Ashish Batham vs State Of Madhya Pradesh on 9 September, 2002

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Bench: Doraiswamy Raju, Shivaraj V. Patil

CASE NO.:
Appeal (crl.) 148 of 2002

PETITIONER:
ASHISH BATHAM

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 09/09/2002

BENCH:
Doraiswamy Raju & Shivaraj V. Patil.

JUDGMENT:

D. RAJU, J.

The above appeal has been filed by the appellant who was convicted by the learned Sessions Judge, Shajapur, Madhya Pradesh, for the offence under Section 302 IPC (on two counts) on the ground

that he killed Ms. Nidhi and Ms. Priti, the daughters of Dr. Ram Avtar Mudgal (PW-2), and sentenced to death and imposition of life imprisonment for the offence under Section 449 IPC for committing house trespass to commit the said murders. The appeal filed by the appellant herein before the High Court in Criminal Appeal No.763 of 2001 and the reference made to the High Court for confirmation in death reference No.1 of 2001 came to be heard together by a Division Bench of the Madhya Pradesh High Court, Indore Bench, and while sustaining the conviction under Sections 302 IPC and 449 IPC, the High Court altered and reduced the sentence to imprisonment of life by making the sentence to run concurrently. The present appeal is against the same.

The case of the prosecution, as unfolded from the evidence, is that Dr. Ram Avtar Mudgal (PW-2), a dental practitioner at Shajapur, father of the two unfortunate victims; was residing in Government Quarters situated near "Nai Sadak" with his wife and two daughters, the eldest of whom by name Kumari Priti, aged about 22 years and the younger one, by name, Kumari Nidhi, aged about 17 years. The appellant was said to have been serving as Assistant Manager from 3.12.97 to 5.10.98 in M.P. Agro State Industry and Development Corporation (for short "Agro Corporation") at its office at Shajapur and was staying in Upkar Lodge situated in the vicinity of Nai Sadak. During the said period he was said to have become friendly with the eldest daughter, though he was familiar with both of them, and often they used to meet and sit behind Hanuman Temple situated on the outskirts of Shajapur city. During such time of visit, said to be almost daily, Priti Mudgal used to be with the appellant and he used to lie down keeping his head on her lap and chat with her when the younger Ms. Nidhi used to sit at some distance. The appellant used to give some gifts to the girls. Thereafter, the appellant came to be transferred as Assistant Manager to Bhopal Office of the Agro Corporation and about a month or so prior to the day of occurrence the father of the appellant Shri Hari Narayn Batham was said to have telephoned to Dr. Ram Avtar Mudgal (PW-2) from Bhopal and told him that there was an affair between his son, the appellant, and Priti, his daughter, and, therefore, he should visit his house at Bhopal for talking about their marriage to which the father of the girls was said to have informed that he was against the idea of marrying Priti to a boy who was not Brahmin by caste, to which they belong and that was also the view of his daughter Priti. It is also the case of the prosecution that the father of the appellant told PW-2 that in case of refusal he would be required to repent and that was the same tone of reply given by PW-2 when called up over phone once again, thereafter. On the ill-fated morning of 8.4.99, it is said that the Dr. Ram Avtar Mudgal (PW-2) and his wife left their house at about 6.15 a.m. or so for a morning walk and when they returned back home by about 7.00 to 7.15 a.m., the outer door was open and a newspaper `Nai Duniya' was lying in the verandah and on entry into the house, they found the younger daughter Ms. Nidhi dead with injuries at the dental clinic room and the eldest daughter Ms. Priti in the toilet with injuries, almost in a sitting position. The further case of the prosecution is that during the time between 6 a.m. and 8 a.m. or so on that day the appellant was present in Shajapur and between 6.15 a.m. and 6.30 a.m. or so he was inside the house of Dr. Ram Avtar Mudgal (PW-2) and it was he who killed the daughters to wreak vengeance due to failure of love. PW-4, Advocate by name Shri Narain Prasad Pande, was said to have seen the appellant near the residential house of Dr. Ram Avtar Mudgal at about 6.15 a.m. when he was going towards bus stand for catching the bus to go to Indore for attending the High Court work. PW-3, Ms. Poonam Garg, a neighbour, was said to have heard the noise of bell which was being pressed at the residence of Dr. Mudgal at about 6.15 a.m. or so followed in a few minutes by the cries `Mummy save, Mummy save'. Jai Prakash Mandloi

