ALL INDIA ACQUITTAL JUDGEMENTS

2024(2)AIAJ505

IN THE SUPREME COURT OF INDIA

[From PATNA HIGH COURT]

[Before Bela M Trivedi; Satish Chandra Sharma]

Criminal Appeal No 1031 of 2015, 1578 of 2017, 765 of 2017, 1579 of 2017

dated 25/09/2024

Vijay Singh@vijay Kr Sharma

Versus

State of Bihar

ACQUITTAL IN MURDER CASE

Indian Penal Code, 1860 Sec. 380, Sec. 34, Sec. 449, Sec. 302, Sec. 364, Sec. 450, Sec. 342, Sec. 120B, Sec. 323, Sec. 506 - Code of Criminal Procedure, 1973 Sec. 313 - Acquittal in Murder Case - Appellant convicted under IPC Sec. 302 and 364 for abduction and murder in 1985 - Conviction based on circumstantial evidence and testimonies of eyewitnesses - Appellant argued inconsistencies in witness statements, motive, and time of death - Court found that testimonies were unreliable and circumstantial evidence was insufficient to establish guilt beyond reasonable doubt - High Court's reversal of acquittal lacked legal grounds - Conviction set aside, and all accused acquitted - Appeals Allowed

Law Point: Conviction based on circumstantial evidence requires a complete and reliable chain of proof, and failure to establish the foundational facts or credible witness testimony warrants acquittal.

Acts Referred:

Indian Penal Code, 1860 Sec. 380, Sec. 34, Sec. 449, Sec. 302, Sec. 364, Sec. 450, Sec. 342, Sec. 120B, Sec. 323, Sec. 506

Code of Criminal Procedure, 1973 Sec. 313

JUDGEMENT

Satish Chandra Sharma, J.- [1] On 30.08.1985, Neelam breathed her last in Simaltalla, PS Sikandra, District Munger, Bihar. The factum of her death was discovered in furtherance of the written report lodged by the Criminal Appeal No. 1031/2015 and others Page 2 of 26 informant and brother-in-law of the deceased, namely, Ramanand Singh (examined as PW18 before the Trial Court) wherein he alleged that Neelam was abducted by seven persons from their house in an incident which occurred at around 10:00 PM on the said day. On the basis of this information,

an FIR bearing no. 127 of 1985 was lodged at PS Sikandra and investigation was commenced which led to the filing of a chargesheet against the seven accused persons, namely Krishna Nandan Singh (Accused No. 1), Ram Nandan Singh (Accused No. 2), Raj Nandan Singh (Accused No. 3), Shyam Nandan Singh (Accused No. 4), Bhagwan Singh (Accused No. 5), Vijay Singh (Accused No. 6) and Tanik Singh (Accused No. 7).

[2] The Trial Court charged all seven accused persons for the commission of offences punishable under Sections 323, 302, 364, 449, 450, 380/34 and 120-B of the Indian Penal Code, 1860. Later, accused nos. 6 and 7 were distinctly charged for the commission of offences punishable under Sections 342, 506 read with Section 34 of IPC. After trial, the Trial Court, vide order dated 05.06.1992, convicted the accused persons listed as accused nos. 1, 2, 3, 4 and 5 for the commission of offences under Section 302/34 and 364/34 of IPC. They were acquitted of all other charges, and accused nos. 6 and 7 were acquitted of all the charges.

[3] The convicts preferred an appeal before the Patna High Court against the order of conviction and the State preferred an appeal before the High Court against the order of acquittal of the two accused persons. The Patna High Court, vide a common judgment dated 26.03.2015, upheld the conviction of the five convicts and set aside the acquittal of accused nos. 6 and 7 by finding them guilty of the commission of offences under Sections 364/34 and 302/34 of IPC. Accordingly, accused nos. 6 and 7 were also convicted and were sentenced to undergo rigorous life imprisonment on each count. The present batch of appeals assail the order/judgment dated 26.03.2015 of the Patna High Court.

BRIEF FACTS

[4] Shorn of unnecessary details, the facts reveal that deceased Neelam was the wife of one Ashok Kumar who happened to be the son of PW3/Ganesh Prasad Singh, and the informant PW18/Ramanand Singh was the brother of Ashok Kumar. The informant s case was that at the relevant point of time, the deceased was residing with her husband and the informant in the house belonging to her late father Jang Bahadur Singh, who belonged to Simaltalla. The house was partially occupied by the deceased, her husband and her brother-in-law and the remaining portion was rented out and tenants were residing in those portions.

[5] As per the prosecution case, on 30.08.1985 at about 10:00 PM, PW18 was sitting outside the house on a rickshaw along with one Doman Tenti, Daso Mistry and Soordas, and Neelam was sleeping inside the house. Her husband, Ashok Kumar, had gone to his native place Ghogsha. Suddenly, the seven accused persons, including the appellants before us, came from north direction along with 15 other unknown assailants. Accused Vijay Singh/A-6 caught hold of the informant/PW18 and as soon as he raised alarm and started shouting, two unknown persons pointed out pistols towards him and directed him to maintain silence. Thereafter, the accused persons who

had caught the informant, assaulted him with fists and slaps, and confined him near the well situated on the north side of the house. Meanwhile, A-1 entered the house with 5-7 other accused persons by getting the house unlatched through a resident namely Kumud Ranjan Singh and dragged Neelam out of the house. As soon as they dragged her out, four persons caught hold of Neelam by her arms and legs, lifted her and started moving towards Lohanda. As per the informant, the accused persons also picked up two sarees, two blouses, two petticoats and a pair of slippers from Neelam s room while going out.

[6] As the informant raised alarm, other people of the mohalla also gathered around including PW2 Vinay Kumar Singh, PW4 Chandra Shekhar Prasad Singh and PW5 Ram Naresh Singh. The Criminal Appeal No. 1031/2015 and others Page 5 of 26 said three witnesses witnessed the accused persons taking away Neelam but could not stop them. The informant explained that no one dared to follow the accused persons as they had pointed pistols and had threatened of dire consequences. The informant also explained the motive behind the commission of the crime. It transpires from his statement that Neelam s late father Jang Bahadur Singh had no son and his house was in possession of his daughter Neelam. She was abducted in order to forcefully obtain the possession of the house belonging to her father. The second limb of motive stems from the pending litigation between A-1 to A-5 (appellants) on one side and deceased Neelam, her maternal grandfather and her two sisters on the other side. The accused persons had obtained letters of administration and probate of the Will left by late Jang Bahadur Singh from the competent court and the said order came to be challenged before the Patna High Court by the deceased, her maternal grandfather and younger sisters. In the said appeal, the Patna High Court had injuncted the accused persons from alienating any part of the property. The High Court also restrained the execution of the probate of the Will by restraining the delivery of possession of the property to the accused persons. Thus, deceased Neelam was residing in her father s house along with her husband and brother-in-law in order to retain the possession of the property. In this backdrop, the matter went for trial.

BEFORE THE TRIAL COURT

[7] The Trial Court, while acquitting A-6 and A-7, observed that the motive attributed for the commission of the crime was not attributable to the said two accused persons as no interest of theirs could be disclosed in the pending litigation. Further, it also found that A-6 was not named in the FIR registered upon the information supplied by PW18 and in his oral testimony, no statement of assault by A-6 and A-7 was given by him. It further held that no evidence sur-faced during the trial to indicate the participation of A-6 and A-7 in the acts of abduction and commission of murder.

[8] While convicting A-1 to A-5 on the charges under Sections 302/34 and 364/34 of IPC, the Trial Court primarily relied upon the oral testimonies of PW18/informant, PW2, PW4 and PW5. The motive for the commission of the offence was supplied by

the pending legal dispute relating to the property belonging to late Jang Bahadur Singh. The Court also replied upon circumstantial evidence borne out from the testimonies of PW7 (maternal uncle of the de-ceased), PW3 (father-in-law of the deceased), PW23 (sister of the deceased) and PW13 (doctor) to arrive at the finding of guilt.

BEFORE THE HIGH COURT

[9] A reading of the impugned judgment passed by the High Court suggests that the High Court carried out a fresh appreciation of evidence. The High Court firstly examined the question whether Neelam was actually residing in the house from which she was abducted. Relying upon the testimonies of PW7 (maternal uncle of deceased), PW18 (broth-er-in-law of deceased and informant) and PW21 (Investigating Officer), the Court concluded that Neelam was indeed re-siding in the said house. In doing so, the Court discarded the fact that the other independent occupants of the house such as Ram Chabila Singh, his son, Kumud Ranjan Singh etc. did not come in support of the said fact. To overcome this deficiency, the Court relied upon the statements of PW21 and PW23 (sister of deceased) that some make-up articles were found in a bag lying in the room, which was suggestive of the fact that a woman was residing in the said room.

[10] In further consideration, the High Court excluded the evidence of PW5 for the reason that his presence at the place of incident was doubtful. For, PW5 deposed that he was heading towards his home from Deoghar and on the way from Lakhisarai to Simaltalla, he stopped at Sikandra Chowk along with PW2 and PW4. It was at this point that they heard the hulla and ended up witnessing the commission of offence. The High Court took note of the fact that while going from Deoghar to Simaltalla, Lakhisarai and Ghogsha would come first and thus, there was no reason for PW5 to come all the way to Sikandra Chowk if he was going to his home in Ghogsha as he could have directly proceeded from Lakhisarai to Ghogsha. Nevertheless, the High Court duly relied upon the evidence of PW2, PW4 and PW18 as well as on circumstantial evidence comprising of the testimonies of PW23, PW13 (doctor) and absence of suitable explanation in the statements of accused persons under Section 313 of the Code of Criminal Procedure, 1973 as regards the fatal injuries suffered by the deceased. Thus, the High Court upheld the finding of guilt of A-1 to A-5.

[11] As regards A-6 and A-7, the High Court reversed the finding of acquittal of the Trial Court into that of conviction. Primarily, the High Court observed that the said two accused persons were acquitted on the basis of the exonerating testimony of PW5 and the same cannot be sustained as the testimony of PW5 has been excluded by the High Court in appeal. Further, the Court held that the testimonies of PW2, PW4 and PW18 were consistent regarding the participation of A-6 and A-7 and thus, they were convicted for the commission of the offences under Sections 364 and 302 of IPC read with Section 34 of IPC. The applicability of Section 34 IPC was based on the fact that

A-6 and A-7 had confined PW18 near the well in order to eliminate any Criminal Appeal No. 1031/2015 and others Page 9 of 26 chances of resistance in the acts committed by the other five accused per-sons.

SUBMISSIONS

[12] On behalf of A-6 and A-7, it is submitted that there was no motive for the said accused persons to have indulged in the commission of the offence in question. The motive, if any, existed only for the remaining five accused persons who were interested in the outcome of the pending litigation between the parties. It is further contended that the High Court ought not to have entered into the exercise of re-appreciation of the entire evidence without finding any infirmity in the view taken by the Trial Court. To buttress this submission, it is submitted that since the view taken by the Trial Court was a possible view, it could not have been disturbed by the High Court in appeal. In this regard, reliance has been placed upon the decisions of this Court in **State of Goa v. Sanjay Thakran , Chandrappa v. State of Karnataka , Nepal Singh v. State of Haryana , Kashiram v. State of M.P. , Labh Singh v. State of Punjab and Suratlal v. State of M.P. .**

[13] It is further submitted that no reliance could be placed upon the testimonies of PW2 and PW4 as their presence at the spot was doubtful. Further, if they were 400 yards away when hue and cry was raised, they could not have seen A-6 taking away PW18 towards the well as the said fact took place prior to the hue and cry. It is further submitted that in the FIR, no pistol was assigned to A-6, whereas, the said fact was brought forward at the time of evidence. The appellants have also raised a question regarding the time of incident on the basis of medical evidence. It is stated that the post-mortem report indicated that halfdigested food was found in the stomach of the deceased, whereas, the informant PW18 deposed that the incident took place immediately after dinner. If such was the case, the death ought to have occurred around 1-2 AM in the intervening night of 30.08.1985-31.08.1985, but the post-mortem report, based on the post-mortem conducted at around 05:30 PM on 31.08.1985, indicated that death took place about 24 hours ago and thus, the time of death was around 05:00 PM on 30.08.1985 and not 10:00 PM, as alleged.

[14] The appellants have also submitted that the prosecution has not proved that the deceased was actually residing in the concerned house at Simaltalla.

[15] Per contra, it is submitted on behalf of the State that mere non-examination of some independent witnesses shall not be fatal to the case of the prosecution. Reliance has been placed upon the decision of this Court in **Rai Saheb & ors. v. State of Haryana** to contend that at times, independent witnesses may not come forward due to fear. It is further submitted that the High Court has correctly appreciated the evidence in order to arrive at the finding of guilt of the accused persons. It is further submitted that the testimonies of PW2, PW4 and PW18 are consistent and the High Court has correctly placed reliance upon their testimonies. As regards motive as well, it is

submitted that the evidence is sufficient to reveal motive for the commission of the crime.

[16] We have heard learned counsels for the appellants as well as for the State. We have also carefully examined the record.

DISCUSSION

[17] In light of the rival contentions raised by the parties, the principal issue that arises before the Court is whether the finding of guilt of the appellants arrived at by the High Court is sustainable in light of the evidence on record. As a corollary of this issue, it also needs to be examined whether the approach of the High Court was in line with the settled law for reversing an acquittal into conviction in a criminal appeal.

[18] After two rounds of litigation before the Trial Court and the High Court, it is fairly certain the case is to be examined only with respect to the offences under Sections 364 and 302 of IPC read with Section 34 IPC. With respect to the offence under Section 364 IPC, the case of the prosecution is based on direct oral evidence, and with respect to the offence under Section 302 IPC, the case of the prosecution is essentially based on circumstantial evidence as no direct evidence of the commission of murder could be collected. However, it is quite evident that the offence of murder was committed after the commission of the offence of abduction. There is a sequential relationship between the two offences and thus, in order to set up a case for the commission of the offence of murder, it is necessary to prove the commission of the offence of abduction by the accused persons/appellants. For, the chain, in a case based on circumstantial evidence, must be complete and consistent.

[19] In order to prove the offence under Section 364 IPC, the prosecution has relied upon the oral testimonies of four eye witnesses PW-2, PW-4, PW-5 and PW-18. Their testimonies have been assailed on various counts. The appellants have termed the said witnesses as interested and chance witnesses. The former charge originates from the fact that the witnesses were related to the deceased, and the latter charge originates from the fact that the witnesses had no rea-son to be present at the place of offence and they just appeared unexpectedly as a matter of chance. Let us examine both the aspects. We may first examine the testimonies of the witnesses independently, without going into their relationship with the deceased.

[20] The informant PW18 has deposed that he was standing near a rickshaw outside his house and the deceased was sleeping inside the house. PW18 was standing along with three independent persons namely, Doman Tenti, Daso Mistry and Soordas. The seven accused persons came along with 15 other persons. A-6 and A-7, along with unknown persons, first came to PW18 and took him away towards the well and confined him there. Thereafter, the remaining accused persons, along with other unknown assailants, entered the house wherein the deceased was sleeping. Interestingly, as per the version of the informant, the house was bolted from inside and

was opened by a tenant namely Ku-mud Ranjan Singh. The problem with the informant s version begins from this point itself. As per his version, the first eye witnesses of the incident ought to have been Doman Tenti, Daso Mistry, Soordas and Kumud Ranjan Singh. One person, namely Soordas, was stated to be blind and thus, he may be excluded. Nevertheless, the prosecution ought to have examined the three natural witnesses of the incident namely, Doman Tenti, Daso Mistry and Kumud Ranjan Singh. There is no explanation for non-examination of the natural eye witnesses. The version becomes more doubtful when it is examined in light of his statement that he could not prevent the accused persons as A-6 had threatened him with a pistol. In the FIR, no pistol has been attributed to A-6, whereas in the statement recorded before the Trial Court, this fact was introduced for the first time, which is indicative of improvement. Furthermore, PW18 got it recorded in the FIR that A-6 and others had assaulted him with fists and slaps, but the said fact was not deposed before the Trial Court in his examination in chief. The discrepancy assumes greater seriousness in light of the fact that no pistol has been recovered from any of the accused persons and if the factum of branding of pistol is un-der the cloud of doubt, the entire conduct of PW18 becomes doubtful and unnatural, as he did not try to prevent the accused persons from entering the premises or from abducting the deceased or from taking away the deceased on their shoulders in front of his eyes as he was the brother-in-law of the deceased.

[21] The other eye witnesses, PW2, PW4 and PW5, de-posed collectively in favour of the prosecution as they had arrived at the scene of crime together. At around 10:00 PM on the fateful night, the said eye witnesses happened to be present at Sikandra Chowk and they heard some hue and cry at the house of the deceased. The witnesses were coming together in a jeep from Lakhisarai and were going towards their home in Ghogsha village, the village wherein the deceased was married and also the native village of PW18/informant. PW2 was the driver of PW4. The testimo-nies of the said PWs have made it clear that while coming from Lakhisarai to Sikandra Chowk, Ghogsha came first, followed by Lohanda and Simaltalla. In such circumstances, their presence at Sikandra Chowk at 10:00 PM must be explained to the satisfaction of the Court. For, if they were going to their village, there was no occasion for them to come to Simaltalla as it did not fall on their way. But no such ex-planation is forthcoming from the material on record.

[22] Interestingly, this lacuna was duly noted by the High Court with respect to PW5 as there was no reason for him to be present at Sikandra Chowk at the time of incident and his testimony was excluded. However, the same logic was not extended to the testimony of PW4 as well, as it was equally improbable for him to be present at Sikandra Chowk at 10:00 PM on the date of incident. His visit to Sikandra Chowk was not necessitated for going to his village. Even otherwise, since the three eye witnesses were similarly placed as per their own version, the rejection of testimony of one witness ought to have raised a natural doubt on the testimonies of the other two

witnesses unless they had a better explanation. However, no such doubt was entertained by the High Court and the impugned judgment offers no explanation for the same. In light of their own testimonies, none of the three eye witnesses were required to visit Sikandra Chowk or Simaltalla for going to their village.

[23] The testimonies of the eye witnesses are also impeachable in light of the other evidence on record. PW21 was the investigating officer in the case and he had examined the aforesaid PWs as eye witnesses of the incident. The version put forth by the eye witnesses meets a serious doubt when examined in light of the evidence of DW3 and DW4, the concerned Deputy Superintendent and Superintendent of Police respectively who had supervised the investigation of the present case. Both these officers were examined as defence witnesses on behalf of the appellants. As per the supervision notes prepared by DW3 during the course of investigation, PW2 and PW4 got to know about the incident only when PW18 came running to them after the incident. PW2, at that time, was sitting in a hotel with Umesh Singh to have prasad . Similarly, the evidence of DW4 indicates that on the date of incident, at around 10:00 PM, PW4 was coming from Lakhisarai in his jeep and he saw six-seven persons fleeing away in a jeep and he identified them as the accused persons. Thus, PW4 entered the scene after the commission of offence and he did not witness the act of abduction. The testimony of PW2 strengthens the doubt as he deposed that when they reached the police station after the incident with PW18, neither him nor PW4 informed the IO that they had directly seen the incident. The stark difference between the versions put forth by the PW21 and DW3/DW4 raises serious concerns regarding the fairness of investigation conducted by PW21 and it is a reasonable possibility that the eye witnesses were brought in to create a fool proof case. The evidence of DW3 and DW4, both senior officers who had exercised supervision over the investigation conducted by PW21, indicates that the so- called eye witnesses of the incident were actually accessories after the fact and not accessories to the fact.

[24] The second limb of the objection against the testimonies of the eye witnesses is that none of the eye witnesses is an independent witness of fact. Ordinarily, there is no rule of law to discard the testimonies of the witnesses merely be-cause they were known to the victim or belonged to her family. For, an offence may be committed in circumstances that only the family members are present at the place of occurrence in natural course. However, the present case does not fall in such category. In the facts of the present case, the natural presence of the eye witnesses at the place of occurrence is under serious doubt, as discussed above, and for unexplained reasons, the naturally present public persons were not examined as witnesses in the matter. The nonexamination of natural witnesses such as Doman Tenti, Daso Mistry, Soordas, Kumud Ranjan Singh and many other neighbours who admittedly came out of their houses to witness the offence, coupled with the fact that the projected eye witnesses failed to explain their presence at the place of occurrence, renders the entire version of the prosecution as improbable and unreliable. The eye witnesses, being family

members, were apparently approached by PW18 who in-formed them about the incident and later, their versions were fabricated to make the case credible. Notably, when the version put forth by the interested witnesses comes under a shadow of doubt, the rule of prudence demands that the independent public witnesses must be examined and corroborating material must be gathered. More so, when public witnesses were readily available and the offence has not taken place in the bounds of closed walls.

[25] Pertinently, the conduct of the eye witnesses also ap-pears to be unnatural considering that they were all relatives of the deceased. Firstly, PW18 did not try to prevent the ab-duction. Even if it is believed that he was held against a pistol, the statement regarding the existence of pistol comes as an improvement from his first information given to the police, as already noted above. Nonetheless, it is admitted that PW2, PW4 and PW5 came in a jeep and they saw the accused persons leaving with Neelam after abducting her. It is also admitted that they had identified the accused persons, who were essentially the relatives of the eye witnesses. In such circumstances, as per natural human conduct, the least that they could have done was to follow the accused persons in their jeep. They admittedly had a ready vehicle with them. Despite so, there was no such attempt on their part, so much so that the dead body of Neelam was not even discovered until the following morning as none of the eye witnesses had any clue as to where the accused persons had taken away the deceased after abducting her.

[26] One crucial foundational fact in the present case is that the deceased was residing in her father s house at Simaltalla. Although, the Trial Court and High Court have not doubted the said fact, we have our reservations regarding the same. In addition to the statements of PW18 (informant), PW23 (sister of deceased) and PW7 (maternal uncle of deceased), no other witness has deposed to prove the factum of residence. The admitted evidence on record sufficiently indicates that various other tenants were residing in the same house, including Kumud Ranjan Singh, Education Officer Ram Chabila Singh along with his daughter and son.

[27] The investigating officer PW21 had inspected the house and no direct material, except some make-up articles, could be gathered so as to indicate that Neelam was actually residing there. Admittedly, another woman namely, Chando Devi (sister of Ram Chabila Singh) was also residing in the same portion of the house. The High Court did take note of this fact but explained it away by observing that since Chando Devi was a widow, the make-up articles could not have belonged to her as there was no need for her to put on make-up being a widow. In our opinion, the observation of the High Court is not only legally untenable but also highly objectionable. A sweeping observation of this nature is not commensurate with the sensitivity and neutrality expected from a court of law, specifically when the same is not made out from any evidence on record.

[28] Be that as it may, mere presence of certain make-up articles cannot be a conclusive proof of the fact that the deceased was residing in the said house, especially when another woman was admittedly residing there. Furthermore, if Neelam was indeed residing there, her other belongings such as clothes etc. ought to have been found in the house and even if not so, the other residents of the same house could have come forward to depose in support of the said fact.

[29] Notably, certain clothes such as two sarees, two blouses and two petticoats were recovered along with the dead body of the deceased. The prosecution version is that the accused persons had taken away the said clothes from the house of the deceased while abducting her. There is absolutely no explanation for the said conduct on the part of the accused persons. It is difficult to understand as to why the accused persons would take her clothes along while abducting her. On the contrary, this fact actually serves the case of the prosecution in proving that the deceased was actually residing at the house in Simaltalla. The clothes appear to have been planted along with the dead body in order to support the fact of actual residence of the deceased at her father s house in Simaltalla. In light of the material on record, it could be concluded that no material whatsoever could be found at the house of Jang Bahadur Singh to directly indicate that the deceased was residing there. The make-up articles were linked with the deceased on the basis of a completely unacceptable reasoning and without any corroborative material. The prosecution has failed to examine even one cohabitant to prove the said fact. Furthermore, no personal belongings of the deceased, such as clothes, footwear, utensils etc., could be found in the entire house. Therefore, we are not inclined to believe that the deceased was actually residing in the house at Simaltalla. In the same breath, we may also note that even for PW18, no material was found in the said house to indicate that he was in fact residing there. Apart from his own statement, no witness has come forward to depose that the informant was a resident of the said house. The prosecution has not spotted any room in the entire house wherein PW18 was residing and thus, his own presence at the place of occurrence is doubtful.

[30] The appellants have also raised certain objections with respect to the time of death. The discrepancy has been flagged in light of the post mortem report, based on the post-mortem conducted at around 5:30 PM on 31.08.1985, which indicates that death took place around 24 hours ago. It indicates that the time of death must have been around 5:00 PM on 30.08.1985, which is contrary to the evidence of PW18 that the incident took place around 10:00 PM on 30.08.1985. A post mortem report is generally not considered as conclusive evidence of the facts mentioned in the re-port regarding the cause of death, time of death etc. It could always be corroborated with other direct evidence on record such as ocular evidence of the eye witnesses. However, when there is no other credible evidence on record to contradict the report, the facts stated in the post mortem report are generally taken as true. In the present matter, the evidence of the eye witnesses has been declared as wholly unreliable including on the

aspect of time of death. Thus, there is no rea-son to doubt the post mortem report and the findings there-in.

[31] At this stage, we may also note that the approach of the High Court in reversing the acquittal of A-6 and A-7 was not in line with the settled law pertaining to reversal of acquittals. The Trial Court had acquitted the said two accused persons on the basis of a thorough appreciation of evidence and the High Court merely observed that their acquittal was based on the improbable statement of PW5 and since the evidence of PW5 stood excluded from the record, there was no reason left for the acquittal of A-6 and A-7. Pertinently, the High Court did not arrive at any finding of illegality or perversity in the opinion of the Trial Court on that count. Furthermore, it did not arrive at any positive finding of involvement of the said two accused persons within the sphere of common intention with the remaining accused persons. Equally, the exclusion of the evidence of PW5, without explaining as to how the evidence of PW2 and PW4 was not liable to be excluded in the same manner, was in-correct and erroneous.

[32] We do not intend to say that the High Court could not have appreciated the evidence on record in its exercise of appellate powers. No doubt, the High Court was well within its powers to do so. However, in order to reverse a finding of acquittal, a higher threshold is required. For, the presumption of innocence operating in favour of an accused through-out the trial gets concretized with a finding of acquittal by the Trial Court. Thus, such a finding could not be reversed merely because the possibility of an alternate view was alive. Rather, the view taken by the Trial Court must be held to be completely unsustainable and not a probable view. The High Court, in the impugned judgment, took a cursory view of the matter and reversed the acquittal of A-6 and A-7 without arriving at any finding of illegality or perversity or impossibility of the Trial Court s view or non-appreciation of evidence by the Trial Court.

[33] We may usefully refer to the exposition of law in **Sanjeev v. State of H.P.,** wherein this Court summarized the position in this regard and observed as follows:

7. It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see **Vijay Mohan Singh v. State of Karnataka , Anwar Ali v. State of H.P.**)

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see **Atley v. State of U.P.**)

7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see **Sambasivan v. State of Kerala**)

[34] Having observed that the case of the prosecution is full of glaring doubts as regards the offence of abduction, we may briefly note and reiterate that the offence of murder is entirely dependent on circumstantial evidence. Although, the post mortem report indicates that the death of the deceased was unnatural and the commission of murder can-not be ruled out. But there is no direct evidence on record to prove the commission of murder by the accused per-sons. The link of causation between the accused persons and the alleged offence is conspicuously missing. The circumstantial evidence emanating from the facts sur-rounding the offence of abduction, such as the testimonies of eye witnesses, has failed to meet the test of proof and cannot be termed as proved in the eyes of law. Therefore, the foundation of circumstantial evidence having fallen down, no inference could be drawn from it to infer the commission of the offence under Section 302 IPC by the accused persons. It is trite law that in a case based on circumstantial evidence, the chain of evidence must be complete and must give out an inescapable conclusion of guilt. In the pre-sent case, the prosecution case is far from meeting that standard.

[35] As regards motive, we may suffice to say that motive has a bearing only when the evidence on record is sufficient to prove the ingredients of the offences under consideration. Without the proof of foundational facts, the case of the prosecution cannot succeed on the presence of motive alone. Moreover, the motive in the present matter could operate both ways. The accused persons and the eyewitnesses belong to the same family and the presence of a property related dispute is evident. In a hypothetical sense, both the sides could benefit from implicating the other. In such circumstances, placing reliance upon motive alone could be a double-edged sword. We say no more.

[36] The above analysis indicates that the prosecution has failed to discharge its burden to prove the case beyond reasonable doubt. The reasonable doubts, indicated above, are irreconcilable and strike at the foundation of the prosecution s case. Thus, the appellants are liable to be acquitted of all the charges.

[37] In light of the foregoing discussion, we hereby conclude that the findings of conviction arrived at by the Trial Court and the High Court are not sustainable. Moreover, the High Court erred in reversing the acquittal of A-6 and A-7. Accordingly, the impugned judgment as well as the judgment rendered by the Trial Court (to the extent of conviction of A-1 to A-5) are set aside, and all seven accused persons (appellants) are hereby acquitted of all the charges levelled upon them. The appellants are directed to be released forthwith, if lying in custody.

[38] The captioned appeals stand disposed of in terms of this judgment. Interim application(s), if any, shall also stand disposed of. No costs

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2024(2)AIAJ517

IN THE SUPREME COURT OF INDIA

[From DELHI HIGH COURT]

[Before B R Gavai; K V Viswanathan]

Criminal Appeal **dated 24/09/2024**

Sunil @ Sonu Etc

Versus

State NCT of Delhi

ALTERATION OF CONVICTION

Indian Penal Code, 1860 Sec. 308, Sec. 34, Sec. 302, Sec. 307, Sec. 304, Sec. 323 - Code of Criminal Procedure, 1973 Sec. 161, Sec. 313 - Alteration of Conviction - Appellants convicted under Section 302 IPC for causing the death - Trial court convicted appellants based on eyewitness testimony - Defense argued appellants arrived drunk and initiated the fight - Appellants also sustained injuries during the altercation, which prosecution failed to explain - Court found possibility of a sudden quarrel without premeditation, holding that Section 302 not applicable - Conviction altered to Part-I of Section 304 IPC as the appellants acted in the heat of passion - Sentence reduced to time already served. - Appeal Partly Allowed

Law Point: Conviction for murder under Section 302 IPC can be altered to culpable homicide not amounting to murder under Section 304 Part-I IPC when death occurs in the heat of passion during a sudden quarrel without premeditation.

Acts Referred:

Indian Penal Code, 1860 Sec. 308, Sec. 34, Sec. 302, Sec. 307, Sec. 304, Sec. 323

Code of Criminal Procedure, 1973 Sec. 161, Sec. 313

Counsel:

Rishi Malhotra, Prashant Singh

JUDGEMENT

B.R. Gavai, J.- [1] Leave granted.

[2] The present appeals challenge the judgment and order dated 26th June 2023, passed by the Division Bench of the High Court of Delhi at New Delhi in Criminal Appeals No. 408 and 137 of 2018, wherein the Division Bench dismissed the appeals filed by the appellants Sunil @ Sonu (Accused No.1) and Nitin @ Devender (Accused No.4). By the said judgment and order, the High Court upheld the judgment and order dated 25th October 2017 rendered by the Additional Sessions Judge, North District, Rohini, Delhi (hereinafter referred to as "the trial court") in Sessions Case No. 139 of 2017 convicting the appellants for the offences punishable under Section 302 read with

Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). The High Court also upheld the order of sentence dated 6th November 2017 vide which the trial court had sentenced them to undergo rigorous imprisonment for life along with fine of Rs. 10,000/- each, in default whereof simple imprisonment for 1 year for the offence punishable under Section 302 read with Section 34 of IPC.

[3] Shorn of details, the facts leading to the present appeals are as under:

3.1 The case of the prosecution is that Rahul (PW-1) and Sachin (deceased) had pre-existing disputes with one of the present appellants Sunil @ Sonu (Accused No.1) and his brother Satish @ Chhotu (Accused No. 2). On 28th November 2016, Rahul (PW-1) along with Sachin (deceased) was walking on the road and appellant Sunil @ Sonu (Accused No.1), Satish @ Chhotu (Accused No.2), Gaurav (Accused No. 3) and the other appellant Nitin @ Devender (Accused No.4) were standing there. At about 09:15 PM, they started abusing Rahul (PW-1) and Sachin (deceased) and after a verbal altercation, all the four accused caught hold of them and started attacking them with knives and dandas. Sachin (deceased) tried to run, and the present appellants chased him while being armed with a knife. They caught him and inflicted knife blows. Thereafter, Shivani (PW-2) (Aunt of Rahul/PW-1) while trying to save Rahul (PW-1), saw a police official namely ASI Subhash Chandra (PW-15) passing by and after stopping him took him to the place of the incident. On seeing them, the accused persons ran away.

3.2 The police were called, and two separate PCR vans took Rahul (PW-1) and Sachin (deceased) to the hospital. Thereafter, SI Suresh (PW-19) arrived at the spot. Rahul (PW-1) could not be found, and Sachin (deceased) was found unfit to give a statement. A search was conducted for Rahul (PW-1) but he could not be found. Thereafter, Rahul (PW-1) himself arrived at the Police Station on 29th November 2016 at about 11:45 PM and his statement was recorded. Subsequently, a First Information Report (hereinafter referred to as "FIR") No. 667 of 2016 was registered at P.S. Jahangir Puri, District North West, Delhi on 30th November 2016 against three out of the four accused persons for offences punishable under Section 307 read with Section 34 of IPC based on the written statement of Rahul (PW-1) narrating the whole incident from his point of view.

3.3 The search for the accused persons began and all the four accused were found behind PRAYAS Home, EE Block, Jahangir Puri. All four were arrested and their disclosure statements were recorded.

3.4 On 2nd December 2016, information was received that Sachin (deceased) had died during treatment and the charge for offence punishable under Section 302 read with Section 34 of IPC was added.

3.5 The post-mortem of Sachin (deceased) was conducted by Dr. Arun Kumar (PW-8), and as per the post-mortem report the cause of death was opined to be

septicemic shock consequent upon compartment syndrome and infection of left lower limb as a result of ante mortem injury to left thigh produced by pointed sharp edged object.

3.6 The medical examination of Rahul (PW-1) was conducted on 30th November 2016 by Dr. Avinash Tripathi (PW-9) and the existence of abrasions were found and it was opined that Rahul had sustained simple injuries.

3.7 On completion of the investigation, charge-sheet was filed by the Investigating Officer Inspector Ajay Kumar (PW-23). Charges were framed against the accused persons Satish @ Chhotu and Gaurav Kumar for offences punishable under Section 308 read with Section 34 of IPC and the present appellants were charged for offences punishable under Section 302 read with Section 34 of IPC.

