Pankaj Sharma vs State Of U.P. on 4 February, 2025

Bench: Saumitra Dayal Singh, Gautam Chowdhary

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15367-DB

Court No. - 45

Case :- CRIMINAL APPEAL No. - 5306 of 2008

Appellant :- Pankaj Sharma

Respondent :- State of U.P.

Counsel for Appellant :- Anil Raghav, Abhishek Mayank, Arbaz Danish,Jai Shanker Audichya

Counsel for Respondent :- Govt. Advocate,Sunil Vashisth

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Dr. Gautam Chowdhary,J.

1. Heard Shri Sandeep Kumar Dubey, learned Amicus Curiae for the appellant and Shri Patanjali Mishra, learned A.G.A.-I for the State.

2. Present appeal has been filed against the judgement and order dated 30.07.2008 passed by Sri S.D. Singh, Additional Sessions Judge, Court no.5, Bulandshahar, in Sessions Trial No. 895 of 2007 (State vs Pankaj Sharma), arising out of Crime No. 88 of 2007, under Sections 364, 307, 302, 301, 377 I.P.C., Police Station - Khurja Dehat, District Bulandshahar, whereby the appellant has been convicted for offence under Section 364 I.P.C. and awarded punishment - rigorous life imprisonment along with fine of Rs. 5,000/- and in default of fine to suffer one year further rigorous imprisonment; Section 302 I.P.C. and awarded punishment rigorous life imprisonment along with fine of Rs. 5,000/- and in default of fine to suffer one year further rigorous imprisonment; Section

377 I.P.C. and awarded punishment eight years rigorous imprisonment along with fine Rs. 5,000/- and in default of fine to suffer one year further rigorous imprisonment, Section 201 I.P.C. and awarded punishment five years rigorous imprisonment along with fine Rs. 1,000/- and in default of fine to suffer one month further rigorous imprisonment.

3. According to the prosecution story, the deceased 'A' aged five years went missing on 13.4.2007 while playing with his minor sister 'R' (P.W.-1 at the trial), aged six years, along with children of their age namely, Vineet, Mohit, Rahul and others, at a place described as the agricultural field of Sobha Ram. The occurrence is described to have taken place at around 2:30 PM. The First Information Report was lodged on 14.4.2007 at about 5:00 PM i.e about 26 hours after the occurrence by the father of 'A' and 'R', namely Jaiprakash Sharma (P.W.-2 at the trial). The scribe of the FIR Ravi Dutt Sharma son of Om Prakash Sharma was not examined at the trial. The written report of the FIR is Ex.Ka-1 whereas the FIR itself is Ex.Ka-6. Plain perusal of the FIR discloses that it was lodged against unknown miscreants. On 16.4.2007, the dead body of 'A' was discovered floating in an irrigation canal. That discovery was described by the prosecution to be made at the pointing out of the appellant, after his confessional statement came to be recorded. The recovery memo of the dead body is Ex.Ka-3. On that, 'Panchayatnama' was drawn on 16.4.2007 itself. It is Ex.Ka-2. After the recovery of the dead body of 'A', 'R' (P.W.-2) was subjected to medical examination on 16.4.2007. In that, the following injury and observation was made by the Dr. Ajay Kumar Sharma (P.W.-4 at the trial):

> "Injuries - Multiple abrasions on anterior and flat surface of neck measuring 9.0 cm x 1.5 cm. Hard scab present.
>
> Conclusion - Injury is about 2-4 days old and caused by throttling by cloth. Nature is simple."

4. That injury report is Ex.Ka-5. The dead body of 'A' was subjected to autopsy examination on 17.4.2007 at about 2 PM, by Dr. Shiv Nath Singh (P.W.-3 at the trial). The dead body had reached an advanced stage of decomposition. However, following ante mortem injuries injuries were noted:

> "(i) A ligature mark (16 cm x 1.5 cm) around the Neck, continuous, horizontally placed over thyroid cartilage on exploration ecchymosis present underneath. Hyiod and larynx found fractured.
>
> (ii) Lacerated wound (4 cm x 2 cm) vertically placed at 6'o clock position to 12'o clock present on Anus and Anus ruptured."