(PW-5), who lives in a house just opposite the District Hospital, was said to have seen the appellant coming out in the outer compound of the residential house at about 7.00 to 7.30 a.m. when he was returning from his newly constructed house where he had gone to do watering. The appellant, after committing the murders of both the girls, was said to have concealed the blood stained knife, weapon of murders and the blue jean which he was said to have been wearing at the time of the incident, which was blood stained, in a ditch behind the bushes behind Hanuman Temple situated at the outskirts of Shajapur city. He was said to have deliberately created the scene of burglary and murder by keeping open the doors of almirah and stealing some currency notes worth Rs.12,000/- for misguiding the Investigating Authorities and also fabricated false evidence for establishing an 'alibi' to prove his innocence by showing that at the same time he was absent and away at Dahod in Gujarat, accompanying his sister from Bhopal and said to be present on 8.4.99 at that place. The priest in Hanuman Temple by name Shri Rishikesh (PW-16) was examined to prove the visits of the appellant to the temple in the company of the two girls. Immediately on his return to the house, Dr. Mudgal seems to have informed Dr. Rathore and Dr. Sisodia on telephone and Dr. Sisodia alongwith Dr. Gupta seems to have reached the place and thereafter Dr. Gupta seems to have telephoned the Police Control Room giving information about the occurrence. PW-26, an ASI, who received the information, informed PW-27, B.P. Samadhiya, City Police Inspector, about the incident. PW-27 on his arrival on the spot was told by Dr. Mudgal (PW-2) about the occurrence and the same was registered as 'First Information Report' (Ex.P-11) and the death of the two girls was recorded as information marked as Ex.P-12 by sending the raiding officer to the Judicial Magistrate and Departmental Sentencing Authority and the investigation was said to have been started. It is stated that during investigation Police Inspector, M.S.Gaur, brought the appellant from Bhopal and produced him before the City Police Inspector, who arrested him. Dr. Mudgal (PW-2) was also stated to have given on 21.4.1999 the list of articles said to be missing from place of incidence to PW-27 marked as Ex.P-14. After the arrest and personal search of the appellant, it was stated that a purse, in which one chain and Rs.1223/- were found, was seized and panchnama marked as Ex.P-22. In the Identification Parade held on 22.4.1999 by Shri R.K. Sharma, Tehsildar (PW-14), Dr Ram Avtar Mudgal (PW-2) and his wife were said to have identified the chain, noticed above, to be the chain missing from the neck of the younger daughter Ms. Nidhi. On a disclosure statement said to have been made on 23.4.1999 under Section 27 of the Evidence Act, the appellant was said to have produced the knife and blood stained clothes from the place where they were said to have been hidden vide Ex.P-23. The knife and blood stained clothes were said to have been seized under seizure panchnama Ex.P-24. The appellant's specimen handwritings and signatures were also said to have been obtained and seized.

The appellant was charged under Section 302 IPC separately for the murder of two girls, in addition to being charged under Section 449 IPC. The appellant denied the charges. After trial, in which witnesses were examined and documents were marked, the learned Trial Judge accepted the evidence of Narain Prasad Pande (PW-4), Rajmal Bhimawat (PW-10) as well as Jai Prakash Mandloi (PW-5) and Poonam Garg (PW-3) and placing reliance upon the evidence of Hanuman Temple priest PW-16, Rishikesh, and PW-27, Investigating Officer Samadhiya, found that the evidence was sufficient to establish the guilt of the appellant in respect of the charge of murder of two girls. The learned Trial Judge also held that during the time between 6 a.m. and 8 a.m. or so on 8.4.99 the appellant was present in Shajapur and between 6.15 a.m. and 6.30 a.m. or so, he was inside the

