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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 876 OF 2021

Shakuntala Shukla …Appellant

Versus

State of Uttar Pradesh and Another …Respondents

WITH

CRIMINAL APPEAL NO. 878 OF 2021

CRIMINAL APPEAL NO. 877 OF 2021

CRIMINAL APPEAL NO. 879 OF 2021

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment(s) and order(s) dated 08.10.2018 and 06.12.2018 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 1283/2018, 1405/2018, 1496/2018 and 1398/2018, by which the High Court has

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released the private respondents herein - accused on bail, pending the aforesaid criminal appeals, the original complainant – widow of the deceased (victim) has preferred the present appeals.

2. At the outset, it is required to be noted that the judgment and order dated 08.10.2018 in Criminal Appeal No. 1283 of 2018 is the order first in line by which the main accused – Swaminath Yadav came to be released on bail and so far as the other accused are concerned, they are released on bail on the ground of parity and order passed in Criminal Appeal No. 1283 of 2018 (in the case of Swaminath Yadav). Therefore, Criminal Appeal No. 876 of 2021 arising out of the impugned judgment and order passed by the High Court in Criminal Appeal No. 1283/2018 is treated as a lead appeal.

2.1 That all the private respondents herein – accused have been convicted by the learned trial Court for the offences under Sections 302/149, 201 r/w Section 120B IPC arising out of Case Crime No. 103/96, Police Station Bansdeeh, District Ballia and they are sentenced to undergo life imprisonment by the learned Additional Sessions Judge, Court No.2, Ballia vide judgment(s) and order(s) dated 08.02.2018 and 09.02.2018 passed in Sessions Trial No. 230 of 1999 (State v. Vikrama Yadav and others).

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Facts in nutshell

3. That the dead body of one Kripa Shankar Shukla alias Bajrang Shukla was found lying in the well of one Chandramani Pandey on 28.10.1995 at 10:00 a.m; that an application was moved at the police station Bansdeeh, District Ballia; that the police party prepared the inquest report on 15.11.1995, however, there was no proper investigation carried out by the police officer of police station Bansdeeh, District Ballia; that some villagers sent the application to his Excellency the Governor for impartial investigation of the case; that on 13.12.1995, the appellant herein – Shakuntala Shukla (wife of the deceased) moved an application before his Excellency the President of India with the facts that she is a widow of Kripa Shankar Shukla (deceased) and her husband was murdered in the night of 26.10.1995 when he was coming back from Bansdeeh to his village Adar and thereafter the dead body was thrown in the well to create confusion; that on the said application of the appellant herein, Special Secretary, Ministry of Home Affairs, Government of Uttar Pradesh, Lucknow directed for investigation of the matter by CB-CID; that during the investigation, the names of the private respondents herein – accused came into light; that CB-CID submitted the chargesheet against the accused Swaminath Yadav and others co-accused under Sections 147, 149, 302, 201, 218, 120B IPC; that the

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learned trial Court framed the charge under Sections 302/149, 201, 120B IPC.

3.1 At this stage, it is required to be noted that during the investigation by Crime Branch, it was found that one Shri Jainath Yadav, the then Sub-Inspector of Police Station Bansdeeh, District Ballia, under the orders of Station House Officer, investigated the incident of death of the deceased Kripa Shankar Shukla and in his investigation report dated 23.12.1995 in order to save the accused deliberately on the basis of the false facts noted the fact that the deceased under the influence of liquor while going to his paramour's house fell into the well and died by drowning, whereas in the post mortem report no symptoms of death by drowning were found. It was also found during the investigation that even the Doctor Vinod Kumar Rai, District Hospital, Ballia had in the post mortem report of the deceased deliberately mentioned the wrong reason for death (died by drowning), in order to save the accused.

3.2 The learned trial Court therefore passed an order to prosecute the then Station House Officer, Sub-Inspector of Police Jainath Yadav and the Doctor Vinod Kumar Rai.

