one silver ring on her leg and one around her neck which were there on the body, he could recognise her. After this, his FIR was registered which was produced at exh.44. According to him, his wife was done to death by the two accused when she had gone to deliver the cow dung cakes to their house for taking away the gold and silver ornaments, she was wearing. In the cross examination, he agreed that till the dead body was found, he had no personal information about the incident. On the date of the incident, his wife had not told him where she was to go to deliver the cow dung cakes. He had identified the cow dung cakes outside the house of the accused as those made by his wife. The house of the accused was at a distance of about half a kilometer from his house and the place from where the dead body was found was at a distance of about 5 kms.

4. Ranmalbhai Rajubhai Mevada, PW15, exh. 46, was a child witness and son of the complainant. He had called Rajubhai PW13, when his mother did not return after delivering the cow dung cakes. Except this, he had no further information.

5. Bhavnaben Rajubhai Mevada, PW17, exh.48, daughter of the complainant, was aged about 17 years at the time of recording of her deposition. She also referred to the mother not returning from her errand, upon which, her brother Ranmal had called their father. Next day, her mama Machabhai asked her to show all the places where the mother used to go for delivering the cow dung cakes. She had taken him to such places. She interestingly added that at the house of Naranbhai Babubhai, the neighbour told them that Kankuben had come to deliver the cow dung cakes but had not come out of the house. This version has come in the deposition of this witness alone and that too by way of hearsay evidence and no other first hand information is available about the deceased seen entering the house of the accused but not coming out.

6. Interestingly, Machabhai Devabhai Chavadiya, PW16, exh.47, with whom Bhavnaben, PW17, claimed to have gone to the house of the accused, in his deposition did not refer to the neighbour informing them that the deceased had entered the house but was not seen leaving. He only stated that outside the house, the cow dung cakes were lying which were of the deceased. This later part of the information Bhavnaben had not given in her deposition.

7. Dhirubhai Desurbhai, PW14, exh.45, the brother of the husband of deceased, lived next door. He had also joined in search for the missing wife of the complainant. He had gone to Junagadh at the given address of accused no.1 Naranbhai and met his father who told him that he had driven Naranbhai out of the house since four years and he did not know about his whereabouts.

8. Vajubhai Tapubhai Lodhiya, PW9, exh.48, was the relative of accused no.1 Naranbhai Babubhai. He had allowed Naranbhai to occupy the room which was of his ownership. He deposed that Naranbhai had stayed in the said room for about three or four months and then once complained to him that a theft had taken place from his house. The witness therefore, told him that if Naranbhai was worried about the theft, he may as well vacate the house. After this conversation, Naranbhai went away a couple of days later, after which, one Bharwad came to his house looking for his missing wife. He was inquiring since Naranbhai was also not traceable. Naranbhai then had come to his office on Shivratri day. He had told him about the Bharwad looking for him. Naranbhai avoided meeting them making an excuse. In the cross examination, he could not give the precise date when Naranbhai had spoken to him on phone complaining about the theft in the house.

9. Dr. Hetalkumar Chaganbhai Kachara, PW6, exh.21, had carried out the postmortem of the highly decomposed dead body of the deceased. The postmortem note was produced at exh.22 in which he had recorded ligature marks around her neck and opined that cause of death was due to asphyxia on account of ligature strangulation. The time of death was estimated to be 5 to 10 days prior to the postmortem. He had preserved the

blood for grouping and cross matching and the teeth for DNA profile.

10. Under the panchnama, exh.14, the house of the accused was searched. The panch witness Mukeshbhai Narotambhai Lodhiya, PW3, exh.13, supported the prosecution. Pachnama would show the house to be an old dilapidated one room apartment on the ground floor of a flat complex. All that the investigating agency recovered from this place was an old mattress and a cover of the mattress. Though the panchnama records some stains on these articles, the FSL and serological analysis to which we would refer to at a later stage, did not show presence of any blood.

11. Mukeshbhai Chimanbhai Jajmeriya, PW7, exh.27, was a panch witness in whose presence under panchnama exh.28, the investigating agency had recovered piece of gold weighing 51.990 grams and silver weighing 288 grams from the shop of a goldsmith Mansukhlal Nandlal Soni, situated at Veraval.