house of Dr. Mudgal by committing house trespass and from the further circumstances proved from the recovery of the chain and the weapon for committing the offence and blood stained clothes, the guilt of the appellant stood substantiated beyond doubt by the overwhelming circumstantial evidence. The defence put forward by the appellant, including the one based on the plea of alibi, was rejected. Consequently, the Trial Court convicted the appellant and imposed sentences, as noticed earlier. The Division Bench of the High Court, while dealing with the Death Reference as well as the appeal filed by the accused, affirmed the conviction and modified only the death sentence into one of life imprisonment.

Shri Sushil Kumar, learned senior counsel for the appellant, and Shri Sidhartha Dave, learned counsel for the respondent-State, were heard at length. The learned counsel took us in detail into the relevant evidence and all the materials on record to substantiate their respective stand. The learned counsel for the appellant contended that being a case depending upon merely circumstantial evidence, the prosecution miserably failed to prove the circumstances satisfactorily to complete the chain of circumstances so as to establish conclusively the guilt of the accused in this case in a manner that rule out every hypothesis inconsistent with his innocence. According to the learned counsel, apart from being unable to do so, the missing links also were liberally filled upon up by manipulated materials and baseless surmises, resulting in grave injustice. The serious charge against the prosecution by the learned counsel was that it suppressed and withheld, relevant and most vital materials gathered by them in the course of investigation and withheld also important witness not only cited but called for and present in Court from being examined in an attempt to avoid the real facts and truth of the episode coming before Court for its consideration. The grievance projected for and on behalf of the appellant is that on mere surmise and suspicion the appellant has been targeted and the case tailored to somehow get the appellant convicted and the Courts below either overlooked or glossed over serious pitfalls and grave infirmities in the case of the prosecution and the evidence let in to prove its case, by adopting a superficial approach, not befitting the seriousness of the crime alleged. Despite the concurring nature of the verdict returned by the Courts below, it was contended for the appellant that the conclusions were manifestly erroneous and arrived at without a complete and comprehensive appreciation of all relevant aspects of the case in their proper perspective and consequently are liable to be set aside.

Per contra, the learned counsel for the respondent also strenuously contended that the prosecution successfully proved its case by placing on record overwhelming circumstantial evidence, which, according to the learned counsel, rightly found favour of acceptance with both the Trial Court as well as the High Court and, therefore, no interference is called for in this appeal. The circumstances such as the motive the love affair and failure in it, the fact that the accused was seen near the place of occurrence at the relevant point of time when the offence was said to have been committed, the failure to prove the alibi set up by the accused, the recovery of the chain from the accused and the further recovery of blood stained knife and clothes, pursuant to a disclosure statement under Section 27 of the Indian Evidence Act, were, according to the learned counsel, strong, relevant and important circumstances which go to establish the guilt of the appellant beyond any reasonable doubt, leaving no room for any other hypothesis, except the guilt excluding entirely the innocence of the accused and consequently, the appeal deserves to be rejected. Keeping in view the gruesome nature of the crime, the learned counsel submits that the accused is not entitled to any liberal or

sympathetic consideration and that the High Court having already been more lenient and sympathetic in reducing the death sentence into one of life imprisonment, no further indulgence of any kind need be shown to the appellant.

The principles, which should guide and weigh with the Courts administering criminal justice in dealing with a case based on circumstantial evidence, have been succinctly laid down as early as in 1952 and candidly reiterated time and again, but yet it has become necessary to advert to the same, once again in this case having regard to the turn of events and the manner consideration undertaken, in this case by the courts below. In Hanumant Govind Nargundkar & Anr. Vs. State of Madhya Pradesh [AIR 1952 SC 343], it has been held as follows:-

> "In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore, it is right to recall the warning addressed by Baron Alderson to the jury in Reg. V. Hodge, (1838) 2 Lewin 227) where he said:
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> "The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting to take for granted some fact consistent with its previous theories and necessary to render them complete."