3.8 In order to substantiate its charges levelled against the accused persons, the prosecution examined 23 witnesses and on the other hand, to rebut the case of the prosecution, the defense examined 3 witnesses.

3.9 After the evidence of the prosecution was completed, one of the appellants Sunil @ Sonu (Accused No.1) gave his statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") and denied all charges. He further stated that the present FIR was registered as a counterblast to an earlier FIR (No. 664 of 2016 lodged at P.S. Jahangir Puri, District North West, Delhi) for offences punishable under Section 307 read with Section 34 of IPC registered by appellant Sunil @ Sonu (Accused No.1) himself and where Rahul (PW-1) is an accused person. It was further stated that Shivani (PW-2) is an interested witness being the aunt of Rahul and that she is trying to save him from the earlier FIR by helping him take revenge through the present FIR.

3.10 At the conclusion of the trial, the trial court convicted the present appellants (Accused No. 1 and 4) for offences punishable under Section 302 read with Section 34 of IPC and convicted Satish @ Chhotu (Accused No. 2) and Gaurav Kumar (Accused No. 3) for offences punishable under Section 323 read with Section 34 of IPC. The trial court vide a separate order dated 6th November 2017 sentenced the present appellants to rigorous imprisonment for life with fine of Rs. 10,000/- each in default to undergo further simple imprisonment for 1 year for the offences punishable under Section 302 read with Section 34 of IPC.

3.11 Being aggrieved thereby, the present appellants preferred criminal appeals before the High Court challenging the orders of conviction and sentence awarded by the trial court. The High Court vide the common impugned judgment and order dismissed the appeals and affirmed the conviction and sentence awarded by the trial court.

3.12 Being aggrieved thereby, the present appeals.

[4] We have heard Shri Rishi Malhotra, learned Senior Counsel appearing on behalf of the appellants and Shri Prashant Singh, learned counsel appearing on behalf of the respondent-State.

[5] Shri Malhotra, learned Senior Counsel appearing on behalf of the appellants submitted that the learned trial court has erred in convicting the appellants and the High Court has also erred in affirming the said conviction. Shri Malhotra submitted that there is an inordinate delay in lodging the FIR which is not explained by the prosecution. It is submitted that although Rahul (PW-1) was present with the deceased Sachin at the time of the occurrence, he has lodged the FIR only on the next day. It is submitted that there are material contradictions in the testimony of Rahul (PW-1). The learned Senior Counsel further submitted that insofar as Shivani (PW-2) is concerned, she is an interested witness. It is submitted that Shivani (PW-2), in her cross-examination, has admitted that she did not tell the police in her statement about the accused persons causing injuries to deceased Sachin and Rahul (PW-1). Shri Malhotra further submitted that with respect to the same incident, a cross FIR being No. 664/2016 was already registered by the appellant Sunil @ Sonu on 29th November 2016 which was much prior in point of time. It is submitted that, in the said incident, both the appellants Sunil @ Sonu and Nitin @ Devender had received severe injuries. It is submitted that both the courts below have failed to take into consideration that the prosecution has failed to explain the injuries sustained by the appellants. The learned Senior Counsel therefore submitted that the order of conviction as recorded by the trial court and affirmed by the High Court is not sustainable in law.

[6] In the alternative, Shri Malhotra submitted that since the prosecution has failed to explain the injuries sustained by the appellants, the prosecution has suppressed the real genesis of the incident. It is therefore submitted that the conviction under Section 302 of the IPC would not be sustainable and the same would be at the most under Part-I or II of Section 304 of IPC.

[7] Shri Prashant Singh, learned counsel appearing on behalf of the respondent-State, on the contrary, submitted that the trial court and the High Court have concurrently, upon correct appreciation of evidence, found that the prosecution has proved the case beyond reasonable doubt and as such, the judgment and order of conviction and sentence warrants no interference.

[8] With the assistance of the learned counsel for the parties, we have perused the materials placed on record.

[9] From the evidence of Dr. Arun Kumar (PW-8) who conducted the post-mortem as well as the evidence of Rahul (PW-1) and Shivani (PW-2), we find that the prosecution has proved beyond reasonable doubt that the injuries which were sustained by deceased Sachin were caused by the appellants and injury No. 13 was sufficient to cause death of deceased Sachin. As such, we find that no interference would be

warranted with the finding of the trial court and the High Court that the appellants have caused homicidal death of deceased Sachin.

[10] The next question that arises for consideration is as to whether the accused can be convicted for the offence punishable under Section 302 of IPC or in the facts and circumstance of the case, the conviction needs to be altered to a lesser offence.

[11] According to Rahul (PW-1), on the date of the incident i.e. 28th November 2016 at around 8:45-9:00 PM, when he was talking to Shivani (PW-2), the accused persons came there and started arguing with deceased Sachin. He stated that accused Gaurav @ Bakra started abusing deceased Sachin and when they both (Rahul (PW-1) and deceased Sachin) objected to this, the accused persons caught hold of deceased Sachin. When the said witness attempted to save deceased Sachin, the accused persons hit him with danda on his head. Then, accused Nitin @ Devender pulled out a knife from his possession. On seeing this, deceased Sachin started running to save himself. However, accused persons caught deceased Sachin at the pulia of gandanala at Block-EE and started giving knife blows to him. At that time, a police official was passing from the street on motor-cycle and Shivani (PW-2) stood before his motor-cycle and stopped him. Shivani (PW-2) brought the police official to the place where deceased Sachin was being beaten up. On seeing the said police official, all the four accused ran away. Shivani (PW-2) made calls on No. 100 and after some time, a PCR van reached the spot. Thereafter, deceased Sachin and Rahul (PW-1) were taken to the hospital.

[12] It is to be noted that, though the incident was alleged to have taken place on the night of 28th November 2016, the FIR was lodged on 30th November 2016 i.e. after more than 24 hours. Though Rahul (PW-1) has tried to give an explanation that after he had been taken to BJRM Hospital, he left the said hospital in order to search for his friend deceased Sachin and thereafter he fell unconscious; the said explanation does not appear to be plausible inasmuch as the record would show that deceased Sachin had already been taken to BJRM Hospital. If that be so, then the conduct of Rahul (PW-1) in leaving the BJRM Hospital in search of deceased Sachin appears to be strange. It can further be seen that, though in the statement recorded under Section 161 Cr.P.C., Rahul (PW-1) admitted that he and deceased Sachin had consumed liquor, he has denied the same in his cross-examination. Rahul (PW-1) has admitted that there is one case registered against him for the offence punishable under Section 307 of IPC with respect to the present incident. It is further to be noted that though in his examination-in-chief, Rahul (PW-1) tried to give explanation that he could not lodge the FIR expeditiously since he fell unconscious, he admitted in his cross-examination that he regained consciousness in the morning of the next day. Then the question is what prevented him from lodging the FIR till 21:15 hours. Shivani (PW-2) also deposed almost to the same effect. There are various contradictions in her deposition. She also admitted that Rahul (PW-1) was also arrested by the police and that she gave her statement after Rahul (PW-1) was arrested by the police.

[13] In the FIR lodged at the instance of appellant Sunil @ Sonu, it is stated that Rahul (PW-1) and deceased Sachin had come to the shop of Satish in a heavily drunken condition, and they had tried to assault the appellants. The medical certificates of appellants Sunil @ Sonu and Nitin @ Devender would show that they had sustained the following injuries:

"Injuries sustained by appellant Sunil @ Sonu:

1) Pain and bleeding from Right side of parietal region.

2) Abrasions on middle finger of the right hand.

Injuries sustained by appellant Nitin @ Devender

1) Incised contused lacerated wound on parietal region of size 3 x 1 x 0.5 cm.

2) Abrasion over left side of abdomen of size 3 x 0.5 cm."

[14] Undisputedly, the said injuries are not explained by the prosecution.

[15] The defence of the accused persons is specific that, it is the deceased Sachin and Rahul (PW-1) had come in a drunken condition at the shop of Satish and they started abusing and assaulting the appellants. The evidence of SI Suresh, Investigating Officer (PW-19) would reveal that when he visited the BJRM Hospital on 28th November 2016, he found not only deceased Sachin but also found all the accused persons admitted in the said hospital. He has also admitted that he did not find Rahul (PW-1) in the said hospital. SI Rakesh Kumar (DW-3), who is an IO in FIR No. 664/2016 which was registered at the instance of appellant Sunil @ Sonu, also deposed that all the accused persons were medically examined and had received injuries which were exhibited vide Ex.DW-3/A to Ex.DW-3/D. It can thus clearly be seen that the defence of the appellants is a possible defence. There is a possibility of deceased Sachin and Rahul (PW-1) coming to the shop of Satish and a fight taking place between the two groups. There is nothing on record to establish that there was any pre-meditation. As such, we find that the possibility of the offence being committed by the appellants without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel cannot be ruled out. There is nothing on record to show that the appellants have taken undue advantage or acted in a cruel or unusual manner.

[16] In that view of the matter, we are of the considered opinion that the appellants are entitled to the benefit of doubt. We find that the present case would be covered under Part-I of Section 304 of IPC and as such, the conviction under Section 302 of IPC would not be tenable.

[17] The appellants have undergone the sentence of more than 8 years without remission. We are therefore inclined to partly allow the appeals.

[18] In the result, we pass the following order:

(i) The appeals are partly allowed;

(ii) The conviction of the appellants under Section 302 of IPC is altered to Part-I of Section 304 of IPC;

(iii) The appellants are sentenced to the period already undergone and are directed to be released forthwith if not required in any other case.

[19] Pending application(s), if any, shall stand disposed of

2024(2)AIAJ523

IN THE SUPREME COURT OF INDIA

[Before Sanjay Kumar; Aravind Kumar]

Criminal Appeal No 477 of 2017 **dated 23/09/2024**

Yogarani

Versus

State By The Inspector of Police

PASSPORT OFFENCE ACQUITTAL

Indian Penal Code, 1860 Sec. 420, Sec. 120B - Prevention of Corruption Act, 1988 Sec. 13 - Passports Act, 1967 Sec. 12 - Passport Offence Acquittal - Appellant convicted of facilitating the issuance of a second passport for accused No.1, charged under Section 420 IPC and Section 12(2) of the Passports Act - Co-accused, including accused Nos. 1 and 3-5, acquitted on similar charges - Appellant's conviction based on hostile testimony and weak handwriting evidence - Court held that without corroborative evidence, the conviction could not be sustained - Appeal Allowed

Law Point: Conviction cannot be sustained based solely on weak and uncorroborated testimony or expert opinion, especially when co-accused are acquitted on identical evidence.

Acts Referred:

Indian Penal Code, 1860 Sec. 420, Sec. 120B

Prevention of Corruption Act, 1988 Sec. 13

Passports Act, 1967 Sec. 12

JUDGEMENT

Aravind Kumar, J.- [1] The appellant who has been arraigned as accused No.2 has challenged the concurrent conviction and sentence ordered under Section 420 Indian Penal Code (for short 'IPC') read with Section 12(2) of the Passports Act, 1967 (herein after referred as 'Passports Act') and sentenced to one-year rigorous imprisonment for each of the offences which are to run concurrently.

[2] The short and long of prosecution story is that appellant had wrongfully and illegally facilitated accused No. 1, for obtaining a second passport, who was already

holding an Indian passport. It was further alleged that accused No.1 having deposited his passport with his employer at Dubai had applied for second passport in order to have better employment opportunities and said application was forwarded/ routed through the appellant. The prosecution alleged that second passport which was issued and dispatched to Accused No.1 had been returned undelivered to the Passport Office Trichy and was kept in safe custody and later it was delivered to the appellant by accused No.3 who was in charge of safe custody of the passports through accused No.4 who was working as a casual labourer in the Passport Office. It was also alleged that appellant had demanded payment of Rs.5,000/- from accused No.1 for handing over the passport and he having refused resulted in appellant returning the second passport to the Passport Office by registered post.

[3] Along with the appellant other accused persons namely Mr. J.Joseph (Accused No.1), Smt. Sasikala (Accused No.3) - in charge of safe custody of passports, Mr. P. Manisekar (Accused No.4) working as a casual labour in the Passport Office, Trichy and Mr. S. Raghupathy (Accused No.5) then working as an Upper Division Clerk in Passport Office, Trichy who had made an endorsement that no passport had earlier been issued in favour of Accused No.1 were also tried for the offences punishable under Section120B read with Section 420 of IPC, Section 12(1)(b), 12(2) of Passports Act and Section 13(2) and Section 13(1)(d) of Prevention of Corruption Act, 1988 before the Special Judge for CBI cases, Madurai, which resulted in acquittal of all the accused persons in respect of charge of conspiracy. Accused Nos.3 and 4 were acquitted of all other charges also. The CBI did not prefer any appeal against acquittal of accused Nos.3 and 4. However, accused Nos.1 and 2 were convicted for offences punishable under Section 420 IPC and Section 12(1)(b) and Section 12(2) of Passports Act respectively. Accused No.5 was convicted under Section 12(2) of Passports Act and Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. Accused Nos.1, 2 and 5 preferred criminal appeals challenging their conviction and sentence and by impugned common judgment the High Court allowed the appeals filed by accused Nos.1 and 5 and acquitted them and said judgment has attained finality as it has not been challenged by the CBI. However, the appeal filed by accused No.2 came to be dismissed and as such she is before this Court.

[4] We have heard the arguments canvassed on behalf of the appellant and the respondent.

[5] The thrust of the argument advanced by the learned counsel appearing on behalf of the appellant is that conviction of appellant alone is not sustainable for more than one reason. Firstly, when accused Nos.3 and 4 who were charged for similar offences had been acquitted of all the charges and no appeal having been filed challenging their acquittal; secondly, when accused No.1 for whose benefit the alleged second passport had been issued, had been acquitted by disbelieving the story of the prosecution namely accused No.3 who was in charge of safe custody of passport had

illegally given the second passport to the appellant through accused No.4. It is further contended that both the courts had erroneously convicted the appellant on the strength of the testimony of PW-3 though she had not deposed that appellant being aware of the details of the previous passport held by accused No.1 had knowingly processed the application of accused No.1. It is further contended that PW-3 had turned hostile and had not supported the story of prosecution and as such conviction could not have been sustained on the basis of the testimony of the said witness. He would also further contend that the High Court had erroneously evaluated the evidence of PW-16 (handwriting expert) who had not expressed any definite opinion with regard to the hand writing found on the returned postal cover with that of admitted hand writing of the appellant and thereby the guilt of the accused was not proved or established beyond reasonable doubt. Learned Counsel would also elaborate his submissions by contending that the testimony of PW-15 did not establish as to when the application of the accused No.1 had been received by the appellant and there was no iota of evidence placed by the prosecution in this regard including the purported payment of registration fees and service charges from appellant by PW-15. Pointing to these gaping holes in the prosecution story it is contended that the judgment of conviction and sentence imposed on the appellant would not be sustainable as such he has prayed for appeal being allowed and appellant being acquitted.

[6] On the contrary, learned counsel appearing for the respondent would support the case of the prosecution and would contend that both the courts on proper evaluation of evidence has arrived at a conclusion that the appellant had committed the offence and convicted her, which finding does not suffer from any infirmity either in law or on facts calling for interference. Hence, learned counsel appearing for the respondent has prayed for dismissal of the appeal.

DISCUSSION AND FINDING

[7] The case of the prosecution as noted herein above is that appellant had illegally facilitated the issuance of second passport in favour of accused No.1 or in other words accused No.1 who held an Indian Passport had deposited the same with his employer at Dubai and in search of better employment opportunities had clandestinely applied for second passport through the appellant and other accused persons had connived with the appellant in procuring second passport to Accused No.1.

[8] The conviction of appellant is based on the deposition of three witnesses namely PW-3 (Selvi Sakila Begum), PW-15(Mr. Selvaraj), and PW-16 (Mr. Ravi). PW-3 is an employee of the proprietorship firm of appellant i.e. Kamatchi Travels and in her examination-in-chief she has deposed that she was working in the said travels which was offering various services including facilitating and obtaining the passports. She has further deposed that as the firm in which she was working could not render such services directly and the applications of their customers for issuance of passports

were routed through Eagle Travels run by PW-15. She has also deposed that the application of accused No.1 was filled by her. However, she had turned hostile and nothing worthwhile was elicited in her crossexamination except to the extent of her admission that appellant was sitting next to her while she was filling the application form of accused No.1. She does not depose that appellant had any knowledge of Accused No.1 was already possessing a passport or appellant having informed her about the passport already held by Accused No.1.

[9] Pw-15 (Mr. Selvaraj) who is the proprietor of Eagle Travels has deposed that the application Ex.P-7 for issuance of passport in favour of accused No.1 was submitted through his firm and it was received from the appellant and appellant had paid the registration fee. PW-16 (Mr. Ravi), the Principal Scientific Advisor of Central Forensic Sciences Laboratory who has been examined by prosecution to drive home the fact that hand writing found on the returned postal cover is that of the appellant, though had deposed that there are similarities in the writings has also admitted that it is not possible for him to express any opinion in that regard on the basis of material on hand. It is pertinent to note at this juncture that prosecution had contended that accused No.3 who was in charge of safe custody of returned passports in the Passport Office had illegally removed the returned passport of accused No.1 from safe custody and had handed over the same to the appellant through accused No.4. However, trial court has not accepted this version of the prosecution and had acquitted accused Nos.3 and 4. The prosecution had failed to place on record any evidence to establish as to the how the passport kept in the safe custody had gone missing and in what manner it was handed over to the appellant or appellant in turn having returned the same back to Passport Office by post. Thus, for lack of direct evidence the accused No.3 and 4 have been acquitted.

[10] The Court cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons. In the case of **Javed Shaukat Ali Qureshi v State of Gujarat**, 2023 INSC 829, this court has held that:

> **"15.** When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination."

In the case on hand, allegations against the appellant being the same as made against Accused No.3 & 4, the Courts below could not have convicted the Appellant while acquitting the other two.

[11] There is no direct incriminating information emanating from the evidence of the PW-3 against the Appellant. All that she has deposed is that she had filled the

application form of accused No.1 and Appellant was by her side while she was filling the application and she has also deposed that appellant would verify and check the application after filling of the application. PW-3 was treated as hostile by prosecution as already noted herein above and prosecution was not able to elicit any incriminating material against the Appellant in her cross examination. As such the evidence of PW-3 is not reliable and trustworthy.

[12] Pw-15 has deposed that application of accused No.1 has been submitted to his firm by Appellant herein and that the charges were paid by Appellant. Apart from the said statement, no documentary evidence was produced to show that charges were paid by the Appellant and that the Appellant had prior knowledge of accused No.1 having a passport. Evidence of this witness does not inspire confidence and even if the same is taken at its face value, it would not discharge the burden cast on the prosecution to prove the guilt of the Appellant beyond reasonable doubt.

[13] Evidence of PW-16 would also not come to the assistance of prosecution and, merely because he has deposed there are some similarities between the writings found on postal cover i.e. Ex.P8 and that of admitted writings of Appellant, by itself would not be sufficient to convict the Appellant, since he has admitted that it is not possible for him to express any opinion on the rest of the questioned items except with regard to handwriting of PW-3. It is pertinent to note that with regard to signature found in Ex.P7/passport application, no opinion was given by him as to who signed the same. It is crucial to note that evidence of PW-16 is not corroborated by any other evidence. This Court in catena of decisions has held that, without independent and reliable corroboration, the opinion of the handwriting experts cannot be solely relied upon to base the conviction. This Court in **Padum Kumar v State of Uttar Pradesh**, 2020 3 SCC 35 has held as under:-

> **"14.** The learned counsel for the appellant has submitted that without independent and reliable corroboration, the opinion of the handwriting experts cannot be relied upon to base the conviction. In support of his contention, the learned counsel for the appellant has placed reliance upon S. Gopal Reddy v. State of A.P. [**S. Gopal Reddy v. State of A.P.**, 1996 4 SCC 596: 1996 SCC (Cri) 792] , wherein the Supreme Court held as under: (SCC pp. 614-15, para 28)
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> **"28.** Thus, the evidence of PW 3 is not definite and cannot be said to be of a clinching nature to connect the appellant with the disputed letters. The evidence of an expert is a rather weak type of evidence and the courts do not generally consider it as offering "conclusive" proof and therefore safe to rely upon the same without seeking independent and reliable corroboration. In Magan Bihari Lal v. State of Punjab [**Magan Bihari Lal v. State of Punjab**, 1977 2 SCC 210: 1977 SCC (Cri) 313] , while dealing with the evidence of a handwriting expert, this Court opined: (SCC pp. 213-14, para 7)

'7. ...we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra v. State of U.P. [Ram Chandra v. State of U.P., AIR 1957 SC 381: 1957 Cri LJ 559] that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in Ishwari Prasad Misra v. Mohd. Isa [Ishwari Prasad Misra v. Mohd. Isa, AIR 1963 SC 1728] that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in Shashi Kumar Banerjee v. Subodh Kumar Banerjee [**Shashi Kumar Banerjee v. Subodh Kumar Banerjee**, 1964 AIR(SC) 529] where it was pointed out by this Court that an expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakhruddin v. State of M.P. [**Fakhruddin v. State of M.P.**, 1967 AIR(SC) 1326: 1967 Cri LJ 1197] and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial.'"

15. Of course, it is not safe to base the conviction solely on the evidence of the handwriting expert. As held by the Supreme Court in Magan Bihari Lal v. State of Punjab [**Magan Bihari Lal v. State of Punjab**, 1977 2 SCC 210: 1977 SCC (Cri) 313] that: (SCC p. 213, para 7)

"7. ... expert opinion must always be received with great caution ... it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law."

16. It is fairly well settled that before acting upon the opinion of the handwriting expert, prudence requires that the court must see that such evidence is corroborated by other evidence either direct or circumstantial evidence. In Murari Lal v. State of M.P. [**Murari Lal v. State of M.P.**, 1980

1 SCC 704: 1980 SCC (Cri) 330] , the Supreme Court held as under: (SCC pp. 708-09, paras 4 and 6)

"4. ... True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses - the quality of credibility or incredibility being one which an expert shares with all other witnesses - but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of fingerprints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. But that is a far cry from doubting the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, howsoever the opinion may be backed by the soundest of reasons. It is hardly fair to an expert to view his opinion with an initial suspicion and to treat him as an inferior sort of witness. His opinion has to be tested by the acceptability of the reasons given by him. An expert deposes and not decides. His duty "is to furnish the Judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the Judge to form his own independent judgment by the application of these criteria to the facts proved in evidence [Vide Lord President Cooper in Davis v. Edinburgh Magistrate,1953 SCC 34 quoted by Professor Cross in his evidence] .

5. ***

6. Expert testimony is made relevant by Section 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person "specially skilled" "in questions as to identity of handwriting" is expressly made a relevant fact. ... So, corroboration may not invariably be insisted upon before acting on the opinion of an handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard-and-fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it."

[14] Appellant has also been charged for the offence punishable under Section 12(2) of the Passports Act, 1967 which reads as under:

> **"12. Offences and penalties.-** (1) Whoever-
>
> (a) contravenes the provisions of section 3; or
>
> (b) **knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document;** or
>
> (c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or
>
> (d) knowingly uses a passport or travel document issued to another person; or
>
> (e) knowingly allows another person to use a passport or travel document issued to him;
>
> shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.
>
> **(1A)** xxxxxxx
>
> **(2) Whoever abets any offence punishable under sub-section (1) or sub-section (1A) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence."**

It is needless to state that burden is cast on the prosecution to prove that the appellant had knowingly furnished false information or supressing known material information with the intent of securing a passport or travel document to a person and thereby had abetted in the commission of offence punishable under Section 12(1) and thereby punishable under Section 12(2) of the Passports Act.

[15] In the case on hand the prosecution failed to place any evidence to prove that the appellant had prior information of accused No.1 was already possessing a passport or knowingly had furnished false information to the passport authorities namely after knowing that accused No.1 had possessed or holding a passport was applying for second passport or having known the fact of accused No.1 possessing the passport was applying for the second passport and thereby there has been suppression of material information. In other words, the prosecution had failed to place on record any evidence to prove that appellant had any previous knowledge of accused No.1 was already possessing a passport. In the absence of any cogent evidence placed in this regard and accused Nos. 1 and 3 to 5 having been acquitted of the offences alleged, the conviction and order of sentence imposed against the appellant alone cannot be sustained or in other words it has to be held that prosecution had failed to prove the guilt of the appellant beyond reasonable doubt.

[16] For the reasons afore-stated the appeal succeeds and appellantaccused No.2 is acquitted of the offences alleged against her. The judgment of the Trial Court passed in C.C. No.5 of 2007 as affirmed in C.A.(Md) No.203 of 2008 by the High Court of Madras at Madurai Bench dated 18.08.2011 are hereby set aside.

[17] The bail bonds of the appellant stands cancelled. The appeal stands allowed in the above terms

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2024(2)AIAJ531

IN THE SUPREME COURT OF INDIA

[From UTTARAKHAND HIGH COURT]

[Before J B Pardiwala; Manoj Misra]

Criminal Appeal No 249 of 2013 **dated 20/09/2024**

Shoor Singh & Anr

Versus

State of Uttarakhand

DOWRY DEATH ACQUITTAL

Indian Penal Code, 1860 Sec. 304B, Sec. 498A - Code of Criminal Procedure, 1973 Sec. 313 - Evidence Act, 1872 Sec. 113B, Sec. 32 - Dowry Prohibition Act, 1961 Sec. 2, Sec. 4, Sec. 3 - Dowry Death Acquittal - Appellants convicted of dowry death and cruelty under Sections 304-B and 498-A IPC for the death of their daughter-in-law due to burn injuries - Deceased allegedly harassed over dowry demands for a motorcycle and cash - Court observed inconsistencies in evidence, including the failure of the deceased's parents to confront the accused and shifting testimonies - No independent witnesses supported the dowry demand - Held that the prosecution failed to prove essential ingredients of dowry death beyond reasonable doubt - Appellants acquitted - Appeal Allowed

Law Point: Conviction for dowry death requires clear proof of cruelty or harassment related to dowry demands; in its absence, the presumption under Section 113B of the Evidence Act does not apply.

Acts Referred:

Indian Penal Code, 1860 Sec. 304B, Sec. 498A

Code of Criminal Procedure, 1973 Sec. 313

Evidence Act, 1872 Sec. 113B, Sec. 32

Dowry Prohibition Act, 1961 Sec. 2, Sec. 4, Sec. 3

JUDGEMENT

Manoj Misra, J.- [1] This appeal is against the judgment and order of the High Court [The High Court of Uttarakhand at Nainital] dated 26.04.2012, whereby, while

affirming the conviction of the appellants under Sections 304-B and 498- A IPC [Indian Penal Code, 1860], the appeal [Criminal Appeal No.87 of 2010] of the appellants was partly allowed thereby reducing the sentence awarded by the Trial Court [Sessions Judge, Pauri Gharwal] from 10 years to 7 years R.I. under Section 304-B IPC and maintaining the sentence of 1 year R.I. under Section 498-A IPC.

FACTUAL MATRIX

[2] The appellants are father-in-law and mother-in-law, respectively, of the deceased (Neelam), who was daughter of Shanker Singh (PW-1) and Sarojini Devi (PW-2). The deceased was married to appellants' son Jitendra Singh (coaccused) on 1.03.2006. On 30.12.2006, deceased gave birth to a male child. Naming ceremony of the child was performed on 11.01.2007. On 17.01.2007, deceased died at her matrimonial home due to extensive burn injuries. Upon being informed of her death, PW-1 lodged a first information report [FIR] (Ex. Ka-1) on the same day, inter alia, alleging that,- when he along with PW-2 had visited deceased's matrimonial home on 4.1.2007, deceased's father-in-law, mother-in-law, brother-in-law (i.e., husband's elder brother not tried) and sister-in-law (husband's elder brother's wife not tried) had told PW-1 and PW-2 that on the day of naming ceremony of the child they would have to give a motor-cycle and cash of Rs.50,000/-. Besides that, it was alleged that when PW-1 and PW-2 visited deceased's matrimonial home on 11.01.2007, the deceased inquired from PW-1 and PW-2 whether they had brought motorcycle and cash. However, when PW-1 expressed his inability to meet the demand, the deceased told PW-1 that lot of pressure was being put on her and if the demand is not met, she would be killed. With these allegations, and by stating that accused had killed his daughter on account of the demand being not met, PW-1 lodged the FIR, which was registered as case crime No.1 of 2007 at P.S. Langur Walla-2, district Pauri Garhwal, under Sections 304-B, 498-A IPC and Sections 3/ 4 Dowry Prohibition Act, 1961, against three accused, namely, Jitendra Singh (husband of the deceased) and the appellants, who were all tried together by the Court of Session, Pauri Garhwal in Sessions Trial No.25 of 2007.

[3] During trial, prosecution examined 7 witnesses. PW-1 (the first informant father of the deceased); PW-2 (mother of the deceased); and PW-3 (uncle of the deceased) were family members of the deceased who proved the date of marriage and alleged that the deceased was depressed on account of the demand. PW-4 was the doctor who conducted autopsy of the cadaver. He proved that the deceased had suffered extensive ante-mortem burn injuries which resulted in her death. PW-5 is cousin of the deceased who had arrived at the spot along with PW-1 on receipt of information regarding her death. He is also the inquest witness. PW-6 is the Patwari who made GD entry of the FIR and took initial steps of investigation such as preparation of inquest report and dispatch of the cadaver for autopsy. PW-7 completed the investigation and submitted charge-sheet. PW-7, inter alia, stated that at the time of inquest the body of the deceased was lying in the courtyard.

[4] In their statement recorded under Section 313 CrPC [Code of Criminal Procedure, 1973] the accused admitted:

(a) the factum of marriage;

(b) the date of marriage;

(c) the date of childbirth;

(d) that parents of the deceased visited her matrimonial home on 04.01.2007 to see their daughter and the child; and

(e) that on 11.01.2007 child naming ceremony was done.

The accused, however, denied demand of dowry/ motorcycle/ cash of Rs.50,000/- as well as harassment of the deceased. Jitendra Singh (i.e., husband of the deceased) stated that the deceased committed suicide due to depression on account of staying separate from him as no quarter was allotted to him, and also because a photograph of her with a male stranger was found. He had also stated that at the time of the incident he had gone to collect wood. Accused Shoor Singh (appellant no.1 herein) added that he had gone to Lansdowne at the time of incident. Similarly, accused Gangotri Devi (appellant no.2 herein) stated that she had gone out to wash clothes.

[5] The defense had examined 4 witnesses (DW-1 to DW-4) and produced color photographs (Ex Kha-1 to Kha-6). DW-1 stated that the deceased used to accompany her for collecting grass and wood, but she never made any complaint about her harassment on account of dowry demand. Rather, the deceased used to say that if she is not taken by her husband to his workplace she would die. DW2 stated that in the morning of 17.01.2007 (i.e., date of the incident) she had seen Shoor Singh (appellant no.1 herein) going towards Lansdowne. DW-3 stated that between 12.30 and 1.00 p.m. he saw smoke bellowing from the house of Shoor Singh. When he reached there, he noticed that none of the accused were there, and the body of the deceased was lying outside the shutter in a burnt condition. Whereafter, he went to inform Gangotri Devi who was washing clothes near a water well. DW-4 stated that he was present at the time of inquest when he saw an empty can of kerosene and matchsticks lying near the body of the deceased; and smell of kerosene was all over.

[6] The trial court primarily relied on the testimonies of PW-1, PW-2 and PW-3 to hold that the deceased was harassed soon before her death in connection with demand for a motorcycle and cash and, therefore, in view of the presumption under Section 113-B of the Evidence Act, 1872, the accused were liable to be convicted for dowry death, punishable under Section 304-B IPC, and for cruelty, punishable under Section 498-A IPC.

[7] Aggrieved therewith, two separate criminal appeals were filed before the High Court. One appeal was by the husband of the deceased and the other was by the appellants herein. Both appeals were decided by the impugned order. In so far as the accused Jitendra Singh is concerned, he has served out the sentence and has not filed

any appeal. This appeal is, therefore, by father-in-law and mother-in-law of the deceased.

[8] We have heard learned counsel for the parties and have perused the record.

SUBMISSIONS ON BEHALF OF THE APPELLANT(S)

[9] Learned counsel for the appellants submitted:

(i) The autopsy report indicated no mark of injury, other than burn injuries, on the body of the deceased. Body of the deceased was found in the courtyard of the house. Further, the evidence indicated death during daytime. The defense evidence indicated that when smoke was noticed, the witness reached the spot to find a burnt body of the deceased lying in the courtyard and, at that time, none of the accused persons were present. Even prosecution witnesses do not state that at the time of incident the accused were present in the house. All of this would suggest that it is a case of suicide, which could be for multiple reasons.

(ii) There is no direct evidence regarding demand of dowry by the appellants. The testimonies of PW-1 and PW-2 do not support the FIR allegation that on 4.1.2007 appellants had demanded a motorcycle and cash from PW-1 and PW-2.

(iii) There is no evidence that motorcycle or cash was demanded in connection with marriage. Hence, a case of dowry death is not made out.

(iv) The courts below failed to test the merit of the allegations against the weight of surrounding circumstances and the deposition of prosecution witnesses during cross-examination.

Interestingly, PW-1 and PW-2, who had been visiting the matrimonial home of the deceased, admitted during cross-examination that they did not confront the accused in respect of the alleged demand as reported to them by their daughter (i.e., the deceased) because they thought it to be a joke. If it was so, the question of subjecting the deceased to cruelty does not arise.

(v) Admittedly, husband of the deceased in connection with service was residing elsewhere. Accused in their statement under Section 313 CrPC stated that the deceased was unhappy and depressed because she was not able to live with her husband as no residential quarter was allotted to him. A suggestion to that effect was also given to the prosecution witnesses. Hence, this was a material circumstance explaining the drastic step to commit suicide.

(vi) PW-1 tried to implicate even the elder brother of the husband of the deceased even though he resided in another town in connection with service. This would suggest that there was a malicious attempt to implicate the entire family without any basis. In such circumstances, the Court ought to have been circumspect. More so, when no witness of the locality was produced in support of the prosecution case.

(vii) Presumption under Section 113-B of the Evidence Act arises only when the necessary ingredients of a dowry death are proved beyond reasonable doubt. Here there was no direct and reliable evidence that the deceased was subjected to cruelty in connection with demand of dowry soon before her death. Hence, there was no occasion to raise a presumption in respect of a dowry death.

(viii) There were sufficient reasons for the deceased to commit suicide, such as:

(a)She was depressed for not being able to reside with her husband who had to be away from home in connection with his service.

