

Abdul Nassar
v.
State of Kerala & Anr.

(Criminal Appeal No(s). 1122-1123 of 2018)

07 January 2025

**[B.R. Gavai, K.V. Viswanathan and
Sandeep Mehta,* JJ.]**

Issue for Consideration

Whether the prosecution has proved by leading clinching and convincing circumstantial evidence that the accused had committed forcible and violent sexual assault on the child victim and, thereafter, strangled and killed her.

Headnotes[†]

Penal Code, 1860 – ss.302 and 376 – Prosecution case that accused had committed forcible and violent sexual assault on the child victim and, thereafter, strangled and killed her – The trial Court found accused/appellant guilty of the offences punishable u/ss.302 and 376 of IPC – Trial Court awarded capital punishment to the accused/appellant – The High Court confirmed the death reference – Accused filed appeal before the Supreme Court – During pendency of the appeals, the accused expired – However, application submitted by the legal heirs of the appellant u/s. 394 (2) CrPC for continuation of the instant appeals:

Held: The following circumstances stand firmly established from a threadbare analysis of the evidence available on record, pointing towards the guilt of the accused appellant – The child victim was a friend of the daughter of the accused, and they used to go to Madrassa together – On the date of incident, the child victim was seen with the daughter of the accused – However, she never reached Madrassa – An extensive search was conducted – The needle of suspicion pointed towards the house of the accused – After many search attempts, PW-12 inspected the bathroom of the accused by lighting his torch and found a heap of clothes, which was removed by PW-8 and the dead body of the child victim

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Digital Supreme Court Reports

was discovered concealed thereunder – Two stones of the septic tank inside the house of the accused were also found moved – Blood-stained pink colour midiskirt (MO-7), petticoat (MO-8) and black miditop (MO-9) worn by the deceased child victim were identified by her mother(PW-9), recovered by the police officials from the house of the accused and were seized – As per the postmortem report, a total of 37 ante mortem injuries were found on the child victim's body – The cause of death was opined to be manual compressive and ligature constrictive strangulation – As per the FSL report, the midiskirt worn by child victim, the dhoti of the accused and cotton gauze collected from the scene of crime contained human spermatozoa and semen – The hair collected from the crime scene matched with the hair of the deceased child victim – The DNA report clearly proved that the DNA profile of the semen stains found on the midiskirt (MO-7) matched with that of the accused – Further, the blood stains found on the cot and beneath it were that of the deceased child victim – Other belongings of deceased child victim were also recovered – Based on the analysis of the evidence on the record, the chain of incriminating circumstances required to bring home the guilt of the accused is complete in all aspects – In the instant case, the prosecution has proved by leading clinching and convincing circumstantial evidence that the accused had committed forcible and violent sexual assault on the child victim and, thereafter, strangled and killed her. [Paras 25, 26, 27]

Evidence – Circumstantial Evidence – Principles that courts must adhere to while appreciating and evaluating evidence in cases based on circumstantial evidence:

Held: (i) The testimony of each prosecution and defence witness must be meticulously discussed and analysed – Each witness's evidence should be assessed in its entirety to ensure no material aspect is overlooked; (ii) Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact. Thus, the reasonable inferences that can be drawn from the testimony of each witness must be explicitly delineated; (iii) Each of the links of incriminating circumstantial evidence should be meticulously examined so as to find out if each one of the circumstances is proved individually and whether collectively taken, they forge an unbroken chain consistent only with the hypothesis of the guilt

Abdul Nassar v. State of Kerala & Anr.

of the accused and totally inconsistent with his innocence; (iv) The judgment must comprehensively elucidate the rationale for accepting or rejecting specific pieces of evidence, demonstrating how the conclusion was logically derived from the evidence – It should explicitly articulate how each piece of evidence contributes to the overall narrative of guilt; (v) The judgment must reflect that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis. [Para 30]

Case Law Cited

Sharad Birdhichand Sarda v. State of Maharashtra [\[1985\] 1 SCR 88](#) : (1984) 4 SCC 116 – relied on.