5. As to the cause of death, it was recorded - 'Asphyxia as a result of strangulation'. The autopsy report is Ex.Ka-4. In such facts, upon investigation, charge-sheet was submitted by the Investigating Officer D.K. Tyagi (P.W.-5 at the trial). On that, five charges were framed against the appellant vide three orders dated 28.7.2007. The charges framed read as below:

"?? ?? ?????? 13.4.2007 ?? ??? 2.30 ??? ??? ???? ????? ???? ??? ????? ????? ??????? ????-??????? ?????? ?????/ ???? ????????? ??? ?? ???? ?????? ???????? ????? ?? ????? ??? ???? 5??? ??? ????? ???? ???? ???? 6 ??? ?? ???? ??????? ????????? ??????? ? ???? ???? ????? ???? ?? ???? ????? ?? ?? ???? ?? ?????? ???? ??? ????? ???? ?? ??.?.?. ?? ???? 364 ?? ???????? ??????? ????? ?? ?? ?? ???????? ?? ????????? ??? ???

?? ?? ?????? 13.4.07 ?? ??? ???? 2.30 ??? ????? ???? ??? ????? ????? ??????? ????-??????? ?????? ?????/ ???? ????????? ??? ???? ???? ?????? ?? ?????? ???? ?? ???? ??? ??????????? ??? ?? ????? ?? ???? ?? ????? ?? ??? ????? ????? ???? ?? ?????? ???? ??? ???? ?????? ?? ???? ?? ?? ????? ?? ???? ????? ?? ?????? ???? ??? ????? ???? ?? ??.?.?. ?? ???? 307 ?? ???????? ??????? ????? ?? ?? ?? ???????? ?? ????????? ?? ???

?? ?? ?????? 13.4.2007 ?? ?????? 16.4.07 ?? ???? ???? ???, ???? ????? ?? ???? ???? ?????? ?? ????? ??? ???? ???? 5 ???? ?? ??? ??????? ?? ???????? ?? ????? ????????? ???????? ??? ????? ?? ?????? ???? ??? ????? ???? ?? ??.?.?. ?? ???? 377 ?? ???????? ??????? ????? ?? ?? ?? ???????? ?? ????????? ?? ???

?? ?? ?????? 13.4.2007 ?? ?????? 16.4.07 ?? ???? ???? ???, ???? ????? ?? ???? ???? ?????? ???????? ?? ????? ??? ???? 5 ???? ?? ???? ??? ?????????? ??? ????? ????? ??? ?? ?????? ???? ??? ????? ???? ?? ??.?.?. ?? ???? 302 ?? ???????? ??????? ????? ???? ?? ?? ???????? ?? ????????? ?? ???

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6. The appellant pleaded not guilty and has faced trial. At the trial, besides proving the documents noted above and certain other documents, the prosecution led oral documents of the following persons:

"(i). 'R' (P.W.-1)

(ii). First informant Jai Prakash Sharma (P.W.-2)

(iii). Dr. Shiv Nath Singh, the doctor who conducted the autopsy (P.W.-3)

(iv). Dr. Ajay Kumar Sharma, the doctor who examined 'R' (P.W.-4)

(v) D.K. Tyagi, Investigating Officer (P.W.-5)

(vi) S.P. Tripathi, Investigating Officer who inquired into the missing person report (P.W.-6)

(vii) Harswaroop, Constable who prepared 'majroobi chitthi' (P.W.-7)"

7. Thereafter, the statement of the accused was recorded under Section 313 Cr.P.C.. In that, the appellant stated - false prosecution had been lodged against him for reason of earlier disputes raised by his mother against the first informant, his brother and other family members making allegation of physical assault. According to the appellant, the first informant side had been convicted in that case. Yet, it is noted, there is no evidence on record of such fact occurrence having ever taken place.

8. At the trial, the prosecution came up with a case of circumstantial evidence. The star witness for the prosecution remained 'R' (P.W.-1). In her statement recorded in chief, she described that she along with the deceased 'A', Amit, Ankit, Vineet, Rahul and Mohit were involved in some child play when the accused reached that place and first started beating Amit and Vineet. Being thus scared, 'R' along with 'A' ran to safety at a place described by her - near 'Chakki Wale Kothi'. The accused is described to have followed and persuaded them to accompany him on promise of mangoes. At that point, the other children ran away from that place. While 'R' claimed that she did not want to accompany the appellant, her younger brother 'A' thought otherwise. At that, she accompanied the appellant along with 'A', to another place described as the field of one Siyaram. There, the accused is described to have offered two mangoes to 'A' and 'R'. Thereafter, he tried to abduct 'A' towards other agricultural field. On being followed by 'R', the appellant is described to have throttled her (with her 'Angocha'). That left her fainted. On gaining her senses, she found herself lying in another agricultural field of one Darshan. Critically, she described to have seen the occurrence as noted above including the fact that after assaulting 'R', the appellant abducted 'A'. On regaining her senses, 'R' further described that she ran back home but could not narrate the occurrence as she suffered loss of voice, due to strangulation. At the same time, she informed her father Jai Prakash Sharma (P.W.-2) about the entire occurrence late in the night i.e. on the night intervening 13/14.4.2007.