(b) She was shamed by discovery of a photograph (Ex. Kha-1) wherein she was noticed alone with a male stranger in front of a waterbody.

SUBMISSIONS ON BEHALF OF STATE

[10] On behalf of the prosecution (i.e., the State of Uttarakhand), it was submitted:

(i) PW-1, PW-2 and PW-3 have all been consistent about the deceased reporting to them that accused persons were demanding a motorcycle and cash of Rs.50,000/- and threatening her that if their demand is not met by the date of child naming ceremony, she would be killed. Naming ceremony was held on 11.01.2007 and soon thereafter the deceased died on 17.01.2007. Thus, deceased's statement was in respect of circumstances of the transaction which resulted in her death and, therefore, admissible in evidence under Section 32 (1) of the Evidence Act.

(ii) The courts below justifiably raised a presumption of the offence of dowry death; and that presumption was not dispelled by the accusedappellants. Moreover, the appellants being fatherin-law and mother-in-law of the deceased, residing in the same house where the deceased died an unnatural death, were liable to be convicted.

(iii) The photograph (Ex. Kha-1) was not admissible in evidence as neither the person who took the photograph nor its negative was produced in evidence. Otherwise also, it did not reveal any such compromising position of which the deceased will be ashamed of.

(iv) The appeal is concluded by concurrent findings of fact, therefore no case for interference is made out.

ANALYSIS/ DISCUSSION

[11] Before we proceed to test the merit of the rival submissions, it would be useful to cull out certain facts as regards which there is no serious dispute. These are:

(a) the deceased was married to the son of the appellants within seven years of her death;

(b) the deceased died an unnatural death on account of ante-mortem burn injuries;

(c) place of death of the deceased was her matrimonial home;

(d) just 18 days before her death, the deceased had given birth to a male child;

(e) prior to her death there was no police complaint or FIR in respect of harassment of the deceased for any reason whatsoever;

(f) there is no evidence that any of the accused demanded dowry, or a motorcycle, or cash from the family members of the deceased either before the marriage or at the time of marriage; and

(g) there is no evidence that the deceased was physically assaulted by any of the accused in connection with demand for dowry or motorcycle or cash.

[12] To constitute a 'dowry death', punishable under Section 304- B **[1]** IPC, following ingredients must be satisfied:

i. death of a woman must have been caused by any burns or bodily injury or it must have occurred otherwise than under normal circumstances;

ii. such death must have occurred within seven years of her marriage;

iii. soon before such death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

iv. such cruelty or harassment must be in connection with any demand for dowry.

The phrase 'otherwise than under normal circumstances' is wide enough to encompass a suicidal death.

[13] When all the above ingredients of 'dowry death' are proved, the presumption under Section 113-B **[2]** of the Evidence Act is to be raised against the accused that he has committed the offence of 'dowry death'. What is important is that the presumption under Section 113-B is not in respect of commission of an act of cruelty, or harassment, in connection with any demand for dowry, which is one of the essential ingredients of the offence of 'dowry death'. The presumption, however, is in respect of commission of the offence of 'dowry death' by the accused when all the essential ingredients of 'dowry death' are proved beyond reasonable doubt by ordinary rule of evidence, which means that to prove the essential ingredients of an offence of 'dowry death' the burden is on the prosecution.

[14] In the instant case, it is not in dispute that the deceased died otherwise than under normal circumstances within seven years of her marriage. However, the issue between the parties is about her being subjected to cruelty or harassment by her husband or his relative, soon before her death, in connection with any demand for dowry.

[15] The testimonies of PW-1, PW-2 and PW-3 do not indicate that any demand for dowry was made by the accused-appellants either before or at the time of marriage of the deceased with their son. Further, there is no evidence that the accused appellants directly demanded a motorcycle or cash from any of the above witnesses. In fact, evidence is to the effect that the deceased had informed PW-1 and PW-2 on 4.1.2007 and 11.1.2007 about the demand for a motorcycle and cash. Further, from the

deposition of PW-1 and PW-2, it appears that the aforesaid demand was not in connection with marriage but as a mark of celebration on birth of a male child.

[16] No doubt testimonies of PW-1 and PW-2 would not be hit by the rule against hearsay evidence because it related to one of the circumstances of the transaction resulting in their daughter's unnatural death. However, a distinction must be drawn between admissibility and acceptability/reliability of a piece of evidence. Merely because a piece of evidence is admissible does not mean that it must be accepted. Before accepting the evidence to hold that the fact in issue stands proved beyond reasonable doubt, the Court must evaluate the same against the weight of surrounding circumstances and other facts proven on record.

[17] In the instant case, the witnesses PW-1 and PW-2 were asked whether they took up the issue of motorcycle /cash demand with the accused. Their reply was that they did not, because they took it as a joke. We fail to understand how parents could treat their daughter's multiple reporting of apprehension to her life, on account of demand being not met, as a joke. This creates a serious doubt about the truthfulness of the allegation more so when there is no allegation that any such demand was ever raised either before or at the time of marriage. This doubt gets fortified by change in stance of PW-1 from what was taken in the FIR. Notably, in the FIR it was alleged that the accusedappellants including their elder son, and his wife, had directly raised demand for a motorcycle and cash. This allegation was not supported by the deposition of both PW-1 and PW-2 while admitting that appellant's elder son was a doctor serving in another district. Thus, there appears to be a knee-jerk reaction to the unnatural death of their daughter to make out a case of dowry death. Besides that, no independent witness of the vicinity was examined. In our considered view, therefore, one of the essential ingredients of dowry death, namely, any demand for dowry, was not proved beyond reasonable doubt.

[18] Indisputably, the accused have not been convicted for murder, and rightly so, because there was no worthwhile evidence to show that except for the burn injuries, which could be self- inflicted, the accused suffered any other antemortem injury. Moreover, the presence of the accused in the house at the time of occurrence is not proved. In such circumstances, the death was most probably suicidal though this would not make a difference for commission of an offence punishable under Section 304-B IPC if all the other ingredients of dowry death stand proved. But, as noted above, here harassment/ cruelty at the instance of the appellants in connection with any demand for dowry has not been proved beyond reasonable doubt. As regards the reason to commit suicide, though it is not necessary for us to dwell upon, suffice it to say that husband of the deceased was in service and stayed away from the deceased. Suggestion was given to the prosecution witnesses, and statement was also made under Section 313 CrPC, that the deceased used to remain depressed for being unable to join her husband at the place of his posting due to lack of residential quarter. That apart, a photograph of the

deceased (Ex. Kha 1), regarding which no dispute was raised by the prosecution witnesses, showing her alone with a male stranger had surfaced. In the statement under Section 313 CrPC a stand was taken that this photograph had shamed her. Be that as it may, once all the necessary ingredients of dowry death have not been proved beyond reasonable doubt, the presumption under Section 113-B of the Evidence Act would not be available to the prosecution. Hence, in our considered view, the appellants are entitled to be acquitted of the charge of offences punishable under Section 304-B and 498-A IPC.

[19] The appeal is accordingly allowed. The order convicting and sentencing the appellants under Section 304-B and 498-A IPC is set aside. The appellants are on bail. They need not surrender. Their bail bond(s) stand discharged.

[20] Pending application(s), if any, stand disposed of.

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1 Section 304-B. Dowry Death. (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation. -- For the purpose of this sub-section, 'dowry' shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 [28 of 1961].

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life

2 Section 113-B. Presumption as to dowry death. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, dowry death shall have the same meaning as in section 304 capital B of the Indian Penal Code [45 of 1860

2024(2)AIAJ539

IN THE SUPREME COURT OF INDIA

[From MADHYA PRADESH HIGH COURT]

[Before Sanjiv Khanna; Sanjay Kumar]

Criminal Appeal No 2030 of 2024 **dated 19/09/2024**

Santosh @ Rajesh @ Gopal

Versus

State of Madhya Pradesh

ACQUITTAL IN MURDER CASE

Indian Penal Code, 1860 Sec. 201, Sec. 34, Sec. 302, Sec. 120B - Evidence Act, 1872 Sec. 83 - Arms Act, 1959 Sec. 25 - Acquittal in Murder Case - Appellant was convicted of murder based on circumstantial evidence, including recovery of a pistol allegedly used in the crime - Ballistic report confirmed bullet matched the pistol recovered - Prosecution relied on co-accused's disclosure leading to recovery - Supreme Court held that circumstantial evidence was insufficient to prove appellant's involvement in the murder - Absence of direct evidence or corroboration linking the appellant to the crime - Conviction set aside - Appeal Allowed

Law Point: Circumstantial evidence must conclusively establish guilt by excluding all other hypotheses, and the absence of corroborative evidence weakens the prosecution's case in murder convictions.

Acts Referred:

Indian Penal Code, 1860 Sec. 201, Sec. 34, Sec. 302, Sec. 120B

Evidence Act, 1872 Sec. 83

Arms Act, 1959 Sec. 25

JUDGEMENT

Sanjiv Khanna, J.- [1] Five individuals, namely, Laadkunwar Bai, Jitendra Singh, Nirbhay Singh @ Rajesh Mama, Meharban Singh and the appellant, Santosh @ Rajesh @ Gopal, were prosecuted for the murder of Narayan Singh in the chargesheet arising out of First Information Report No. 640/2011 dated 13.11.2011, registered with Police Station - Industrial Area, District Dewas, Madhya Pradesh, for offence(s) punishable under Sections 302, 34 and 120B of the Indian Penal Code, 1860, and Section 25(1-B)(A) of the Arms Act, 1959.

[2] Three out of these five persons are related to the victim, Narayan Singh. Laadkunwar Bai and Jitendra Singh are the wife and son of the victim, Narayan Singh. Meharban Singh is the father-in-law of Jitendra Singh, the son of Narayan Singh. The remaining two persons, namely, Nirbhay Singh and the appellant, Santosh @ Rajesh @ Gopal, are allegedly hired killers.

[3] On 30.11.2017, the trial court acquitted Laadkunwar Bai and Meharban Singh. However, Nirbhay Singh @ Rajesh Mama, Jitendra Singh, and the appellant, Santosh @ Rajesh @ Gopal, were convicted.

[4] Following this, Nirbhay Singh @ Rajesh Mama, Jitendra Singh, and the appellant filed appeals before the High Court of Madhya Pradesh at Indore. During the pendency of the appeal, Nirbhay Singh @ Rajesh Mama passed away, resulting in the dismissal of his appeal as abated.

[5] By the impugned judgment dated 18.10.2022, Jitendra Singh has been acquitted. His acquittal has not been challenged. However, the conviction of the appellant, Santosh @ Rajesh @ Gopal, was upheld, prompting him to file the present appeal.

[6] The prosecution's case, in brief, is that on 13.11.2011, at 9.30 p.m., Rachna Bai, the mother of the victim, Narayan Singh, deposed as PW-2 that both she and Narayan Singh were sleeping at their house in Village Binjana, District Dewas, Madhya Pradesh. Someone called out Narayan Singh's name from outside, prompting him to open the door. At that moment, Rachna Bai (PW-2) heard a gunshot. She ran towards Narayan Singh, and shortly after, a second gunshot was fired, striking Narayan Singh in the chest, and causing him to fall. When Rachna Bai (PW-2) went outside, she saw her daughter-in-law, Laadkunwar Bai (Narayan Singh's wife), and Jitendra Singh (Narayan Singh's son) standing on the opposite side of the house. She also saw two individuals with their faces covered fleeing the scene on a motorcycle.

[7] The prosecution's primary evidence against the appellant, Santosh @ Rajesh @ Gopal, also referenced in the impugned judgment, is the recovery (Exhibit P-6) of a pistol and the ballistic report (Exhibit P-57), which confirms that the bullet (Exhibit B-1) recovered from the body of the victim, Narayan Singh, was fired from the country-made pistol (Exhibit A-1 and C-1). There is evidence to show that the pistol was recovered (Exhibit P-6) from the appellant, Santosh @ Rajesh @ Gopal, and we would accept the said version of the prosecution.

[8] There are no eyewitnesses to the crime, implicating the appellant, Santosh @ Rajesh @ Gopal. The case against the appellant, Santosh @ Rajesh @ Gopal, rests entirely on circumstantial evidence.

[9] Where the case rests entirely on circumstantial evidence, a finding of guilt is justified only if all the incriminating facts and circumstances are incompatible with the accused's innocence. In other words, there must be a chain of evidence so far complete, such that every hypothesis is excluded but the one proposed to be proved and such circumstances must show that the act has been done by the accused within all human probability. [Hanumant v. State of Madhya Pradesh,1952 2 SCC 71.]

[10] In **Sharad Birdhichand Sharda v. State of Maharasthra**, 1984 4 SCC 116. this Court outlined five essential principles, often referred to as the "golden rules",

which must be satisfied for circumstantial evidence to conclusively establish the guilt of the accused:

> "(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> xxx xxx xxx
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
>
> (3) the circumstances should be of a conclusive nature and tendency,
>
> (4) they should exclude every possible hypothesis except the one to be proved, and
>
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

[11] The ballistic report (Exhibit P-57) connects the pistol recovered (Exhibit P-6) from the appellant, Santosh @ Rajesh @ Gopal, with the bullet (Exhibit B-1) recovered from the body of the victim, Narayan Singh. This is an inculpatory fact. However, it is also the prosecution's case that the said discovery and recovery is attributable to the disclosure statement (Exhibit P-35) provided by the co-accused, Nirbhay Singh (since deceased). Such discovery and recovery at the instance of an accused are governed by Sections 8**[3]** and 27 **[4]** of the Indian Evidence Act, 1872 [For short, "Evidence Act".].

[12] This Court, in **Perumal Raja v. State, Represented By Inspector of Police**, 2024 1 SCR 87. has referred to **Mohmed Inayatullah v. State of Maharashtra**, 1976 1 SCC 828. which elucidated the conditions required to be satisfied under Section 27:

> "Section 27 of the Evidence Act is an exception to Sections 25 and 26 of the Evidence Act. It makes that part of the statement which distinctly leads to discovery of a fact in consequence of the information received from a person accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the accused. The fact which is discovered as a consequence of the information given is admissible in evidence. Further, the fact discovered must lead to recovery of a physical object and only that information which distinctly relates to that discovery can be proved."

The word, "distinctly", used in Section 27 relates to the discovered fact. Only that much which relates to the discovery of a physical object is admissible. The rest of the testimony is to be excluded. The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative

hypotheses, namely, (i) that the accused had himself deposited the physical items that were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show the involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case. Further, a fact already known to the police is not admissible under Section 27 of the Evidence Act.

[13] As the disclosure statement (Exhibit P-35) has led to the arrest of the appellant, Santosh @ Rajesh @ Gopal, the prosecution may take the benefit of Section 8 of the Indian Evidence Act, 1872. However, even assuming this to be the case, the absence of any corroborative evidence directly linking the appellant to the crime introduces a significant gap in facts as alleged in the chain of circumstances. In our view, this fails to establish a hypothesis of guilt that conclusively excludes all other reasonable possibilities.

[14] This Court, in **State of Maharashtra v. Suresh**, 2000 1 SCC 471. observed that when any incriminating material is discovered based on a disclosure statement, three hypotheses emerge: -

> "26. We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there..."

[15] In the present context, it is the prosecution's case that the location of the pistol was disclosed by the co-accused, Nirbhay Singh (since deceased). However, to establish that the appellant, Santosh @ Rajesh @ Gopal, participated in the murder, the prosecution must present further material and evidence linking the appellant to the actual crime. While the appellant, Santosh @ Rajesh @ Gopal, may be guilty of an offence under Section 201 of the IPC, the evidence provided by the prosecution is insufficient to secure a conviction for the murder of the victim, Narayan Singh, on 13.11.2011. Consequently, the prosecution has failed to prove that the appellant, Santosh @ Rajesh @ Gopal, is guilty of murder, either individually or with shared common intention or in conspiracy with the co-accused, Nirbhay Singh @ Rajesh Mama (now deceased).

[16] We, therefore, allow the present appeal and set aside the conviction of the appellant, Santosh @ Rajesh @ Gopal. The appellant, Santosh @ Rajesh @ Gopal, was granted bail by this Court on suspension of sentence, vide order dated 08.04.2024. The bail bonds and sureties furnished by the appellant, Santosh @ Rajesh @ Gopal, shall be treated as cancelled.

[17] The impugned judgment is set aside and the appeal is allowed. Pending application(s), if any, shall stand disposed of.

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3 Section 8 of the Evidence Act reads:

"8. Motive, preparation and previous or subsequent conduct.- Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto."

4 Section 27 of the Evidence Act reads:

"27. How much of information received from accused may be proved.- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved

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2024(2)AIAJ543

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

[Before Sanjay Kumar; Aravind Kumar]

Criminal Appeal No 313 of 2012, 314 of 2012 **dated 18/09/2024**

Saheb, S/o Maroti Bhumre Etc

Versus

State of Maharashtra

MURDER CONVICTION

Indian Penal Code, 1860 Sec. 324, Sec. 149, Sec. 148, Sec. 302 - Code of Criminal Procedure, 1973 Sec. 374 - Murder Conviction - Twenty-two persons were accused of murder - Trial court convicted nine of them under Sections 148, 302, 324 read with Section 149 of IPC - Nine appellants challenged the conviction - Prosecution's case stated that the accused attacked the deceased and his family with axes and sticks during a power cut - High Court upheld the conviction of three accused and acquitted the others due to lack of specific charges regarding the injuries caused - High Court relied on sole testimony of widow (PW-1), disbelieving other witnesses - Supreme Court found inconsistencies in widow's testimony - Held that the evidence of PW-1 was unreliable due to contradictions in her statements - Court noted appellants had

already served over ten years in prison - Benefit of doubt was extended to appellants - Appellants acquitted of charges and ordered release from custody - Appeals allowed

Law Point: Conviction cannot be sustained solely on unreliable and inconsistent testimony, especially when key witnesses fail to corroborate crucial facts. Benefit of doubt extended where evidence lacks clarity.

Acts Referred:

Indian Penal Code, 1860 Sec. 324, Sec. 149, Sec. 148, Sec. 302

Code of Criminal Procedure, 1973 Sec. 374

JUDGEMENT

Sanjay Kumar, J.- [1] Twenty-Two persons stood accused of the murder of Madhavrao Krishnaji Gabare and were tried by the learned Additional Sessions Judge, Basmathnagar, Maharashtra, in Sessions Trial No. 20 of 2006. By judgment dated 24.04.2008, the learned Additional Sessions Judge held nine of them guilty of offences punishable under Sections 148, 302 and 324, both read with Section 149, of the Indian Penal Code, 1860 (IPC). They were sentenced to imprisonment coupled with fine. Aggrieved thereby, all nine of them filed appeals under Section 374 Cr.P.C. before the High Court of Judicature of Bombay, Aurangabad Bench. Accused No. 2 (Khemaji s/o Maroti Gabare), was the appellant in Criminal Appeal No. 695 of 2008, Accused No. 3 (Saheb s/o Maroti Bhumre), was the appellant in Criminal Appeal No. 89 of 2009; and Accused No. 5 (Sitaram Pandurang Gabare), was the appellant in Criminal Appeal No. 618 of 2009. By judgment dated 06.12.2010, a Division Bench of the High Court sustained the conviction of Accused Nos. 2, 3 and 5 and acquitted the remaining six accused on the ground that the charges levelled against them were not specific in relation to the injuries afflicted on the deceased and other injured persons. Accused Nos. 2, 3 and 5 were also acquitted of the offence punishable under Section 324 IPC read with Section 149 IPC, but their conviction under Section 302 IPC read with Section 149 IPC and under Section 148 IPC were confirmed. Aggrieved thereby, Accused Nos. 3 and 5 are in appeal before this Court. Criminal Appeal No. 313 of 2012 was filed by Saheb, Accused No. 3, while Criminal Appeal No. 314 of 2012 was filed by Sitaram Pandurang Gabare, Accused No. 5. Significantly, Khemaji s/o Maroti Gabare, Accused No. 2, did not choose to file an appeal against the confirmation of his conviction.

[2] Both the appellants were incarcerated on 08.04.2006 and remained in custody. It was only on 30.06.2016 that this Court directed their release on bail. In effect, the appellants have suffered imprisonment for over ten years.

[3] The case of the prosecution was as follows: On 08.04.2006, at about 7.30-8.00 pm, the deceased Madhavrao Krishnaji Gabare and his family members, viz., his wife, Janakibai Gabare, their son, Ganesh, and their daughter-in-law, Annapurnabai, and others were attacked by the accused with axes and sticks at the residence of the

deceased in Village Singi. On Janakibai Gabare's complaint, FIR No. 36 of 2006 was registered. The deceased was stated to have expired on the spot. His post-mortem examination revealed that he had suffered as many as nine injuries. The cause of his death was ascertained as - head injury and intracranial hemorrhage with multiple fractures. Nine other persons were said to have been injured during the incident. The cause for the altercation was stated to be political rivalry. The deceased, as per his widow, was the Sarpanch of the Village about 15 years prior to the incident and since then, Khemaji and Sambhaji, two of the accused, were on inimical terms with him. Thereafter, Laxmibai, the wife of the nephew of the deceased, became the Sarpanch of the Village, leading to further animosity. Significantly, both Khemaji and Sambhaji were the nephews of the deceased being the sons of his brothers, Maroti and Deorao.

[4] Admittedly, at the time of the incident, there was a power cut due to load shedding, but according to the widow, Janakibai, who was examined as PW-1, there was sufficient moonlight to identify all the accused and the weapons that they used during the attack. Fifteen witnesses, in all, were examined by the prosecution to bring home the guilt of the accused. Documents and material objects were marked in evidence through them. PW-1 (Janakibai Gabare), PW-4 (Kamalbai Gabare), PW-5 (Govind Gabare) and PW-8 (Ganesh Gabare) were examined as eye-witnesses to the attack on the deceased. All four of them are closely related. As already noted, Janakibai Gabare is the wife of the deceased while Ganesh Gabare is their son. Govind Gabare is the nephew of the deceased and Kamalbai Gabare is his wife. The Trial Court, having placed reliance on the evidence of these witnesses, came to the conclusion that except Accused Nos. 1 to 5, 11 to 13 and 15, none of the other accused participated in the assault on the deceased. Holding so, the Trial Court convicted and sentenced Accused Nos. 1 to 5, 11 to 13 and 15 accordingly.

[5] However, in appeal, the High Court found that there was no indication as to when Govind Gabare (PW-5) and his wife, Kamalbai Gabare (PW-4), actually came to the spot so as to witness the incident. Janakibai (PW-1) had clearly stated that, at the time of the incident, she, along with her husband, her son, Ganesh (PW-8), and daughter-in-law, Annapurnabai, were present in the house. In view of this, the High Court disbelieved that PW-4 and PW-5 were eye-witnesses. Similarly, the evidence of Ganesh Gabare (PW-8) was discarded by the High Court on the ground that he did not state anything about the assault on the deceased. The High Court, therefore, placed reliance only upon the evidence of Janakibai (PW-1). Even in relation to her testimony, the High Court recorded that she had, no doubt, embroidered her story but concluded that it did not mean that her evidence was not reliable totally. As she had stated that the assault on the deceased was made by Khemaji (Accused No. 2), Saheb (Accused No. 3) and Sitaram (Accused No. 5), the High Court acted upon the same. As she did not attribute any overt act or active participation to Sambhaji who had accompanied Khemaji (Accused No. 2), the High Court gave him the benefit of doubt. Similarly, the other accused, who were found guilty by the Trial Court, were let off by

the High Court on the ground of omissions. Insofar as conviction under Section 324 IPC read with Section 149 IPC was concerned, the High Court opined that as no specific charges were levelled against each of the accused in relation to inflicting of the injuries sustained by injured persons, as evidenced by their medical certificates, their conviction under Section 324 IPC read with Section 149 IPC could not be sustained.

[6] We are conscious of the fact that Madhavrao Krishnaji Gabare was brutally murdered in his own house on 08.04.2006, but the guilt of those responsible for his murder has to be proved beyond reasonable doubt. All that the defence needs to establish is the existence of reasonable doubt for the accused to be given the benefit thereof. In the case on hand, the guilt of the appellants hinges solely upon the testimony of the widow, Janakibai (PW-1), as the other so-called eye-witnesses have been discarded by the High Court. Notably, Annapurnabai, the daughter-in-law, a key eye-witness by all accounts, was not even examined by the prosecution.

[7] Certain facts, admitted as they are, may first be noted. The incident occurred between 7:30-8:00 PM on 08.04.2006 and there was a power cut at that point of time. The attack upon the deceased appears to have been in the courtyard of his house, as his dead body was also found there. However, except for the statement of Janakibai (PW-1), that there was moonlight at that time, no other evidence has been adduced by the prosecution to substantiate that fact. Further, Janakibai (PW-1) also does not state that it was a full-moon night or, at least, nearing the full-moon night, whereby the moonlight would have been bright enough for her to see, with clarity and certainty, the events that unfolded during the attack, i.e., the weapons used in the course thereof and the persons who actually wielded those weapons.

[8] In her deposition before the Trial Court, Janakibai (PW-1) stated that, at the time of the incident, along with the deceased, their son, Ganesh, daughter-in-law, Annapurnabai, and she were present in the house. Accused No. 2, Khemaji, and Accused No. 4, Sambhaji, allegedly came to the house and the rest of the accused followed them. She further stated that Accused No. 13, Chandu Gabare, caught hold of the hands of the deceased and Accused No. 2, Khemaji; Accused No. 3, Saheb; and Accused No. 5, Sitaram; dealt axe blows to him. The rest of the accused were stated to be holding sticks in their hands. She said that the deceased succumbed to the injuries on the spot. She further stated that one of the accused hit her on the head with a stick and that, her son, Ganesh, and her daughter-in-law, Annapurnabai, were also beaten. She then added that the accused also beat Govind Gabare and others. According to her, one of the accused picked up Govind's infant daughter from the cradle and threw her down. Thereafter, she said that all the accused persons ran away from the spot. She identified the complaint given by her in the hospital which was marked as Exh-111. In her cross-examination, PW-1 stated that, except for Khemaji, Accused No. 2, and Sambhaji, Accused No. 4, they had cordial relations with the other accused till the

incident. She stated that the moon was there on that night at about 7:00 PM and denied the suggestion that the moon rose at 10:00 PM on that day. She further denied that there was darkness throughout the village due to load shedding. She further stated that Ganesh and Pravin, her sons, had not taken dinner at home on that night. She added that they were intending to take their dinner after her sons ate. She claimed that the deceased returned to the house at 7:30 PM and that she did not enquire with him about his dinner. She again stated that one of the accused picked up Govind's 2-3 months old daughter and threw her in front of the house. She, however, did not know whether the baby sustained any injury, which is rather unbelievable and manifests that this allegation was an afterthought, added to shock and prejudice the Court. She conveniently claimed that she had stated this fact but the same was not recorded in her complaint given at the hospital. She further stated that she could not say as to which accused had held which axe or stick in his hand. According to her, the incident went on for two hours!! She then stated that the accused first beat the deceased and, thereafter, hit her on the head. She said that she lost consciousness after she was given the blow on the head and remained unconscious till she was taken to the hospital at Basmathnagar.

[9] Significantly, in her complaint recorded on 09.04.2006 at the hospital, Janakibai (PW-1) had a different story to tell. She stated that the deceased and Ganesh, her son, had their dinner and she along with her daughter-in-law were just sitting down to have their dinner at the time the attack occurred. She further stated that the accused, without speaking a single word, started beating the deceased and her, her son, Ganesh, her daughter-in-law, Annapurnabai, her nephew, Govind, and others. She identified Khemaji, Accused No. 2; Sitaram, Accused No. 5; Saheb, Accused No. 3 and Chandu Gabare, Accused No. 13, as the persons who had axes and who attacked them with the same. She further stated that she was hit on the head and was also injured on her back but owing to the chaos, she did not know who had hit her.

[10] Juxtaposition of her deposition before the Trial Court and her initial complaint clearly demonstrate that Janakibai (PW-1) embellished her narration of how the attack occurred, resulting in a lot of inconsistencies. On the one hand, she stated that Chandu, Accused No. 13, was holding an axe and was one of the persons who attacked with an axe, but on the other, she stated that Chandu caught hold of the hands of the deceased as soon as the accused came to their house, which would mean that he was unarmed. Further, she clearly tried to include more witnesses and added extra details of the assault in her deposition. The contradictions in her story would raise reasonable doubt, as her statement in her deposition that she was attacked after the attack on the deceased was made to buttress her narration as to who attacked the deceased with axes, but in the first instance, she had stated that the accused attacked all of them as soon as they entered the house.

[11] Picturing a scenario where twenty-two persons entered into the premises armed with axes and sticks on a dark night, even if dimly lit by moonlight, it is difficult to believe that, in the melee that ensued, any person who was under attack would be in a position to identify, clearly and with certainty, as to who was assaulting whom and with what weapon. More so, as PW-1 claimed that Sambhaji, Accused No. 4, was one of the first persons to enter the premises along with Khemaji, Accused No. 2, but no attack was attributed to him, leading to his acquittal by the High Court.

[12] It is no doubt possible that PW-1 could have identified the accused who first entered the premises armed with axes and launched the initial attack on her husband, but given her contrary statements on even these crucial facts and more particularly, in the context of Sambhaji, Accused No.4, and Chandu, Accused No.13, her evidence is placed wholly in the realm of uncertainty and no credence can be given to her solitary testimony on any aspect. Though the maxim 'Falsus in uno, falsus in omnibus' is only a rule of caution and has not assumed the status of a rule of law in the Indian context, an attempt must be made to separate truth from falsehood and where such separation is impossible, there cannot be a conviction (See **Narain vs. State of M.P**, 2004 2 SCC 455). We find that to be so in the case on hand.

[13] As already noted, the appellants have suffered 10 years' incarceration. Given the lacunae in the prosecution's case and the shaky evidence adduced in support thereof by PW-1, we necessarily have to extend the benefit of doubt to the appellants. The appellants are, therefore, acquitted of the offences under Section 148 IPC and Section 302 IPC read with Section 149 IPC.

The appeals are accordingly allowed.

The bail bonds and sureties furnished by the appellants shall stand discharged. Fine amount, if any, paid by the appellants shall be refunded

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2024(2)AIAJ548

IN THE SUPREME COURT OF INDIA

[From ALLAHABAD HIGH COURT]

[Before Sanjiv Khanna; Sanjay Kumar; R Mahadevan]

Criminal Appeal No. 2294 of 2024 **dated 12/09/2024**

Lav Kumar @ Kanhiya

Versus

State of Uttar Pradesh

KIDNAPPING AND MURDER

Indian Penal Code, 1860 Sec. 201, Sec. 302, Sec. 364A - Evidence Act, 1872 Sec. 65B - Arms Act, 1959 Sec. 25, Sec. 4 - Kidnapping and Murder - Appellant was convicted

under Sections 364A, 302, and 201 of IPC, and Section 25 of the Arms Act, for the kidnapping and murder - Decomposed body was found days after his disappearance - Prosecution relied on circumstantial evidence, including the appellant's relationship with the deceased, phone call records, and recovery of the body and a knife at his instance - Court found significant gaps in the investigation, especially in the timing of the recovery of the body, the role of the investigating officers, and failure to follow due process in phone record evidence - Appellant's connection with the crime not conclusively established beyond reasonable doubt - Conviction set aside - Appellant acquitted. - Appeal Allowed

Law Point: Conviction based on circumstantial evidence requires an unbroken chain of events leading to guilt-significant gaps in evidence weaken the prosecution's case and necessitate acquittal.

Acts Referred:

Indian Penal Code, 1860 Sec. 201, Sec. 302, Sec. 364A

Evidence Act, 1872 Sec. 65B

Arms Act, 1959 Sec. 25, Sec. 4

JUDGEMENT

Sanjiv Khanna, J.- [1] The impugned judgment dated 26.10.2018 passed by the High Court of Judicature at Allahabad affirms the conviction of Lav Kumar @ Kanhiya in the chargesheets, arising out of First Information Report [For short, "FIR".] No. 540/2011 dated 05.07.2011 for the offences punishable under Sections 364A, 302 and 201 of the Indian Penal Code, 1860 [For short, "IPC".], and FIR No. 582/2011 dated 05.07.2011 for the offences punishable under Section 4/25 of the Arms Act, 1959 [For short, "1959 Act".], both registered at Police Station Sikandra, District Agra, Uttar Pradesh. As the two FIRs arose from the same incident, the trial court consolidated and disposed of Session Trial Case Nos. 447/2011 and 448/2011 together.

[2] The deceased, Vivek Goyal @ Vicky/Vikky went missing on 04.07.2011 and a report of kidnapping and ransom was filed, resulting in registration of FIR No. 540/2011 on 05.07.2011. The report refers to a telephonic call received by Ranjana Gupta, who has not been examined, on her mobile phone from a person who was using the SIM card of the deceased, Vivek Goyal @ Vicky/Vikky. He had demanded a ransom of ?50,00,000/- (Rupees Fifty Lakh only).

[3] One Monu Saxena was statedly arrested on 06.07.2011 at about 11.30 p.m. on the basis of Call Detail Records [For short, "CDRs".] of the connected mobile phones kept under surveillance. However, he was found dead in police custody and lock-up on 07.07.2011 at about 7.45 a.m.

[4] We have examined the testimony of J.N. Asthana (PW-4), the first Investigating Officer, who arrested Monu Saxena. He accepted in his testimony that on surveillance of four mobile numbers belonging to Ranjana Gupta, Dinesh Goyal

(complainant/father of the deceased), and two mobile numbers of the deceased, Vivek Goyal @ Vicky/Vikky, the name and mobile number of the appellant, Lav Kumar @ Kanhiya, came to notice on 06.07.2011. In spite of knowing the details of Lav Kumar @ Kanhiya, including the name and address of his father, Ashok Kumar Sharma, J.N.Asthana (PW-4) did not make any enquiries from him.

[5] The second Investigating Officer, Surya Kant Dwivedi (PW-8), in his cross-examination, stated that he could not remember whether on the intervening night of 8/9 July 2011, he had received the phone call regarding recovery of the dead body of Vivek Goyal @ Vicky/Vikky (deceased) on his mobile number or landline of the police station. In fact, he accepted the suggestion that he had not even seen the dead body of Vivek Goyal @ Vicky/Vikky (deceased). Further, he had gone to the place of recovery of the dead body on the pointing out of Arun Kumar Sharma, Inspector, Police Station New Agra, Uttar Pradesh (PW-2).