Rahul v. State (NCT of Delhi) [\[2022\] 9 SCR 1129](#) : (2023) 1 SCC 83; *Prakash Nishad @ Kewat Zinak Nishad v. State of Maharashtra* [\[2023\] 8 SCR 152](#) : 2023 SCC OnLine SC 666; *Hanumant v. State of Madhya Pradesh* [\[1952\] 1 SCR 1091](#) : (1952) 2 SCC 71; *Rameshwar Dayal and Others v. State of U.P.* [\[1978\] 3 SCR 59](#) : (1978) 2 SCC 518; *George and Others v. State of Kerala and Another* [\[1998\] 2 SCR 303](#) : (1998) 4 SCC 605 – referred to.

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860; Juvenile Justice (Care and Protection) Act, 2000; Kerala Police Act, 2011.

List of Keywords

Child victim; Forcible and violent sexual assault on the child victim; Strangulation; Evidence; Circumstantial evidence; Testimony of witnesses; Reasonable inference; Hypothesis of guilt of accused; Capital punishment; DNA profile; Chain of incriminating circumstances.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 1122-1123 of 2018

From the Judgment and Order dated 28.02.2018 of the High Court of Kerala at Ernakulam in DSR No. 3 of 2013 and CRLA No. 1452 of 2013

Digital Supreme Court Reports**Appearances for Parties**

Trideep Pais, Sr. Adv., Ms. Sakshi Jain, Harini Raghupathy, Pallav Mongia, Advs. for the Appellants.

R. Basant, Thomas P Joseph, Sr. Advs., Nishe Rajen Shonker, Mrs. Anu K Joy, Alim Anvar, Abraham Mathew, Manu Krishnan, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

Mehta, J.

1. These appeals assail the judgment and order dated 28th February, 2018 passed by the Division Bench of the High Court of Kerala at Ernakulam in Criminal Appeal No. 1452 of 2013 and Death Sentence Reference No. 3 of 2013¹. The Death Sentence Reference and the Criminal Appeal arose out of the judgment dated 31st July 2013 passed by the Court of Sessions Judge, Manjeri² in Sessions Case No. 487 of 2012.
2. By the aforesaid judgment, the learned trial Court found the appellant (the sole accused) guilty of the offences punishable under Sections 302 and Section 376 of the Indian Penal Code, 1860³ and sentenced him as follows:
 - (i) Under Section 302 IPC: Death sentence (subject to the confirmation by the High Court)
 - (ii) Under Section 376 IPC: Rigorous Imprisonment for 7 years and a fine of Rs. 1,000/- (in default to undergo Rigorous Imprisonment for two months). [This imprisonment was allowed to be set off under Section 428 of the Code of Criminal Procedure, 1973⁴]
3. Being aggrieved by his conviction and sentence awarded by the learned trial Court, the accused preferred Criminal Appeal No. 1452

¹ Hereinafter, being referred to as D.S.R. No. 3 of 2013

² Hereinafter being referred to as 'trial Court'

³ Hereinafter being referred to as 'IPC'

⁴ Hereinafter being referred to as 'CrPC'

Abdul Nassar v. State of Kerala & Anr.

of 2013 before the High Court. Since the trial Court awarded capital punishment to the accused appellant, the matter was referred to the High Court under Section 366 CrPC for confirmation of the death sentence vide D.S.R. No. 3 of 2013. Both D.S.R. No. 3 of 2013 and Criminal Appeal No. 1452 of 2013 were decided by the High Court *vide* common impugned judgment dated 28th February 2018 whereby, the Criminal Appeal was dismissed, and the Death Sentence Reference was allowed confirming the death sentence awarded to the accused. Being aggrieved, the accused appellant has filed the present appeals by way of special leave.