9. During her cross-examination, she specified to have reached back home at about 5 PM. At that time, her father (P.W.-1) was not at home. He returned late at about 2:30 AM i.e. on the night intervening 13/14.4.2007. She specifically stated that she told everything to her father at that time.

10. As to Jai Prakash Sharma (P.W.-2), he clearly did not describe himself as an eye-witness to any extent. He had not seen the occurrence and he did not seen the appellant abduct the deceased 'A'. On being cross-examined, as to how he learnt about the involvement of the appellant, he stated that he was informed by a villager Pradeep (again not examined at the trial) on 15.4.2007, that he had last seen 'A' with the appellant.

11. Dr. Shiv Nath Singh (P.W.-3) proved the autopsy report. No doubt emerged from that cross-examination. Dr. Ajay Kumar Sharma (P.W.-4) proved the injury report of 'R'. As to time of occurrence, he opined that such injury may have been caused at any time between 13.4.2007 and 14.4.2007. Shri D.K. Tyagi, the Investigating Officer (P.W.-5) proved the investigation. Shri S.P. Tripathi proved the facts and investigation conducted pertaining to the missing person report. Similarly, Shri Harswaroop (P.W.-7) proved the letter requiring the medical examination of 'R'.

12. Learned court below has disbelieved the prosecution story in part. It did not believe of allegation of assault made on 'R'. It has thus acquitted the appellant of offences alleged under Section 307 I.P.C. As to the other charge of abduction, unnatural sexual act and murder committed on 'A' and destruction of evidence, it has found the appellant guilty. Accordingly, he has been sentenced.

13. Submission is, no one saw the occurrence and in any case the occurrence was not proven as one caused by the appellant or in the manner described. That truth is self apparent from the facts admitted to the prosecution. Undeniably, 'A' went missing in the afternoon of 13.04.2007. That fact was reported to the first informant by none other but his daughter 'R' in the intervening night of 13/14.04.2007. Yet, the F.I.R. was first lodged more than 12 hours thereafter, only reporting occurrence of disappearance of 'A'. Neither any accused person was named nor any accusation was made against the appellant of causing such disappearance nor any allegation was made of the appellant having assaulted 'R' and other children, in any manner. Thus, the prosecution allegation against the appellant emerged only after discovery of the dead body of the deceased 'A'. At that stage, on 16.04.2007 injury was first claimed to have been received by 'R' as well (at the time of the occurrence i.e. in the afternoon of 13.04.2007). That injury has been wholly doubted for reason of its non-disclosure in the F.I.R. that was lodged belatedly. Dr. Ajay Kumar Sharma (P.W.-4) opined that such injury may have been caused as late as on 14.04.2007. Then, wholly unexplained and unnatural conduct of the prosecution has emerged inasmuch as neither the scribe of the F.I.R. nor the independent eye witnesses (not less than three in numbers), were examined at the trial. Though the F.I.R. clearly stated that 'A' along with 'R' were playing with their friends Vineet, Mohit, Rahul and others, the prosecution made no attempt to prove that part of the occurrence through any of the those independent witnesses. Then, though the prosecution story alleges that the appellant assaulted the other children namely, Amit and Vineet, they were also not examined and their injuries were not informed to the police or examined. Another doubt has been created on the testimony of 'R' (P.W.-1) as she described, she had been left unconscious in the agricultural field of Siyaram but discovered herself as lying in the field of one Darshan i.e. at another place. Yet, she claimed to have seen the appellant abduct 'A'.