[6] Arun Kumar Sharma (PW-2) was not the Investigating Officer of this case. He claims that while on patrolling and search duty on 08.07.2011, he received information from an informer regarding the whereabouts of the appellant, Lav Kumar @ Kanhiya, who was wanted in FIR No. 540/2011. The informer stated that the appellant, Lav Kumar @ Kanhiya, could be arrested, if immediate action is taken. The informer identified the appellant, Lav Kumar @ Kanhiya, who was then taken into custody. The appellant, Lav Kumar @ Kanhiya, then took Arun Kumar Sharma (PW-2) to an empty shop in Nandini Building Material, Nagla Padma, Gwalior Road, Agra, Uttar Pradesh. Upon entry into the said shop, a decomposed dead body was recovered. He then made a telephone call to the father of the deceased, Vivek Goyal @ Vicky/Vikky, namely, Dinesh Kumar Goyal, who deposed as PW-1 and whose statement, we will refer to, hereinafter.

[7] Interestingly, the panchanama of the dead body of Vivek Goyal @ Vicky/Vikky was prepared in the morning, at about 7.30 a.m. on 09.07.2011. The aforesaid exercise was undertaken by the police officers from Police Station Sadar Bazar, Agra, Uttar Pradesh. As noticed above, the second Investigating Officer, Surya Kant Dwivedi (PW-8), who had taken over investigation from the first Investigating Officer, J.N. Asthana (PW-4), on 07.07.2011 was not informed of the developments. Prosecution did not examine any witnesses from Police Station Sadar Bazar. The prosecution has, however, examined Naresh Kumar Goyal (PW-6), a witness to the panchanama for recovery of the dead body. He deposed that he knows Dinesh Kumar Goyal (PW-1), the father of the deceased, Vivek Goyal @ Vicky/Vikky. In the morning of 09.07.2011, Naresh Kumar Goyal (PW-6) had travelled from his residence 12-13 kms. away to reach the place of recovery, that is, the empty shop in Nandini Building Material, Nagla Padma, Gwalior Road, Agra. This was after information was given to him by the family of Dinesh Kumar Goyal (PW-1).

[8] It is clear from the deposition of J.N. Asthana (PW-4) that he had come to know about the mobile numbers, including the alleged possible involvement of Monu Saxena and Lav Kumar @ Kanhiya either in the evening/night of 05.07.2011 and certainly by morning hours of 06.07.2011. The arrest of Monu Saxena is accepted and admitted by the prosecution. He remained in custody for about 12 hours, if not more than that. He had suffered several injuries, including injuries on his knees. There were also injury marks on his legs.

[9] J.N. Asthana (PW-4) was later on suspended and an FIR under Section 302 of the IPC was registered, albeit the final report has been accepted by the trial Court.

[10] It is an accepted position that the dead body of Vivek Goyal @ Vicky/Vikky was highly decomposed, and the entire room was smelling. As per the postmortem report (marked Exhibit 'Ka.1'), Vivek Goyal @ Vicky/Vikky had died 4-5 days before the postmortem, which was conducted on 09.07.2011 at about 10.30 p.m. There is evidence that the property/building from where the dead body was recovered, was surrounded by other houses and residences. It is difficult to believe that the smell/stink emanating from the dead body, which was lying in the said property/building for 4-5 days, would have gone unnoticed.

[11] We have already commented upon the evidentiary value and our doubts on the time/place of panchanama and the deposition of Naresh Kumar Goyal (PW-6). The panchanama with regard to the recovery of the dead body, which was statedly recovered shortly after the purported arrest of Lav Kumar @ Kanhiya at 10.10 p.m. on 08.07.2011, was drawn up much later in the morning at around 7.30 a.m. on 09.07.2011.

[12] The disclosure statement resulting in the recovery of the dead body at the behest of the appellant, Lav Kumar @ Kanhiya, is highly debatable, if not a pretence. We are not satisfied in the present case that any 'disclosure' can be attributed to the appellant, Lav Kumar @ Kanhiya, leading to the recovery of the dead body of the deceased, Vivek Goyal @ Vicky/Vikky. The arrest of the appellant, Lav Kumar @ Kanhiya, by Arun Kumar Sharma (PW-2) is also debatable.

[13] The prosecution also relies upon CDRs, for which, officers from the telecom companies, namely, Rajeev Singh Sanger and Awadh Jain, were examined as PW-9 and PW-10. However, they did not produce certificates under Section 65B of the Indian Evidence Act, 1872. Even if we are to ignore the non-production of the said certificates, the CDRs would only reveal that there were occasional conversations between the deceased, Vivek Goyal @ Vicky/Vikky and the appellant, Lav Kumar @ Kanhiya. The CDRs also reveal that Monu Saxena had used the SIM card of the deceased, Vivek Goyal @ Vicky/Vikky. However, the appellant, Lav Kumar @ Kanhiya, had not used the SIM card of the deceased, Vivek Goyal @ Vicky/Vikky.

[14] Dinesh Kumar Goyal (PW-1), the father of the deceased, Vivek Goyal @ Vicky/Vikky, has accepted that the appellant, Lav Kumar @ Kanhiya, had worked in his garment shop for one year. His son, Vivek Goyal @ Vicky/Vikky, was acquainted with Lav Kumar @ Kanhiya. He had also accepted that Vivek Goyal @ Vicky/Vikky may be knowing Monu Saxena. A telephone call demanding ransom was made to Dinesh Kumar Goyal (PW-1) on 06.07.2011. Further, in his cross-examination, Dinesh Kumar Goyal (PW-1) accepted that Lav Kumar @ Kanhiya had not made the said call, as he would have recognized his voice. Dinesh Kumar Goyal (PW-1), in his cross examination, accepted that Monu Saxena had made a confession or disclosure statement before the police, and he was aware of the same. About his visit to the property/building, that is, Nandani Building Material, Nagla Padma, Gwalior Road, Agra, he stated that it was dark when he visited the spot. Further, by the time he reached the spot, the body of Vivek Goyal @ Vicky/Vikky was being put in a plastic kit.

[15] The appellant, Lav Kumar @ Kanhiya, was certainly acquainted and known to the deceased, Vivek Goyal @ Vicky/Vikky, but this would not be sufficient to convict him for the offences in question.

[16] The police also relied upon recovery of a knife at the behest of the appellant, Lav Kumar @ Kanhiya, but the said knife was recovered at least 13-14 days after the arrest of the appellant, Lav Kumar @ Kanhiya. The said recovery would not, in any way, change our opinion about the prosecution's case.

[17] To safely opine and affirm that the appellant, Lav Kumar @ Kanhiya, is the perpetrator, we must ensure that the chain of evidence is so complete as not to leave any reasonable ground for the conclusion consistent with his innocence and must show that in all human probability the act must have been done by him.5 As highlighted above, the prosecution version leaves significant chinks and cracks in the chain of circumstances. In view of the aforesaid position, we feel that the prosecution evidence does not establish a case beyond doubt against the appellant, Lav Kumar @ Kanhiya.

[18] Accordingly, the impugned judgment is set aside and the appeal is allowed. The appellant, Lav Kumar @ Kanhiya, is acquitted of the charges under Sections 364A, 302 and 201 of the IPC as well as Section 4/25 of the 1959 Act.

[19] Pending applications, if any, shall stand disposed of

2024(2)AIAJ553

IN THE SUPREME COURT OF INDIA

[From KERALA HIGH COURT]

[Before Sudhanshu Dhulia; Ahsanuddin Amanullah]

Criminal Appeal No 3700 of 2024 **dated 03/09/2024**

Mallan @ Rajan Kani

Versus

State of Kerala

RAPE CONVICTION

Indian Penal Code, 1860 Sec. 376 - Rape Conviction - Appellant convicted under Section 376 IPC for repeatedly raping his stepdaughter in a forest and at their home - Conviction upheld by the High Court, and appellant sentenced to life imprisonment with a fine of Rs. 2 lakhs - Appellant sought sentence reduction, citing financial difficulties and having served over 8 years in prison - Court reduced the sentence to 10 years but retained the fine - Failure to pay fine within one year would result in an additional one-year sentence - Appeal disposed of accordingly. - Appeal Partly Allowed

Law Point: Courts may reduce sentences considering the totality of circumstances, but fines imposed must still be paid within a specified period to avoid further imprisonment.

Acts Referred:

Indian Penal Code, 1860 Sec. 376

Counsel:

D N Goburdhun (Senior Advocate), Nidhi, Harshad V Hameed, Dileep Poolakkot, Ashly Harshad, Farhad Tehmu Marolia

JUDGEMENT

[1] Leave granted.

[2] The appellant has been convicted and sentenced for life imprisonment with fine of Rupees Two lakh in default to pay the fine to undergo RI for two more years for the offences punishable under Section 376 of the Indian Penal Code, which has been upheld in appeal before the High Court vide order dated 14.12.2021. The case of the prosecution against the appellant is that he is the step father of the victim and the he used to insist that the victim accompany him to the nearby forest to collect fire woods where she was raped by the appellant. The victim also states that the appellant had raped her on previous occasions as well, at the very same forest and also at her dwelling house.

[3] Under these circumstances, we see absolutely no reason to interfere with the well-considered finding of the Trial Court as well as the High Court on conviction.

[4] Learned senior counsel for the appellant thereafter argue on the sentence. Presently, the appellant is in his 40s and he had already undergone more than 8 years of the sentence. His financial condition is such that he will never been able to pay the fine of Rupees Two lakh which has been additionally imposed upon him, states his counsel who has been assigned to argue this Court as a legal aid matter.

[5] Having consider the totality of the facts and circumstances of the case, we reduce the sentence to 10 years and retain the fine amount as Rupees Two lakhs. The appellant shall pay the said fine amount within a period of one year from today.

[6] In case the said fine amount is not paid by the appellant within the stipulated time, the appellant shall undergo one year (instead of two years RI) of further sentence.

[7] The appeal stands disposed of in the above terms.

[8] All pending applications stand disposed of

2024(2)AIAJ554

IN THE HIGH COURT OF KERALA AT ERNAKULAM

[Before Raja Vijayaraghavan V; G Girish]

Crl A (Criminal Appeal) No 981 of 2021 **dated 24/09/2024**

Ansar V K

Versus

State of Kerala; Station House Officer

CIRCUMSTANTIAL EVIDENCE ACQUITTAL

Indian Penal Code, 1860 Sec. 376, Sec. 392, Sec. 302, Sec. 376A, Sec. 397 - Code of Criminal Procedure, 1973 Sec. 232, Sec. 313, Sec. 174 - Evidence Act, 1872 Sec. 32 - Circumstantial Evidence Acquittal - Appellant was convicted under IPC for murder, rape, and robbery of a woman, largely based on circumstantial evidence and recovery of stolen ornaments - Witnesses placed him near the crime scene and mentioned mud on his clothes, but there were inconsistencies - Scientific evidence, including DNA analysis, failed to link him to the crime - Court found lapses in investigation, improper handling of forensic evidence, and weak recovery testimony - It concluded that the prosecution's case lacked conclusive proof, leaving room for reasonable doubt - Conviction overturned - Appellant acquitted - Appeal Allowed

Law Point: In cases relying on circumstantial evidence, the prosecution must establish a complete chain of evidence that excludes all reasonable hypotheses of innocence.

Acts Referred:

Indian Penal Code, 1860 Sec. 376, Sec. 392, Sec. 302, Sec. 376A, Sec. 397

Code of Criminal Procedure, 1973 Sec. 232, Sec. 313, Sec. 174

Evidence Act, 1872 Sec. 32

Counsel:

T U Sujithkumar, Alex M Thombra

JUDGEMENT

Raja Vijayaraghavan V, J.- [1] This appeal has been preferred by the accused in S.C.No.1084 of 2017 on the file of the Special Judge for the Trial of Offences Against Women and Children (Additional Sessions Judge-I), Thalassery.

[2] In the above case, the appellant was charged for having committed offences punishable under Sections 376A, 392, 397, and 302 of the IPC.

The incident:

[3] On 14.8.2017, Reeja, a loving wife and mother, left her home in Kariyad to perform the most ordinary of tasks buying fish for her family and for her sister-in-law. Her family would have expected her return in a short while, unaware that this journey would tragically be her last. As Reeja walked towards Puthiya Road, traversing the familiar dirt path she had likely taken countless times before, she was allegedly intercepted by the accused. The prosecution alleges that at this moment, in broad daylight, an unspeakable horror unfolded. The appellant, with criminal intent, attempted to commit sexual assault on Reeja. She resisted valiantly, but he got the better of her and he is alleged to have cruelly smothered her nose and mouth, leaving her unconscious. The accused is alleged to have committed penetrative sexual assault while she lay in the water channel unconscious. As if the brutality was not enough, the prosecution further alleges that the accused forced Reeja's head into the shallow waters, leaving her to drown. He also snatched the gold ring and gold chain thereby breaking the chain into two pieces. One piece was left in the drain. Everything happened within 150 meters of her residence and near to scores of houses situated within a distance of 100 meters or less. This is the tragic sequence of events that led to the charge against the accused.

Registration of the Crime and it's aftermath:

[4] Kottur Balan (PW1), the Municipal Counsellor of Panoor Municipality, was informed over the phone at about 4:00 p.m. that a lady was lying dead in the Kelothuthazhe paddy field under the culvert. He immediately rushed to the Chokli Police Station and lodged information, based on which, Ext. P30 FIR in Crime No. 768 of 2017 of the Chokli Police Station was registered at 5:40 p.m., on 14.08.2017 under Section 174 of the Code of Criminal Procedure. The Sub Inspector of Police, Chokli Police Station, (PW36), reached the spot and prepared Ext.P2 inquest report at

about 5:50 p.m. and concluded the same at 7:20 p.m. on 14.08.2017. It is stated in Column No. 12 of the inquest that some injuries are found on the body of the deceased, and some ornaments have been lost. However, at that point of time, no one was being suspected. The investigation was taken over by the Inspector of Police, Panoor Police Station (PW38), on 15.08.2017 at 9:30 a.m. He prepared the scene mahazar. He forwarded a report to the court adding Section 302 of the IPC. Within about 24 hours from the time the crime was registered, the Investigating Officer zeroed in on the appellant as the likely killer. At about 7:00 p.m. on 15.08.2017, the appellant was arrested. Items found in his possession, such as two mobile phones (MO20 & MO21), a SIM card (MO22), purse (MO15), Currency notes (MO16 series), Aadhar card (MO17) and Driving Licence (MO18), were seized as per Ext.P33 Inspection Memo. On the next day, the appellant is alleged to have given a disclosure statement, based on which MO3 ring and MO4 a piece of gold chain were recovered from the terrace of a three-storeyed building, where the establishment by name "Marva Timber Syndicate" was functioning. On the same day, at about 11:00 a.m., based on the disclosure made by the accused MO6 T-shirt, MO7 pair of shoes, and MO8 underwear, alleged to have been worn by the appellant at the time of the commission of the crime, were seized from the precincts of his residential home, kept concealed under a stone, as per Ext. P5 mahazar. The clothes as well as the shoes were found smeared with mud. The Investigating Officer obtained the services of the scientific expert to collect the soil from the scene of the crime, and the same was seized as per Ext.P20 Seizure mahazar. The blood sample and nail clippings of the appellant were collected by PW25, Assistant Surgeon, General Hospital, Thalassery, and the same was seized as per Ext.P22 Seizure Mahazar. PW24, Professor, Forensic Medicine, Pariyaram Medical College, who conducted the autopsy, also collected vaginal swabs and blood smears of the deceased and forwarded the same to the Forensic Science Laboratory, through the court. In the course of the investigation, Ext.P44 report was submitted incorporating Section 376 of the IPC, and Ext.P46 report was submitted incorporating Sections 302 and 392 of the IPC. After the completion of the investigation, the final report was laid before the Judicial First Class Magistrate, Thalassery. The committal proceedings were initiated and the case was committed to the Court of Sessions, Thalassery, from where the case was made over to the Special Judge for the Trial of Offences Against Women and Children (Additional Sessions Judge-I), Thalassery.

Evidence let in:

[5] The prosecution examined PWs 1 to 38 to prove its case and through them, Exts.P1 to P46 were exhibited and marked. Material Objects were produced and identified as MOs 1 to 22. After the close of the prosecution evidence, the incriminating materials were put to the accused under Section 313 of the Cr.P.C. He emphatically denied the circumstances brought out against him and maintained his innocence. On finding that the accused could not be **acquitted** under Section 232 of

the Cr.P.C., he was called upon to enter his defence. No evidence was adduced by the defence.

Findings of the learned Sessions Judge:

[6]

6(a) The evidence let in by the prosecution established beyond a semblance of doubt that the death of Reeja was a clear case of homicide. 6(b) The evidence tendered by Sri. Balan V.T (PW9), Sri. Dinesan. P (PW10), Sri.C.P Gangadharan (PW11), and Smt.Pushpa. E (PW13) establishes that the appellant was seen in and around the scene of the crime, at or about the time when the deceased had come out of her house to go to Puthiya Road to buy fish.

6(c) PW9, PW11, PW12, and PW17 had stated that the clothes worn by the appellant were untidy, and they had noticed the presence of mud in his clothes. The presence of mud on the dress of the appellant, coupled with the specific case of the prosecution that the deceased was sexually violated and after pushing her into the water channel, her face was pushed down to force her to drown in the shallow water, is a gravely incriminating circumstance.

6(d) Recovery of the MO3 wedding ring, containing the inscription 'GOPI' and MO4 a piece of gold chain from the terrace of 'Marva Timbers Syndicate', based on the disclosure statement given by the appellant is a seriously incriminating circumstance. Ext.P28 report is to the effect that MO1 and MO4 are pieces of the same gold chain.

6(e) Failure of the accused to offer sufficient explanation for the three injuries noted by the Assistant Surgeon, Community Health Center, Panoor (PW20), after examining the appellant immediately after his arrest.

6(f) Presence of mud in MO5 to MO8 clothes, allegedly worn by the appellant at the time of occurrence, seized based on the disclosure statement given by him. Failure of the appellant to offer a proper explanation for the presence of mud in his clothes is an incriminating circumstance.

6(g) Presence of spermatozoa in MO8 underwear of the accused and the presence of spermatozoa in the vaginal swab collected from the body of the deceased is a strong link in the chain of circumstantial evidence.

6(h) The evidence let in by PW6, PW7 and PW13, brings out an incident that took place a couple of days earlier, wherein, the appellant had attempted to sexually assault the deceased. The statement made by the deceased to her daughter and Smt. Pushpa is admissible under Section 32(1) of the Indian Evidence Act, 1872 as a statement relating to the circumstances of the transactions that resulted in the death of the deceased.

6(i) Some injuries were found on the body of the appellant which can only be injuries caused by the deceased while she was being violated.

The sentence imposed:

[7] The accused was found guilty and was sentenced to undergo imprisonment for life and to pay a fine of Rs.1,00,000/- under Section 302 of the IPC and in default to undergo rigorous imprisonment for one year; to undergo RI for life and to pay a fine of Rs.1,00,000/- under Section 376A of the IPC and in default of payment of fine to undergo RI for one year; to undergo RI for 10 years and to pay a fine of Rs.25,000/- under Section 392 of the IPC and in default of payment of fine to undergo RI for six months.

The contentions of the appellant:

[8] Sri. Sujithkumar T.U, the learned counsel appearing for the appellant, submitted that none of the circumstances relied on by the learned Special Judge/Additional Sessions Judge-I could be considered as reliable enough to point unerringly toward the guilt of the appellant. He referred to the observations in **State of Gujarat v. S.D Soni**, 1991 AIR(SC) 917, and it is urged that the circumstances established was not consistent with the hypothesis of the guilt of the accused The learned counsel urged that the learned Sessions Judge totally erred in relying on the evidence of PW9, PW10, PW11, and PW13, particularly when a reading of the evidence showed that they were lying on material points. They had also embellished their evidence extensively while deposing before the Court. A proper evaluation of their evidence would have revealed that no incident of the nature alleged by the prosecution had in fact taken place. The appellant was implicated solely on the basis of the statement given by Balan (PW9) that the appellant was seen standing near a shop room in the vicinity of the place of occurrence, that the arrest of the appellant was recorded at 7:00 p.m. on 15.08.2017. It is argued by the learned counsel that the prosecution narrative is implausible and defies logic. The suggestion that the appellant approached the victim in an area quite near to her home and in the near vicinity of PW9 and PW10 and several houses, that he rendered the victim unconscious by smothering her, then committed sexual assault in an open area, followed by pushing her into a water channel to drown, and thereafter proceeded to visit a timber shop and a mosque wearing the same clothes used during the crime, only to later conceal these clothes under a wall near his house, is nothing short of a fabricated and far-fetched story. Such a sequence of events is highly improbable, making it difficult to accept as a believable account of the incident. After the arrest of the appellant, a false recovery was set up to link him with the crime. The learned counsel would point out that two mobile phones were seized from the possession of the appellant. However, no scientific investigation was carried out to ascertain whether the appellant was in the vicinity of the murder scene at 12 noon or thereafter. It is urged that Ext.P15 call details revealed that the last call made by the appellant from his mobile phone was at 11:47 a.m., and no data was collected to show the location of the appellant thereafter. It is submitted that the portion of the gold chain which was allegedly seized from the

body of the deceased on 14.08.2017 and the gold ornaments which were seized based on the disclosure statement given by the appellant on 16.08.2017, were not sent to the court forthwith. Instead, Ext.P40 report was submitted before the jurisdictional Magistrate by the Investigating Officer on 16.08.2017, stating that the gold ornaments seized based on the disclosure statement and the clothes worn by the accused could not be forthwith forwarded to the court, as the same was required for showing it to the witnesses for identifying the same. This aspect is highlighted by the learned counsel to advance his contention that the attempt of the Investigating Officer was to concoct false evidence. It is further submitted that it cannot be believed that the accused would leave out the longer portion of the gold chain at the scene of the crime itself, and take only a smaller portion, so as to enable the Investigating Officer to recover the same at a later stage. Relying on the principles laid down in Ramanand alias Nandlal Bharti Vs. State of Uttar Pradesh,2022 SCCOnLine(SC) 1396 and in Subramanya v. State of Karnataka,2022 SCCOnLine(SC) 1400 , it is urged that the prosecution had failed to comply with the requirement of law, before accepting the evidence of discovery. The absence of the authorship of concealment in the disclosure statement, the non-recording of the exact words attributed to the accused, and the failure to prove the contents of the Mahazar, are all highlighted by the learned counsel to contend that the learned Sessions Judge was not justified in placing reliance upon the circumstance of recovery of ornaments and the clothes. The learned counsel would point out that, though samples were taken for DNA analysis, there is total absence of materials to conclude that the spermatozoa found in the underwear of the accused and the one found in the vaginal swab relate to the one and the same person. Even the mud allegedly found on the clothes of the appellant did not tally with the mud sample taken from the place where the deceased was found. Instead of holding that the appellant had no role to play in the rape and murder of the deceased, the learned Sessions Judge has convicted the appellant on the basis of flimsy evidence.

Submissions made by the learned Public Prosecutor:

[9] Sri. Alex M. Thombra, the learned Public Prosecutor submitted that the incriminating circumstances relied on by the learned Sessions Judge established beyond any semblance of doubt, that it was the appellant who had committed the heinous act. He would refer to the evidence of PWs 9, 10, 11, and 13, and it is urged that despite searching cross-examination, the witnesses stuck to their earlier version and spoke about the presence of the appellant in and around the scene of the crime. The evidence of PWs 7 and 13 is also relied on and it is urged that a few days back, the appellant had in fact tried to molest the deceased and it was by a whisker that the deceased had saved her honour. The recovery evidence of the ornaments and the clothes at the instance of the appellant was also highlighted as a strong piece of evidence to link the appellant with the crime. The presence of spermatozoa in the underwear and in the body of the deceased is also emphasized by the learned Public Prosecutor as another strong circumstance. Reliance is placed on the observation in **Joseph v. State of Kerala**, 2000 AIR(SC)

1608, and in **Padala Veera Reddy V. State of Andhra Pradesh**, 1990 AIR(SC) 79, and it is argued that the chain of circumstances cumulatively and unequivocally points towards the guilt of the appellant.

Principles governing the evaluation of cases resting on circumstantial evidence:

[10] The finding of guilt of the appellant is grounded entirely in circumstantial evidence. Before proceeding to analyze and assess the circumstances that have influenced the decisions of the learned Sessions Judge, it would only be appropriate to refer to the precedents that may provide guidance on the handling and evaluation of cases based on circumstantial evidence. In **Sharad Birdhichand Sarda v. State of Maharashtra**, 1984 4 SCC 116, a three-Judge Bench has laid down five golden principles which constitute the "panchsheel" in respect of a case based on circumstantial evidence. Referring to the decision in **Shivaji Sahebrao Bobade v. State of Maharashtra**, 1973 2 SCC 793, it was opined that it is a primary principle that the accused "must be" and not merely "may be" guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions. Thereafter, the Bench proceeded to lay down that the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; that the circumstances should be of a conclusive nature and tendency; that they should exclude every possible hypothesis except the one to be proved; and that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. The very same principles were reiterated in **Padala Veera Reddy** (supra).

[11] In **Balwinder Singh v. State of Punjab**, 1996 SCC(Cri) 59, it was observed as follows in paragraph No. 4 of the judgment:

> "4. .... the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence, the court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, howsoever strong they may be, to take the place of proof."
>
> (emphasis supplied)

[12] In **State of U.P. v. Ashok Kumar Srivastava**, 1992 2 SCC 86, it was held that it is the duty of the court to take care while evaluating circumstantial evidence. If

the evidence adduced by the prosecution is reasonably capable of two inferences, the one in favour of the accused must be accepted. That apart, the circumstances relied upon must be established and the cumulative effect of the established facts must lead to a singular hypothesis that the accused is guilty.

[13] In **Ram Singh v. Sonia**, 2007 AIR(SC) 1218, while referring to the settled proof pertaining to circumstantial evidence, this Court reiterated the principles about the caution to be kept in mind by the court. It was observed as follows in paragraph No. 39 of the judgment:

> "39. .... in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts."
>
> (emphasis supplied)

[14] We shall now endeavor to determine from the maze of evidence as to whether the circumstances from which the conclusion of guilt has been drawn have been fully and conclusively proved, and whether those circumstances are sufficient to connect the appellant to the crime. It is essential that the conscience of the Court is satisfied that the various circumstances highlighted by the prosecution in the chain of events have been clearly established. This chain must be complete and unbroken, ruling out any reasonable likelihood of the innocence of the appellant. In conducting this exercise, we shall ensure not to allow suspicion to substitute for legal proof and avoid being influenced by emotional considerations, however compelling they may be, in place of objective evidence.

Cause of Death:

[15] It has come out from the evidence of PWs 1, 2, 3, 5, 6, and 9, that Reeja was found lying dead in the water channel, under a slab, in a place called 'Kelothuthazhe Vayal'. PW24, Professor, Forensic Medicine, Pariyaram Medical College, conducted the Autopsy. He noted 24 antemortem injuries. He said before the court that the postmortem findings were consistent with death due to drowning in an unconscious state. He also noted that the evidence of the application of blunt criminal force on the body, prior to death. The accused does not dispute that the death of the deceased was homicidal.

Presence of the accused in and around the scene of crime:

[16] One of the key factors relied upon by the learned Sessions Judge in convicting the appellant is his alleged presence near the scene of the crime around

11:00 a.m., as observed by PWs 9, 10, and 11. Before delving into the evidence provided by these witnesses, it is important to first examine the scene plan and the description of the crime scene, as detailed in Ext.P10 (the site plan prepared by PW23, the Village Officer) and Ext.P3 (the Scene Mahazar prepared by the Investigating Officer). For clarity, a replica of the site plan is provided below for reference.

[17] According to the site plan, the house of the deceased is situated near Settumukku. The scene mahazar notes that the distance from Settumukku junction to the shop room numbered KP-I/336 is approximately 700 meters. From the shop room to the concrete slab, under which the body of the deceased was found, the distance is recorded as about 20 meters. A water channel, flowing east to west, runs beneath the slab and is approximately 130 cm wide. The concrete slab itself measures about 2.10 meters in length and 1.13 meter in width, as seen from the scene mahazar. A laterite wall, approximately 137 cm in height, borders both sides of the pathway leading to the slab for a short distance. The distance from the concrete slab to Puthiya Road is recorded as about 70 meters. The northern side of the scene, both to the north-east and north-west, is largely clear of vegetation. In contrast, the southern side is noted for its thick cultivation, featuring coconut palms, arecanut trees etc. The scene mahazar further indicates that there are no visual obstructions for up to 50 meters to the north-east and north-west of the crime scene. The house of Nazeera is situated about 75 meters to the north, with Khadeesa's residence located 25 meters east of Nazeera's house. To the south, the homes of Aliyar, Basheer, and Kunjumoosa are noted to be approximately 100 meters from the crime scene. While there are minor discrepancies between the details shown in the sketch and the scene mahazar, the description provided above closely aligns with the information presented in both the site plan and the scene mahazar.

[18] With the above context in mind, we shall advert to the evidence presented by the prosecution. The key witness regarding the appellant's presence at or near the crime scene is Balan V.T. (PW9). In his testimony, he stated that he raises cows for a living. About 3-4 days before 14.8.2017, while taking his cows for grazing, he saw the accused sitting on a slab beside the water channel. He had no prior acquaintance with the accused. The appellant allegedly asked whether the cows belonged to him and if there were any calves, to which he responded that the calves were at home. After this encounter, PW9 saw the appellant again on 14.8.2017 at about 11:00 - 11:15 a.m., near an old shop, speaking on his mobile phone. The appellant was wearing pants and a long-sleeve T-shirt resembling a military-style outfit, and he was seen walking towards the concrete slab. The witness let the cows graze freely in the field and sat on a nearby stone. At around 12:00 noon, he heard the horn of a fish vendor. Sometime later, the accused was seen walking towards Puthenpally and his clothes were found smeared with mud. The appellant did not engage in any further conversation with the witness. PW9 stayed there until 2:30 p.m., when he left to return home for milking his cows. Later that evening, around 5:00 p.m., someone informed him that a body was found under the slab,

and he later learned it was that of the deceased. The following day, PW9 was called to the Police Station, and when he reached the Station, the appellant was found there. He also mentioned that after the appellant left, a person named Rajan passed by the same way. During cross-examination, PW9 admitted that he had not heard any cries or screams while sitting in the adjacent field. He also acknowledged that he had not provided any identifying marks of the appellant. The nearest house, belonging to Surendran (PW13's husband), was about 120 meters from the crime scene. An analysis of PW9's testimony reveals that although he was the only witness to see the appellant walking towards the concrete slab, by the time he arrived at the Police Station the following day, the appellant had already been apprehended. However, the prosecution does not clarify how the investigating officer concluded that the appellant was involved in the crime. Moreover, the prosecution specifically contends that the accused was positioned on the pathway leading to Puthiya Road, while the deceased was approaching from Settumukku-Munnangadi Road with the intention of purchasing fish from a vendor who had just arrived at Puthiya Road and sounded the horn to announce his presence. The topography of the area reveals that the concrete slab in question is only 20 meters from the northern road, where several houses are located. According to the scene mahazar, it is evident that the northern side of the concrete slab is devoid of vegetation, offering a clear and unobstructed view of anyone standing there to anyone approaching from the north. Given the prior incident of attempted molestation, which occurred a few days earlier, the deceased would have likely raised an alarm if the appellant had indeed been present. Such an alarm would have alerted PW9, who was seated by the roadside, as well as the nearby residents on either side of the concrete slab. It is also evident from the scene plan that there are numerous houses in the vicinity. Additionally, during cross-examination, it was revealed that PW9 had not mentioned the mud on the accused's clothes in his original statement to the police. His claim that the accused walked past him after committing the murder, particularly when his presence was already noted by him earlier, raises doubts about the credibility of his testimony. At any rate, the mere presence of the accused in and around the scene of crime cannot be relied upon to conclude that he was the person responsible for the heinous act without any other corroborating evidence.

[19] Pw10 is another witness who testified regarding the presence of the appellant near the crime scene. He stated that he is a tailor by profession and had prior acquaintance with the family of the deceased. On 14.8.2017, he went to Kelothuthazha road to invite certain individuals in the locality to a wedding. Upon arriving there, he saw the appellant coming from the Puthenpalli area. When he inquired about the presence of the appellant in the locality, the appellant allegedly responded that he had come to see the paddy field. They walked together for a short distance. During their conversation, when PW10 mentioned his intent to invite Surendran and his wife to the wedding, the appellant informed him that they would not be at home, as they were working at his house. When he came out from Surendran's house, he saw the appellant

standing in front of a shop. PW10 asked the appellant to accompany him, but the appellant told him to continue with his work. The witness noted that the appellant was wearing a military green T-shirt and jeans on that day. PW10 further stated that the police questioned him on 16.8.2017, he admitted that he did not initially mention in his statement to the police the specific clothes the appellant was wearing. He also disclosed that his house is located about 600 meters from the house of the deceased and that he had known the deceased's family closely for over a decade. Additionally, he confirmed that he was present during the inquest. If PW10 had met the appellant while he was on his way to Surendran's house, he would certainly have seen PW9 as well. The witness does not even speak about the presence of PW9, who was sitting by the side of the road from 11 a.m. to 11.30 a.m. Neither of the witnesses speak about the presence of the other. Furthermore, the testimony of PWs 9 and 10 would reveal that they are both having close acquaintance with the deceased and her family and that the house of Surendran, as well as PW10 are within 600 meters from the house of the deceased. While tendering evidence, it is made to appear that he had come from a far off place whereas, he is a resident of the same area. With regard to the presence of mud in the clothes of the appellant, the witness had no such case in his earlier statement to the police and it was brought out as an embellishment. The witness has however denied the question put in cross-examination that the accused is a total stranger and his services were availed by the prosecution to place the accused in and around the scene of crime.

[20] Pw11, C.P. Gangadaharan, stated that he is a coolie by profession. At about 1:30 p.m., on 14.08.2017, when he reached in front of the house of Surendran, he saw a bearded person, wearing a green coloured crew neck banyan and pants smeared in mud. He stated that he is residing near to Reeja's home. He also stated that he had spoken about spotting mud in the clothes of the appellant when he saw him. On the next day, he saw the appellant at the Police Station. He admitted that no other person was shown to him and no Test Identification Parade was conducted by the police.