3.3 That during the trial, the prosecution examined 8 main witnesses; statement of one Doctor Chandrabhal Tripathy was recorded as Court witness; that number of documentary evidence were also brought on

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record; that in the depositions, the witnesses – villagers who were examined on behalf of the prosecution specifically stated that before they gave the evidence/statements, they were threatened by the accused; not only that but an FIR was also lodged against the accused persons for giving threats for the offences under Sections 504 & 506 IPC; that all the witnesses – villagers who were examined specifically stated with respect to threats administered by the accused and they were told not to give any evidence against the accused; that during the investigation the prosecution also established and proved the motive; that on appreciation of evidence and having specifically found from the post mortem report that the lungs of the deceased were found congested, however, no water was found in the lungs; that the learned trial Court specifically noted that despite the above, SI Jainath Yadav neither considered the above points himself nor sought any opinion in this regard from any doctor; that the learned trial Court also noticed that before preparing the enquiry report, neither he enquired from the brother, wife and son of the deceased nor recorded their statements; that thereafter on appreciation of evidence, more particularly the evidence of last seen with the deceased at about 8 O'clock in the night on 26.10.1995 along with the accused persons and thereafter Kripa Shankar Shukla was not seen by anybody and ultimately the dead body was found in the well at about 10:40 a.m. on 28.10.1995. That the

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learned trial Court vide its judgment dated 08.02.2018 convicted the private respondents herein – accused persons, namely, Vikrama Yadav, Swaminath Yadav, Jhingur Bhar, Surendra Kumar Pandey and Umesh Kumar Pandey for the offences under Sections 302/149, 201 r/w 120B IPC. That the learned trial Court also convicted the then Investigating Officer Jainath Yadav and the Doctor Vinod Kumar Rai who performed the post mortem on the body of the deceased and stated the wrong reason of death for the offences under Sections 201 r/w 120B and 218 IPC.

4. Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the learned trial Court imposing the sentence of life imprisonment, convicted accused – Swaminath Yadav has preferred Criminal Appeal No. 1283/2018; convicted accused – Surendra Kumar Pandey has preferred Criminal Appeal No. 1405/2018; convicted accused Jhingur Bhar has preferred Criminal Appeal No. 1496/2018; and convicted accused Vikrama Yadav has preferred Criminal Appeal No. 1398 of 2018 before the High Court.

4.1 In the aforesaid Criminal Appeal No. 1283/2018, accused Swaminath Yadav preferred Criminal Miscellaneous Bail Application being Bail Application No. 1A/1 of 2018 praying for releasing him on bail during the pendency of the criminal appeal. That by the impugned

judgment and order dated 08.10.2018, the High Court has allowed the said bail application and has directed to release the accused – Swaminath Yadav on bail on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned.

4.2 Order dated 08.10.2018 passed by the High Court in Criminal Miscellaneous Bail Application No. 1A/1 of 2018 in Criminal Appeal No. 1283/2018 in the case of accused – Swaminath Yadav has been followed in other three appeals and other three accused, namely, Surendra Kumar Pandey, Jhingur Bhar and Vikrama Yadav are also released on bail on parity and on the ground that co-accused Swaminath Yadav has been released on bail by a coordinate Bench.

5. Feeling aggrieved and dissatisfied with the impugned orders passed by the High Court releasing the accused on bail pending respective criminal appeals, the appellant – victim – wife of the deceased has preferred the present criminal appeals.

5.1 At this stage it is required to be noted that by the time the High Court released the accused on bail, they had undergone 8 months sentence only.

6. Shri V.K. Mishra, learned Advocate has appeared on behalf of the appellant, S/Shri Sandeep Narain and Udayaditya Banerjee, learned

Advocates have appeared on behalf of the accused in Criminal Appeal Nos. 876 and 877 of 2021 and Ms. Srishti Singh, learned Advocate has appeared on behalf of the State of Uttar Pradesh.

6.1 Though served, nobody has appeared on behalf of the remaining accused. However, learned counsel appearing on behalf of the private respondents – accused in Criminal Appeal Nos. 876 and 877 of 2021 have fairly assisted the Court with their submissions which will cover all the cases.

6.2 Shri V.K. Mishra, learned Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case the High Court has committed a grave error in releasing the respondents – accused on bail pending their respective appeals.