14. Her testimony has been further doubted for reason of her categorical statement made during her cross-examination that she had narrated the entire occurrence to her father - the first informant Jai Prakash Sharma (P.W.-2) on 13/14.04.2007 itself, during mid night. Absolutely, no credible or other explanation exists why after such disclosure made to the first informant, remained from being reported, though the F.I.R. came to be lodged at about 5.00 p.m. on the next day i.e. 14.04.2007. That critical break in the prosecution story is described as fatal to the prosecution story. It brings out the complete hollowness and falsity of the prosecution allegation. Considering the fact involving the disappearance of a minor child and serious injuries suffered by 'R' - the other minor child of P.W. -2, it can never be believed that it escaped or remained with such informant to report that occurrence to the police that too more than 26 hours after the occurrence.

15. Insofar as the learned court below has disbelieved the prosecution story and testimony of prosecution witness, namely, 'R' (P.W.-1) as to her injuries and, therefore, acquitted the appellant for the offence alleged under Section 307 I.P.C., it has been strenuously urged that was wholly impermissible for the learned court below to have then believed the other part of the story of the

same witness with respect to the murder of 'A'. Though, on first principle, the Court's do recognize the entire testimony of a witness may not be thrown out if some part of it is false yet, here the most vital part of the testimony of the star witness has been disbelieved i.e. as to her own injuries. Once that conclusion had been drawn by the learned court below it did not survive with it to believe the other aspect of the prosecution allegation, on her testimony.

16. On the other hand, learned A.G.A. would submit, the prosecution story has been proved not only on the strength of the testimony of 'R' (P.W.-1) but also wholly supported by the recovery as also the autopsy report. There is absolutely no doubt that the death of 'A' was caused due to asphyxia as a result of strangulation. According to the doctor, the death was caused in the afternoon of 13.04.2007. Sexual assault was also proven. Therefore, the learned court below has not erred in convicting the appellant and offered life sentence.

17. Having heard learned counsel for the parties and having perused the record, the status of 'R' (P.W.-1) cannot be ignored, she being a child witness and also the sister of the deceased 'A' as also an injured witness. Also, she was the sole eye-witness who offered account of last seen. At the same time, it is not as if that status would lead the Court to either believe or disbelieve her deposition. The truth in her statement made to the Court must be examined on its own.

18. As to conviction on the testimony of a single eye-witness, the rule is clear. In Vadivelu Thevar Vs State of Madras, AIR 1957 SC 614, the Supreme Court observed as below.

> "The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:
>
> (1) Wholly reliable.
>
> (2) Wholly unreliable.
>
> (3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way ? it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the

court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

19. Then, in Joseph vs State of Kerala, (2003) 1 SCC 465, with respect to testimony of single eye-witness, the Supreme Court further observed:

> To our mind, it appears that the High Court did not follow the aforesaid standard but went on to analyse evidence as if the material before them was given for the first time and not in appeal. Section 134 of the Indian Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a court to record and sustain a conviction on the evidence of a solitary eyewitness. But, at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implicit confidence. By this standard, when the prosecution case rests mainly on the sole testimony of an eyewitness, it should be wholly reliable. Even though such witness is an injured witness and his presence may not be seriously doubted, when his evidence is in conflict with other evidence, the view taken by the trial court that it would be unsafe to convict the accused on his sole testimony cannot be stated to be unreasonable.

20. Again, in Bhimapa Chandappa Hosamani vs State of Karnataka, (2006) 11 SCC 323, word of caution was added by the Supreme Court, a Court may pass the order of conviction, solely on that testimony. It observed as below:

> "We have undertaken a very close and critical scrutiny of the evidence of PW 1 and the other evidence on record only with a view to assess whether the evidence of PW 1 is of such quality that a conviction for the offence of murder can be safely rested on her sole testimony. This Court has repeatedly observed that on the basis of the testimony of a single eyewitness a conviction may be recorded, but it has also cautioned that while doing so the court must be satisfied that the testimony of the

> solitary eyewitness is of such sterling quality that the court finds it safe to base a conviction solely on the testimony of that witness. In doing so the court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or suspicion, must impress the court as wholly truthful, must appear to be natural and so convincing that the court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness."

21. Next, as to the reliance that may be placed on the statement or deposition of child witness, in Dattu Ramrao Sakhare vs State of Maharashtra, (1997) 5 SCC 341, it was clearly observed that though a child witness is a competent witness and their statement may be relied even in absence of oath administered yet, the credibility of such evidence would depend upon circumstances of each case.