[21] Pws 9, 10 and 11 are the three witnesses upon whom strong reliance was placed by the Trial court to come to the conclusion that the appellant was found in and around the scene of crime and that when they saw him, they all noticed the presence of mud in his clothes. PWs 9 and 11 are total strangers and they never had an occasion to see the accused earlier. PW10 is also a nearby resident and he claimed that he is having prior acquaintance with the accused. However, nothing turns out from the evidence as regards the involvement of the appellant in the crime. It can only be through the evidence of these three witnesses that the finger of suspicion could have pointed to the appellant. However, these witnesses stated that when they reached the Police Station, the appellant was already there. As to how PW38 zeroed in on the appellant is not discernible from the prosecution evidence. We are of the view that it was after fixing the appellant as the assailant, the nearby residents were made to speak about his unusual presence near to the scene of crime. To make him complicit, all the

witnesses were made to state that his clothes were smeared in mud. We do not think the evidence of the witnesses above are credible enough to fix the presence of the appellant in and around the scene of crime as one of the links in the chain of evidence. Even if the evidence of these witnesses are taken to be true, it would only show that they had chanced to meet the appellant and nothing more.

Previous incident of alleged attempted molestation:

[22] Pw6 is the brother of Gopi, the husband of the deceased. In his evidence, he stated that on hearing about the incident involving her mother, Swathi, the daughter of the deceased, became unwell. She was taken to the hospital. When she regained her consciousness, she stated to the witness that about four days back, a young man, who is a resident of the Mathiparambu area, attempted to catch the hands of Reeja and that when she abused and screamed for help, the molester left the place. Swathi also stated to him that two days prior to the incident, her mother pointed out the said person to Swathi. The learned counsel appearing for the appellant pointed out that the evidence of the witness is pure hearsay. PW7 is the daughter of the deceased. She stated that on 14.08.2017, she had gone to Thalassery for PSC coaching. She returned at about 2 p.m. and found that her mother was not at home. She went to the house of Pushpa to enquire about her mother. Her aunt Reji, who is residing close by, told her that her mother would return soon. At about 5:30 p.m., she was informed that her mother was no more. As she felt dizzy, she was taken to the hospital and she was admitted as an inpatient. She informed her uncle that her mother had told her that about a few days back a young man had attempted to grab her and when she screamed for help, the assailant left her alone. The witness said that the mother had informed about the incident to her friend Pushpa as well. When a specific question was asked by the learned Prosecutor as to whether she was aware of the person who attempted to molest her mother, she initially said that she was unaware. A leading question was then put to the witness as to whether she had occasion to see the individual who had attempted to molest her mother. To the said question, she answered that about two days back, while they were travelling in an autorickshaw, her mother had pointed out a young man with a beard and told her that the said individual had attempted to molest her. The witness then pointed out that the accused was the person that her mother had pointed out. In cross-examination, the witness stated that neither her mother nor she had complained about the incident that took place about four days back to any person of authority. She stated that she did not have any previous acquaintance with the accused. She was questioned by the police on 14.08.2017 and 15.08.2017 and she admitted that she had not given any hints so as to identify the person who had attempted to molest her mother. She also stated that this fact was not informed to her father.

[23] Pw13 is Pushpa, wife of Surendran. She stated that the deceased was her friend. She is residing within 200 meters of the house of Reeja. According to her, on 14.08.2017, she along with her husband went to the house of the accused to fix up a

gate. She had worked for a week in the house of the appellant earlier. At about 9 a.m., they reached the house of the appellant. The appellant was at home till 10.30 a.m. at which time, he left the house. After finishing the work at about 3 p.m., they went back home. After some time, PW7 came to her house and enquired about the deceased. Later, at 5 p.m., she received information about the murder of Reeja. She stated that Reeja had told her about a recent incident where a young man had attempted to molest her and how she managed to save herself. When Pushpa advised her to inform her husband, Reeja discouraged her, saying that her husband would feel bad. Days after the incident, she realised that PW9, 10 and 11 had seen a young man near to the scene of crime and she realized that appellant was the man who had tried to molest Reeja. During cross-examination, it was revealed that in her previous statement to the police, she had not mentioned that the deceased had informed her of the identifying marks of the accused. She also admitted that, despite being part of a closely-knit community, they had not reported the incident involving the appellant to anyone. If the appellant had continuously employed her, and if the deceased had confided in her about the molestation attempt, it raises the question as to why, as a close friend, this witness was unaware that it was the appellant who had committed the act and despite the same, she went to his home for employment. A careful evaluation of the evidence reveals that the witness is lying on material points and she was introduced to link the appellant with the murder.

[24] A thorough examination of the evidence reveals that the investigating agency primarily relied on the appellant's presence at the crime scene on 14.08.2017 to attribute the murder to him. Subsequently, it appears that the agency shaped the witnesses' statements to fit this narrative. Significantly, the prosecuting agency missed crucial opportunities for a more rigorous and scientific investigation. They could have easily established the appellant's culpability by conducting DNA analysis to confirm if the semen found on the victim's body matched the appellant. Additionally, two mobile phones were seized from the appellant, yet the agency failed to obtain tower dump and location details, which could have corroborated his presence at the crime scene. Moreover, the soil samples collected from the clothes allegedly hidden by the appellant were found to be inconsistent with both the soil from the crime scene and the soil on the victim's body and clothing. The testimony of Pushpa, a friend of the deceased, who was called to prove that the appellant had employed the victim on the day of the incident, lacks credibility. The murder is alleged to have occurred around noon on 14.08.2017, and the appellant was taken into custody based largely on the Investigating Officer's assumptions. We are not convinced that on the basis of evidence let in by PWs 7 to 10, and 13, it can be concluded that the appellant committed this gruesome murder.

Scientific Evidence:

[25] It would be relevant to note that the specific case of the prosecution is that the appellant intercepted the deceased at about 12 noon on 14.08.2017, smothered her and made her unconscious, pushed her into the water channel, subjected her to rape and then pushed her head inside and made her to drown. Witnesses are made to speak about the mud on his clothes to probablise this version. However, none of these witnesses in their earlier statement to the police spoke about the presence of mud in the clothes of the accused or that it was wet. It was on 16.08.2017 at 11:00 a.m. that MO5 Jeans, MO6 T-shirt, MO7 pair of shoes, and MO8 underwear were seized from under a stone in the house of the accused, as per Ext.P5 Mahazar. Ext.P37 is the property list, which is dated 16.08.2017 relating to the above material objects. At the time of the conduct of the inquest, a piece of a gold chain weighing about 10.50 grams, and two studs weighing about 2 grams were seized from the body of the deceased. MO10 Maxi, MO11 Bra, MO12 skirt, MO13 panties, and MO14 Hawai Sandals, belonging to the deceased were found near the body, and were seized at the time of the inquest for the purpose of analysis. The nail clippings and blood sample of the accused were collected by PW25, the Assistant Surgeon attached to the General Hospital, Thalassery. The Doctor who conducted the autopsy had collected the vaginal swab and blood smear and forwarded the same to the Forensic Science Laboratory. PW33, the Assistant Director (Biology), State Forensic Science Laboratory, Thiruvananthapuram, examined the samples and Ext.P25 report submitted by her. The Biologist has stated that semen was detected in MO12 skirt, MO13 panties, and MO8 underwear. Ext.P26 report issued by PW33, Assistant Director (Biology), revealed that the vaginal swabs taken from the body of the deceased contained human spermatozoa. However, on conducting DNA Typing Examination, PW32, the Assistant Director, (DNA), State Forensic Science Laboratory, Thiruvananthapuram, issued Ext.P24 report that the spermatozoa in the items were insufficient for DNA Profiling. Insofar as nail clippings are concerned, it is stated in Ext.P24 report that the same contained only cells and tissues of Ansar. Soil particles were also collected from MO10 Maxi, MO11 Bra, MO12 skirt, MO13 panties, MO1 gold chain belonging to the deceased, and MO15 purse, MO5 jeans, MO6 T-shirt, MO8 underwear, and MO7 pair of shoes of the appellant. MO4 pieces of gold chain seized based on the disclosure statement given by the appellant were also forwarded for analysis. Ext.P28 report issued by the Scientific Officer (Physics), Forensic Science Laboratory, Thiruvananthapuram, revealed that no soil could be detected in MO8 underwear worn by the accused. The report also revealed that the soil particles contained in MO10 Maxi, MO11 Bra, MO12 skirt, MO13 panties, MO5 jeans, MO6 T-shirt, and MO7 pair of shoes, were dissimilar to the sample soil. It is also reported that MO4 and MO1 are the pieces of the same gold chain. Ext.P6 Seizure Mahazar would reveal that the piece of gold chain seized based on the disclosure statement was having a length of about 33 cms and weighing 9 gms, whereas the ring containing the inscription "Gopi", weighed about 3.900 gms. The

piece of gold chain, which was found at the scene of crime was having a length of 36 cms. The scientific evidence available before the court would clearly show that though semen was found in the underwear of the accused, and the panties and skirt of the deceased, the semen found on the skirt and panties could not be linked to that of the appellant. Tissues or blood of the deceased was not found in the nail clippings of the accused. The mud found on the clothes of the accused were found to be dissimilar to the soil seized from the place of occurrence and also the soil found on the clothes of the deceased. In other words, the scientific evidence collected by the prosecution does not in any manner link the appellant with the crime but on the other hand exculpates him. The learned Sessions Judge has opined that the presence of semen in the underskirt and panties of the deceased coupled with the presence of semen in the underwear of the appellant will link him positively with the murder. We cannot agree. The appellant is not bound to explain as to how semen was found in the underskirt of the deceased. If on DNA profiling the body fluids had matched, then it would have conclusively proven his involvement in the murder.

[26] The Apex Court in **NHRC v. State of Gujarat**, 2009 6 SCC 767, proclaimed unambiguously that discovery, investigation and establishment of truth are the main purposes of the courts of justice and indeed are the raison d' tre for their existence. If the main purpose is to be served, the agency entrusted with the investigation will have to fulfill their duties with all diligence, competence and skill at their command.

[27] Adverting to the role of the Police to be one for protection of life, liberty and property of citizens, with investigation of offences being one of its foremost duties, it was underscored in **Manohar Lal Sharma v. Union of India**, 2014 2 SCC 532 that the aim of investigation is ultimately to search for truth and to bring the offender to book. The observations of Lord Denning in his rendering in 'The Due Process of Law', First Indian Reprint, 1993, p. 102 were alluded to as under: (SCC p. 553, para 25)

> "25. ... 'In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust: and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice. The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants.'"

[28] In **Pooja Pal v. Union of India**, 2016 3 SCC 135, the Apex Court highlighted the avowed purpose of criminal investigation and its efficacious prospects with the advent of scientific and technical advancements by observing as under in paragraph No. 96 of the judgment.

96. The avowed purpose of a criminal investigation and its efficacious prospects with the advent of scientific and technical advancements have been candidly

synopsised in the prefatory chapter dealing with the history of criminal investigation in the treatise on Criminal Investigation -- Basic Perspectives by Paul B. Weston and Renneth M. Wells:

> "Criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.
>
> Successful investigations are based on fidelity, accuracy and sincerity in lawfully searching for the true facts of an event under investigation and on an equal faithfulness, exactness, and probity in reporting the results of an investigation. Modern investigators are persons who stick to the truth and are absolutely clear about the time and place of an event and the measurable aspects of evidence. They work throughout their investigation fully recognising that even a minor contradiction or error may destroy confidence in their investigation.
>
> 97. The joining of science with traditional criminal investigation techniques offers new horizons of efficiency in criminal investigation. New perspectives in investigation bypass reliance upon informers and custodial interrogation and concentrate upon a skilled scanning of the crime scene for physical evidence and a search for as many witnesses as possible. Mute evidence tells its own story in court, either by its own demonstrativeness or through the testimony of an expert witness involved in its scientific testing. Such evidence may serve in lieu of, or as corroboration of, testimonial evidence of witnesses found and interviewed by police in an extension of their responsibility to seek out the truth of all the circumstances of crime happening. An increasing certainty in solving crimes is possible and will contribute to the major deterrent of crime the certainty that a criminal will be discovered, arrested and convicted."

[29] It is pertinent to emphasize the critical role that DNA and semen analysis play in modern criminal investigations, particularly in cases involving sexual offenses or where bodily fluids have been recovered from the crime scene or the victim's body. DNA profiling stands as one of the most precise and reliable methods for linking an accused to a crime or excluding them from suspicion. The samples, if properly collected, preserved and analyzed, can conclusively establish facts which may not be possible otherwise. In the present case, despite semen being detected on key items, such as the skirt and panties of the deceased and the underwear of the appellant, the prosecution failed to utilize the evidence to pin the accused with the crime. The DNA Typing Examination report from the Forensic Science Laboratory indicated that the spermatozoa found in the samples were insufficient for DNA profiling. This scenario

could have been avoided if the collection and analysis of the samples was conducted with the necessary diligence, care, and by adhering to scientific protocols.

[30] The responsibility to ensure the proper collection and handling of evidence rests squarely on the Investigating Officers and Scientific Experts. DNA evidence, particularly from delicate sources like semen or bodily fluids, must be handled with extreme precision to prevent contamination or degradation. In this case, forensic experts were unable to perform a conclusive DNA analysis on the spermatozoa found in the vaginal swabs and other articles of the deceased's clothing, likely due to improper collection techniques, storage conditions, or other procedural lapses, resulting in insufficient sample material. A proper sampling and analysis could have yielded a match between the spermatozoa found on the deceased's garments and the appellant, conclusively linking him to the crime. Conversely, if there had been no match, it would have bolstered the defense and highlighted the importance of thorough investigation. This lapse in evidence collection and analysis undermines the integrity of the investigation as a whole.

[31] Equally concerning is the Investigating Officer's failure to utilize critical information available from the mobile phones seized from the appellant. Location data and tower dumps are indispensable tools in modern criminal investigations. Had the investigators retrieved mobile tower location details, they could have potentially placed the appellant at or near the crime scene, adding a crucial link in the chain of circumstances. The last call made by the appellant, as evidenced by Ext.P15, was at 11:37 a.m. on 14.8.2017, and the prosecution could have easily obtained cyber evidence to track the appellant's location thereafter. By neglecting to secure this data, the prosecution missed a significant opportunity to substantiate their claims regarding the appellant's whereabouts on the day of the crime. Furthermore, the forensic analysis of soil samples taken from the appellant's clothing further exemplifies the prosecution's investigative shortcomings. The soil on the clothing allegedly hidden by the appellant did not match the soil from the crime scene or the soil found on the victim's body and clothing. This inconsistency weakens the prosecution's attempt to link the appellant to the murder. Soil analysis is a precise but often underutilized forensic tool. Had the soil on the appellant's clothing matched the soil from the crime scene, it could have served as compelling evidence of his involvement.

[32] The investigating agency must recognize that scientific evidence is the cornerstone of modern criminal proceedings, especially in cases involving sexual assault or murder, where forensic evidence can definitively prove or disprove allegations. This case underscores the pressing need for Investigating Officers and Forensic Experts to exercise the highest degree of care, diligence, and precision in the collection and analysis of evidence to ensure that justice is served and the actual perpetrator is identified. The tools necessary for solving such crimes exist, but they must be employed properly and consistently to achieve justice.

Recovery of ornaments at the instance of the accused:

[33] Now, we turn to the evidence concerning the recovery of the clothes and the gold ornaments.The recovery of gold ornaments based on the disclosure statement given by the appellant is another incriminating circumstance against him. The prosecution had examined Abdul Kareem (PW12), to prove that, on the day when a lady was found dead in the area, he was at the Puthenpalli Juma Masjid at about 12:45 p.m., when he went to wash his hands and legs in the bathroom, he found that the bathroom door was closed. When he knocked on the door, the appellant opened the door and came outside. He found that the clothes worn by the appellant were smeared with mud, and he looked very untidy in an outfit similar to the one worn by military personnel. As he looked unkempt, he did not ask the appellant anything. The appellant looked perplexed. If the version of this witness is believed, after committing the brutal murder, the appellant directly went to the Mosque, wearing wet clothes smeared in mud. However, PW9, PW10, and PW11 had no such case in the earlier statement. Another important witness is PW17 Ramees. He stated that he was working as a Sales Man in a timber shop by name 'Marva Timbers'. The accused is his friend. On 14.08.2017, at about 2:30 p.m., while he was going to have his lunch, he saw the accused outside his shop room. He stopped his car and enquired with the appellant whether he was joining him for lunch. The accused answered in the negative. The appellant went to the timber shop and sat there on a stool. At about 4:00 p.m., PW17, along with Askar, the owner of the shop and the appellant went to the nearby Mujahid Mosque for offering their prayers. At that time, the witness noticed the presence of mud on the trousers, legs, and pants of the appellant. During cross-examination, the witness admitted that Askar, the owner of the shop, will be in the shop from 10:00 a.m. onwards till the closing of the shop. It was brought out in cross-examination that the witness had no case when the statement was recorded by the police that there was mud on the clothes and leg of the appellant. Furthermore, the case of the prosecution is that the appellant, a total stranger, would have gone up to the 3rd floor of the building to conceal the robbed gold, while the witness had gone for lunch. However, the witness stated that the owner of the shop would be there in the shop room from morning itself. The owner was the best person to speak about the manner in which the appellant had gone up to the terrace to conceal the gold.

However, the owner of the shop was not examined.

[34] Pw15 is the attestor to the recovery mahazar. He stated that on 16.08.2017, while he was standing in front of the MRA Bakery and having a conversation with his friend, some police personnel came in a jeep. The Officer sitting in the front seat called PW15 and his friend and informed them that he was the Officer investigating the murder of Reeja, that the accused was in the jeep, and that the accused had confessed that he had concealed the gold robbed from the deceased and asked them to board the vehicle to witness the recovery. They were taken to the establishment by name 'Marva

Timbers' and the accused is alleged to have led them to the third floor and took out MO3 ring and MO4 a piece of gold chain. In cross-examination, some discrepancies with regard to the building where the ornaments were concealed were brought out. PW14, in his evidence, that on 16.08.2017 at about 11:00 a.m., while he was at the Mathiparambu town, police personnel came in a jeep and told him that the clothes worn by the accused at the time of the commission of the crime were kept by the accused in his house, and they were asked to enter the vehicle to witness the recovery. He stated that the accused led them to the boundary wall and from underneath the stone, MO5 jeans, MO6 T-shirt, and MO7 a pair of shoes were taken out by the accused. Ext.P5 Mahazar was prepared in his presence. Both the witnesses denied that the Mahazar was signed by them at the Police Station.

[35] In this context, it is necessary to refer to Ext.P35 extract of true confession which reads as under:

Insofar as Ext.P5 Mahazar relating to the recovery of MO6, MO7 and MO8 is concerned, the extract of the confessional statement as recorded in Ext.P5 are as under:

In both the Mahazars, it is stated that the disclosure was made by the accused, while at the Office of the Circle Inspector of Police. None of the witnesses were present when the confession statements were given by the accused. What emerges from the evidence of the investigating officer is that the appellant/accused stated before him while he was in custody that ornaments and clothes have been concealed and the accused is alleged to have volunteered to take the Investigating Officer to enable him to discover the place. This statement does not indicate or suggest that the appellant/accused indicated anything about his involvement in the concealment of the weapon. It is a vague statement. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, lest it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the substantive evidence as regards the discovery of the weapon is that the appellant disclosed that he would show the ornaments and clothes [See: **Subramanya v. State of Karnataka** (supra)].

[36] In **State of Rajasthan v. Bhup Singh**, 1997 10 SCC 675, the Apex Court has observed the following as the conditions prescribed in Section 27 of the Evidence Act, 1872 for unwrapping the cover of the ban against the admissibility of the statement of the accused to the police (1) a fact should have been discovered in consequence of the information received from the accused; (2) he should have been accused of an offence; (3) he should have been in the custody of a police officer when he supplied the information; (4) the fact so discovered should have been deposed to by the witness.

The Court observed that if these conditions are satisfied, that part of the information given by the accused which led to such recovery gets denuded of the wrapper of prohibition and it becomes admissible in evidence.

[37] The aspect which this Court has to consider in the present case is whether these recoveries have been made in accordance with law and whether they are admissible in evidence or not, and most importantly, the link with and effect of the same vis-a-vis the commission of the crime. At this juncture, it would be profitable to bear in mind the observations of the Apex Court in **Subramanya v. State of Karnataka** (supra) wherein the Apex Court has delineated the principles that are to be borne in mind by the Court while confronted with the question of admissibility of recovery effected at the instance of the accused. It was observed as follows in paragraph Nos. 77 and 78 of the judgment:

> "77. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.
>
> 78. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second

part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter."

[38] In Ramanand alias Nandlal Bharti Vs. State of Uttar Pradesh,2022 SCCOnLine(SC) 1396, the principles were clarified further and it was observed as under:

"56. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Exh.5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place.

xxxxxx xxxxx xxxx xxxxx

70. Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving the contents of the panchnama (Exh.5), the trial court as well as the High Court was not justified in placing reliance upon the circumstance of discovery of weapon

> 7. If it is the case of the prosecution that the PW2, Chhatarpal Raidas, s/o Rameshwar Raidas had acted as one of the panch witnesses to the drawing of the discovery panchnama, then why the PW2, Chhatarpal Raidas in his oral evidence has not said a word about he having acted as a panch witness and the discovery of the weapon of the offence and blood stained clothes being made in his presence. The fact that he is absolutely silent in his oral evidence on the aforesaid itself casts a doubt on the very credibility of the two police witnesses i.e. PW6 and PW7 respectively."

[39] In the case on hand, when the Investigating Officer was examined, he merely stated that the accused while in custody furnished a statement and nothing more. In his evidence, he has not proved the contents of the recovery mahazar. He has also not mentioned that he had procured the presence of independent witnesses of the locality to witness the search. In other words, the recovery of ornaments and clothes at the instance of the accused will not advance the case of the prosecution.

[40] It is also beyond comprehension that if the appellant had no reservations about walking directly in front of PW9, who was seated near the scene of the crime, proceeding to a nearby mosque for prayers, and then spending hours in Ramees's shop, wearing clothes soaked with water and mud, there would be no logical reason for him to hide his own wet and muddy clothes under a stone near the boundary of his house. If his clothes were indeed wet and muddy, he could have easily gone home, changed them, and then proceeded to the mosque and the timber shop after disposing of the clothes. It is thus apparent that the attempt of the Investigating Officer was to recover the same and thereafter record the statements of the witnesses to somehow link the appellant with the crime. On a thorough examination of the entire case records as requested by the learned counsel appearing for the appellant, we find that the statements of most of the witnesses were recorded only after the appellant's arrest, and notably, none of these statements are dated. In a case of this nature, such irregularities raise serious concerns, casting doubt on the integrity of the investigation, which appears to be marred by suspicious circumstances.

[41] There is also a serious discrepancy with the custody of the gold ornaments and the clothes seized based on the disclosure statement given by the accused. Ext.P5 and Ext.P6 are Mahazars prepared at 9:00 a.m. and 11:00 a.m. on 16.08.2017. One would have thought that the gold ornaments and the clothes would have been sealed in accordance with law and the same would have been forwarded to the analyst. However, Ext.P40 report submitted by the Investigating Officer, before the Jurisdictional Magistrate on 16.08.2017, endorsed by the Magistrate on 17.08.2017, would reveal that the Investigating Officer had sought time to produce MO3 to MO8 before the Court. The excuse offered is that the gold is required to be identified, and the clothes of the accused are wet and smeared in mud and that it needs to be dried up, before production in Court. As to when it was ultimately produced, whether the

produced items were the ones recovered based on the confessional statement and whether they were the objects which were forwarded to the analyst are not discernible from the case records. In other words, the prosecution has not properly proved the chain of custody of the material objects after the same were seized.

Non-explanation of the injuries noted on the body of the accused:

[42] After arresting the accused, he was produced before PW20, Assistant Surgeon, Community Health Center, Panoor, who examined him and issued Exhibit P7 certificate. The doctor has noted an abrasion of 1 cm on the right hand, an abrasion of 3 cm on the back of the chest and an abrasion having a length of 1 cm over the scalp. However, when he was examined before the court, the doctor opined that he had not noted the age of the injuries. He also stated that he was not in a position to say whether the injuries noted are old or new. He also stated that if the person itches similar injuries can be caused. The nail clippings of the accused were sent for analysis and the report revealed that the samples contained the tissues of the appellant. In that view of the matter, this piece of evidence cannot be used to link the appellant with the murder. There is yet another matter. The specific case of the prosecution is that the deceased became unconscious when she was smothered by the accused. The accused is alleged to have committed rape on the deceased. However, PW24, the doctor who conducted the postmortem has not noted any injuries in the external genitalia. The accused was also examined by PW25, the Assistant Surgeon attached to the General Hospital, Thalassery. He has also not noted any tell tale signs on his penis. If it was a case of forcible sexual intercourse on an unconscious adult woman by a 24 year old man, one would have noted some indications of the same in the private organs of both the persons. This also throws serious doubt on the case of the prosecution.

Conclusion:

[43] In view of the discussion above, we hold that the prosecution has failed to prove any of the circumstances from which the conclusion of guilt is to be drawn. We are convinced that the circumstances presented by the prosecution are not of a conclusive nature so as to exclude every hypothesis, but the guilt of the accused. The chain of evidence does not show that within all human probability the act must have been done by the accused and the accused alone. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken, the accused must get the benefit thereof. There is paucity of legal evidence to reach the exclusive conclusion regarding the guilt of the appellant. We are of the opinion that the present is in fact a case of no evidence.

In the result, this appeal will stand allowed. The conviction and sentence of the appellant in S.C.No.1084 of 2017 passed by the Court of Special Judge for the Trial of Offences against Women and Children (Additional Sessions Judge-I), Thalassery, are

set aside. We **acquit** the appellant and direct that he be set at liberty forthwith, if his continued incarceration is not required in any other case

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2024(2)AIAJ577

IN THE HIGH COURT AT CALCUTTA

[Before Tirthankar Ghosh]

Cr A (Criminal Appeal); C R A N No 200 of 2023; 3 of 2024 **dated 13/09/2024**

Newton Mondal @ Niwetan Mondal

Versus

State of West Bengal

ABDUCTION AND RAPE ALLEGATIONS

Indian Penal Code, 1860 Sec. 341, Sec. 376, Sec. 363, Sec. 366, Sec. 506 - Code of Criminal Procedure, 1973 Sec. 164 - Abduction and Rape Allegations - Appellant was convicted under IPC Sec. 376, Sec. 366, and Sec. 341 for abducting and raping the victim - The victim alleged that she was abducted in a Tata Sumo and confined for over a month - Prosecution relied heavily on her testimony, which had inconsistencies in her statement under Sec. 164 CrPC and deposition in court - No corroborative witnesses from the busy marketplace were presented, and there was unexplained delay in filing the complaint - Court observed discrepancies in the evidence, raising doubts about the conviction, leading to the acquittal of the appellant. - Conviction Set Aside

Law Point: In cases of abduction and rape, sole testimony of the prosecutrix must be consistent and credible; unexplained delays and lack of corroboration weaken prosecution's case.

Acts Referred:

Indian Penal Code, 1860 Sec. 341, Sec. 376, Sec. 363, Sec. 366, Sec. 506

Code of Criminal Procedure, 1973 Sec. 164

Counsel:

Surajit Basu, Jasika Alam, Pritam Chakraborty Rana Mukherjee, Mujibar Ali Naskar, Subhasish Datta

JUDGEMENT

Tirthankar Ghosh, J.- [1] The present appeal has been preferred against the judgment and order of conviction and sentence dated 04.10.2023 and 05.10.2023 passed by the learned Additional Sessions Judge, Rampurhat, Birbhum in Sessions Trial No. 04/February/2016 arising out of Sessions Case No. 156 of 2015, thereby convicting the appellant under Sections 341/366/376 of the Indian Penal Code and sentencing him as follows:

(i) For the offence punishable under Section 341 of IPC Simple Imprisonment for one month;

(ii) For the offence punishable under Section 366 of IPC Rigorous Imprisonment for 7 (seven) years and a fine of Rs.5,000/-, i.d. to suffer further R.I. for 3 (three) months;

(iii) For the offence punishable under Section 376 of IPC Rigorous Imprisonment for 7 (seven) years and fine of Rs.5,000/-, i.d. to suffer further R.I. for 3 (three) months.

[2] Nalhati Police Station case no. 92/10 dated 17.04.2010 was registered for investigation on the basis of a written complaint filed by 'Y' (brother of the victim 'X'). The allegations made in the written complaint addressed to the Officer-in-charge, Nalhati Police Station were to the effect that the accused promised to marry his sister 'X' but she used to avoid him. However, the accused used to visit her during day and night and even when his sister used to come to market then the accused would go around the road and threaten to beat her. The incident was informed to villagers, the villagers called the accused for settlement/meeting however, the accused did not attend the settlement/meeting and disobeyed the villagers. On 28.03.2010 at about 10.00 am when the victim had been to Nalhati market from then onwards she did not return home. The complainant alleges that his sister is a widow having two minor sons and the accused kidnapped her and confined her at a secret place.

[3] On the basis of the aforesaid complaint Nalhati Police Station registered the case under Section 341/363/366/506 of the Indian Penal Code and the Officer-in-charge was pleased to endorse the case to Sub-inspector Sunil Kr. Dey (PW14) for investigation. The investigation of the case was thereafter handed over to Sub-inspector Samir Kr. Dutta (PW15) who submitted a report in final form and prayed for discharging the accused. A further investigation was held by Mojammel Mondal (PW16), Sub-Inspector of police and after conclusion of investigation he submitted charge-sheet against the accused under Section 341/363/366/376/506 of the Indian Penal Code.

[4] Learned A.C.J.M., Rampurhat after complying with the relevant provisions of law was pleased to commit the case to the learned Additional Sessions Judge, Rampurhat, Birbhum. The learned Trial Court thereafter by its order dated 17th February, 2016 was pleased to frame charges under Sections 341/363/366/376/506 of the Indian Penal Code. The contents of the charge was read over to the accused person to which he pleaded not guilty and claimed to be tried.

[5] The prosecution in order to prove its case relied upon 16 witnesses which included PW1, Kartick Let, co-villager; PW2, Santana Let, co-villager; PW3, 'Y', complainant, brother of the victim; PW4, Sunil Let, co-villager; PW5 Kalpana Let, co-villager; PW6, Tuktuki Let, co-villager; PW7, Santosh Maharaj, scribe; PW8, Binoy

Kumar Nonia, Judicial Magistrate who recorded the statement of the victim under Section 164 of Cr.P.C.; PW9, Dr. Sricharan Halder, doctor who examined the accused; PW10, 'Z', sister of the victim; PW11, Jakir Sk., owner of the land where the complainant was engaged as a cultivator; PW10, Narayan Dhar, brother-in-law of the victim; PW13, 'X', victim; PW14, Sunil Kr. Dey, first investigating officer of the case; PW15, Samir Kr. Dutta, S.I. of police and second investigating officer of the case who submitted the final report; PW16, Mojammel Mondal, Sub-inspector of police who carried out further investigation and submitted charge-sheet.

[6] Pw1, Kartick Let is a co-villager who deposed that he knew the complainant 'Y', as also the accused Newton Mondal and identified him in Court. He deposed that he knew that the victim 'X' was the elder sister of the complainant, however, he denied of having heard any incident relating to the victim 'X' and the accused Newton Mondal. He was declared hostile by the prosecution.

[7] Pw2, Santana Let is a co-villager who identified the accused in Court and deposed that she knew both the complainant 'Y' as well as the accused Newton Mondal and also had knowledge that the victim was the elder sister of the complainant who was a widow and had two sons. However, she denied of any knowledge in respect of the incident relating to the accused and the victim. She was also declared hostile by the prosecution.

[8] Pw3 is 'Y', complainant of the case who deposed that the accused is a resident of Akalipur village. He identified the accused in Court and deposed that the victim 'X' is his elder sister who is a widow having two minor sons. He stated that the incident took place on 28.03.2010 at about 10.00 am when his elder sister went to Nalhati Market and did not return. He alleged that the accused Newton Mondal kidnapped his elder sister that is why she did not return. According to him the accused confined his elder sister in a hilly area within a forest where she was raped and threatened of being killed. He further deposed that his elder sister was confined for two days and he came to know regarding the incident after the same was disclosed by his elder sister when she returned home. As such after having knowledge regarding the incident he lodged a written complaint at Nalhati Police Station which was drafted by one Santosh Maharaj as per his instruction. He identified the complaint along with his signature which was admitted in evidence. In his cross-examination he replied that his elder sister's house is situated after five houses away from his house and denied also the suggestion relating to kidnap and rape of not having taken place.

[9] Pw4, Sunil Let, identified the accused in Court and deposed that he knew the accused as well as the complainant. He was aware regarding the victim being the elder sister of the complainant. However, he denied of any knowledge in respect of any incident between the accused and the victim. His cross-examination was declined on behalf of the accused.

[10] Pw5, Kalpana Let, identified the accused in Court and deposed that she knew the accused as well as the complainant and was aware regarding the fact that the victim was the elder sister of complainant. However, she denied of any knowledge relating to any incident between the victim and the accused. She was declared hostile by the prosecution. In cross-examination on behalf of the accused she replied that she had no bitter relationship with the complainant or his elder sister.

[11] Pw6, Tuktuki Let, identified the accused in Court and deposed that she knew the accused as well as the complainant who are her co-villagers. She was also acquainted regarding the fact that the victim is the elder sister of the complainant. However, she denied of any knowledge relating to any incident between the victim and the accused.

[12] Pw7, Santosh Maharaj is scribe of the FIR who deposed that he wrote the complaint as per instruction of the complainant 'Y', read over the same to the complainant and after being satisfied the complainant signed it. He also signed on the complaint as a scribe. He identified his signature, accordingly the same was admitted in evidence.

[13] Pw8, Binoy Kumar Nonia is the Judicial Magistrate who at the relevant point of time was the Judicial Magistrate, 2nd Court, Rampurhat. He deposed that on 05.05.2010 as per order of learned A.C.J.M., Ramurhat he recorded the statement of the victim in his chamber under Section 164 of Cr.P.C. after observing all legal procedures. The victim was identified and produced before him by a lady Home Guard namely, Jahanara Bibi of Nalhati Police Station and after identification she left his chamber. After observing all formalities the statement of victim was recorded under Section 164 of Cr.P.C. and she signed all the pages. After conclusion of the statement he certified the same. He identified the statement along with his signature and seal. The statement of the victim as such was admitted in evidence.

[14] Pw9, Dr. Sricharan Haldar is Medical Officer of Rampurhat Government Medical College and Hospital, who deposed that on 25.09.2015 he examined Newton Mondal aged about 37 years for his potency test. On examination he arrived at his conclusion and accordingly prepared the report with opinion that there was nothing to suggest that the male examined is not capable of performing sexual act. The medical report was admitted in evidence.