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 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 for 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."

These principles were needed to be restated even as late as in the decision reported in Sudama Pandey & Ors. Vs. State of Bihar [(2002) 1 SCC 679] and Subhash Chand Vs. State of Rajasthan [(2002) 1 SCC 702].

The learned Trial Judge adverted to the following circumstances said to have been shown against the appellant to establish his guilt:

> (a) Motive to commit the crime is that the accused failed in the love affair with Ms. Priti, daughter of P.W.2, and failure to marry her;

(b) The accused, who had earlier served at Shajapur but transferred to and serving at Bhopal, was seen entering and leaving the house situated in the premises of District Hospital, Shajapur, where the two daughters of P.W.2 were found dead and was seen going towards the bus stand;

(c) Absence of the accused in suspicious circumstances one day before the date of incident and three days after the incident from his Bhopal Office and the improbable and unproved defence of alibi taken that he was with his sister at Dahod in Gujarat State;

(d) Seizure of the chain from the possession of the accused and the identification of the same by the mother and father of the deceased;

(e) The disclosure statement given by the accused under Section 27 of the Indian Evidence Act and seizure of the knife and the blood stained clothes, pursuant to the same;

(f) Presence of human blood in the chemical examination of the knife and blood stained clothes seized from the accused; and

(g) The conduct of the accused, non-disclosure of the facts in his knowledge and giving false explanation.

The High Court also, though chosen to refer to the very same, had modulated and multiplied it by adverting to the various facets of the same.

Realities or Truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however, strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and grave the charge is greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between `may be true' and `must be true' and this basic and golden rule only helps to maintain the vital distinction between `conjectures' and `sure conclusions' to be arrived at on the touch stone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record.

So far as the case on hand is concerned, it becomes necessary even at the threshold to find out whether the Courts below really endeavoured to find out that each and every incriminating circumstance has been clearly established by reliable and clinching evidence. In a case like the one before us entirely resting on circumstantial evidence and the defence plea that prosecution had

withheld and suppressed documents, witnesses and materials it was obligatory for the Courts below also to ensure whether the prosecution has come up before the Court with the whole and unvarnished truth or merely presented a perfunctory and tailored case to suit its game plan of somehow securing a conviction, resulting in grave miscarriage of justice. Before going into the circumstances pleaded and analysing the materials on record to find out whether they stood sufficiently or properly established in this case, it would be appropriate to take up for consideration this grievance for the appellant to ascertain the impact of the same on the very proof of existence of those circumstances. P.W.8, the senior Scientific Officer and Assistant Chemical Examiner, who inspected the scene of occurrence by about 11.30 a.m. on the very day of occurrence stated about his instructions to Shri P.C. Yadav, the Finger Print Officer, present at that time, to take the finger prints noticed during inspection. P.W. 27, the Investigating Officer, also spoke about the taking of fingerprints and foot prints (shoe marks). The fingerprints of the accused were also taken by P.W.27, yet evasive was his reply on the result of examination or course of action taken pursuant thereto. Neither any reports were marked nor Shri P.C. Yadav was examined. This would be a relevant and important piece of material to strengthen the case of either side about the alleged complicity of the accused. The lie detector test report of the appellant said to be item No.45 in the list of documents submitted by the prosecution with the charge sheet was not also marked. Evidence collected by the prosecution regarding the journey of the appellant from Bhopal to Dahod and materials to evidence actual journey with his sister in its possession was also not marked though shown in the list of documents with the charge sheet. Ironically, courts below tried to blame the accused for not getting official witnesses examined in this regard for the defence, in spite of his having examined his sister (D.W.1) and a tenant (D.W.2) in the house at Dahod where D.W.1 also lived. Withholding by the prosecution of the report the materials gathered and conclusions of the CID investigation in the very case and claiming privilege for its production, which came to be upheld also on 27.11.1999 by the Trial Court resulting in the exclusion of those materials from the case and denial of even the copy of the said report seems to suggest a concerted effort on the part of the prosecution to mask the real truth from the Court. The CID officers, who conducted the independent investigation and submitted report though cited as witnesses and present in Court on 7.12.2000 were, for reasons best known, not examined. Inspector M.C. Gaur, who conducted the investigation in Bhopal and gathered materials relating to the trip of the appellant to Dahod, stated to have recovered a diary and photograph and brought him from Bhopal to Shajapur on 11.4.1999, though cited as witness No.19 in the list submitted with the charge sheet, was not examined. He was the best and really vital witness, who could speak for his absence on account of being away at Dahod as well as regarding the search of his person before the alleged search and seizure of the purse and chain on 12.4.1999 at Shajapur by P.W.27 and as to whether the appellant was really absconding or evading being apprehended as projected by the prosecution, in spite of the real fact that even without any arrest warrant he accompanied Inspector Gaur to Shajapur without any demur. Witnesses, natural and independent, expected to be in and around the place of occurrence at the relevant time such as sweepers, milkman, Newspaper man (P.W.2 admits newspaper having been lying at the entrance when he returned) whose statements were recorded and cited as witness were but given up and not examined at all. The list of Telephone calls STD, said to be on the basis of computer sheet relating to Telephone No.547396 of Bhopal alone seems to have been got marked as Ex.P.16 through P.W.16 but for reasons best known such list containing details of calls made from the house of the deceased (their father P.W.2) to the house of the accused though shown as Item