4. This Court *vide* order dated 4th September, 2018, stayed the execution of death sentence awarded to the accused appellant.
5. During the pendency of these appeals, the appellant passed away on 16th January 2024. An application was submitted by the legal heirs of the appellant before this Court under Section 394(2) CrPC for the continuation of the present appeals to wash off the stigma attached to the accused appellant and his family which was allowed *vide* order dated 1st February, 2024.
6. Brief facts relevant and essential for the disposal of these appeals are as follows: -
 - 6.1 The prosecution story in brief is that on 4th April, 2012, at about 6:30 am, the child victim aged about 9 years was proceeding from her house to the Madrassa situated at Ponnamkallu in Amarambalam Village. On the way to the Madrassa, she went to the house of the accused which was situated on the side of the panchayat road at Ponnamkallu, in search of her friend who is the daughter of the accused so as to go to the Madrassa together.
 - 6.2 On seeing the child victim all alone, the accused who was also alone in the house, committed rape upon her in a room in his house at around 6:45 am, and after that, he strangled the child victim with a shawl and smothered her with his hands which lead to the death of the victim.
 - 6.3 It is the case of the prosecution that the accused, with the intention to destroy evidence, concealed the dead body of the victim beneath a cot inside the bedroom in the said house. Thereafter, the accused shifted the victim's dead body to the

Digital Supreme Court Reports

bathroom attached to the said house. He also attempted to dispose of the dead body in the septic tank situated at the north-eastern corner of the house as the stones from under the slab of the septic tank were found removed.

- 6.4 When the victim could not be found anywhere despite frantic efforts to trace her out, a written complaint⁵ came to be submitted by complainant-Salim (PW-1) at the Nilambur Police Station on 4th April, 2012 at 7:00 pm on the basis of which an FIR No. 308 of 2012⁶ came to be registered at the Nilambur Police Station under Section 57 of Kerala Police Act, 2011 and the investigation was commenced.
- 6.5 The dead body of the girl was found at around 7:30 pm on 4th April, 2012, in the bathroom adjacent to the house of the accused appellant and thereupon, the offence punishable under Section 57 of the Kerala Police Act, 2011 was altered to Section 302 IPC *vide* Exhibit P-9. Further, on the next day, offences punishable under Sections 376 and 201 IPC and Section 23 of the Juvenile Justice (Care and Protection) Act, 2000⁷ were also added to FIR No. 308 of 2012⁸ *vide* Exhibit P-20, and the investigation continued. The accused appellant was arrested on 6th April, 2012.
- 6.6 The Investigating Officer (PW-24) forwarded a report⁹ regarding the addition of the name and address of the accused in the aforesaid FIR. Material forensic evidence was collected from the crime scene and was subjected to scientific examination. Incriminating recoveries were effected in furtherance of the disclosure statements made by the appellant. After the conclusion of the investigation, a charge sheet came to be filed against the accused for the offences punishable under Sections 376, 302, and 201 IPC and Section 23 of the JJ Act in the Court of the concerned Jurisdictional Magistrate.
- 6.7 The case being exclusively Sessions triable was committed to the Court of Sessions Judge, Manjeri ('trial Court') where charges

5 Exhibit P-1

6 Exhibit P-11

7 Hereinafter being referred to as 'JJ Act'

8 *Supra*, Note 6

9 Exhibit P-21

Abdul Nassar v. State of Kerala & Anr.

were framed against the accused for the above offences. The accused pleaded not guilty and claimed trial.