12. Under panchnama exh.41, the investigating agency recovered a "Tagara" (a metal container used for carrying household articles and agricultural produce). The panch witness Yakubbhai Sidiquebhai Gohel, PW11, exh. 40, turned hostile. The panchnama records that the police informed the panch witness that after committing murder of Kankuben, her Tagara was given to a hawker with lorry which is to be recovered. Thereupon, the accused led the panch witness and the police party to a tea stall where from the stall operator Shantilal Ratilal, the Tagara was recovered.

13. The FSL report read with serological report exh.67 would show that blood group of the deceased was "A" which was found only from her clothes and no other articles.

14. The prosecution had also produced the DNA report to establish the identify of the dead body as that of Kankuben. The DNA samples, as can be seen from the report exh.65, matched with those of her daughter and sons, thus putting the question of identification of the dead body beyond doubt. This in the nutshell is the evidence on record.

15. The case rests solely on circumstantial evidence. As per the settled legal position, in such a situation, conviction of the accused can be recorded only if the established circumstances form a complete chain pointing unerringly to the only possible conclusion of the involvement of the accused persons to the exclusion of any other hypothesis to the contrary. While assessing the evidence, therefore, we would like to ascertain the circumstances which stand established and upon which the prosecution can place reliance.

16. We may recall the first informant Rajubhai, PW13, the husband of the deceased, was away from home when his wife, as reported by his child, left the house to deliver the cow dung cakes. He had no information as to where she had gone. The children at home also

did not have any specific idea where their mother had gone. Bhavnaben, PW17, could only show several places where the mother used to regularly go for delivering the cow dung cakes, one of them was the house of the accused. There was no other eyewitness from the neighbouring area where the accused lived who had seen the deceased going to the house of the accused on the fateful day. Thus we have no first hand information that on 10.2.2010, Kankuben had actually gone to the house of the accused to deliver the cow dung cakes.

17. In fact, we also do not have any information of Naranbhai and his wife on that day still occupying the place. As per Vajubhai, PW9, he had given the room to Naranbhai to occupy. Naranbhai had complained about the theft taking place in the house, upon which, the witness had told him to vacate in such a case. After Naranbhai went away, the complainant met Vajubhai inquiring about his missing wife. Vajubhai could not give the precise date when Naranbhai had spoken to him about the theft. We therefore, do not have any clear picture on when Naranbhai would have vacated the room. Going by the deposition of Vajubhai, it is entirely possible that Naranbhai might have vacated the house even before the date of the incident.

18. With this background, we may list the circumstances which the prosecution would like to take advantage of. These circumstances are :

a) The wife of the complainant had left the house in the evening of 10.2.2010 to deliver the cow dung cakes.

b) The house of the accused was one place which according to Bhavnaben, the daughter of deceased, out of many where the deceased used to regularly supply cow dung cakes. The deceased Kankuben did not return till late and her dead body was found later. There is also no doubt about the identification of the dead body. The husband had identified the body from the clothes and remaining ornaments. DNA test also established that the body was of Kankuben.

c) The complainant claimed that the cow dung cakes prepared by his wife were lying outside the house of the accused.

d) Tagara of the deceased was, according to the prosecution, discovered from a tea stall operator at the instance of the accused no.1.

e) The gold and silver was recovered from the goldsmith shop under panchnama exh.26.

19. We may refer to each factor in seriatum.

a) About the first factor, we have no difficulty in believing that the wife of the deceased did leave the house in the evening of 10.2.2010 for delivering the cow dung cakes as deposed by the daughter Bhavnaben and son Ranmalbhai.

b) We are also prepared to accept the version of Bhavnaben that the house of the deceased was one place where the deceased regularly supplied such material. However, this was neither the only place nor the place to which we have information that the deceased had gone on the date of the incident.

c) Regarding the cow dung cakes lying outside the house of the accused, we have serious doubt. The complainant claimed to have identified such cow dung cakes without giving any indication on how they were identifiable. Cow dung cakes are routinely prepared in rural areas and are used for cooking fire and other purposes. They do not have any identification marks. If the cow dung cakes prepared by the wife of the complainant were unique in size, shape or design, the prosecution ought to have brought such aspect on record to give confidence to the Court to accept the identification of such objects by the complainant.