22. The Court should watch out for element of tutoring that may always arise in the case of a child witness. The Supreme Court further recognized that there may exist no rule or practice requiring corroboration of the statement made by a child witness. Yet, rule of prudence may always be enforced by Courts - to seek corroboration, where required. Pertinent to our observation, it was observed as below:

> "The entire prosecution case rested upon the evidence of Sarubai (PW 2) a child witness aged about 10 years. It is, therefore, necessary to find out as to whether her evidence is corroborated from other evidence on record. A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record. In the light of this well-settled principle we may proceed to consider the evidence of Sarubai (PW 2)."

23. Then, again in Ratansinh Dalsukhbhai Nayak vs State of Gujarat, (2004) 1 SCC 64, after relying on Dattu Ramrao Sakhare (supra), the Supreme Court further elaborated on the vulnerability of a child witness and observed that a child witness may remain amenable to tutoring. Therefore, a more careful scrutiny is required - of such evidence. In that regard, it was observed as below:

> "The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession

> or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

24. Then, in Golla Yelugu Govindu Vs. State of A.P., (2008) 16 SCC 769, again, reliance was placed on Dattu Ramrao Sakhare (supra). Thereafter, principle laid in Dattu Ramrao Sakhare (supra) and Ratansinh Dalsukhbhai Nayak (supra) was reiterated. Last, in Alagupandi vs State of T.N., (2012) 10 SCC 451, again the principal laid down in Dattu Ramrao Sakhare (supra) and Ratansinh Dalsukhbhai Nayak (supra) was reiterated.

25. Third, in the case of Padala Veera Reddy v. State of A.P., AIR (1990) SC 79, wherein the Hon'ble Supreme Court laid down the guiding principle with regard to appreciation of circumstantial evidence:-

> "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
>
> (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

26. In the case of State of U.P. v. Ashok Kumar Srivastava, (1992) 1 SCR 37, the Supreme Court pointed out, great care must be taken in evaluating circumstantial evidence and if the evidence relied is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt of the accused persons, and no other.

27. In the case of Sanatan Naskar and Anr. v. State of West Bengal, (2010) 8 SCC 249, the Supreme Court observed as under:-

> "13. There cannot be any dispute to the fact that it is a case of circumstantial evidence as there was no eye witness to the occurrence. It is a settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt complete chain of events and circumstances which definitely points towards the involvement and guilt of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eye witness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of accepted principles in that regard."

28. Also, in Sharad Birdhichand Sarda Vs. State of Maharshtra, (1984) Cri. L.J. 178, Supreme Court was pleased to observe in paras-150 to 158, as below:-

> "150. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete than a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.
>
> 151. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The fundamental and basic decision of the Apex Court is Hanumant v. The State of Madhya Pradesh.(1) This case has been uniformly followed and applied by this Court in a large number of later decisions uptodate, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh(2) and Ramgopal v. State of Maharashtra(3). It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (supra):
>
> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground far a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra where the following observations were made:

> "Certainly, 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."

(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.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

154. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus deliciti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in The King v. Horry,(l) thus:

> "Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that up on no rational hypothesis other than murder can the facts be accounted for."

155. Lord Goddard slightly modified the expression, morally certain by 'such circumstances as render the commission of the crime certain'.

156. This indicates the cardinal principle' of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry's case (supra) was approved by this Court in Anant Chintaman Lagu v. The State of Bombay(2) Lagu's case as also the principles enunciated by this Court in Hanumant's case

(supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases Tufail's case (supra), Ramgopals case (supra), Chandrakant Nyalchand Seth v. The State of Bombay (Criminal Appeal No. 120 of 1957 decided on 19.2.58), Dharmbir Singh v. The State of Punjab (Criminal Appeal No. 98 of 1958 decided on 4.11.1958). There are a number of other cases where although Hanumant's case has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration(l). Mohan Lal Pangasa v. State of U.P.,(2) Shankarlal Gyarasilal Dixit v. State of Maharashtra(3) and M.C. Agarwal v. State of Maharashtra(4)-a five-Judge Bench decision.

157. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in Deonandan Mishra v. The State of Bihar(5), to supplement this argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:

> "But in a case like this where the various links as started above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation-such absence of explanation of false explanation would itself be an additional link which completes the chain."

158. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied:

> "(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved.
>
> (2) the said circumstance point to the guilt of the accused with reasonable definiteness, and (3) the circumstance is in proximity to the time and situation.?