[15] Pw10, 'Z' is the sister of the victim who deposed that the accused Newton Mondal used to offer ill proposal to her sister for residing with him, and once the victim was found missing from Nalhati Market. She was searched but could not be traced. After one month she came back to their paternal house at Monigram, Bhadrapur and on being asked about her absence for a month, she disclosed that she was kidnapped by Newton Mondal and confined in an unknown place by him. According to the witness the victim also alleged regarding torture being inflicted by the accused Newton Mondal and she being ravished by him. The witness stated that

the incident took place on 28th of March few years ago. The witness also stated that she was illiterate and so she could not tell exact year when her sister was kidnapped. She identified the accused in Court and stated that police interrogated her five years after the date of the incident. In cross-examination she answered that she was a resident of Dankuni for about 25 years and further stated that she heard that the accused Newton had a family consisting of his wife and children. Further she stated that the victim was kidnapped forcefully with her mouth being tied with a cloth. She was taken by a vehicle. According to her a General Diary was lodged with the police officer of Nalhati Police Station after few days of the victim being not traceable.

[16] Pw11 is Jakir Sk. who deposed that he knew the complainant as well as the accused Newton Mondal and identified the accused in Court. He further stated that the complainant is cultivating his land and the victim happens to be the sister of the complainant who was a widow and had two sons. He was informed relating to the incident in the year 2010 by the complainant that his sister was missing from Nalhati Bazaar. According to him the complainant stated that his sister was kidnapped and was raped. In cross-examination, however, he stated that he has deposed on the basis of what he heard from the complainant.

[17] Pw12, Narayan Dhar is the brother-in-law of the victim, who deposed that the victim was a widow having two minor sons and the accused used to send ill proposal of marrying her. The victim felt irritated as he teased and assaulted her. On 28.03.2010 at about 10.00 am when the victim had been to Nalhati Market she was kidnapped by the accused and confined at a secret place. He also stated that the victim was confined for one month and 20 days, when she was raped continuously but somehow she fled away from the unknown place. He heard the incident as narrated by the victim after she returned. He identified the accused in Court and further deposed that as the mental condition of the victim deteriorated because of bad experiences she felt ashamed of the incident. In cross-examination he replied that on 28.03.2010 he came to know about disappearance of his sister-in-law and the same was informed by his brother-in-law. He deposed in Court as per the version what was stated to him by his brother-in-law at the relevant point of time. He also narrated the same facts to the police authorities which he heard from his brother-in-law.

[18] Pw13, 'X' is the victim who identified the accused in Court and deposed that the complainant was her younger brother. She narrated the incident by stating that initially she did not know the accused but subsequently she knew when he inflicted torture upon her. On 28.03.2010 at about 9.00 am she went to the market. The accused earlier also irritated her in different way on the road and also assaulted her. Over this issue she complained to Nalhati Police Station, earlier ventilating her grievances to the police. Prior to the incident she had been to the police station when police officer asked her to come with paper. Accordingly she went there and when she was returning from police station the accused along with three persons restrained her on the road and

dragged her in a Tata Sumo vehicle to an unknown place and confined her. At the said place the accused raped her and confined her for about a month. She narrated to the Court that she could not go out from the said place as she was guarded all along by the accused and sometime by others. The accused left her and she thereafter boarded a train from Loharpur railway station under Nalhati Police Station from where she returned to her home and went to the police station subsequently. She divulged the incident to the police officer. Being an illiterate lady she did not know where she was confined. According to her as she protested against the torture by the accused she was abducted and ravished by the accused. Additionally she deposed that initially she went to the police station for ventilating her grievances and there a document was prepared by Bhomor Vakil but the accused did not abide by the terms of settlement and continued his torture upon her in different ways. She stated in Court that she was abducted from Nalhati Market and she was a widow having two minor children. She repeated that the accused Newton Mondal along with others raped her, however, she did not know the name of the other persons. She was medically treated at Rampurhat Hospital where she signed on the medical paper. She identified her signature in the medical paper. Her signature was admitted in evidence. She was also produced before the Magistrate and her statement was recorded. She identified her signature in the statement under Section 164 of Cr.P.C. which was also admitted in evidence. Lastly she stated in her examination-in-chief the facts which she deposed in Court was also narrated to the police authorities. In cross-examination she stated that except her signature she is unable to read or write. Further when she was confronted on behalf of the accused she replied that for responding to natures call she came out from the room and used field for defecation and used water from a small pond nearby. She described that there was no bedding and spent one month in a dark place. Four persons used to ravish/rape her for about four/five times a day regularly. She reiterated that the accused and others committed such mischief forcibly. She sustained injuries on different parts of her body. After one month she came back from there when she got an opportunity. The day when she left nobody raped her, but the day before all the four persons rapped her for four to five times. On the very day when she returned she went to Nalhati Police and narrated all the facts to Darogababu. However, she did not sign the same but her brother/complainant signed it. She was sent to hospital where she narrated the incident to the doctor. She also replied that she showed all the injuries which were inflicted upon her, including her private parts. She was unable to state the registration number of the vehicle and on a suggestion being advanced on behalf of the accused she denied the fact that she and her husband worked under the accused Newton and as there was misunderstanding she went to the house of Newton and complained to his wife that she would get money. She denied of any such incident not having taken place.

[19] Pw14, SI Sunil Kumar Dey, is the first investigating officer of the case who deposed that on a missing complaint the Officer-in-charge started Nalhati Police

Station case no. 92/2010 dated 17.04.2010 and entrusted the case to him. After getting charge of the investigation he perused the FIR, visited the place of occurrence, drew rough sketch map with index, examined available witnesses and recorded their statement, the victim girl was sent for recording her statement under Section 164 Cr.P.C. and the statement was also collected by him. As he was under transfer he handed over the Case Diary to the Officerin-charge, Nalhati Police Station on or about 17.06.2010.

[20] Pw15, SI Samir Kumar Dutta deposed that he was handed over the charge of investigation of Nalhati Police Station case no. 92/2010 dated 17.04.2010 and on receipt of the documents he initiated the investigation and according to him as he did not find anything he submitted a final report vide FRT no. 12/2012 dated 31.01.2012 and discharged the FIR named accused.

[21] Pw16, Mojammel Mondal, Sub-inspector of police was entrusted on and from 18.09.2015 for carrying out further investigation of Nalhati Police Station case no. 92/2010 dated 17.04.2010. He arrested the accused Newton Mondal on 21.09.2015. The accused was remanded to police custody for five days and his statement was recorded, further he was sent for medical examination. The medical report of the accused was collected. He also collected the medical report of the victim. He examined the witnesses Jayanti Dhar, Narayan Dhar and Jakir Sk. recorded their statement and on conclusion of investigation submitted charge-sheet no. 280/15 dated 21.10.2015 against the accused under Section 341/363/366/376/506 of IPC.

[22] Mr. Surajit Basu, Learned advocate appearing on behalf of the appellant submitted that there was inconsistency in the version of the victim both in her statement under Section 164 of the Code of Criminal Procedure before the Learned Magistrate as well as her deposition before the Court. Her narratives were scripted and exaggerated in such a manner that the same strikes at the root of the prosecution case thereby making her an unreliable witness. According to the learned advocate if the FIR is taken to be true then the victim was missing since 28.03.2010 and there were no complaints regarding her whereabouts as the complaint was lodged on 17.04.2010. The victim in her statement under Section 164 of the Code of Criminal Procedure before the learned Magistrate stated that for 1 month and 20 days prior to recording of her statement she was abducted by the appellant along with others in a Tata Sumo vehicle. She was thereafter taken to a hilly area where she was confined in a dark room and ravished, however, she managed to flee away after boarding a train. Although, she in her deposition stated that she had narrated the incident to the doctor but in the medical report the incident is not reflected. Learned advocate also stated that in response to the question relating to her being confined for more than one month, in cross-examination improbable circumstances were narrated by her and the same crumbles the fact of her abduction as also probabilize the defence case that there were some enmity in respect of the victim having grievance of receipt of some money for

which she has falsely implicated the present appellant in connection with the instant case which would be evident from the cross-examination of PW13 as well as the answer of the accused under Section 313 of the Code of Criminal Procedure wherein the accused stated that "I went to her house for demanding money lend to her and she filed this false case. She started to work under Jakir". The conduct of the complainant being the brother of the victim and other relations are also not above suspicion as they did not lodge any complaint relating to her whereabouts for a considerable period of time when she was missing and almost after 20 days lodged the complaint with the Nalhati Police Station. It was submitted that having regard to the aforesaid circumstances the evidence of the victim who is the sole individual for narrating the incident cannot be relied upon. To that effect learned advocate referred to the judgments of Nirmal Premkumar & Anr. -Vs. State represented by Inspector of Police,2024 SCCOnLine 260; **Juwar Singh & Ors. Vs. State of Madhya Pradesh**, 1980 Supp1 SCC 417; **Santosh Vs. State of Bihar**, 2020 3 SCC 443. Lastly, it was submitted that having regard to the factual circumstances of the present case and the proposition of law as laid down in the aforesaid judgments, interference is called for in respect of the judgment and order of conviction and sentenced so passed by the learned trial Court and the same as such should be set aside.

[23] Mr. Rana Mukherjee, learned advocate appearing for the State on the other hand opposed such contention and submitted that in cases of sexual assault/offences the sole testimony of the prosecutrix assumes significance, as such offences are committed in seclusion. To search for corroborative materials in such type of offences are practically impossible as hardly there will be witnesses available in front of whom the offences have been committed. Additionally it was submitted that considering the background from where the lady belongs, who is illiterate, it cannot be expected that she would have the courage to forthwith taken action, although in evidence it has surfaced that she had been to the police station on several occasions but the police authorities on one pretext or the other delayed and/or did not cooperate with her so far as her harassment which was inflicted by the accused upon the victim. According to the learned advocate for the State the judgment and order of conviction and sentence so passed by the learned trial Court do not call for any interference and as such the same should be affirmed.

[24] I have considered the arguments advanced on behalf of the appellant as well as that of the State and I find that the lady was missing from 17.03.2010 and not even a missing diary was lodged or any information communicated to the police authorities. There were no witnesses relied upon by the prosecution relating to the place of occurrence which is a market place, as such the question of abduction from a market place and taking her away by a Tata Sumo vehicle do not inspire any confidence. Majority of the prosecution witnesses do not support the prosecution case or their deposition before the Court is on the basis of hearsay evidence. As such the prosecution case is based upon the evidence of PW3, complainant 'Y'; PW10, 'Z'

(sister); PW12 (brother-in-law) and PW13, 'X' (victim). So far as PW10 and PW12 are concerned they heard the incident that on 28.03.2010 the victim was abducted and she was missing and they deposed that a General Diary was lodged with the Police Station regarding the victim which is not traceable, however, no such General Diary was produced before the Court so the other witnesses whose deposition are of significance are the complainant and the victim. The complainant was residing in the same locality as that of the victim and is her brother. In spite of the same there is nothing in evidence to suggest that any information was available to the local police station in respect of the victim who was missing. Thus there is no corroborative evidence which lend support to the version of abduction as such the sole testimony of the prosecutrix in this case assumes importance. So far as her version is concerned in her statement under Section 164 of Cr.P.C. before the learned Judicial Magistrate she narrated that when she was returning after complaining against the appellant from Nalhati Police Station, she was abducted by few persons who made her unconscious and took her to an unknown destination in a hilly area. She further stated that the accused were four in number and all the four persons raped her. She, however, managed to escape from them and she apprehends that such act was done at the behest of the accused Newton Mondal. Thus in the statement under Section 164 of Cr.P.C. she did not allege that the accused/appellant ravished her rather she stated that she was sexually abused by four unknown persons. In her deposition before the Court she stated that the accused along with three other persons restrained her on the road and dragged her in a Tata Sumo vehicle to an unknown place and kept her there and at the said place the accused committed rape upon her and confined her there for one month. Additionally, she also stated that the accused Newton Mondal along with others committed rape upon her and she do not know the other persons. The victim also before the doctor who examined her did not narrate any fact of sexual abuse committed at the instance of all the persons or the appellant.

[25] Having considered the aforesaid facts which surfaced in the present case it would be pertinent to consider the settled proposition of law so far as the appreciation principles relating to the sole testimony of the prosecutrix is concerned. In **State of Rajasthan Vs. Babu Meena**, 2013 4 SCC 206, it has been held in paragraphs 8 and 9 which are as follows:

> "8. Mr Jain assails the acquittal of the respondent under Section 376 of the Penal Code and contends that the trial court ought to have accepted the evidence of Kirti (PW 3). He submits that conviction can be based on the sole testimony of the prosecutrix and the trial court erred in rejecting her evidence and acquitting the respondent. In support of the submission he has placed reliance on the judgment of this Court in **Vijay v. State of M.P.**, 2010 8 SCC 191: (2010) 3 SCC (Cri) 639] Relevant para of the judgment reads as under: (SCC p. 198, para 14)

> "14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."
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> 9. We do not have the slightest hesitation in accepting the broad submission of Mr Jain that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused."

[26] Further in **Dinesh Jaiswal -Vs. State of M.P.**, 2010 3 SCC 232, in paragraph 10 of the Hon'ble Supreme Court was pleased to held:

> "10. Mr C.D. Singh has however placed reliance on Moti Lal case [(2008) 11 SCC 20: (2008) 3 SCC (Cri) 950] to contend that the evidence of the prosecutrix was liable to be believed save in exceptional circumstances. There can be no quarrel with this proposition (and it has been so emphasised by this Court time and again) but to hold that a prosecutrix must be believed irrespective of the improbabilities in her story, is an argument that can never be accepted. The test always is as to whether the given story prima facie inspires confidence. We are of the opinion that the present matter is indeed an exceptional one."

[27] In **Rai Sandeep Vs. State (NCT of Delhi)**, 2012 8 SCC 21 while reversing the order of conviction and holding that the prosecutrix was not a witness to be held as a 'sterling witness', it was opined by the Hon'ble Supreme Court in paragraph 22 which is as follows:

> "22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not

be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

[28] Additionally in **Krishan Kumar Malik Vs. State of Haryana**, 2011 7 SCC 130 while dealing with solitary evidence of the victim in matters relating to sexual offences the Hon'ble Supreme Court in paragraph 31 and 32 was pleased to hold as follows:

"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined

and later given up by the public prosecutor on the ground that she has been won over by the appellant."

[29] Very recently in Nirmal Premkumar & Anr. Vs. State represented by Inspector of Police,2024 SCCOnLineSC 260, relied upon by the appellant in paragraph 15, it has been held by the Hon'ble Supreme Court as follows:

"15. in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a "sterling witness" without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistences excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded."

[30] Thus, on an appreciation of the materials available in this case, firstly non-explanation relating to the delay of absence of the victim for a long period and no information being made available to the police authorities or any authorities for that purpose without any explanation being furnished raises a serious concern. Secondly, the variance in the version of the statement under Section 164 of the Code of Criminal Procedure of the victim and her deposition before the Court along with no witnesses being examined by the prosecution at a busy market place from where the victim was allegedly abducted in a Tata Sumo vehicle raises a doubt regarding the factual foundation of the prosecution case and do not inspire this Court to arrive at a conclusion of guilt so far as the present appellant is concerned in respect of the charges which he was called upon to answer.

[31] Accordingly, the judgment and order of conviction and sentence dated 04.10.2023 and 05.10.2023 passed by the learned Additional Sessions Judge, Rampurhat, Birbhum in Sessions Trial No. 04/February/2016 corresponding to Sessions Case No. 156 of 2015 arising out of Nalhati Police Station Case no. 92/10 dated 17.04.2010 is hereby set aside.

[32] The appellant is acquitted of all the charges.

[33] Thus, CRA (SB) 200 of 2023 is allowed.

[34] The appellant is on bail and as such he is discharged from the bail bonds.

[35] Pending connected applications, if any, are also disposed of.

[36] Department is directed to send back the Lower Court Records immediately. A copy of the judgment be forwarded to the learned Trial court immediately for compliance regarding the directions given above.

[37] All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

[38] Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities

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2024(2)AIAJ589

IN THE HIGH COURT AT CALCUTTA

[Before Tirthankar Ghosh]

Cr A (Criminal Appeal) No. 333 of 2019 **dated 12/09/2024**

Bikash Das

Versus

State of West Bengal

ASSAULT ON DEAF VICTIM

Indian Penal Code, 1860 Sec. 376, Sec. 511, Sec. 354 - Assault on Deaf Victim - Appellant convicted under IPC Sec. 376/511 for attempting to rape a deaf and mute girl - Incident occurred when the victim's mother was absent, and the accused entered the house, forcibly undressed and molested the victim - Trial court convicted him under Sec. 376/511 and sentenced him to three years - On appeal, the High Court found inconsistencies in the mother's testimony and no medical evidence of injury - Court reduced the charge to Sec. 354 for outraging modesty and sentenced the appellant to the time already served in custody, around eleven and a half months - Appeal Partly Allowed

Law Point: In sexual assault cases involving disabled victims, credibility of the testimony and corroborating medical evidence are critical for upholding higher charges.

Acts Referred:

Indian Penal Code, 1860 Sec. 376, Sec. 511, Sec. 354

Counsel:

Sourav Chatterjee, Prasun Kumar Datta, Subrato Roy

JUDGEMENT

Tirthankar Ghosh, J.- [1] The present appeal has been preferred against the judgement and order of conviction and sentence dated 30.04.2019 and 28.05.2019 passed by learned Additional District and Sessions Judge, Fast Track Court, Kalna in Sessions Trial No. 46 of 2015 arising out of G.R. Case No. 288 of 2011 wherein the learned trial court was pleased to convict the appellant under Sections 376/511 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for three years

and pay fine of Rs.5000/-, in default, to suffer further simple imprisonment for six months.

[2] The genesis of the present case relates to Purbasthali Police Station Case No. 139 of 2011 dated 09.05.2011 under Sections 376/511 of the Indian Penal Code wherein the complainant "Y" being mother of the victim reported to the Inspector-in-Charge, Purbasthali Police Station to the effect that her daughter "X" aged about 18 years is an inborn deaf and dumb girl. It was alleged that on 08.05.2011 which was Sunday at about 4 p.m. when she went for bath and her daughter was at the house being alone, one Bikash Das entered the house and attempted to rape her daughter forcibly. Her daughter was outraged of her female modesty as extreme physical force was applied to her daughter at the instance of the accused. When she returned home, the accused Bikash Das having heard the sound went in a corner of the room thereby hiding himself. The victim was there in the room and when the complainant entered, she found the accused was standing in a corner of the room and when she raised her voice, at that time, the accused pushed her and fled away. The victim thereafter started weeping and trembling in fear and became senseless. When her husband returned, she informed the entire incident to her husband and thereafter both of them went to the house of father of Bikash Das viz. Jogesh Das to inform the incident, but they were threatened not to inform the matter to the police station. As such, under such circumstances, the complainant requested the police authorities to take action against the accused.

[3] On the basis of the aforesaid complaint, the criminal case was registered under Sections 376/511 of the Indian Penal Code and the Investigating Officer on conclusion of investigation, submitted chargesheet under the same Sections being Sections 376/511 of the Indian Penal Code. The case was thereafter committed to the court of sessions and the proceedings were thereafter transferred to the court of the learned Additional District and Sessions Judge, Fast Track Court, Kalna. The learned trial court on or about 17.11.2015 was pleased to frame charge under Section 376 of the Indian Penal Code read with Section 511 of the Indian Penal Code against the accused/appellant. The contents of the charge were read over to the accused to which he pleaded not guilty and claimed to be tried.

[4] The prosecution in order to prove its case relied upon eight witnesses which included PW-1, "X" the victim girl; PW-2, "Y" mother of the victim girl; PW-3, Kartick Das, scribe of the FIR; PW-4, Tapan Das, a resident of the locality; PW-5, Motilal Das, a resident of the locality; PW6, Sanjit Das, a resident of the locality; PW-7, Kanchan Das, a resident of the locality; PW-8, Dr. Anup Kumar Bhole, doctor who examined the victim.

[5] Pw-1, "X", the victim girl as she was deaf and dumb, the court sought the assistance of an interpreter named Stuti Debi. It was apprised to the court by the interpreter that the witness was 100% hearing impaired and at the time of inserting the

requirements so far as the introduction of the witness/victim is concerned, it was stated by the mother of the victim that she was aged about 24 years. It was recorded that the victim stated that she was alone in her house when her mother was absent. At that time, the accused entered their house, came to her room, pushed her on a bed, embraced her and pressed her breast and thereafter put off her undergarment. The accused thereafter climbed over her body and removed his trouser. However, the accused did not commit the offence of rape. She thereafter deposed that her mother went for a bath and after returning when she saw the incident, the accused concealed himself. The accused was identified by the witness. In crossexamination, she deposed that her mother understood her gesture and posture and therefore, she was able to explain her mother as to what the accused committed to her. At this stage, it is reflected in the crossexamination that the learned trial court has recorded the witness/victim could not hear the word '"mother' and also could not express as to how many brothers or sister she had. She also replied that the accused was working in the nearby field as there was a vacant land beside their house.

[6] Pw-2, "Y", is the mother of the victim and de facto complainant of the case who deposed that the victim "X" is her daughter who is deaf and dumb and she is acquainted with her gesture and posture as well as the manner in which she communicates. She stated that she lodged the complaint with the police station against the accused whom she identified in court. Additionally, she stated that the incident occurred almost six years ago at about 4 p.m. when she went for a bath and while returning, she heard that her daughter was crying and a sound was heard from the room which was closed, but unlocked. When she opened the room, she saw the accused tried to conceal himself in the corner of the room and on questioning her daughter, she by her gesture communicated that the accused tried to rape her. When she tried to question the accused, the accused pushed her and fled away. As a result of such act, her daughter was traumatized, so when her husband returned at about 5 p.m., she narrated the incident and they went to the house of the accused and narrated the incident to his father. However, Jogesh Das, the father of the accused, threatened them by stating that they are trying to falsely implicate his son. The couple thereafter narrated the incident to the local people and her husband went to the house of Kartick Das who happens to be a teacher in the locality. The said Kartick Das wrote a complaint which was signed by her. She identified the complaint which was admitted in evidence. She also stated that she handed over the dress which her daughter was wearing at the relevant period of time. The same was identified and admitted in evidence. In cross-examination, on a specific query on behalf of the accused that whether the couple had taken a sum of Rs.50,000/- on an allegation of an affair in between Tapas Das and her daughter which was by way of a village salish, she replied to the same as correct. It was also suggested on behalf of the defence that for the purpose of squeezing money from the parents of the accused, a false narrative has been

created as a counterblast as the appellant raised objection for installation of electricity at their house.

[7] Pw-3 is Kartick Das who is a resident of the locality to whom the PW-2 and her husband went for writing the complaint. The witness identified the complaint which was written by him and the same was admitted in evidence. In cross-examination, the witness categorically stated that he did not have any personal knowledge in respect of the allegations.

[8] Pw-4 is Tapan Das, a resident of the locality who stated that his house is situated at a distance of half k.m. away from the house of the victim. However, he on hearing a hue and cry, rushed to the house of the de facto complainant and heard from the de facto complainant/PW-2 that the accused fled away from her room by tearing the wearing apparels of her daughter. He identified the accused in court. However, in cross-examination, the witness replied that he did not state to the Investigating Officer that he heard from PW-2 that accused Bikash Das tore the wearing apparels of the victim.

[9] Pw-5 is Motilal Das who is a resident of the locality who deposed that on hearing a hue and cry, he rushed to the house of PW-2 and found that PW-2/the de facto complainant was shouting to the effect that the accused entered the room of her daughter when she was alone and she found that her daughter was crying. In cross-examination, the witness stated that the victim happens to be her niece.

[10] Pw-6 is Sanjit Das who deposed that when he went out from his house to a nearby tea stall, he heard an incident involving the accused and a deaf and dumb girl. In cross-examination, he stated that his residence is half k.m. away from the house of the de facto complainant.

[11] Pw-7 is Kanchan Das who denied of any knowledge regarding the incident.

[12] Pw-8 is Dr. Anup Kumar Bhole who was attached with Kalna S.D. Hospital as gynaecologist and deposed that the victim was identified to him by a lady constable. He found her to be deaf and dumb and the history was recorded as per the version of her mother. The history as recorded in the medical report is as follows:

> "On 8.05.11 at about 4 p.m. after taking a bath when Tumpa's mother was returning back to her room, she found that her daughter was crying inside of the room. She found one Bikash Das being the neighbour was tearing her dresses (Tumpa's dress). On seeing her mother Bikash rushed away."

[13] The doctor did not find any injury in the medical report. He identified the medical report which was marked in evidence. In crossexamination, the doctor replied that he did not ask the mother as to whether she was acquainted with the gesture or communication made by the deaf and dumb girl. However, he volunteered that he noted down the reaction of the mother as reported to him.

[14] Mr. Chatterjee, learned advocate appearing for the appellant submitted that the de facto complainant had a history of squeezing money which would be evident from the cross-examination. To that effect learned advocate drew the attention of the Court to the relevant part of the cross-examination of PW-2 wherein she admitted that she accepted a sum of Rs.50,000/- from a person named Tapas Das with whom at the relevant point of time, she alleged that her deaf and dumb daughter had a relationship. It was also contended on behalf of the appellant that because of supply of electricity, a dispute arose between the de facto complainant and the accused. As such, having regard to the previous conduct of the de facto complainant, the factum of falsely implicating the present appellant cannot be ruled out. The learned advocate also drew the attention of the Court to the medical evidence and submitted that in the medical report, there is nothing to suggest that there was any attempt committed for ravishing the victim as has been alleged. Attention was drawn to the relevant part of the statement of the mother of the victim which was recorded in the form of history in the medical report wherein it was stated that the accused was tearing the dress of the victim. Lastly, it was submitted on behalf of the appellant that having regard to the vindictive attitude of the mother of the victim, there is every possibility of the appellant being falsely implicated and as there is not even any injury as is reflected in the medical report, the appellant should be acquitted of the charges.

[15] On the other hand, Mr. Datta, learned advocate appearing for the State resisted such submission of the appellant and submitted that in cases of such nature, the offences are committed in seclusion and as such, there is hardly any witness who can narrate the incident in detail, more so in a case where the victim happens to be a deaf and dumb girl. It was also submitted on behalf of the State that there is corroboration in the statement of the victim and her mother and having regard to the manner in which the victim has narrated the incident, the principles on which the sole testimony of the prosecutrix is to be relied upon for convicting an appellant in cases of sexual assault should be applied in the present case. The learned advocate for the State emphasised that the reasons so assigned by the learned trial court are cogent and acceptable and as such, no interference should be made in the judgement and order of conviction and sentence so passed.

[16] I have considered the evidence of the witnesses and having considered the plea taken by the State that the sole testimony of the prosecutrix can be relied upon in a case of sexual offence, I would express my dissatisfaction particularly with regard to the manner in which the cross-examination has been recorded in this case. The learned trial court while recording the cross-examination, has categorically stated that the witness could not hear the word "'mother' and the witness could not express how many brothers or sister she has. As such, it was incumbent upon the learned trial court to test the capacity of the interpreter who was brought in to interpret the gesture/ communication of a deaf and dumb witness who happens to be a victim.

[17] In this case, I find that the victim is a deaf and dumb girl and so far as the mother, PW-2, is concerned, she has exaggerated the version particularly by introducing facts of tearing the wearing apparels which is not reflected from the seizure list and she having accepted the fact that there was a dispute with the accused with regard to installation of electricity and she has already taken a sum of Rs.50,000/- from another person who she claimed had an affair with her daughter.

[18] Having considered the aforesaid facts and the medical evidence which do not reflect that any form of injury was committed on the girl, I am of the view that so far as the version of the victim is concerned, the same can be extended to the fact that the accused tried to outrage the modesty of the victim and not beyond the same. Having regard to the said factum, I am of the view that the order of finding of guilt, conviction and sentence so passed by the learned trial court under Sections 376/511 of the Indian Penal Code be converted to Section 354 of the Indian Penal Code.

[19] The accused, therefore, is convicted under Section 354 of the Indian Penal Code.

[20] Records reflect that the accused/appellant was in custody from 21.06.2011 to 03.09.2011 during the stage of investigation and/or at the pre-trial stage and was again taken into custody on 25.04.2019. The accused continued in custody till 04.02.2020 when the appellate court was pleased to release the appellant on bail on certain terms and conditions during the pendency of the appeal. I find, therefore, the appellant has already served out a sentence of more than eleven and a half months. Having considered the period of sentence so undergone by the appellant, I am of the view that the offence so committed at the instance of the appellant be reduced to the period of detention already undergone by the accused.

[21] With the aforesaid observations, the appeal being CRA 333 of 2019 is partly allowed.

[22] Pending connected application, if any, is consequently disposed of.

[23] Department is directed to send back the lower court records along with a copy of this judgment immediately to the learned trial court.

[24] All concerned parties shall act on the server copy of this judgement duly downloaded from the official website of this Court.

[25] Urgent photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities

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2024(2)AIAJ595

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Abhay S Waghwase]

Criminal Appeal No 289 of 2002 **dated 10/09/2024**

Mohammad Ejaz S/o Mohammad Osman

Versus

State of Maharashtra

ABETMENT TO SUICIDE

Indian Penal Code, 1860 Sec. 306, Sec. 498A - Abetment to Suicide - Appellant convicted under Sections 306 and 498A IPC for abetment to suicide and cruelty toward his wife, who immolated herself - Prosecution relied on dying declarations and testimony from the deceased's parents, alleging cruelty and suspicion of infidelity - Appellant argued inconsistencies in dying declarations, lack of certification of fitness, and delay in recording - Court found no reliable evidence of direct instigation or mental cruelty, highlighting flaws in the dying declarations and lack of mens rea for abetment - Conviction quashed appellant acquitted. - Appeal Allowed

Law Point: Conviction under Section 306 IPC requires proof of direct or indirect acts of instigation; mere allegations of cruelty, without proximate or specific actions leading to suicide, do not suffice for abetment.

Acts Referred:

Indian Penal Code, 1860 Sec. 306, Sec. 498A

Counsel:

Niraj Pradeep Chudiwal, Chaitali Choudhari Kutti

JUDGEMENT

Abhay S Waghwase, J.- [1] The correctness of the judgment and order of conviction dated 16.05.2002 rendered by learned Additional Sessions Judge, Aurangabad in Sessions Case No. 253 of 2000, convicting present appellant for offence punishable under Sections 498-A and 306 of the Indian Penal Code [IPC] is under challenge.

FACTUAL MATRIX

Prosecution version:

[2] Deceased Shahana Begum was married to present appellant and after marriage, she came to reside with her husband and in-laws. Initially everything was smooth, but subsequently there was ill-treatment at the hands of accused persons. They suspected her fidelity and beat her. Two years after marriage, because of said ill-treatment, she

had consumed phenyl and therefore, was brought back by her father PW5. After compromise, she came back to reside with husband and in-laws, but again ill-treatment began. According to prosecution, on 29.05.2000, husband beat her by suspecting her character. Finally, getting fed up of the same, she immolated herself and suffered 92% burns. PW3 Special Executive Magistrate recorded her dying declaration on the strength of which, crime was registered.

[3] Shahana Begum succumbed to the burns and therefore, investigation was carried out by PW9, who, after gathering sufficient evidence, chargesheeted accused persons for commission of offence punishable under Sections 498-A and 306 of IPC.

[4] Case being exclusively triable to the court of sessions, was on the file of Additional Sessions Judge, Aurangabad, who commenced trial vide Sessions Case No. 253 of 2000 on the charge of commission of offences punishable under Sections 498-A and 306 of IPC. After appreciating the oral and documentary evidence adduced by prosecution, learned trial Judge, by judgment dated 16.05.2002, acquitted accused nos. 2 and 3 from all charges, but convicted husband i.e. present appellant for commission of offence punishable under Sections 498-A and 306 of IPC, giving rise to the present appeal.

SUBMISSIONS

On behalf of the appellant:

[5] Criticizing the judgment of conviction, learned counsel for the appellant pointed out that prosecution had miserably failed to bring home the charges. According to him, neither ingredients for commission of offence under Section 498-A, nor 306 of IPC, as contemplated by law, are available in the prosecution evidence. He pointed out that on the same set of evidence, accused nos. 2 and 3 are already acquitted by learned trial court, but accused no.1 husband alone is held guilty. He pointed out that apparently, deceased had suicidal tendency. Initially also she had attempted to end up her life without any just and reasonable cause. He pointed out that even regarding second episode of burns, husband appellant was not in the house and it is so evident from the very dying declarations.

[6] Challenging the veracity of dying declarations, learned counsel for the appellant submitted that firstly, the dying declarations are undated, and secondly, there is no endorsement of fitness of deceased to give statement, that too when she had allegedly suffered 92% burns. He took this Court through all three dying declarations Exhibits 26, 35 and 39 and submitted that dying declarations are recorded in Marathi whereas deceased was only conversant with Urdu. There is no remark or statement in the dying declaration that statement was read over to deceased. According to learned counsel, this was fatal to the prosecution.

[7] On this count, learned counsel for the appellant takes recourse to the following rulings of the Hon'ble Apex:

1. **Laxman v. State of Maharashtra**, 2002 CrLJ 4095.

2. **P. Mani v. State of T.N.**, 2006 AIR(SC) 1319.

3. **Kanti Lal v. State of Rajasthan**, 2009 AIR(SC) 2703.

4. **Sanju alias Sanjay Singh Sengar v. State of M.P.**, 2002 AIR(SC) 1998.

5. **State of Maharashtra v. Sanjay D. Rajhans**, 2005 AIR(SC) 97.

6. Tukaram Dashrath Padhen v. State of Maharashtra,2013 CrLJ(NOC) 113 (Bom.) (Nagpur Bench).

7. **Ashok Pandurang Jadhav v. State of Maharashtra**, 2011 4 AIRBomR 10.

8. Radhakisan Dhondiba Bhalekar v. State of Maharashtra,2018 2 AIRBomR(Cri) 269.

9. Arjun Uddhav Arbad v. State of Maharashtra,2017 3 AIRBomR(Cri) 65.

[8] Learned counsel for the appellant next took this Court through the observations of learned trial Court and would submit that there is improper appreciation as, according to him, specific instances and specific role of beating is not defined in the testimony of any of the witnesses. There was no previous complaint of any sort at any place. Moreover, according to him, on the day of burns, victim was at her parents house and therefore there is no question of husband being responsible for the burns. He pointed out that all such crucial aspects are lost sight of by the learned trial Judge. Thus, according to him, on mere allegation of suspicion of character and on the basis of omnibus and general allegations, case of prosecution has been straightway accepted without assigning appropriate and sound reasons, and therefore, according to him, such judgment being not sustainable in the eyes of law, is required to be interfered with by allowing the appeal and setting aside the impugned judgment.