d) The socalled discovery of Tagara at the instance of accused also is of no consequence. Firstly, the panch witness did not support the prosecution. More importantly, if this panchnama exh.41 is to be a discovery panchnama, there had to be a statement of the accused which with the aid of section 27 of the Evidence Act, would become admissible in evidence. All that the panchnama records is that it was the police who informed the panch witnesses that the Tagara of Kankuben discarded after the murder of Kankuben is to be recovered. There was no disclosure statement made by the accused and the mere recovery of the Tagara therefore, would be of no consequence.

e) The recovery of gold and silver slugs under the panchnama exh.26 is also of no consequence. Under this panchnama the investigation merely collected and recovered from a shop of the goldsmith a piece of gold weighing 51.990 grams and silver weighing 288 grams. There is no evidence to link these precious metals with the gold and silver ornaments of the deceased. There is absolutely no evidence to link the accused with the sale of such ornaments to the goldsmith. Obviously, the ornaments were no more in identifiable condition. All the more so, therefore, it was the duty of the prosecution to bring on record some evidence to establish that it was the accused who had sold the gold and silver ornaments of the deceased to a particular person. The shop owner was not examined. We therefore, have no link whatsoever between the pieces of gold and silver

recovered under panchnama exh.26 and the missing ornaments of the deceased. More importantly, we have no basis to believe that it was the accused no.1 or 2 who had sold such ornaments to the said goldsmith.

20. From the above discussion it can be seen that there is not even an iota of evidence against the accused for having committed the murder of deceased Kankuben. In addition to the above noted circumstances, we also find that the last seen together theory is not established. No one had seen Kankuben going towards the house of the accused. As discussed earlier, we do not even have a reliable evidence to believe that the accused continued to occupy the said room even after the incident of theft from the house which was reported to the owner Vajubhai PW9.

21. There are two more glaring aspects which are completely lost sight of by the learned trial Judge. As per the deposition of Rajubhai PW13, the house of the accused was at a distance of about 5 kms from the Shapar petrol pump, the area from where the dead body of Kankuben was found. There was no evidence suggesting the manner in which the dead body was carried at such a distant place. Further, as per Rajubhai''s deposition, some of the ornaments were still there on the dead body found many days later. If the motive for committing the crime was stealing the ornaments and if the accused had sufficient time to carry the dead body to a distant place after committing murder, it sounds somewhat strange that the dead body still carried a couple of ornaments when it was found later.

22. The evidence on record is thus extremely sketchy. The circumstances which can be stated to have been established are stray pieces of unrelated and fragmented circumstances. That apart, it is also not clear to us how the involvement and role of accused no.1 and 2 can be ascertained. Conviction of both of them would have to proceed on the assumption that they were both at the room when Kankuben went there to deliver the cow dung cakes, they both shared the common intention of causing her death to rob her gold and silver ornaments and it was the duo of husband and wife who put the plan in action. The criminal prosecution does not proceed on assumptions and presumptions. What if the accused no.1 alone was at the house when the incident took place and his wife was not. The converse question is equally valid. The trial Court believed that both the accused must be at home and must have intended to cause the death of Kankuben and take away her gold and silver ornaments. We are therefore, of the opinion that the judgment under challenge suffers from serious infirmities. Conviction of both the accused was erroneously recorded.

23. This Criminal Appeal is filed only by accused no.1 Naranbhai Babubhai, through the legal aid. Strangely, since the husband had filed the appeal but wife had not, we had made further inquiries with the High Court Legal Service Committee. We were informed that the application of accused no.1 was received by the Committee forwarded by the

Rajkot jail under letter dated 21.5.2012. Accordingly, the appeal was filed on behalf of the said accused. Learned APP who was requested a day before had also made further inquiries. The statement of accused no.2 Rekhaben was recorded on 21.3.2017 in which she had pointed out that she had supplied the copy of the judgment to the coaccused Naranbhai for filing the appeal on her behalf also. However, no such appeal was filed. She had therefore, given the application on 20.1.2016 for assigning a legal aid advocate. Along with the statement, a copy of her letter and the forwarding letter of the Rajkot jail dated 20.1.2016 is produced. When this was pointed out to the Secretary of the High Court Legal Services Committee, he made further inquiries and informed us that upon receipt of the application of the accused no.2 for the legal aid, the letters were written for obtaining necessary documents including the copy of the judgment which has taken some time since there was an error in reference to the District Court which had convicted the accused.