No.63 in the list of documents submitted with the charge sheet was not got marked and placed in evidence. This could have cast serious doubts about the claims of PW-2 in respect of the alleged threat over telephone as well as the attitude of his and his own daughter towards the accused. All those aspects would really go to a great extent to justify the grievance sought to be made on behalf of the appellant, that the prosecution instead of impartially endeavouring to unravel the truth was bent upon persecuting the appellant to get him some how convicted, with a preconceived idea of his guilt.

The courts below proceeded to believe the disappointment and failure in love of the accused with Ms.Priti to be the strong motive for the appellant to have committed the murder and as a firm circumstance to connect him with the incident. The accused, of course, denied the love affair. P.W.2, the father, also deposed that he was not aware of the same and when he checked up after the call from the father of the accused Hari Narayan Batham, who was alleged to have asked for the marriage of the accused with the deceased girl Priti, the girl also stated to have denied any such relationship with the accused. In that view of the matter, the evidence of P.W.16, the Priest of Hanuman Temple, and the telephone calls were mainly relied upon to arrive at the findings in this regard, taken together also with a stray information given the observation by the sister of the accused, D.W.1. A careful reading of the evidence of P.W.16 would show that he is a mere tuitored witness and not speaking the truth as to what really happened, if only the version of P.W.2 as to total ignorance of any such affair with his daughter and the blunt denial by his daughter Priti as spoken by him is to be believed. Ex.P.16, the telephone bill pertaining to Telephone No. 547396 located in Bhopal, not merely indicates the call from the said telephone to the residential telephone of P.W.2 on that day or thereafter, but the calls often made from January onwards, at times of very long duration at odd hours in the night. This taken together with the grievance projected on behalf of the appellant about non-marking of the similar list of telephone STD calls from the telephone of P.W.2 indicating as it is claimed of such calls of longer duration to the Bhopal No.547396 would go to show that P.W.2 could not have been oblivious to the on-going affair between the accused and the deceased daughter Priti. The theory of alleged threat seems to be a mere invention of the prosecution to somehow fix the appellant with the murder taking advantage of the partial evidence produced. This line of reasoning suggested by the learned counsel for the appellant would get strengthened from the fact that though the Police arrived immediately after the occurrence and a complaint was lodged by P.W.2, there was no mention about the appellant being even a suspect for incident and if only the theory of threat sought to be advanced to prove the complicity of the appellant with the murder, was a real fact the moment he saw the occurrence on his return to the house that alone should have naturally come to his thought in the forefront. From the mere fact that the deceased Priti and the appellant were said to be in love alone, it cannot be even remotely presumed that he should have been the cause for the murder unless it is substantiated by credible evidence that the affair had broken beyond redemption. This part seems to have more surmised by courts than substantiated by the prosecution on any credible or legally acceptable evidence. In our view, therefore, the motive factor seems to have no legal basis or sufficiently proved to constitute a circumstance to connecting the appellant with the occurrence.