29. Here the consistent prosecution story as presented at the trial is that the disappearance occurred on 13.04.2007 at about 2.30 p.m., while, the deceased 'A' along with 'R' (P.W.-2 - the solitary eye-witness) was involved in some child play with his friends Vineet, Mohit, Rahul and others at the agricultural field of Sobha Ram. Jai Prakash Sharma (P.W.-2), who is the father of 'A' and 'R' was not an eye witness to that occurrence. While he was not obligated to disclose his source of information narrated in the F.I.R. and no adverse inference may be drawn on that fact, it is not denied to the prosecution that P.W.-1 gained knowledge of the occurrence from his daughter 'R' (P.W.-2). During his cross-examination, he described that he also gained knowledge of the occurrence involving disappearance 'A' through a villager Pradeep (claimed to have last seen 'A' with the appellant). At the same time, the said Pradeep was never examined at the trial. As to the disclosure made by 'R' (P.W.-1), she clearly described during her cross-examination that she had

told her father (in entirety), about the occurrence during the intervening night of 13/14.04.2007. Once that disclosure had been made (as claimed) more than 26 hours before the F.I.R. came to be lodged, it is wholly unbelievable and unproven how no narration was made in the F.I.R. of the occurrence as narrated by 'R' (P.W.-1). It is wholly unnatural for the father-Jai Prakash Sharma (P.W.-2) to have offered a different account of the occurrence in such/later F.I.R., when he had been disclosed the correct facts both by his daughter 'R' and Pradeep, on 14.04.2007 itself.

30. The above fact weaken the foundation of the prosecution story. Not only none may have seen the occurrence, it remains wholly doubtful and unbelievable that the solitary eye-witness who happens to be a child witness, namely 'R' had seen the occurrence as narrated in the prosecution story. To that extent, it is also remarkable that the learned court below has itself disbelieved the allegation of 'R' with respect to assault made on her by the appellant. Once that occurrence has been disbelieved in the status of the law as it exists, it would be difficult to rely on the other part of her testimony without any confidence that she had seen the occurrence of disappearance caused by the appellant, in absence of any corroboration offered with any other evidence.

31. In such a case, it is notable that no evidence whatsoever was led by the prosecution, of any natural and independent eye witnesses, namely, Vineet, Mohit and Rahul two of whom were also described to have been assaulted by the appellant. They were neither subjected to medical examination nor produced as witnesses of fact, at the trial. The scribe of the F.I.R. was also not examined by the prosecution as may have offered any corroboration to the version offered by 'R' and as may have allowed the defence an opportunity to prove the falsity of the prosecution story with respect to the F.I.R. narration.

32. Though, there is no doubt that 'A' was done to death after being subjected to aggravated sexual assault and was murdered, at the same time, in absence of any corroboration, more than reasonable doubt remains in the prosecution story to establish that the appellant is the accused who caused that occurrence both with respect to disappearance of 'A' as also the consequential murder attributed to him, on circumstantial evidence of a solitary eye witness who is a child witness only. Such doubts leave gaping holes in the theory proposed by the prosecution that circumstances indicate that the appellant alone was the person who caused the occurrence and it may not have been caused by any other.

33. We also note that though the learned court below acquitted the appellant for the offence under Section 307 I.P.C. against 'R', it has not recorded any reason for the same. At the same time, it also appears that there is no cross appeal arising therefrom.

34. For the reasons noted above, present appeal must succeed and is allowed. Accordingly, it is allowed on a benefit of doubt that must be given for reasons noted above. The impugned order is set aside. The conviction of the appellant under all the offences alleged (as above) is not sustained. The learned court below has erred in convicting the appellant for those offences. The appellant is in jail since 16.4.2007. He shall be released forthwith unless he is wanted in any other case, subject to his complying with the mandatory requirements of provision of Section 437-A Cr.P.C. Let lower court record be returned forthwith.

35. Let a copy of this judgment be sent to the Jail Authorities concerned and the court concerned for compliance.

36. Sri Sandeep Kumar Dubey, learned Amicus Curiae appearing on behalf of the appellant has rendered his valuable assistance to the Court. He be paid as per rules towards fee for the able assistance provided by him in hearing of the present appeal.

Order Date :- 4.2.2025/Prakhar/Anurag (Dr. Gautam Chowdhary,J.) (S.D. Singh, J.)