24. It can thus be seen that the appeal of the accused no.2 has got lost in maze of abject poverty, illiteracy and procedures. She claims to have provided necessary papers to the coaccused for filing the appeal. For some strange reason, he applied for the appeal for only himself. The jail record shows that she has been in jail already for close to seven years. She is perhaps not even aware about her right to seek legal aid or that she has a right to file the appeal in the first place. A situation has therefore, arisen where in an appeal by the coaccused, we have found that conviction is palpably erroneous. The facts, circumstances and the evidence against both the accused is not only inextricably interlinked, it is in fact, common with no distinction whatsoever possible. The question therefore, immediately arises in our mind is should we confine ourselves to this appeal, decide the legality of the conviction of accused no.1 who is the sole appellant and dispose of the appeal without any further directions? In our opinion, such technical approach would result into gross miscarriage of justice. Having come to the conclusion that conviction of accused no.2 was also entirely erroneous, would we leave the conviction intact only because she has not been able to file appeal?

25. Section 397 of the Code of Criminal Procedure empowers the High Court or any Sessions Judge to call for and examine the record of any proceedings before an inferior Criminal Court situated within its local jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order and as to the regularity of any proceedings of such inferior Court. Likewise, section 401 of the Code of Criminal Procedure pertains to High Court''s power of revision. Subsection(1) of section 401 provides that in case of any proceeding, the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Sessions by section 307. Likewise, section 482 of the Code of Criminal Procedure, as is well known, saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

26. The Supreme Court in case of Pranab Kumar Mitra v. State of W.B. and another reported in AIR 1959 Supreme Court 144 considered the contours of revisional jurisdiction under sections 431 and 439 of the Code of Criminal Procedure, 1898. It was a case where the convicted accused had filed a revision petition before the High Court. During the pendency of the proceedings, the accused died leaving behind the surviving widow and children. One of the heirs requested the High Court to decide the revision petition on merits, despite the death of the convict. He also applied for substitution in place of his deceased father. The Division Bench of the High Court refused to go into the merits of the conviction and confined itself to the question whether the sentence of fine was unduly severe. The Constitution Bench of the Supreme Court held that the revisional powers of the High Court under section 439 of the Code is a discretionary power which has to be exercised in aid of justice. Whether or not the High Court will exercise such powers, must depend upon the facts and circumstances of the case. The revisional powers of the High Court vested in it by section 439 of the Code read with section 435 do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence, and that subordinate criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code. It was further observed that where the High Court thinks it fit and proper to entertain an application in revision or calls for the record suo motu then notwithstanding the death of the convicted person pending the revision it has the power to examine the whole question of the correctness, propriety or legality of the sentence of fine, which necessarily involves examining the order of conviction itself from that point of view.

27. In case of Sunilakhya Chowdhary v. H.M. Jadwet and another reported in 1968 Criminal Law Journal 736, learned Single Judge of Calcutta High Court held that even if a party does not apply to the High Court in revision but the said case is brought before the Court by some other party, nothing would stand in the way of the High Court to exercise its revisional or inherent powers to pass necessary orders to meet with the ends of justice.

28. In case of Ratan Singh v. State of Madhya Pradesh reported in 1977 Criminal Law Journal 673, the facts were that three accused were convicted for the offence of murder by common judgment. Two of them had preferred appeal through jail before the High Court against the conviction and sentence. The third one, Ratan Singh had not preferred the appeal. The appeal memo sent through jail contained all the three names but the memo was signed by only two convicts and not signed by Ratan Singh. In the appeal by the coaccused, the High Court was convinced that the conviction was absolutely illegal and could not be sustained. The appeal of the two appellants was therefore, allowed. The High Court however, did not notice that the third accused was also convicted whose appeal was not before the Court. Thereafter, the third accused filed an application under section 482 of the Code of Criminal Procedure, requesting the Court to consider his case

and set aside his conviction and sentence also. Subsequently, he also preferred appeal with a request for condonation of delay of six years. In this background, the Court observed that the State is the protector of its subject,and therefore, it has to see that no innocent person, being its subject, shall suffer a sentence which is unjust and illegal. This duty and privilege of the State is entrusted to the High Court and this is the reason for conferring such wide powers under section 439 of the Code of Criminal Procedure (old) or section 401 of the present Code. It was observed that there is an obligation on this Court of superintendence and supervision on subordinate criminal Courts to see that the order of conviction passed by such Court is not illegal and nobody is made to suffer a sentence which is illegal and contrary to law. It was further observed as under :