The next circumstance sought to be relied upon is that the appellant, who was transferred from Shajapur and working at the relevant time at Bhopal, was found entering near the compound and leaving the place during the time between 6.00 and 7.15 a.m. on the morning of 8.4.1999. This

circumstance is sought to be substantiated by the evidence of P.W.4, an Advocate, residing nearby and P.W.5 residing in the vicinity of the Lodge opposite to the quarters of P.W.2 and that of the young girl of 14 years at the time of examination (P.W.3), who was said to have heard the calling bell sound in the house of P.W.2, followed by a cry of Priti `Mummy save, Mummy save' from the house of P.W.2. It is odd to believe that this girl neither tried to come out to see what it is nor sounded or alerted anyone in her own house about such a cry to enable them to respond or verify what it was about. The conduct and the attitude of P.W.4 as well as P.W.5 seems to be highly suspicious to make them to be really true witnesses for the event spoken to by them. Though P.W. 4 would claim that he saw the accused entering near the compound leading to the house of P.W.2 while he was leaving for the bus stand for his onward journey to Indore to attend the Court work in the High Court, P.W. 5 was positive in deposing that after the occurrence and when the police arrived and people were gathered before the house of P.W.2, he found P.W.4 also in the crowd. In spite of all these, P.W.5 would say that he immediately left for his village evincing no interest in the matter and returned after two days and when he called on the Doctor, he disclosed about having seen the appellant whom he claimed to know since the appellant was residing earlier in the Upkar Lodge. P.W.4, the Advocate, also would say that only when he returned late in the night, he called on the father and disclosed the information about his having noticed the appellant while he was leaving. The evidence of these two witnesses seems too artificial to be believed and their disappearance from the scene, to reappear one on the night and other after two days, would hardly inspire confidence in their version, to be believed by any reasonable person or any Court, which is obliged to analyse and assess the credibility of the evidence before accepting the same. Consequently, no reliance could have been placed on their version to prove the movement of the appellant during the relevant point of time near the house of P.W.2 so as to implicate him in the murder. It is necessary at this stage itself to advert to the claim of the appellant that on 7.4.1999 he left Bhopal accompanying his sister DW-1, by the night train to Dahod in Gujarat as per the reservation of tickets made by him, which was also spoken to by D.W.1 and D.W.2 that not only the appellant travelled along with the D.W.1, but he was very much present at Dahod in Gujarat on 8.4.1999. Curiously, the Courts below chose to summarily reject the claim faulting the appellant for not examining the railway officials ignoring the fact that in spite of Inspector Gaur collecting the materials relating to his reservation and travel, neither he was examined nor the prosecution summoned those officials, who were examined during the course of investigation or marked the materials collected to prove that the appellant did not travel as claimed by him. Different and contradictory standard of appreciation of evidence seems to have been adopted to the detriment of the accused resulting in grave injustice. In the absence of any clinching material brought on record by the prosecution to show that the appellant did not, as a matter of fact, travel as per the reservations made by him along with his sister (D.W.1), it was not permissible for the courts below merely to disbelieve DW-1 and DW-2 for no valid reason and to surmise, in our view, most unjustifiably that the appellant was clever enough to prepare the material for the defence of alibi, which, according to them, remained unsubstantiated. To support the prosecution version, an arrest of the appellant was shown on 12.4.1999 at Shajapur by P.W.27. It was sought to be projected as though he was absconding and avoiding being apprehended without choosing to examine Inspector Gaur, who had been to Bhopal to investigate and who really brought him into Shajapur and presented him to the Investigating Officer (P.W.27). To add further to the mysterious move of the prosecution, no attempt was made to mark or let in evidence of the relevant railway officials, though the materials gathered were shown in the list of documents by the prosecution. It