On behalf of the respondent-State:

[9] Per contra, supporting the judgment of conviction, learned APP pointed out that there are three dying declarations which are consistent. That, just before the incident of burns, husband had beaten her. That, ill-treatment meted out to her was regularly reported by deceased to her father and mother. That, they both are examined by prosecution. Their statements are consistent. Only because of suspicion of character and beating, deceased was forced to commit suicide and there was no other reason. She pointed out that required ingredients for attracting Section 498-A as well as Section 306 of IPC are readily available in the prosecution evidence and therefore, according to her, learned trial court has not committed any error. Rather, trial court's findings are infallible and do not warrant any interference at the hands of this Court. Hence, she prays to dismiss the appeal.

EVIDENCE BEFORE THE TRIAL COURT

[10] Prosecution has examined 9 witnesses in support of its case. Their role and status, and the sum and substance of their evidence can be summarized as under:

PW1	Dr, Aparna, Medical Officer at MGM Hospital, deposed about admission of deceased on 20.04.1997 on the history of consumption of phenyl and she being treated from 20.04.1997 to 22.04.1997.		
PW2	Dr. Jinturkar, autopsy surgeon, who, after conducting postmortem, gave percentage of burns to be 92% and cause of death to be "shock due to burns".		
PW3	Sanjay, Special Executive Magistrate, who, on requisition from police, visited Sushrut hospital on 30.05.2000 and recorded her dying declaration Exhibit 26.		
PW4	Iqbalbegum is mother of deceased. Sum and substance of her evidence is that accused persons doubted character of her daughter and beat her. Due to ill-treated at their hands, once she consumed poison, but was taken back by husband. Ill-treatment and beating continued and so she committed suicide on 01.06.2020.		
PW5	Harunbaig is father of deceased. Sum and substance of his evidence is that after two to four months, accused persons doubted character of his daughter and she reported whenever she visited him. After two to three years, due to cruelty, she consumed poison. On 29.05.2000, husband took her back and later on they learnt about incident of burns suffered by her.		
PW6	Sk. Roshan is the pancha to spot panchanama Exhibit 30.		
PW7	Dr. Yelikar, who gave endorsement about fitness of patient before recording dying declaration by police.		
PW8	A.S.I. Mundhe	|	are the Investigating Officers who
and		|	recorded dying declarations Exhibits
PW9	P.S.I. Dabhade	|	35 and 39 respectively.

ANALYSIS

[11] Here, there are two sets of evidence, **first set** - oral evidence and **second set** - three dying declarations.

First, let us appreciate the oral evidence, i.e. of parents of deceased.

ORAL EVIDENCE

[12] PW4 Iqbalbegum, mother of deceased, who is examined at Exhibit 27, initially deposed about marriage of her daughter with accused, for some time husband treating her daughter well, however, thereafter, she being ill-treated. **She deposed that accused nos. 1 to 3 along with mother-in-law of her daughter were beating her by doubting her character** and they were saying that she was having illicit relations with

somebody. When her daughter came home, she disclosed this fact to her. After two years of marriage, she stated that, due to ill-treatment, her daughter consumed poison. After spending five days in the hospital, she was brought to her house for about two months. Matter was compromised and her daughter went to cohabit with accused no.1. After some days, again ill-treatment started. Regarding incident, she deposed as under:

"On the day of incident, at about 3.10 p.m., accused no.1 had been to my house with deceased Shahana. Shahana told me that accused nos. 1 to 3 beat her and they were taking doubt on her character. After 10 minutes, accused no.1 took away deceased at his house. Thereafter, we came to know that deceased had committed suicide. After we came to know the incident, we had been to M.G.M. Hospital. We have seen the deceased Shahana in burnt condition. By seing us the accused persons left the hospital. Thereafter we have taken the deceased at Sushrut hospital at Bansilal Nagar, Aurangabad. At Sushrut hospital, on enquiry deceased told me that she was illtreated by accused nos. 1 to 3 and her mother-in-law, and therefore, she committed suicide. On 1.6.2000 deceased died in the hospital.

While under cross, she is unable to give time and date of her daughter being beaten by accused persons. She admitted that after every 15 days to 1 month, her daughter was coming to her house and she was reached by accused no.1 and taken away after some time. She also admitted that some months before the incident, her daughter was doing tailoring work. Material omission is brought to the extent that "on the day of incident, accused no.1 along with deceased had been to her house and her daughter disclosed her about beating to her". Rest is all denial.

[13] PW5 Harunbaig, father of deceased, who is examined at Exhibit 28, deposed that after marriage, for about two to four months, deceased was treated well. Thereafter, accused nos. 1 to 3 were taking doubt on her character. On that count, **accused no.1 used to beat deceased.** That, whenever deceased came to the parents' house, she disclosed the ill-treatment. According to him, sometimes they were keeping daughter to their house, but accused no.1 was threatening to kill her sons. Three years back, his daughter had consumed phenyl because of ill-treatment meted out to her. That, after spending 5 to 6 days in MGM, his daughter was brought to the house and kept for three months. After compromise before panchas, his daughter was sent to the house of accused no.1, but ill-treatment was continued from accused persons. Regarding the incident, he deposed as under:

> "On 29.05.2000, accused no.1 had been to my house with deceased Shahana at around 3.30 p.m.. By leaving Shahana in my house, accused no.1 went away. Accused no.1 was standing outside my house. Accused no.1 has taken away deceased at 4.00 p.m. from my house. Now says after 5 to 7 minutes of stay of Shahana at my house, accused no.1 has taken away her. At about 7.00 p.m. I came to know about the incident. Thereafter my wife has admitted deceased to Sushrut hospital by taking her from M.G.M. hospital. On inquiry,

deceased Shahana told me that she was having ill-treatment from accused nos. 1 to 3. She further told me that after leaving my house on 29.05.2000, accused no.1 has beaten her and therefore, she committed suicide."

In cross, omission is brought that accused nos. 2 and 3 were taking doubt on the character of his daughter. That, accused no.1 had been to his house with Shahanabegum at about 3.30 p.m. on 29.05.2000. Rest is all denial.

[14] On analyzing the evidence of parents, i.e. PW4 and PW5, they both are found to be deposing about proper treatment for some time after marriage, but there was said to be ill-treatment thereafter. According to mother, **all accused** beat her daughter after doubting her character. Whereas, according to father, **only accused no.1** husband beat her by doubting her character. Therefore, they are not consistent on the point of beating due to suspicion of character. Thus, general allegations are levelled against all in-laws. Regarding visit of deceased on 29.05.2000, material omission is brought that on said date, accused brought deceased to their house and she told that she was beaten by husband that day. For said reasons, oral evidence of parents is not consistent and also carries material omission regarding beating on the day of episode of burns.

SECOND SET - DYING DECLARATIONS

[15] On appreciating the dying declarations which are Exhibits 26, 35 and 39 respectively, the same are recorded by PW3 Sanjay - Special Executive Magistrate and two Police Officials i.e. PW8 ASI Mundhe and PW9 PSI Dabhade, respectively. Before appreciating the credibility and veracity of dying declarations, it would be fruitful to give brief account of settled position on the point of manner of appreciation of dying declaration, more particularly, when they are plural in number.

[16] Here, there are three dying declarations. Therefore, it can be said that there are multiple dying declarations. In such contingency, some judicial precedents need to be dealt and discussed here. Very recently, the Hon'ble Apex Court in the case of **Abhishek Sharma v. State (Govt. of NCT of Delhi)**, 2023 INSC 924, while deciding Criminal Appeal No. 1473 of 2011, in para 8 discussed its own previous rulings and observations therein which are borrowed and reproduced as under:

"8.1 This Court in **Kamla v. State of Punjab**, 1993 1 SCC 1, [AIR 1993 SC 374] has held:

"5. It is well settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various tests (vide **Khushal Rao v. State of Bombay**, 1958 AIR(SC) 22: [1958 SCR 552: 1958 Cri LJ 106]). The ratio laid down in this case has been referred to in a number of subsequent cases with approval. It is also settled in all those cases that the statement should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration, they should be consistent. If a dying

declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without even any corroboration. In a case where there are more than one dying declaration if some inconsistencies are noticed between one and the other, the court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances."

8.2. In **State of Punjab v. Parveen Kumar**, 2005 AIR(SC) 1277, [2005 (9) SCC 769], this court further observed:

"10. ..... The court must be satisfied that the dying declaration is truthful. If there are two dying declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declarations. It may be that if there was any other reliable evidence on record, this court could have considered such corroborative evidence to test the truthfulness of the dying declarations..."

8.3. In **Amol Singh v. State of M.P.**, 2008 5 SCC 468 [AIR OnLine 2008 SC 62,],

"13. ... However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances."

8.4. Faced with multiple dying declarations, this Court in **Lakhan v. State of M.P**, 2010 8 SCC 514 observed-

"21. ... In case there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance."

This judgment was also referred to by this court recently in Makhan Singh v. State of Haryana,2022 SCCOnLineSC 1019 (2-Judge Bench).

8.5. In **Ashabai v. State of Maharashtra**, 2013 2 SCC 224 [(2- Judge Bench)] the court observed:-

"15. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assessed independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variations in the other."

8.6. In **Jagbir Singh v. State (NCT of Delhi)**, 2019 8 SCC 779, [AIR 2019 SC 4321] the following principles were observed:

31. A survey of the decisions would show that the principles of declarations can be culled out as follows: ....

31.6. However, there may be cases where there are more than one dying declaration. If there are more than one dying declaration, the dying declarations may entirely agree with one another. There may be dying declarations where inconsistencies between the declarations emerge. The extent of the inconsistencies would then have to be considered by the court. The inconsistencies may turn out to be reconcilable.

31.7. In such cases, where the inconsistencies go to some matter of detail or description but is incriminatory in nature as far as the Accused is concerned, the court would look to the material on record to conclude as to which dying declaration is to be relied on unless it be shown that they are unreliable;

31.8. The third category of cases is that where there are more than one dying declaration and inconsistencies between the declarations are absolute and the dying declarations are irreconcilable being repugnant to one another. In a dying declaration, the Accused may not be blamed at all and the cause of death may be placed at the doorstep of an unfortunate accident. This may be followed up by another dying declaration which is diametrically opposed to the first dying declaration. In fact, in that scenario, it may not be a question of an inconsistent dying declaration but a dying declaration which is completely opposed to the dying declaration which is given earlier. There may be more than two."

8.7. In **Uttam v. State of Maharashtra**, 2022 8 SCC 576 [(2- Judge Bench)] this court observed:

"15. In cases involving multiple dying declarations made by the deceased, the question that arises for consideration is as to which of the said dying declarations ought to be believed by the court and what would be the guiding factors for arriving at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the court would be expected to carefully scrutinise the evidence to find out as to which of the dying declarations can be corroborated by other material evidence produced by the prosecution. Of equal significance is the condition of the deceased at the relevant point in time, the medical evidence brought on record that would

indicate the physical and mental fitness of the deceased, the scope of the close relatives/family members having influenced/tutored the deceased and all the other attendant circumstances that would help the court in exercise of its discretion."

In para 9, the principles that emerged on consideration of above rulings, which is observed, is reproduced as under:

"9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;

9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;

9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.

9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.

9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.

9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.

9.7 In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc."

[17] Having discussed above settled legal position, it would be further desirable to even reproduce the translated version of dying declarations at Exhibits 26, 35 and 39 in chronology. On careful scrutiny, it is emerging that deceased Shahanabegum suffered burns on the afternoon of 29.05.2000, but Exhibits 26 and 35 are shown to be recorded on 30.05.2000. Admittedly, time of recording both is not reflected on either of dying declarations. Whereas, third dying declaration Exhibit 39 is recorded on 31.05.2000.

Dying Declaration Exh. 26

Date: 30/5/2000

Statement

I, Shahanabegum W/o Mohmed Ezaz, age- 22 yrs., occupation-household, R/o Kiradpura, in front of Barkat grocery shop, Aurangabad.

Upon asking I do hereby state that, I got married five years ago with Mohmed Ejaz s/o

Osman, R/o Kiradpura as per Muslim customs. I have two sons.

How the incident took place: - Yesterday on 29/05/2000 in the afternoon my husband quarreled with my by doubting my character. He abused me and beat me with slaps and fist blows. So, I went to the house of my sister-in-law Saliha and stayed in her house. Later, around 3 p.m., my husband brought me to our house and then he went out to the shop. My husband Mohmed Ejaz and my father-in-law Mohmed Osman used to harass me by raising doubts on my character. As I could not bear the harassment, so in the fit of the anger I poured kerosene on my person from the plastic canister and set myself ablaze at around quarter past three to half past three. At that time my mother-in-law Khalidabi and my sister-in-law Munnibi were present at home and my husband, father-in-law and brother-in-law had went out. While I was burning, my mother-in-law and sister-in-law did not extinguish the fire. As the burns were causing more pain, I poured water on my person and extinguished the fire. After some time, my husband Md. Ejaz came home, and he took me to the M.G.M hospital for the initial treatment and thereafter he admitted me in Sushrut Hospital. At present I am undergoing treatment at Sushrut Hospital.

Therefore, yesterday as I had quarreled with my husband, namely Mohmed Ejaz and he used to harass me by raising doubts on my character and beat me up. Therefore, I got angry and poured kerosene on my person and set myself ablaze. My husband and father-in-law used to harass me by raising doubts on my character.

Hence this statement. [Left toe impression]

sd/-

30.05.2000

Sanjay Kashinathrao Jaibahar

[Special Executive Magistrate]

Dying Declaration Exhibit 35

Dt. 30.05.2000

Statement

Myself Shahana Begum w/o Mohmed Ejaz, r/at Kiradpura, Near Barkat Grocery Shop,Aurangabad.

I do hereby state in person that, I am residing at the above-mentioned place, my parents are residing at Roshan Gate. I am married 5 years ago to Mohmed Ejaz s/o Mohmed Osman from Kiradpura according to Muslim customs and have two children.

Yesterday on 29.05.2000 while at home in the afternoon, I had a quarrel with my husband. So, he abused, slapped and beat me with fist blow. So, I went and sat at the home of my sister in-law, namely Saliha. At around 3.00 O'clock my husband brought me to our house from my sister-in-law's house and he went outside to the shop. As my

husband and father-in-law, Mohmed Osman used to harass me by raising doubts on my character and yesterday they quarreled with me and beat me up, so in the fit of the anger I poured kerosene on my person from the canister and set myself ablaze at around quarter past three to half past three. At that time my mother-in-law Khaledabi and my sister-in-law, Munnibi were present at home. They did not extinguish the fire. As the burns were causing more pain, I poured water on my person and extinguished the fire. After some time, my husband Mohmed Ejaz came home and at first, he took me to the M.G.M hospital for the initial treatment and thereafter he admitted me in Sushrut Hospital.

Therefore, yesterday I had quarreled with my husband namely Mohmed Ejaz s/o Mohmed Osman and he beat me up; similarly, as my husband Mohmed Ejaz and my father-in-law Mohmed Osman used to harass me by raising doubts on my character. Therefore, as I could not bear the harassment, I got angry and poured kerosene from the canister on my person and set myself ablaze. At present I am undergoing treatment at Sushrut Hospital, Aurangabad. Hence, you are requested to take action against my husband and father-in-law.

The above statement of mine is written as per my say and it is correct and true.

Before me	Statement by
Sd/-	Sd/-
ASI	Left Toe Impression.

Jinsi, Police Station,Aurangabad

Dying Declaration Exhibit 39

31/5/2000

Sushrut Hospital A'bad.

Statement

I, Shahana Begum w/o Mohmed Ejaz, Age -22 years, Occupation- Household, R/o. Kiradpura, Near Barkat Grocery Shop, Aurangabad.

I do hereby state in person that, I am residing at the above-mentioned place. My parents reside at Roshan Gate. I got married before 5 years ago with Md. Ejaz s/o. Osman from Kiradpura as per Muslim customs. I have two children; one is 4 years old and the other is 2 1/2 years old.

The day before yesterday i.e. on 29/5/2020 in the afternoon while I was at home my quarrel took place with my husband namely Md. Ejaz. He abused me and beat me with slaps and fist blows. So, I went to the house of my sister-in-law Saliha, who lives next door, and stayed in her house. Around 3 p.m., my husband brought me from the house of my sister-in-law Saliha to our house and then he went to the shop. My husband, father-in-law, and elder sister-in-law Munnibi used to harass me by raising doubts on

my character and abuse me in filthy language. As day before yesterday my husband quarreled with me and beat me up, I got angry and around three or quarter past three o'clock in the afternoon I poured kerosene from the canister on my person and set myself ablaze. At that time my mother-in-law Khalidabi and my elder sister-in-law Munnibi were present at home, and they did not extinguish the fire. As the burns were causing more pain, I poured water on my person and extinguished the fire. After some time, my husband Md. Ejaz came home, and he took me to the M.G.M hospital for the initial treatment and thereafter he admitted me in Sushrut Hospital.

Therefore, the day before yesterday as I had quarreled with my husband namely Mohmed Ejaz s/o Mohmed Osman and he beat me up; similarly, as my husband Mohmed Ejaz and my father-in-law Mohmed Osman, my elder sister-in-law Munnibi alias Surraya used to harass me by raising doubts on my character, beat me and abuse me. Therefore, I got angry and poured kerosene from the canister on my person and set myself ablaze. At present I am undergoing treatment at Sushrut Hospital, Aurangabad. Hence, you are requested to take action against my husband, father-in-law and elder sister-in-law.

My above statement is read over to me, and it is true and correct as per my narration.

Before.

Sd/

PSI, Dabhade, P.S. Jinsi

31.05.2000

[Translated by Senior Translator of this Establishment]

[18] What is noticed from above dying declarations is that, firstly, there is no prompt recording of dying declarations since afternoon of 29.05.2000 till noon time of 30.05.2000. As pointed out by learned counsel for the appellant, on none of the three dying declarations Exhibits 26, 35 and 39, time of its recording is reflected, and surprisingly, on none of them there is certification of fitness of Shahanabebum to give dying declaration. In the considered opinion of this Court, it was crucial for the simple reason that she had suffered over 92% burns and there was already delay in recording prompt declaration. It is further surprising to note that PW3, who was at that point of time, Special Executive Magistrate, was a tailor by occupation. He claims that he received intimation from police at 4.00 to 4.30 p.m. on 29.05.2000 itself, but Exhibit 26 is recorded by him on next day and not on same day. In cross he has answered that when he visited hospital, he learnt from police that patient was not in fit condition to give statement and therefore he returned back. Police were not at all competent to inform him regarding fitness of the lady to give dying declaration. But it seems that believing police, he did not record statement on 29.05.2000 itself. As pointed out, the lady gave dying declaration in Urdu but this witness claims to have translated it in Marathi. There is nothing to show that he was conversant in Urdu so as to enable him

to translate it in Marathi. As stated above, he has admitted that he did not note the timing and even did not take certification of doctor. Doctor PW7 has not stated about visit of PW3 for recording any dying declaration as said doctor only speaks about police approaching him. Such circumstances compel this court to doubt the veracity of dying declaration.

[19] As regards second dying declaration Exhibit 35 is concerned, it is recorded by PW8 ASI Mundhe, who, in his evidence at Exhibit 33, claims that after giving communication to Special Executive Magistrate on 29.05.2000, he approached Sushrut Hospital. He claims that the doctor on duty certified Shahanabegum to be fit to give statement. Such certification is obtained on the carbon copy of communication at Exhibit 34, but it carries date as 29.05.2000, however, dying declaration Exhibit 35 is surprisingly carrying date as 30.05.2000. Such material clearly suggest that documents are prepared later on. Had PW8 issued letter to PW7 on 29.05.2000 which carries certification of doctor of same day, then, why dying declaration was not recorded at that very time, is not explained by prosecution or even this witness. Rather, he has identified statement of deceased at Exhibit 35 which is apparently of 30.05.2000.

[20] PW9 also has recorded 3rd dying declaration on 31.05.2000 and the same is at Exhibit 39. PW9, in his evidence at Exhibit 37, deposed about receiving case papers on 30.05.2000 but he appears to have visited Sushrut Hospital, not on same day, rather on next day i.e. on 31.05.2000 and then recorded statement Exhibit 39. It is also pertinent to note that certification is not on statement, rather on a communication Exhibit 38 which is also a carbon copy of communication to hospital authorities. Even time of recording dying declaration Exhibit 39 is not reflected nor there is thumb impression of deceased lady over it.

Above are the stark features emanating on meticulous examination of Exhibits 26, 35 and 39. There is perfunctory or casual approach by investigating authorities in not recording dying declaration promptly or with due care and caution.

[21] On careful scrutiny of Exhibit 26, it is noticed that deceased named husband alone for suspecting character and picking up quarrel and beating her. In Exhibits 35 and 36, she merely informed that there was quarrel between husband and wife, as such, reason stated in Exhibit 26 about suspicion of character is not finding place in Exhibits 35 and 39. It is also emerging from Exhibits 26, 35 and 39 that, after she was brought home back from his sister' place by husband accused, he had left the house, as according to deceased, he went to shop. Her such statement shows that husband was not present around at the time of immolation. She categorically stated that in rage of anger, she poured kerosene and incinerated herself.

[22] Resultantly, on carefully analyzing and re-appreciating three dying declarations, the distinct features which are emerging could be summarized as, **firstly,** there is delay in recording dying declarations, **secondly,** time of recording dying declaration is not appearing on any of the dying declarations. **Thirdly,** none of

the dying declarations carry certification of doctor regarding fitness to give statement. Exhibit 39 recorded by Investigating officer on 31.05.2000 also does not carry thumb impression. For such reasons, there is considerable doubt about veracity and credibility of multiple dying declarations. In view of deceased having suffered 92% burns, it is also doubtful whether she was in capacity to give multiple dying declarations. On this count, support can be taken of the judgment of Hon'ble Apex Court in the case of **Surinder Kumar v. State of Haryana**, 2011 10 SCC 173.

[23] There is conviction for offence under Section 306 of IPC. Before attracting and applying said charge, it is bounden and statutory duty of prosecution to establish that there was abetment, inducement, instigation to commit suicide. Coupled with mens rea, positive role must be shown to have been played by accused.

Law to the above extent is time and again dealt and discussed in numerous judgments, including recent judgment of Kumar @ Shiva Kumar v. State of Karnataka,2024 SCCOnLineSC 216, wherein, from para 60 onwards, the Hon'ble Apex Court has discussed the legal aspect of abetment to suicide, as to what amounts to abetment as dealt under Section 107 of IPC and also, after discussing previous legal pronouncements in **M. Mohan v. State**, 2011 3 SCC 626; **Ramesh Kumar v. State of Chhattisgarh**, 2001 9 SCC 618, **Chitresh Kumar Chopra v. State**, 2009 16 SCC 605; **Amalendu Pal alias Jhantu v. State of West Bengal**, 2010 1 SCC 707; **Rajesh v. State of Haryana**, 2020 15 SCC 359 and **State of West Bengal v. Orilal Jaiswal**, 1994 1 SCC 73, culled out a principle that in order to prove guilt of accused for abetment to commit suicide, prosecution has to prove:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

Referring to the case of **Amalendu Pal** (supra), it has been observed in para 69 that:

69. ... this Court after referring to some of the previous decisions held that it has been the consistent view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative to put an end to her life. It must be borne in mind that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the commission of suicide. Merely on the allegation of harassment without there being any

positive action proximate to the time of occurrence on the part of the accused which led or compelled the deceased to commit suicide, conviction in terms of Section 306 IPC would not be sustainable. Thereafter, this Court held as under:

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

[24] To sum up, here it is emanating from oral evidence of parents that husband suspected and doubted character of deceased and beat her. But when such instances occurred, is not specified. There is material omission regarding beating on the day of episode of burns. As discussed in para 14, parents are not consistent on the point of beating. Therefore, in the considered opinion of this Court, there is no convincing evidence on the point of subjecting deceased to mental cruelty. Resultantly, he cannot be held guilty of commission of offence under Section 498-A IPC. For above discussed reasons, as essential ingredients for attracting Section 306 IPC are patently missing in the prosecution evidence to hold him guilty for the same, he also deserves to be acquitted from charge under Section 306 IPC.

[25] In view of the above discussion, the following order is passed:

ORDER

I. The appeal is allowed.

II. The conviction awarded to the appellant-original accused no.1 by learned Additional Sessions Judge, Aurangabad in Sessions Case No. 253 of 2000 for offence under Sections 498-A and 306 of IPC on 16.05.2002 is hereby quashed and set aside.

III. The appellant stands acquitted of the offence punishable under Sections 498-A and 306 of IPC

IV. The bail bonds of the appellant stand cancelled.

V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.

VI. It is clarified that there is no change as regards the order regarding disposal of muddemal.

VII. Fees of the counsel appointed to represent the appellant is quantified at Rs. 15,000/- [Rupees fifteen thousand only] to be paid by the High Court Legal Services Sub-Committee, Aurangabad

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2024(2)AIAJ610

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

[Before S V Pinto]

Criminal Miscellaneous Application (For Leave To Appeal); Criminal Appeal No 9541 of 2023; 1238 of 2023 **dated 10/09/2024**

Jayantibhai Naranbhai Patel

Versus

State of Gujarat & Ors

ACQUITTAL IN CHEQUE DISHONOR

Code of Criminal Procedure, 1973 Sec. 378 - Negotiable Instruments Act, 1881 Sec. 139 - Sec. 138 - Acquittal in Cheque Dishonor - Application filed under Sec. 378(4) of Cr.P.C. challenging acquittal in cheque dishonor case - Respondents allegedly failed to pay enforceable debt - Cheque issued for Rs. 1,50,000/- dishonored due to insufficient funds - Trial Court acquitted respondents, holding cheque was given as security without sufficient evidence - Applicant argued that all required evidence was provided, including agreements and cheques - Court did not properly consider Memorandum of Agreement and evidence - Leave to appeal granted as presumption under Sec. 139 N.I. Act not rebutted - Appeal Allowed

Law Point: In cases of cheque dishonor under Sec. 138 of N.I. Act, presumption favors the holder unless rebutted by the accused with cogent evidence, and the agreements and financial transactions must be considered in totality

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 378

Negotiable Instruments Act, 1881 Sec. 139, Sec. 138

Counsel:

Ashish M Dagli, N K Majmudar, C M Shah

JUDGEMENT

S V Pinto, J.- [1] At the outset, learned advocate for the applicant seeks permission to delete the name of **Respondent No. 5 i.e. Patel Harishbhai Laxmibhaidas** as also submits that by an order dated 10/07/223 passed by this Court, matter qua **Respondent No. 6 i.e. Patel Rajnikant Hiralal** is abated since the respondent No. 6 has expired.

Permission as prayed for is granted. Registry is directed to delete the name of **Respondent No. 5 Patel Harishbhai Laxmibhaidas** and necessary amendment shall be carried out.

1. The present application has been filed by the original complainant seeking leave to appeal under Section 378(4) of the Code of Criminal Procedure, 1973 (

hereinafter referred to "Cr.P.C.", for short) challenging the judgement and order of acquittal dated **17/03/2023** passed by the **learned Judicial Magistrate First Class, Dakor** (hereinafter referred to as the learned trial Court) in **Criminal Case No. 85 of 2002**, whereby the learned trial Court was pleased to acquit the Respondent Nos. 2, 3, 4 and 7 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (herein after referred to as the "N.I Act", for short).

[2] Heard learned advocate Mr. Ashish Dagli for the applicant, learned Additional Public Prosecutor Ms. C.M.Shah for the respondent No. 1- State, learned advocate Ms. Raksha Dixit for the respondent No. 2 and learned advocate Mr. N.K. Majmudar for the respondent Nos. 3, 4 and 7. Perused the impugned judgement and order to examine whether the applicant has an arguable case to grant leave to appeal and admit the appeal.

[3] The brief facts culled out from the impugned judgement and order and the submissions of the learned advocates as also the petition are as under:-

3.1 The respondent No. 2 is CURE AIM PHARMACEUTICAL, a partnership firm and the respondent Nos. 3, 4 and 7 are the partners of CURE AIM PHARMACEUTICAL Firm. As per the complaint, the present applicant and the Respondent Nos. 3, 4 and 7 had friendly relations and the Respondent No. 2-Firm was in need of some finance, which was given by the applicant and the applicant was added as a partner to the said Firm on 01/08/1998. The management of the said Firm was done by the Respondent Nos. 3, 4 and 7 and a dispute arose between them and a legal enforceable debt of Rs. 35,50,000/- till 31/05/1999 was outstanding to be paid to the applicant. An agreement on a stamp paper of Rs. 50/- was executed between them on 30/09/1999 but as the parties did not act as per the terms of the settlement, an Arbitration Petition - I.A.AP. No. 49 of 2000 was filed before this Court and an Arbitrator was appointed by an order dated 08/12/2000. The applicant also filed Arbitration Application No. 94 of 2000 before the Civil Court, Nadiad and an order of status quo was granted in favour of the applicant. The settlement proceedings were carried on and on 19/01/2001, a legally enforceable debt of Rs. 49,75,000/- was found to be outstanding to be paid to the applicant and a Memorandum of Understanding was executed in the presence of the Arbitrator and the advocates. The respondent No. 4 accepted the responsibility on behalf of the respondent No. 2 Firm and all the other respondents and 25 cheques of The Dakor Nagrik Sahkari Bank Ltd., Dakor Branch were issued in favour of the applicant. A **Cheque No "279501" of Rs. 1,50,000/-** dated **01/11/2001** was deposited by the applicant in his bank i.e. The Dakor Nagrik Sahkari Bank Ltd., Dakor Branch on **03/12/2001**, and the cheque was returned with the endorsement **"insufficient funds".** The applicant gave the statutory notice dated **15/12/2001** through his advocate by RPAD/ UPC, but the amount was not paid within the stipulated time period and hence the applicant filed the complaint under Section 138 of the N.I. Act before the learned trial court which was registered

as **Criminal Case No 85 of 2002** . The respondent Nos. 2,3,4 and 7 appeared before the learned trial Court and at the conclusion of the trial the learned trial Court was pleased to acquit the respondent Nos. 2,3,4, and 7 from the offence.

[4] Learned advocate Mr. Ashish Dagli for the applicant has submitted that the applicant has produced all the oral and document evidences but the learned trial Court has not considered that the applicant had a legally enforceable debt and all the ingredients of Section 138 of the N.I.Act were fulfilled and satisfied and the presumption under Section 139 of the N.I. Act is to be drawn in favour of the applicant and the same has not been believed. The agreements have been produced and all the transactions in question have been proved by documentary evidence, but the learned trial Court has observed that the cheque was given as a security without any cogent evidence produced by the respondent Nos. 2, 3,4 and 7. The impugned judgement and order is illegal and perverse and interference is required, and the leave to appeal is required to be granted.

[5] Learned advocate Mr. N.K.Majmudar has submitted that the learned trial Court has considered all the aspects and no interference is required in the impugned judgement and order and leave to appeal is not required to be granted.

[6] Considering the submissions of the learned advocates and on perusal of the impugned judgement and order, it prima facie, transpires that the applicant has stepped into the witness box and the deposed at **Exh:111** and the **Cheque No."279501"** is produced at **Exh:P131/ P.W.1**, the return memo is produced at **Exh:P132/P.W.1**, the statutory notice given to the respondents is produced at **Exh:P134/P.W.1** and the RPAD slips and UPC slips have also been produced. The agreements executed between the parties are also produced in the evidence of the applicant. The respondents have produced the balance sheet of the respondent No. 2- Firm.

[7] At this juncture, it would be fit to refer to Section 139 of the N.I. Act which reads as under:-

139. Presumption in favour of holder.-

"It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

[8] In cases filed under Section 138 of the N.I.Act, the initial presumption is required to be drawn in favour of the complainant and it is settled position of law that presumption cannot be rebutted unless the contrary is proved by the accused. The rebuttal of presumption can be drawn from the evidence available on record and the accused may lead evidence or himself step into the witness box to put up his case. Considering the disputes involved between the parties and the arbitration proceedings, pursuant to which agreements have been executed between the parties, in the presence of the arbitrator and the advocates prima facie, it appears that there were financial

transactions between the applicant and the respondent No. 2-Firm and disputes had arisen about these financial transaction and efforts were made to settle the financial transactions through arbitration proceedings and the Memorandum Of Agreement was executed in the presence of the Arbitrator and the advocates of the parties. The learned trial Court has not appreciated the Memorandum Of Agreement executed between the parties on 19/01/2001 in the correct perspective and the present leave to appeal deserves to be allowed and accordingly is allowed

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2024(2)AIAJ613

DELHI HIGH COURT

[Before Amit Mahajan]

Crl L P (Criminal Leave Petition) No 547 of 2019 **dated 09/09/2024**

State

Versus

Sarjeet

ACQUITTAL IN RAPE CASE

Code of Criminal Procedure, 1973 Sec. 161, Sec. 378 - Protection of Children from Sexual Offences Act, 2012 Sec. 3, Sec. 4 - Acquittal in Rape Case - Respondent was charged under POCSO for raping a 17-year-old girl - Victim initially stated she ran away with the respondent voluntarily due to familial pressure to marry someone else - Later, she claimed abduction and rape under threat of harm to her brother - Trial court noted contradictions in her testimony and found no corroborative evidence of sexual assault - Medical examination showed torn hymen but no semen - Court also found discrepancies regarding the victim's age, favoring her birth certificate which indicated she was not a minor - Acquittal upheld due to lack of reliable evidence. - Petition Dismissed

Law Point: Contradictory testimony and absence of corroborative evidence weaken the prosecution's case, especially when the victim's age and consent are in dispute.

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 161, Sec. 378

Protection of Children from Sexual Offences Act, 2012 Sec. 3, Sec. 4

Counsel:

Pradeep Gahalot, Sanyam Bansal, Sonali Sharma, Neelakshi, Azhar Alam

JUDGEMENT

Amit Mahajan.- [1] The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of leave to challenge the judgment

dated 24.04.2019 (hereafter 'the impugned judgment'), in Sessions Case No. 440696/2016 arising out of FIR No.116/2014, registered at Police Station Jaffarpur Kalan, whereby the learned Trial Court had **acquitted** the respondent of the offence under Section 4 read with Section 3(i) of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

[2] The brief facts of the present case are that the respondent allegedly raped the prosecutrix, who was 17 years old at the time of the incident. The victim had been missing after leaving her house for school on 19.05.2014. The victim's father made a missing persons complaint on 20.05.2014 at 00:45 AM, and mentioned that he suspected the respondent, who was a resident of the village where the victim's maternal uncle resided. The present case was registered on the said complaint. Thereafter, the police visited the respondent's house in Haryana, and found him to be missing. At around 12:30 PM on 20.05.2014, the complainant went to the police station with the victim and the respondent. In her statement under Section 161 of the CrPC, the victim stated that she had gone with the respondent of her own free will, as she considered the respondent as her husband and that she had known him since November, 2013. She stated that she had tried to persuade her parents, however, they intended to get her married to some other person. She stated that she had thus ran away with the respondent. She further stated that they spent the night in a Hotel near New Delhi Railway Station, where they had physical relations. She stated that her parents had asked them to return and promised to arrange their marriage, however, the victim did not want to live with them.