6.3 It is submitted that while releasing the accused on bail, the High Court has not at all properly appreciated and considered the fact that by a detailed judgment and order and after appreciation of the entire evidence on record, the learned trial Court has convicted the accused for the offences under Sections 302/149, 201 r/w 120B IPC and sentenced them to undergo life imprisonment.

6.4 It is submitted that once the accused are convicted for the very serious offence under Section 302 IPC by the learned trial Court, there shall not be any presumption of innocence thereafter and therefore the

High Court shall be very slow in granting bail to the accused pending appeals who are convicted for the offences under Sections 302/149, 201 r/w 120B IPC.

6.5 It is further submitted that as such no reasons whatsoever have been assigned by the High Court while releasing the accused on bail pending appeals. It is submitted that the High Court has failed to note the circumstances under which right from the very beginning the efforts were made to derail the investigation and even the trial Court also convicted the then Investigating Officer and even the doctor who performed the post mortem for the offences under Sections 201 r/w 120B and 218 IPC.

6.6 It is submitted that the High Court has not at all properly appreciated and/or noted and/or considered the fact that the prosecution witnesses – villagers who deposed against the accused were given threats repeatedly by the accused who were on bail and threatened them that if they give evidence against the accused, they will have to suffer dire consequences.

6.7 It is submitted that the High Court has also failed to note that even two FIRs were filed during the trial for the offences under Sections 504 and 506 IPC against the accused for giving threats to the complainant side and others.

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6.8 It is submitted that in the impugned judgments and orders, the High Court has not at all even referred to the counter affidavit filed on behalf of the State opposing bail pending appeals.

6.9 It is submitted that therefore the High Court while releasing the private respondents herein – accused on bail pending criminal appeals against the judgment and order of conviction has not at all considered the seriousness of the offence and the gravity of the accusation against the accused and their antecedents and conduct of giving threats to the witnesses during trial and even thereafter.

6.10 Making the above submissions, it is prayed to allow the present appeals and quash and set aside the impugned orders passed by the High Court releasing the accused on bail, pending criminal appeals.

7. Learned counsel appearing on behalf of the State has fully supported the appellant. It is submitted that the High Court has failed to notice and/or consider the motive, antecedents and conduct of the accused even during trial and the manner in which all efforts were made right from the very beginning to scuttle the fair investigation.

7.1 It is submitted that as such no specific reasons have been assigned by the High Court while releasing the accused on bail pending appeals. It is submitted that the manner in which the High Court has disposed of the bail applications and released the accused on bail

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pending appeals is not sustainable at all. It is submitted that from the impugned orders passed by the High Court, it is difficult to identify the submissions on behalf of the accused and even the findings recorded while releasing the accused on bail. It is submitted that even the submissions on behalf of the State have not been summarised and/or discussed at all.

7.2 It is submitted that criminal history of two cases against the accused for the offences under Sections 143, 504 & 506 being CR No. 158/1996 and CR No. 23/1999 under Sections 504 & 506 IPC are taken very lightly by the High Court. It is submitted that the High Court ought to have appreciated that the aforesaid cases were for giving threats by the accused to the witnesses and the family members of the deceased including the appellant herein.

8. Learned counsel appearing on behalf of the respondents – accused have vehemently submitted that in the facts and circumstances of the case, no error has been committed by the High Court releasing the accused on bail, pending appeals.

8.1 It is submitted that admittedly it is a case of circumstantial evidence and not a single witness had stated that he saw any of the accused murdering Kripa Sankar Shukla or even throwing his dead body in the well. It is submitted that even in the post mortem report, the cause

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of death was shown 'died by drowning'. It is submitted that there is no other further medical evidence showing the different cause of death.

8.2 It is further submitted that during the trial the accused were on bail and even thereafter also by the impugned orders the accused are on bail and nothing is on record that thereafter they have misused the liberty granted by the Court by releasing them on bail. It is submitted that therefore no case is made out to cancel the bail granted by the High Court.

8.3 Making the above submissions, it is prayed to dismiss the present appeals.

9. We have heard the learned counsel for the respective parties at length. We have also carefully gone through the impugned judgment and order passed by the High Court releasing the accused on bail pending appeal against the judgment and order of conviction for the offences punishable under Sections 302/149, 201 and 120B IPC.