"10. It was contended that it was not a case of giving an information by a third party but was an application by the accused himself, who was a party to the trial and who had not preferred any appeal, his application could not be treated as an information given by a third party to the Court. We do not find any force in this objection. If the High Court could act in revision at the instance of a person, who was not a party directly interested, then why not when otherwise informed. So far as the exercise of revisional powers suo motu is concerned, it will be relevant to quote that it is immaterial who had parked th plugs of the Court system. "What is material and what merits is the right or wrong of the relief". We cannot forget that the revisional jurisdiction of this Court under the Code of Criminal Procedure is in its real purpose not only a power but also a duty.

29. Learned Single Judge of Karnataka High Court in case of M.P. Poonnamma and another v. The State of Karnataka reported in 1978 Criminal Law Journal 1241 observed that the revisional jurisdiction of the High Court is very extensive. It was further observed as under : "8. The revisional jurisdiction of the High Court is very extensive. There is no form of judicial injustice which this Court, if need be, cannot reach. It would be unfortunate if it were otherwise. This is a case in which the accused were wrongly convicted. It may be pointed out that injustice may equally be done where persons, in fact guilty, are improperly acquitted as well as where innocent persons are convicted. Therefore, this is eminently a fit case in which I should interfere by exercising my revisional powers to set aside the conviction and sentence passed against A2 and A3 though they have not appealed."

30. In case of State of Gujarat v. Rohit and another reported in 1985 Criminal Law Journal 556 before the Division Bench of this Court, the facts were that the accused was convicted for offence under section 304 Part I of the IPC. The State had challenged his acquittal for offence under section 302 of the IPC. The accused had not preferred any appeal against his conviction. While hearing the State appeal, the Division Bench found that the conviction of the accused was erroneous. The question therefore, arose, whether in absence of the appeal by the accused, in a State appeal against the acquittal, can his

conviction be set aside. The Division Bench referring to judgments of other High Courts held and observed as under : "4. We may mention at the outset that the accused No.1 who has been convicted by the learned Sessions Judge of the offence punishable under section 304(1) IPC has not filed any appeal challenging the conviction and sentence passed against him. In this connection, the learned advocate Mr. Gandhi appearing for the respondents submitted that even though accused No.1 has not filed any appeal against the order of conviction, this Court can while appreciating the evidence in this appeal, consider whether the conviction of accused No.1 for the said offence is justifiable or not. He urged that even though no appeal has been filed by the accused No.1, this Court, while hearing this appeal, can exercise revisional powers and acquit accused No.1 of the said offence even though he has not filed any appeal. He has relied upon the decisions reported in (1)Emperor v. Panchaksharam, AIR 1938 Mad 723 : (1938 (39) Cri LJ 871), (2) State Government, Madhya Pradesh v. Sheodayal Gurudayal, AIR 1956 Nag 8 : (1956 Cri LJ 83) and (3) The State v. Babulal and Bherumal AIR 1956 Raj 67 : (1956 Cri LJ 550) in support of his submission. Before going to the authorities cited by Mr. Gandhi it would be proper to refer to the relevant corresponding provisions of the Code of Criminal Procedure, 1973, which relate to the powers of revision by the High Court. Section 397 of the Code of Criminal Procedure, 1973, empowers the High Court to call for and examine the record of any proceedings before any inferior criminal Court situate within its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court. Section 401(1) of the Code says that in the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge the High Court may in its discretion exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 of the Criminal PC. This shows that the power of revision can be exercised by the High Court even if the record and proceedings are not called for under section 397 but have come to the knowledge of the Court in any proceedings. The record and proceedings of Sessions Case No. 47/82 are before us in this acquittal appeal and by virtue of the provisions of section 40(1) of the Criminal PC, we can exercise this power conferred on us in revision. Section 401 says that the powers which can be exercised by a Court of appeal, can be exercised by us in exercise of the powers of revision. Therefore, there does not appear any difficulty in accepting the submission of Mr. Gandhi that the powers of revision can be exercised and if ultimately we come to the conclusion that the conviction of accused No.1 even for offence of culpable homicide is not justifiable then we can in exercise of the powers of revision set aside the said conviction also even though accused No.1 has not filed any appeal before this Court against his conviction."