appears that on a grievance of harassment and biased and partial investigation by the local Police, complaint seems to have been made necessitating the CID officers to conduct an independent investigation and submit a report, but claiming privilege and protection under Section 137(6) of the Cr.P.C., not only those papers were removed from the case file, but no one associated with the said investigation were even examined though they were cited as witnesses and were also said to be present in court on 7.12.2000. Strangely, the learned Trial Judge while examining the accused under Section 313, Cr.P.C., was shown to have put questions about the conduct of those investigating officers to the accused. The serious lapse in not pursuing the examination of the finger prints or bring on record the results of fingerprints taken and making them available for consideration as well as the omission to bring to the notice of the Court the result of the lie detector test, to which the appellant was subjected, sufficiently create serious suspicion and cast great shadow of doubt on the credibility and truthfulness of the prosecution case.

The next circumstance that was considered to be a strong and relevant one to connect the appellant with the occurrence was the recovery of the chain said to have been worn by his younger daughter Nidhi and stated to be missing. The entire episode, both with reference to this recovery as well as the recovery of the knife said to have been used in the commission of the offence as well as the blood stained clothes of the appellant seem to be much more shrouded in suspicion and dramatic than real to inspire any confidence or faith to place any reliance on either of them. About the so-called missing of the chain, which looked similar to gold, and about other alleged missing articles, P.W.2 was said to have given in writing, without any date, but indisputably only on 21.4.1999.

The identification test said to have been conducted by the Tehsildar (PW-

8) and the so-called identification of the same by PW-2 and his wife of the chain said to have been worn by the deceased Nidhi does not carry the case of the prosecution any further. It is stated that the said chain placed for identification had iron wire in place of hook and it was not said to have been mixed with similar chains having such iron wire in place of hook. The criticism that, nothing much could be relied upon the so called identification cannot be lightly brushed aside. Even as to the recovery of the chain claimed from the appellant after his arrest on 12.4.99. at Shajapur, serious doubts surround recovery claim to render the said claim itself a suspect one. PW-9, the only panch witness, examined for the recovery, panchnama does not corroborate any recovery in his presence and the other witness to the recovery was not examined at all. It is hard to believe that the appellant was carrying the chain in his pocket from the date of occurrence till he met Inspector Gaur that the said Inspector who allegedly got the diary and a photo could not have noticed it at Bhopal and the same was carried by him even when he was brought to Shajapur till it was claimed to have been recorded by PW-27. Though, it was said to have been worn by the deceased Nidhi before her death, no bloodstains were found on the chain in spite of her neck being cut and she bled profusely from the neck. The non-examination of Inspector Gaur, who brought the appellant from Bhopal, also cast serious and reasonable doubts about this part of the prosecution case. The same appears to be the position with reference to the story about the disclosure statement Ex.P-23 and the recovery panchnama Ex.P-24 relating to the recovery of the blood stained knife and clothes recovered from the bushes near the Hanuman temple. Apart from the story striking to be stale, unnatural and unbelievable that after the occurrence the appellant had gone to the temple area to hide these two

things though he was said to have been going towards the bus stand, suggestive of the fact that he was only leaving for Bhopal. The delayed recovery that too after the second remand of the appellant cast serious doubts about the said circumstance itself to be true or accept to have been proved. Though PW-10, the panch witness would claim that the appellant signed the disclosure statement Ex.P-23 in his presence, the same really does not bear any signature of the appellant. This fact taken together with the deposition of PW-10 that the appellant was found handcuffed and his face was covered and the non-examination of the other witness in spite of such doubtful version, the credibility of the so-called disclosure statement as well as the alleged recovery becomes seriously doubtful.