[3] The learned Trial Court framed the charge against the respondent vide order dated 04.08.2014 for the offence under Section 4 read with Section 3(i) of the POCSO Act.

[4] The learned Trial Court, by the impugned judgment, **acquitted** the respondent of the charged offence and observed that testimony of the victim was unreliable due to contradictions. It was noted that there was a lack of supporting evidence to prove the offence.

[5] The learned Trial Court held that the prosecution had failed to prove beyond reasonable doubt that the victim was a minor at the time of the incident as her age as per the birth certificate (Ex. PW-5/DA) was 01.05.1996. It was also noted that the victim had given contradictory statements wherein she had initially admitted that she had gone with the applicant willingly, however, in her testimony, she had stated that she had no friendship with the respondent and she had gone with him under threat that he would murder her brother.

[6] It was noted that even if the victim was assumed to be under 18 years of age, the prosecution failed to prove that the respondent had kidnapped her. Reliance was placed on the case of Vardhrajan v. State of Madras, 1965 AIR(SC),942 where the Hon'ble Apex Court had held that the offence of kidnapping was not made out as the

girl, who was 17 years of age at that time, had voluntary gone with the accused therein having the capacity to know the import of doing so. Further, it was noted that while the hymen of the victim was torn, no semen was found in the MLC.

[7] It was also noted that the prosecution had miserably failed to prove its case and the accused was therefore **acquitted** in the present case.

[8] The learned Additional Public Prosecutor for the State submitted that the impugned judgment is based on conjectures and surmises and as such cannot stand the scrutiny of law and liable to be set aside.

[9] He submitted that the learned Trial Court has **acquitted** the respondent on account of some discrepancies in the statement of the victim. He contended that the courts should examine the broader probabilities of a case and not get swayed by minor or insignificant discrepancies in the statement of the child victim, which are not of a fatal nature, to throw out an otherwise reliable prosecution case.

[10] He submitted that the testimony of the victim is corroborated by the FSL report which mentioned that at the time of medical examination, the victim's hymen was freshly torn.

[11] He submitted that it is trite law that conviction can be sustained on the sole testimony of the victim and in the present case the prosecutrix has clearly named the accused in her statements.

[12] He submitted that the learned Trial Court failed to appreciate the testimony of Dr. V.N.V. Satish, Junior Staff surgeon (PW-14) who had deposed that "as the upper second molars had not erupted, the possibility of her being 18 years of age or more is very bleak".

[13] The learned counsel for the respondent submitted that the testimony of the victim was riddled with discrepancies.

[14] He submitted that in the statements of the victim that were recorded under Sections 161 and 164 of the CrPC, the victim had stated that she wished to marry the respondent, however, the victim presented a different version in her testimony where she deposed that the respondent had threatened to kill her brother in custody of his friends.

[15] He submitted that the version of the prosecution is not supported by the statements of PW-2 (father of victim) and PW-5 (mother of victim) as the victim had made no mention of the alleged threats to them.

[16] He submitted that the victim's statement that the accused raped her by threatening to kill her brother whom he had kidnapped is contradicted by the statement of her mother (PW-5) who deposed that on the date of the alleged incident, the victim's brother was at home.

[17] He submitted that the victim was a major on the day of the incident, that is, 19.05.2014, as her date of birth on the birth certificate which was corroborated by the victim's mother is 01.05.1996. He submitted that the school certificate was unreliable since the date of birth was recorded merely on the word of the victim's parents at the time of admission, and no document was given to substantiate the same.

ANALYSIS

[18] It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a prima facie case is made out in favour of the appellant or if such arguable points have been raised which would merit interference.The Hon'ble Apex Court in the case of **Maharashtra v. Sujay Mangesh Poyarekar**, 2008 9 SCC 475 held as under:

> "19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal "shall be entertained except with the leave of the High Court". It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.
>
> **20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.**
>
> **21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits.** But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be "perverse" and, hence, no leave should be granted."
>
> (emphasis supplied)

[19] In the present case, the prosecution allegations are sought to be proved only on the basis of statement of the prosecutrix. It is an admitted case that that the same is not corroborated by any other independent evidence.

[20] It is trite law that the accused can be convicted solely on the basis of evidence of the complainant / victim as long as same inspires confidence and corroboration is not necessary for the same. The law on this aspect was discussed in detail by the Hon'ble Apex Court by Nirmal Premkumar v. State,2024 SCCOnLineSC 260. The relevant portion of the same is produced hereunder:

> **"11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence**.
>
> 12. In Ganesan v. State4, this Court held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.
>
> 13. This Court was tasked to adjudicate a matter involving gang rape allegations under section 376(2)(g), I.P.C in Rai Sandeep v. State (NCT of Delhi)5 . The Court found totally conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness', the Court opined as under:
>
> "22. In our considered opinion, the 'sterling witness' should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the crossexamination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert

opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

(underlining ours, for emphasis)

14. In Krishan Kumar Malik v. State of Haryana6 , this Court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences. 32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant."

15. **What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a "sterling witness" without further corroboration, but the quality and credibility must be exceptionally high. The statement**

of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistences excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded."

(emphasis supplied)

[21] It has been argued by the learned APP that the respondent ought not to have been **acquitted** merely on account of minor discrepancies in the statements of the victim. It is relevant to note that the discrepancies in the versions of the victim are not minor. As rightly noted by the learned Trial Court, the victim initially admitted to having gone with the respondent and stated that she wanted to marry him but her parents were objecting to the same. However, during her testimony, she took a diametrically opposite stand and alleged that the respondent had kidnapped her and raped her under the threat of harming her brother. The said contradiction goes to the root of the matter and cannot be said to be so minor so as to not affect the prosecution's case. The testimony of the victim is rendered doubtful due to her inconsistent and dubious stand and the same does not inspire confidence.

[22] The victim in her testimony had made allegations of kidnapping against the respondent. The learned Trial Court had rightly noted that the victim had not made any such allegations at the outset and neither informed about the same to her parents or the police. The brother of the victim at that time was at home as per her parents as well. The allegation that the victim had accompanied the respondent and he had raped her under threats of harm to the victim's brother is a significant improvement over the initial stance of the victim and seems improbable. As noted above, initially the victim had maintained that she had left her home voluntarily as her parents were not agreeing to her relationship with the respondent and wanted to get her married to someone else. In such circumstances, it does not seem that the victim was enticed away from lawful guardianship or forced into sexual relations.

[23] However, it is settled law that the consent of a minor is no consent. Insofar as the age of the victim is concerned, two contradicting documents were brought forth by the parties. While the prosecution placed reliance on the Admission Register for the period 19.07.1991 to 04.04.2008 of the victim's school to establish the date of birth of the victim as 01.05.1997, the defence relied upon a birth certificate (Ex. PW-5/DA) that was registered on 10.05.1996 where the date of the birth of the victim was shown as 01.05.1996. In the opinion of this Court, the learned Trial Court rightly favoured the birth certificate to determine the age of the victim. It was rightly appreciated that while the principal of the school (PW4) supported the Admission Register, however, she deposed that at the time of admission, no documents were produced by the parents of

the victim regarding her age. Moreover, PW-5 (mother of the victim) had admitted the date in the said birth certificate and PW-2 (father of the victim), in his testimony, had admitted to lowering the victim's age at the time of admission. In the opinion of this Court, the learned Trial Court rightly noted that the prosecution had been unable to establish that the victim was a minor at the time of the incident.

[24] It is relevant to note that there is no cogent proof regarding the sexual relations being established either. While the MLC suggests that the hymen of the victim was torn, it was rightly noted by the learned Trial Court that no semen was found so as to suggest sexual relations had been established between the parties. It was also noted that PW2 (father of victim) and PW3 (Investigating Officer) had not stated that the victim had told them that the respondent has established sexual relations with her and their testimonies thus don't help the case of the prosecution. It seems that there was a typographical error and the learned Trial Court was referring to PW5 (mother of victim) instead of PW3 as it was also mentioned that apart from the said witnesses, the rest of the witnesses were official witnesses.

[25] Furthermore, the learned Trial Court rightly noted that it was peculiar that the respondent accompanied the victim and her father to the police station. It seems odd as to why the respondent would present himself up for arrest and the same created a doubt in the story of the prosecution.

[26] Insofar as the argument regarding the presumption of guilt under Section 29 of the POCSO Act is concerned, the same comes into play once the prosecution establishes the foundational facts. It can be rebutted by discrediting the witnesses through cross-examination as well [Ref. Altaf Ahmed v. State (GNCTD of Delhi),2020 SCCOnLineDel 1938]. The respondent has successfully cast doubt over the age of the victim.

[27] Having noted that the testimony of the prosecutrix is in doubt and that there is no independent corroboration in the form of MLC or FSL, the possibility of the respondent's false implication cannot be ruled out.

[28] In view of the aforesaid discussion, this Court is of the opinion that the State has not been able to establish a prima facie case in its favour and no credible ground has been raised to accede to the State's request to grant leave to appeal in the present case.

[29] The leave petition is dismissed in the aforesaid terms

2024(2)AIAJ621

THE HIGH COURT OF JUDICATURE AT MADRAS

[Before M S Ramesh; C Kumarappan]

Crl A (Criminal Appeal) No 778 of 2019, 779 of 2019, 546 of 2020 **dated 06/09/2024**

Sridhar; Suresh Kumar @ Suresh; Pravinkumar @ Pravin @ Kumar S/o Muthulingam; Rajkumar @ Raj; Pravinkumar @ Pravin S/o Joseph

Versus

State

MURDER CONVICTION APPEAL

Indian Penal Code, 1860 Sec. 341, Sec. 149, Sec. 148, Sec. 147, Sec. 302 - Code of Criminal Procedure, 1973 Sec. 161 - Murder Conviction Appeal - Appellants convicted for murder of ward councilor by Sessions Court, with sentences based on testimonies of eye-witnesses, confession, and recovery of weapons - Appellants argued discrepancies in witness testimonies and delays in FIR registration and forwarding - Court found contradictions in eye-witness accounts, doubts about witnesses' presence at the scene, and questionable recovery process - Motive for the crime unproven and discrepancies in prosecution evidence raised reasonable doubt - Conviction and sentence set aside -Appellants acquitted - Appeal Allowed

Law Point: Prosecution must provide consistent and credible witness testimonies and evidence to establish guilt beyond reasonable doubt, especially in murder cases.

Acts Referred:

Indian Penal Code, 1860 Sec. 341, Sec. 149, Sec. 148, Sec. 147, Sec. 302

Code of Criminal Procedure, 1973 Sec. 161

Counsel:

S Suresh, S Senthilvel, A Gokulakrishnan

JUDGEMENT

C. Kumarappan, J.- [1] All the three appeals have been filed assailing the judgment in S.C.No.241 of 2016 dated 30.09.2019 passed by the learned III Additional Sessions Judge, Poonamallee. The learned Sessions Judge has convicted A1 to A4 for the offence under Section 302 IPC and A5 was convicted for the offence under Section 302 IPC r/w 149 IPC. Similarly, A1 to A5 were also found guilty for the offence under Sections 341 and 148 of IPC. Against the above conviction and sentence, A5 preferred a Criminal Appeal in Crl.A.No.778 of 2019. A1 filed a Criminal Appeal in Crl.A.No.779 of 2019. Similarly, the other 3 accused viz., A2, A3 and A4 filed a Criminal Appeal in

[2] During the pendency of these appeals, A2-Pravinkumar @ Pravin @ Kumar, S/o. Muthulingam, died. Hence, the appeal against A2 stands abated.

[3] Since all the 3 Criminal Appeals are against the judgment in SC.No.241 of 2016, this Court deems it appropriate to take up all these appeals and dispose of the same by a common judgment.

[4] According to the prosecution, the de facto complainant viz., Mr.Ravichandran-PW1 was the driver of the deceased Guru. The deceased Guru was the 86th ward councilor of Chennai Corporation, and he owned a house at No.25, Manickkampillai Street, Manoorpet. It appears that on 30.09.2015 at about 1.15 p.m, when the deceased Guru was approaching his car to proceed to attend the council meeting at Rippon Building, he was hacked to death. According to the prosecution, the appellants in all these appeals were the assailants.

[5] Pw1-Mr.Ravichandran who witnessed the occurrence gave the complaint [Ex.P1] to the police immediately after the occurrence. According to PW1, he being the driver, when he was waiting in the car expecting the arrival of Guru, at about 1.15.p.m, when the deceased Guru was coming, Mr.Suresh, Raj, Pravin and one more identifiable person, who came in 2 motor bikes attacked the deceased on his head, hand and wrist, indiscriminately and fled away from the scene of occurrence.

[6] The complaint was received by the Sub Inspector of Police [PW9] on 30.09.2015 at about 3.00.p.m. Immediately, on receipt of the complaint, she registered an FIR in Crime No.439 of 2015 for the offence under Section 302 IPC. It appears that on registering the FIR, she forwarded the same to the Investigating Officer [PW18].

[7] According to the Investigating Officer Mr.V.Karnan [PW18], on receipt of the FIR, he proceeded to the scene of occurrence at about 5.30.p.m, and prepared observation mahazar and rough sketch in the presence of one Mr.Selvamani [PW10] and Mr.Mukesh. Thereafter, he recorded the statement of PW1-Mr.Ravichandran, PW2-Mr.Maskrin and PW3-Mr.Ando Stalin viz., driver, wife and son respectively of the deceased. He also recorded the statement of the other witnesses viz., PW4-Mr.Vinoth, PW5- Mr.Nagoor Meeran and one Mr.Syed. On 01.10.015 at about 9.00.a.m, he conducted inquest upon the body of the deceased and arranged for a postmortem. He also recorded the statement of the inquest witnesses, the Forensic expert and the photographer. Thereafter, he collected the blood stains from the scene of occurrence. He also forwarded the blood stained dhothi of the deceased, to the jurisdictional Magistrate under Form-95. On 01.10.2015 at about 22.00 hours, he arrested A1, A3 and A4 and recorded their confession statement in the presence of one Mr.Raja Karunakaran [PW6] and Mr.A.Meganathan [PW7] and made a discovery of facts by recovering the weapons and vehicles used in the occurrence. He also recorded the confession statement of A2 and A5 before the very same witnesses. The recovery of weapons were made behind the Seeyathamman Temple in respect of A1 to A4, whereas, against A5, the recovery was made at the burial ground, Oragadam.

[8] He also recorded the statement of Doctor PW15-Mr.Manikandaraj, who conducted postmortem on the body of the deceased. In the postmortem certificate, PW-15/Doctor has found the following injuries:-

"**Injuries**

• Reddish brown abrasion of 3 cm X 0.5 cm, 1 cm x 1 cm over the outer aspect of upper 1/3 of right arm.

• Reddish brown abrasion of 10 cm x 1 cm over the upper aspect of right shoulder.

• Reddish brown abrasion of 5 cm x 0.5 cm over the upper 1/3 of left arm

• Reddish brown abrasion of 10 cm x 2 cm over the upper aspect of left shoulder.

• Reddish brown abrasion of 8 cm x 3 cm over the back of upper 1/3 of left forearm.

• Incised wound of 8 cm x 3 cm x bone deep over the back of right hand.

• Incised wound 3 cm x 1 cm x bone deep over the back of right index finger.

• Incised wound 5 cm x 1 cm x bone deep over the back of right thumb.

• Incised wound of 7 cm x 6 cm x bone deep over the back of left hand.

• Incised wound of 2 cm x 1 cm x 0.5 cm over the base of left index finger.

• Incised wound of 6 cm x 1 cm x bone deep over the left upper frontal region

• Incised wound of 5 cm x 1 cm x bone deep over the left tempero parietal region.

• Incised wound of 6 cm x 1 cm x bone deep over the upper left parieto occipital region.

• Incised wound of 7 cm x 1 cm x bone deep over the lower left parieto occipital region.

• Incised would of 2 cm x 2 cm x scalp deep over the upper aspect of right parietal region.

• Incised wound of 12 cm x 2 cm x bone deep over the occiput extending from left side to right side and an incised wound of 7 cm x 2 cm x bone deep intersecting the above mentioned wound over the centre of the occiput.

• Incised wound of 12 cm x 8 cm x bone deep over the lower aspect of right side of the occiput.

• Incised wound of 5 cm x 2 cm x bone deep over the upper aspect of right side of the occiput.

• Incised wound of 11 cm x 10 cm x bone deep over the back of the head, 4 cm above the occiput.

• Incised wound of 10 cm x 1 cm x bone deep over the centre of the occiput

• Incised wound of 6 cm x 2 cm x bone deep over the centre of nape of the neck.

• Incised wound of 7 cm x 2 cm x bone deep over the right side of the nape of the neck.

• **Vault:** Depressed comminuted fracture over the occiput and sub occipital region exposing the meanings of the brain.

• **Brain:** Diffuse subdural and sub arachnoid haemorrhage involving all the lobes of the brain. **Cerebellum:** C/S: Congested."

[9] According to the Doctor's [PW15] opinion, the deceased would have died due to the above injuries.

[10] After that, the Investigating Officer [PW18] also received viscera report from the forensic lab and recorded the statement of PW17- Mrs.Umadevi. He also recorded the statement from the serology expert. He then altered the charge to Sections 147, 148, 302 of IPC and forwarded the alteration report to the jurisdictional Magistrate. And once again he forwarded the alteration report by incorporating Section 149 IPC. Thus, after completing the investigation, and after recording the statement from all the witnesses, he laid the charge sheet against all the accused for the offences under Sections 147, 148, 341 and 302 r/w 149 IPC.

[11] In order to prove their case, before the Trial Court, the prosecution has examined as many as 18 witnesses as PW1 to PW18, marked 27 exhibits as Exs.P1 to P27 and 15 Material Objects as M.O.1 to M.O.15.

[12] The Trial Court, after having considered the oral and documentary evidences and after hearing the arguments on either side has found that the charges framed against the accused have been proved beyond reasonable doubts and imposed life imprisonment against all the accused. Aggrieved by the same, the appellants are before this Court in these Criminal Appeals.

[13] The learned counsel for the appellants/A1, A3 to A5 would contend that the Trial Court has not considered their contention that all the prosecution witnesses are unreliable witnesses, which factum could be evidently proved through systemic delay of registering the FIR and forwarding the same to the jurisdictional Magistrate. The learned counsel would further contend that there was an inordinate delay in sending all the statements recorded under Section 161 Cr.P.C to the Court. The learned counsel would further contend that, the very genesis of the case was suppressed. It is also the contention of the learned counsel for the appellants/A1, A3 to A5 that the discrepancy found in the FIR as to the number of assailants would create a grave doubt about the presence of PW1 at the scene of occurrence.

13 (a). It was also contended by the learned counsel for the appellants that there are wide discrepancies between the evidences of one witness from the other witnesses that too in respect of the core issue of the crime, such as, in respect of the presence of

PW1 to PW5 at the scene of occurrence. Though it was projected by the prosecution that there was a motive between the accused and the deceased, there was not an iota of evidence available to prove such motive. It was also contended by the learned counsels for the appellants that the discovery of fact projected by the prosecution is concocted one. They would further contend that, there is no proof to connect the discovery of fact with that of the occurrence and the accused. Thus, the learned counsel for the appellants would vehemently contend that though the prosecution has miserably failed to prove their case, the Trial Court, based upon the surmises and conjectures, has found that the charges are proved and erroneously convicted and awarded sentences against the accused.

[14] Per contra, the learned Additional Public Prosecutor would renege the submission, by contending that the prosecution has proved the charges beyond reasonable doubt through the eye witnesses, who are none other than the driver of the deceased, who was very much present at the scene of occurrence and also through the wife and son of the deceased, who were living with the deceased and also present at the time of occurrence. The learned Additional Public Prosecutor would further contend that PW4, who is an independent witness has corroborated the evidence of PW1 to PW3. Apart from that, the learned Additional Public Prosecutor would contend that there are no unreasonable delay in either registering the FIR, or forwarding the same to the concerned jurisdictional Magistrate.

14 (a). It was further contended by the learned Additional Public Prosecutor that the case of the prosecution is further substantiated through the discovery of fact, which has been proved through the witnesses PW6 and PW7. Thus, the learned Additional Public Prosecutor would contend that occurrence, which is a daylight murder, has been witnessed by the occurrence witnesses and there are no reason to doubt their veracity, and that all the occurrence witnesses are trustworthy witnesses, and that they are consistent in their stand through out their examination. Hence, it was contended by the learned Additional Public Prosecutor that the Trial Court has considered all the material aspects and has rightly concluded that the prosecution has proved the charges beyond reasonable doubts. It was the further contention of the learned Additional Public Prosecutor that the appellants have not made out any case for interference in the well considered order of conviction. Hence, prayed to dismiss the appeals.

[15] We have given our anxious consideration to either side submissions.

[16] The entire prosecution case revolves around the testimony of eye witnesses viz., PW1 to PW4. Whereas, the learned counsel for the appellants set up a defence of absence of PW1 at the scene of occurrence. In this regard, he would bring the attention of this Court in respect of Ex.P1- complaint. Though PW1 admits that he was present at the Police Station within half an hour from the time of occurrence qua 1.30.p.m, the complaint was registered at about 3.00 p.m. Therefore, the learned counsel for the appellants projects the case that, when the police was present within five minutes from

the time of occurrence, and having taken PW1 to the police station within 30 minutes, the delay of 2 hours in registering the FIR must be construed as unexplained inordinate delay. It is well settled principle of law that mere delay would not be fatal to the prosecution's case.

[17] However, there is an inherent danger in losing the advantage of spontaneity. Such delay attached with danger of creeping in by the introduction of a coloured version, exaggerated account or concocted story as a result of larger number of deliberation and consultation. In the case on hand, though the occurrence took place at 1.30.p.m, on 30.09.2015, the deceased was taken to the hospital immediately, where he succumbed to the injuries at about 2.00 p.m. Now, according to the prosecution, the assailants were 5 in number and the occurrence was a daylight incident. When such a brutal murder takes place, everyone might have been under shock, and some reasonable time may be required to recover from such a shock. Therefore, though PW1 was present in the station within 30 minutes of the occurrence, considering the nature of occurrence and the brutality of the incident and also considering the fact that the deceased was taken to the nearby hospital, this Court could not find any inordinate delay in registering the FIR.

[18] Now let us consider the next defence of delay in forwarding FIR. The learned counsel for the appellants would contend that, though FIR refers that the same was registered at 3.00.p.m, the time at which the jurisdictional Magistrate received the FIR should also be relevant and an indicator to consider whether the FIR was really registered at 3.00.p.m, as contended by the prosecution. In this regard, a perusal of the FIR, which is marked as Ex.P1 and as admitted by PW-18/Investigating Officer, would reveal that it reached the jurisdictional Magistrate on 30.09.2015 at about 9.30.p.m (Ex.P12). It is pertinent to mention here that even according to PW9- Inspector of Police, Tmt.R.Sundari, the jurisdictional Magistrate Court is just 2 1/2 kms away from the scene of occurrence, which could be reached within 20 minutes even during peak hours. As we already stated, it is settled principle that the mere delay is not a fatal, but still it may impact upon the spontaneity of FIR. Be that as it may.

[19] However, if the witnesses are in sterling quality, then naturally the so called delay in forwarding the FIR cannot be a ground to doubt the prosecution case. According to the prosecution, the occurrence was witnessed by PW1 viz., the driver of the deceased Guru, and PW2 and PW3, Wife and son of the deceased respectively, PW5, whose shop was located opposite to the scene of occurrence and PW4, who is the acting driver of PW5. According to the appellants, the testimony of these witnesses are not trustworthy and their evidences has inherent contradictions. The learned counsel would draw the attention of this Court to Ex.P1-complaint. According to Ex.P1, the occurrence was witnessed by one Mr.Vinoth [PW4], Mr.Syed and Mr.Nagoor Meeran [PW5]. But in the chief examination, PW1 had improved his case by stating that on hearing the noise, the wife of the deceased Guru and his daughter

rushed to the scene of occurrence. However, it is manifestly clear that the presence of the deceased's son, who is PW-3 has not been spelt out either in the complaint-Ex.P1 or in the chief examination of PW1. Similarly, though the wife and daughter's presence was not mentioned in the Ex.P1-complaint, PW1 has spoken about their arrival to the scene of occurrence albeit only on hearing the noise.

[20] Whereas, the other alleged occurrence witnesses PW2 and PW3, who are the wife and son, have stated that they were present and witnessed the occurrence. But more curiously, PW2/wife of the deceased did not speak about the presence of PW3/her son. Thus, if we look at the evidence of PW2 viz., the wife of the deceased, in the background of Ex.P1-complaint and the evidence of PW1, she (PW2) could have reached to the scene of occurrence from the upstairs only after hearing the noise. Therefore, the claim of PW2(Wife) to have witnessed the occurrence, is highly doubtful.

[21] So also, the presence of the son of the deceased [PW3] was neither spoken to in the evidence of PW1, nor referred in Ex.P1-complaint. This apart, even PW2, who is none other than the mother of PW3, has not spoken about the presence of PW3 at the scene of occurrence. More curiously, contrary to the evidence of PW1 and PW2, the son-PW3 has deposed before the Court that he was present at the time of occurrence and had witnessed the same. If really PW3 was available at the residence, that too at the time of occurrence, his name would have been found place in the oral testimony of PW1, though not referred in Ex.P1-complaint. To crown it all, his mother [PW2] herself did not speak about his presence at the scene of occurrence. Therefore, as rightly contended by the learned counsel for the appellants, the presence of PW3 at the scene of occurrence is highly doubtful.

[22] Further, though PW2's name finds place in PW1's chief examination, had her presence was really noticed by PW1, the natural propensity would be, her name would have definitely be mentioned in Ex.P1- complaint. Therefore, the non reference in Ex.P1 complaint about the presence of PW2 and PW3, would also assume importance and thus, raises a reasonable apprehension in respect of the presence of PW2 and PW3 at the scene of occurrence.

[23] However, the author of Ex.P1-complaint, qua PW1 in his chief examination referred the names of one Mr.Nagoor Meeran [PW5] and Mr.Vinoth [PW4] as the occurrence witnesses. According to prosecution, PW5 was dealing with iron and having shop just 400 feet away from the scene of occurrence. According to his evidence, when he rushed to the scene of occurrence with PW4, he had found the body of the deceased in a pool of blood. However, PW4-Mr.Vinoth, who had accompanied PW5, has given a different version by implicating all the accused to the crime. Therefore, while looking at the evidence of PW4-Vinoth, in the background of the evidence of PW5-Nagoor Meeran, the evidence of PW4-Vinoth will only come within the category of partly reliable and partly unreliable and hence, needs corroboration.

[24] The learned counsel for the appellants would contend that the evidence of PW1, who set the law in motion, is attached with serious inherent contradiction to his first version in Ex.P1-complaint, which refers to 4 persons, having participated in the crime and later improved his version and claimed that they were five in numbers. No doubt, a person who witnessed a brutal murder because of some shock, may err, while naming the persons or while referring the number of persons. However, the prosecution in the proclivity of the investigation could have set right the same through further statements.

[25] In this regard, the learned counsel for the appellants would invite the attention of this Court in respect of the evidence of the Investigating Officer-PW18, where he has categorically admitted that the statement recorded on 30.09.2015 under Section 161 Cr.P.C, has been forwarded to the Court after a period of 27 days viz., on 27.10.2015. Therefore, as rightly contended by the learned counsel for the appellant, the long delay in sending the statement recorded under Section 161 Cr.P.C, that too, when the prosecution has included one more additional accused, after the Ex.P1-complaint, assumes much relevance and causes a dent in the prosecution case.

[26] In the totality of these circumstances viz., registering the complaint after two hours, though the police have reached the scene of occurrence immediately within 5 minutes, and when PW1 complainant was taken to the Police station within half an hour, and transmitting the FIR to the concerned jurisdictional Magistrate thereafter, after a lapse of 8 hours viz., at 9.30.p.m, though the Court was reachable within 20 minutes from the place of occurrence, apart from the long delay of 27 days in forwarding the 161 Cr.P.C statement, cumulatively strengthens the case of the accused that the evidence of the star witnesses qua PW1 to PW4 cannot be believed on it's face value, as the imperviousness of their trustworthiness was compromised.

[27] Thus, while looking at the complaint-Ex.P1, in the background of the reasonable doubts demonstrated hereinabove, about the presence of the key eye witnesses viz., PW2, PW3 and PW4, at the scene of occurrence, would prognosis the fudging and pliable condition of the prosecution case.

[28] As a matter of fact, the accused were not arrested by the police, but when confession witness PW6 and PW7 were present in the Police station, A1 to A3 were produced before the police station by the general public, in a different case with the charge of robbery. It is the submission of the learned counsel for the appellants that a person, who has a motive against the deceased, and committed a daylight gruesome murder, cannot be expected to wander and involve in another case, instead of hiding themselves. This Court also has to inexorably accept the argument as there is apparent speciousness in the theory of arrest.

[29] At this juncture, it is relevant to refer to the alleged discovery of fact made by the prosecution through the confession statement of all the five accused. It appears that A1 to A4 have concealed the weapon, and the blood stained clothes behind the

"**Seeyathamman temple**". Though PW6 recovery witness speaks about the recovery of weapon on the back side of Seeyathamman temple, the other confession witness PW7, has stated during his chief examination that the recovery was made behind the **Pothiamman Temple**. But, during his cross examination, he has stated that, he has inadvertently referred Pothiamman temple during chief examination, instead of Seeyathamman temple. Admittedly, both "**Seeyathamman temple**" and "**Pothiamman temple**" are within the jurisdiction of Ambattur Estate police station. If really a recovery had been genuinely effected at Seeyathamman temple, there was no reason for PW7, to state different temples. This cannot be taken as simple slipshod evidence, as this was made during his chief examination. Therefore, referring to different temples by PW7 is yet another adrift in the prosecution's case. To crown it all, though the recovered weapon had blood stains, admittedly, there is no reference or evidence connecting those weapons with the occurrence.

[30] It is well settled principle of law that in a case based on ocular evidence, the motive loses its significance. However, in the case on hand, we have demonstrated a numerous reasonable doubt in the evidence of the eye witnesses. Therefore, in this backdrop, the proof regarding motive endogenously assumes much significance. To put it differently, where the ocular testimony appears to be suspicious, then the existence or non existence of motive acquires significant substratum to the probability of the prosecution case, as held in the judgment of the Hon'ble Supreme Court in **Badam Singh v. State of M.P.**, 2003 12 SCC 792.

[31] Here, the motive for occurrence is previous enmity between the deceased and accused. More curiously, even the alleged eye witnesses viz., PW1 to PW4 did not speak about the so called motive. Hence, palpably no evidence available to prove any motive. Therefore, the argument of the learned counsel for the appellants that there are no reasons for the appellants to do away the deceased, also cannot be lightly ignored. Further, there are no materials such as finger prints or any other scientific evidence connecting the accused to the occurrence.

[32] It is pertinent to mention here that generally witnesses can be classified into 3 categories viz., (i) wholly reliable, (ii) wholly unreliable and (iii) partly reliable and partly unreliable. There is no problem to evaluate the testimonies of wholly reliable and wholly unreliable witnesses. But, in so far as the witnesses, who are partly reliable and partly unreliable, it would be obligatory on our part to closely scrutinize their testimonies for corroboration in material particulars, so as to remove the grain from the chaff. With this view in mind, when the testimonies of these witnesses were circumspected, we find that there are no corroboration of each witness from the other witnesses. The motive which could also to some extent be construed as a corroboration, has not been proved. Besides, though the recovery of weapon is doubtful, still there are no proof to connect the blood stains in the recovered weapon, with the occurrence.

[33] The yet another aspect is the consistency of the testimony. While appreciating the evidence of PW1, we find that he has retracted from the evidence made during his chief examination. While appreciating the evidence in a criminal case, what would be more relevant is, the consistency of the statement right from the starting point till the end. In the present case, PW1 initially states in his complaint that 4 persons were seen in the place of occurrence and during chief examination, he states the presence of 5 persons. To crown it all, in the cross examination, he pleaded ignorance as to against whom he had given a complaint. For ready reference, it is relevant to extract the admission made by PW1 during the cross examination:-

[34] Before closing the curtain, we would like to recapitulate our above discussion for easy reference. In this case, there is no consistency in the evidence of PW1. Similarly, PW2-wife of the deceased during cross examining, has admitted that she reached the scene of occurrence when the deceased was fighting for his life after the attack. As already stated, PW3's presence was not spoken to by either PW1 or PW2. Though PW4 speaks about the occurrence, there is no corroboration for his evidence. Besides if we look at the evidence of PW5, even PW4 could not have reached the scene of occurrence at the time of attack. Recovery is tethering with doubt and not tethered with the occurrence. Thus, while cumulatively looking into all the above aspects, there are palpable reasonable doubts in the prosecution case.

[35] However, the Trial Court has proceeded to believe all the witnesses, which according to us, is not in tandem with law, as it goes contrary to the discussion which we hereinabove made. Though the learned Trial Judge has relied so many legal principles and precedents, what she missed to see is, whether the eye witnesses are trustworthy or not. For all the above detailed analysis, we are of the indubitable view that it is highly unsafe to rely upon the testimonies of the witnesses PW1 to PW5. Even otherwise, admittedly, there are no corroboration to those witnesses, even if we treat them as partly reliable and partly unreliable. Thus, we hold that the prosecution has miserably failed to prove the charges against the accused beyond all reasonable doubts. Hence, the order of conviction is liable to be set aside.

[36] In the result, all the three Criminal Appeals are allowed in so far as A1, A3, A4 and A5 are concerned. In concomitant, the conviction and sentence passed in S.C.No.241 of 2016 by the III Additional District and Sessions Judge Poonamallee dated 13.09.2009 is set aside against A1, A3, A4 and A5. Resultantly, the appellants A1, A3, A4 and A5 are acquitted from all the charges and the fine amount paid by them will be directed to be refunded. The bail bond, if any, executed by the A1, A3, A4 and A5, shall stand cancelled. As against A2, the appeal stands abated, as he died during the pendency of these appeals

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