31. In case of Central Bureau of Investigation v. Ashok Kumar Aggarwal and another reported in (2013) 15 Supreme Court Cases 222, the Supreme Court observed that sections 397 and 401 of the Code of Criminal Procedure do not create any right in favour of the litigant but empower and enable the Court to see that justice is done in accordance with the recognised principles of criminal jurisprudence.

32. In case of Popular Muthiah v. State Represented by Inspector of Police reported in (2006) 7 Supreme Court Cases 296, the Supreme Court observed that while exercising appellate jurisdiction, High Court in suo motu exercise of inherent powers, can direct further investigation of the case against persons who are not chargesheeted and who are not accused at the stage of trial but whom High Court felt should have been included in the chargesheet. Such powers however, should be exercised sparingly.

33. In case of Surendra Singh Rautela alias Surendra Singh Bengali v. State of Bihar (Now State of Jharkhand) reported in (2002) 1 Supreme Court Cases 266, the Supreme Court observed that the High Court suo motu in exercise of revisional jurisdiction, can enhance the sentence of an accused awarded by the trial Court and the same is not affected merely because an appeal is provided under section 377 of the Code for enhancement of sentence and no such appeal has been filed. Ofcourse such powers should be exercised only after giving opportunity of hearing to the accused.

34. In case of Krishnan and another v. Krishnaveni and another reported in (1997) 4 Supreme Court Cases 241, the Supreme Court reiterated that the High Court has power to suo motu exercise revisional jurisdiction under section 401 of the Code. The revisional power of the High Court merely conserves the power to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinate courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior criminal Courts or to prevent the miscarriage of justice.

35. In case of Govind Ramji Jadhav v. State of Maharashtra reported in (1990) 4 Supreme Court Cases 718, the Supreme Court held that High Court can even suo motu enhance the sentence by exercising revisional jurisdiction, however, must provide predecisional opportunity of showing cause.

36. In case of Rameshchandra J. Thakkar v. Assandas Parmanand Jhaveri, State of Maharashtra reported in (1973) 3 Supreme Court Cases 884, the Supreme Court observed that the revisional jurisdiction under section 439 of the old Code can be exercised by the High Court by being moved either by the convicted person himself or by any other person or even suo motu on the basis of its own knowledge derived from any source whatsoever without being moved by any person at all. All that is necessary to bring the High Court''s power of revision into operation is such information as makes the High Court think that an order made by a subordinate Court is fit for the exercise of its power of revision.

37. From the above judicial pronouncements, it can be seen that the revision power of the High Court under section 401 read with section 397 of the Code of Criminal Procedure, are extremely wide though need to be sparingly exercised by the High Court in a fit case.

The powers are inherent in nature to correct the judgments and orders of the Courts below which suffer from gross illegality or jurisdictional error. The paramount consideration is not who has moved the Court or whether anyone has moved at all but to prevent the abuse of process of law and to ensure injustice is removed. If the facts are brought to the notice of the High Court that the order of a Court below suffers from gross illegality and, therefore, required to be taken in revision, nothing prevents the High Court from exercising such revisional powers suo motu.

38. It would be a classical case of injustice, if we were to allow the appeal of the sole appellant ignoring that under the same, legally unsustainable judgment, one more accused has been convicted and who would languish in jail for years together if her conviction and sentence is also not set aside.

39. Neither law nor any limitation of the powers of the High Court prevents us from interfering with the entire judgment of conviction and setting aside the same against both the accused. In fact, it is the bounden duty of the Court to strike at the root of injustice and ensure that a person whose conviction has been totally incorrectly recorded, no longer suffers the consequence of such illegality.

40. In the result while allowing the appeal of the sole appellant and setting aside his conviction and sentence recorded by the trial Court, in exercise of suo motu revision powers, we also set aside the conviction and sentence of original accused no.2 in Sessions Case No.44/2010. They shall be set free forthwith, if not required in any criminal case. Criminal Appeal is disposed of. R&P may be transmitted back to the concerned trial Court.