Considering also the number, nature and manner of injuries found inflicted on the body of the two girls as also the deposition of PW-18, the Doctor, who conducted the post-mortem, serious doubts, in our view, could reasonably be said to arise to engulf the credibility of the prosecution theory, as a whole, as to whether it was possible at all for a single person to inflict so many injuries with one knife and within such a short span of time left between PW-2 and his wife leaving from the house and returning from their morning walk. It is also doubtful as to whether one person could have, without getting himself hurt, or receiving any form of injury during altercation, in retaliation from the two girls, inflicted so many injuries. In this context, the absence of any explanation to the bloodstains found on the terrace of the house also assumes significance and considerably affect the veracity of the case projected by the prosecution.

The learned counsel for the respondent strenuously contended that though, each of the above circumstances may not by themselves point towards the guilt of the appellant, but taken together, lead to the only inevitable and inescapable conclusion that it is the appellant who committed the murder of the two daughters of PW-2 cannot, at any rate, be doubted. We have carefully considered this aspect of the matter also, despite the doubtful nature of the very circumstances themselves to be really facts established, but could not be persuaded to either agree with the learned counsel for the respondent or approve the findings of the courts below. On a careful reading of the relevant portions of the judgment of both the learned Sessions Judge as well as the Division Bench of the High Court, to which our attention has been invited by the learned counsel appearing on either side, we are constrained to place on record that both the courts below have committed the same serious error in presuming the guilt of the appellant first and try thereafter to find out one or other reason to justify such a conclusion without an objective, independent and impartial analysis or assessment of the materials, before recording a finding on the guilt of the appellant. Contradictory standards or yardstick and lack of coherence is found writ large in the manner of consideration adopted by the courts below. In the case of evaluation of the evidence, it could be seen so patently that insignificant things have been unduly magnified and serious lapses and withholding of vital materials and relevant witnesses have been unjustifiably glossed over despite the fact that the production of those materials would have really helped to fix the guilt or otherwise of the appellant concretely and bring about the real truth about the matter. We find, on going through the materials on record and the judgments of the courts below, the case before us to be an ideal and illustrative one to justify the apprehensions often reiterated by this Court that the mind was apt to take pleasure in adopting the circumstances to one or the other circumstance without straining a little to supply even the links found wanting to render them complete. The fact that at a busy place like the one in and nearby the

Hospital area, a thickly residential with surroundings as spoken to by the witnesses such murder of two girls could be said to have been executed without attracting the attention of anyone nearby or regular passersby at that point of time in the area also seriously improbablise the prosecution version that the appellant alone was and could have been the culprit. We are also of the view that the doubtful and suspect nature of the evidence sought to be relied upon to substantiate the circumstances in this case themselves suffer from serious infirmities and lack of legal credibilities to merit acceptance in the hands of Courts of Law, since the very circumstances sought to be relied upon themselves stood seriously undermined the existence or proof of one or more of stray circumstances in the chain, break and dislocate the link in such a manner so as to irreversibly snap the link in the chain of circumstances rendering it difficult, inappropriate as well as impossible too, to consider even one or more of them alone to either sufficiently constitute or provide the necessary basis to legitimately presume the guilt of the appellant. We could not resist but place on record that the appellant seems to have been roped in merely on suspicion and the story of the prosecution built on the materials placed seems to be neither the truth nor wholly the truth and the findings of the courts below, though seem to be concurrent, do not deserve the merit of acceptance or approval in our hands having regard to the glaring infirmities and illegalities vitiating them and patent errors apparent on the face of the record, resulting in serious and grave miscarriage of justice to the appellant.

For all the reasons stated above, the judgments of the courts below are set aside. The appeal is allowed and the appellant is acquitted and directed to be released forthwith, if not required in any other case.