9.1 Having gone through the impugned judgment and order passed by the High Court releasing the accused on bail pending appeal, we are at pains to note that the order granting bail to the accused pending appeal lacks total clarity on which part of the judgment and order can be said to be submissions and which part can be said to be the findings/reasonings. It does not even reflect the submissions on behalf

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of the Public Prosecutor opposing the bail pending appeal. A detailed counter affidavit was filed on behalf of the State opposing the bail pending appeal which has not been even referred to by the High Court. The manner in which the High Court has disposed of the application under Section 389 Cr.P.C. and has disposed of the application for bail pending appeal cannot be approved. It is very unfortunate that by this judgment, we are required to observe the importance of judgment; purpose of judgment and what should be contained in the judgment.

9.2 First of all, let us consider what is "judgment". "Judgment" means a judicial opinion which tells the story of the case; what the case is about; how the court is resolving the case and why. "Judgment" is defined as any decision given by a court on a question or questions or issue between the parties to a proceeding properly before court. It is also defined as the decision or the sentence of a court in a legal proceeding along with the reasoning of a judge which leads him to his decision. The term "judgment" is loosely used as judicial opinion or decision. Roslyn Atkinson, J., Supreme Court of Queensland, in her speech once stated that there are four purposes for any judgment that is written:

i) to spell out judges own thoughts;
ii) to explain your decision to the parties;

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iii) to communicate the reasons for the decision to the public; and

iv) to provide reasons for an appeal court to consider

9.3 It is not adequate that a decision is accurate, it must also be reasonable, logical and easily comprehensible. The judicial opinion is to be written in such a way that it elucidates in a convincing manner and proves the fact that the verdict is righteous and judicious. What the court says, and how it says it, is equally important as what the court decides.

Every judgment contains four basic elements and they are (i) statement of material (relevant) facts, (ii) legal issues or questions, (iii) deliberation to reach at decision and (iv) the ratio or conclusive decision. A judgment should be coherent, systematic and logically organised. It should enable the reader to trace the fact to a logical conclusion on the basis of legal principles. It is pertinent to examine the important elements in a judgment in order to fully understand the art of reading a judgment. In the Path of Law, Holmes J. has stressed the insentient factors that persuade a judge. A judgment has to formulate findings of fact, it has to decide what the relevant principles of law are, and it has to apply those legal principles to the facts. The important elements of a judgment are:

i) Caption

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ii) Case number and citation

iii) Facts

iv) Issues

v) Summary of arguments by both the parties

vi) Application of law

vii) Final conclusive verdict

9.4 The judgment replicates the individuality of the judge and therefore it is indispensable that it should be written with care and caution. The reasoning in the judgment should be intelligible and logical. Clarity and precision should be the goal. All conclusions should be supported by reasons duly recorded. The findings and directions should be precise and specific. Writing judgments is an art, though it involves skilful application of law and logic. We are conscious of the fact that the judges may be overburdened with the pending cases and the arrears, but at the same time, quality can never be sacrificed for quantity. Unless judgment is not in a precise manner, it would not have a sweeping impact. There are some judgments that eventually get overruled because of lack of clarity. Therefore, whenever a judgment is written, it should have clarity on facts; on submissions made on behalf of the rival parties; discussion on law points and thereafter reasoning and thereafter the ultimate conclusion and the findings and thereafter the operative portion of the order. There must be a clarity on the final relief granted. A party to the

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litigation must know what actually he has got by way of final relief. The aforesaid aspects are to be borne in mind while writing the judgment, which would reduce the burden of the appellate court too. We have come across many judgments which lack clarity on facts, reasoning and the findings and many a times it is very difficult to appreciate what the learned judge wants to convey through the judgment and because of that, matters are required to be remanded for fresh consideration. Therefore, it is desirable that the judgment should have a clarity, both on facts and law and on submissions, findings, reasonings and the ultimate relief granted.

10. If we consider the impugned order passed by the High Court, as observed hereinabove, we find that there is a total lack of clarity on the submissions, which part of the order is submission, which part of the order is the finding and/or reasoning. As observed hereinabove, even the submissions on behalf of the Public Prosecutor have not been noted and referred to, though a detailed counter affidavit was filed by the State opposing the bail applications. We do not approve the manner in which the High Court has disposed of the application for bail pending appeal.

11. Even on merits also, the impugned order passed by the High Court releasing the accused on bail pending appeal is unsustainable. The High Court has not at all appreciated and considered the fact that the learned trial Court on appreciation of evidence has convicted the

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accused for the offences under Sections 302/149, 201 r/w 120B IPC. Once the accused have been convicted by the learned trial Court, there shall not be any presumption of innocence thereafter. Therefore, the High Court shall be very slow in granting bail to the accused pending appeal who are convicted for the serious offences punishable under Sections 302/149, 201 r/w 120B IPC.

11.1 Even the High Court has also failed to note the circumstances under which right from the very beginning the efforts were made to delay/derail the investigation. It is to be noted that even the learned trial Court also convicted the investigating officer and even the doctor who performed the post mortem for the offences under Sections 201 r/w 120B and 218 IPC.

11.2. The High Court has also not appreciated the conduct on the part of the accused pending investigation and even during trial. The trial Court has specifically observed while appreciating the evidence of the prosecution witnesses that the accused gave threats repeatedly to the prosecution witnesses and villagers and threatened them that if they give evidence against the accused, they would suffer the dire consequences. The High Court has also not very seriously considered the two FIRs filed during trial for the offences under Sections 504 & 506 IPC against the accused for giving threats to the complainant side and others. The High

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Court has very casually observed that two cases for the offences under Sections 504 & 506 IPC are of a simple nature and that "these two cases will not constitute the criminal history of the accused". Giving threats to the complainant side and the other witnesses and the offences under Sections 504 & 506 IPC can be said to be a very serious offence. Therefore, the aforesaid conduct ought not to have been taken by the High Court very lightly.

11.3. Even, the High Court has also not considered the seriousness of the offence and the gravity of the accusation against the accused and their antecedents and conduct by giving threats to the witnesses during trial and even thereafter. The High Court ought to have noted that when the High Court released the accused on bail pending appeal, they have undergone only 8 months sentence against the life sentence imposed by the learned trial Court.

12. Considering the aforesaid facts and circumstances, therefore even on merits also, the High Court has committed a grave error in releasing the accused on bail pending appeals against the judgment and order of conviction for the offences under Sections 302/149, 201 r/w 120B IPC.

13. In view of the above and for the reasons stated above, the present appeals succeed. The impugned judgment(s) and orders(s) dated

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08.10.2018 and 06.12.2018 passed in Criminal Miscellaneous Bail Application No. 1A/1 of 2018 in Criminal Appeal No. 1283/2018, Criminal Miscellaneous Bail Application No. 1A/1 of 2018 in Criminal Appeal No. 1405/2018, Criminal Miscellaneous Bail Application No. 1A/1 of 2018 in Criminal Appeal No. 1496/2018 and Criminal Miscellaneous Bail Application No. 1A/1 of 2018 in Criminal Appeal No. 1398/2018 respectively releasing the private respondents herein – accused on bail pending appeal, namely, Swaminath Yadav, Surendra Kumar Pandey, Jhingur Bhar and Vikrama Yadav against the judgment and order of conviction passed by the learned trial Court convicting them for the offences under Sections 302/149, 201 r/w 120B IPC are hereby quashed and set aside. The private respondents herein – accused, namely, Swaminath Yadav, Surendra Kumar Pandey, Jhingur Bhar and Vikrama Yadav are hereby directed to surrender forthwith to serve out the sentence imposed by the learned trial Court, failing which the learned trial Court is directed to issue warrants of arrest against them and take them into custody forthwith. A copy of this order be also forwarded to the concerned trial Court for compliance.

14. The present appeals are allowed in the aforesaid terms. It goes without saying that the High Court shall decide the pending appeals on

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their own merits, in accordance with law, uninfluenced by any observations made in this judgment.

…………………………………….J.
[Dr. Dhananjaya Y. Chandrachud]

New Delhi;
September 07, 2021.

……………………………………..J.
[M.R. Shah]

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