7. The prosecution examined as many as 24 witnesses and exhibited 25 documents and 17 material objects to prove its case. For the sake of convenience, the details of the prosecution witnesses, exhibits and material objects are given below: -

Prosecution Witnesses:-

PW-1	Saleem
PW-2	Nazarudheen
PW-3	Abdul Azeez
PW-4	Unnikrishnan
PW-5	Vijayachandran Kutty
PW-6	Harinarayanan
PW-7	Ibrahim Kutty
PW-8	Shamsudheen
PW-9	Suhara
PW-10	Ibrahim Darimi
PW-11	Ramakrishnan
PW-12	Unnikrishnan
PW-13	Musthafa
PW-14	Subramaniam
PW-15	Sunil Pulikkal
PW-16	Nisha
PW-17	Ratheesh
PW-18	Abraham
PW-19	Dr. Sonu
PW-20	Dr. Vinod Kumar
PW-21	Dr. R. Sreekumar
PW-22	Dr. P.A. Sheeju
PW-23	Pradeep Kumar
PW-24	A.P. Chandran

Digital Supreme Court Reports

Exhibits:-

Ex. P-1	First Information Statement
Ex. P-2	Seizure Mahazar
Ex. P-3	Admission abstract and certificate of the deceased, issued by the Headmaster, Government LP School, Kavalamukkatta
Ex. P-4	Property certificate issued by Village Officer, Amarambalam
Ex. P-5	Scene Plan
Ex. P-6	Seizure Mahazar
Ex. P-7	Seizure Mahazar
Ex. P-8	Septic Tank Report issued by Asst. Engineer, PWD Building Section, Nilambur
Ex. P-9	Report incorporating the offence under S. 302, Indian Penal Code, 1860 (IPC)
Ex. P-10	Seizure Mahazar
Ex. P-11	First Information Report
Ex. P-12	Potency Certificate
Ex. P-13	Examination report on semen stains, blood, and hair
Ex. P-14	DNA Report
Ex. P-15	Post-Mortem report
Ex. P-16	Seizure Mahazar
Ex. P-17	Seizure Mahazar
Ex. P-18	Seizure Mahazar
Ex. P-19	Inquest Report
Ex. P-20	Report submitted in court incorporating offences under S. 376 and 201 of the IPC, and the offence under S. 23 of the Juvenile Justice (Care and Protection) Act, 2015
Ex. P-21	Report submitted in court adding name of the accused to the FIR.
Ex. P-22	List of property sent to Magistrate, filed by PW24.
Ex. P-23	Extract of confessional statement of the accused.
Ex. P-24	Chemical analysis certificate.
Ex. P-25	Copy of request for collection of nail clippings, hair, and blood of the accused.

Abdul Nassar v. State of Kerala & Anr.**Material Objects:-**

MO1	Chapels
MO2	Chapels
MO3	Writing pad
MO4	Pen
MO5	Plastic cover
MO6	Plastic carry bag
MO7	Midi skirt
MO8	Petticoat
MO9	Midi top
MO10	Piece of shawl
MO11	Underwear
MO12	Piece of shawl
MO13	Piece of shawl
MO14	Dothi
MO15	Full sleeves shirt
MO16	Passport of the accused.
MO17	Election Identity Card of the accused

8. The accused upon being questioned under Section 313 CrPC denied the prosecution allegations but chose not to lead any evidence in defence. The trial Court proceeded to convict and sentence the accused in the above terms¹⁰ *vide* judgment dated 31st July 2013.
9. Being aggrieved by the conviction and sentence awarded by the trial Court, the accused appellant preferred Criminal Appeal No. 1452 of 2013 under Section 374(2) CrPC before the High Court of Kerala at Ernakulam. Since, the trial Court awarded death sentence to the accused for the offence punishable under Section 302 IPC, the matter was referred to the High Court for confirmation of the death sentence under Section 366 CrPC *vide* D.S.R. No. 3 of 2013.
10. Criminal Appeal No. 1452 of 2013 and D.S.R. No. 3 of 2013 were decided *vide* common judgment dated 28th February 2018, whereby the Division Bench of the High Court dismissed the Criminal Appeal

10 Refer, Para 2

Digital Supreme Court Reports

and allowed the Death Sentence Reference confirming the death sentence awarded to the accused appellant. The said judgment is assailed in the present appeals.

Submissions on behalf of the appellant:

11. Shri Trideep Pais, learned senior counsel representing the accused appellant advanced the following pertinent submissions to assail the impugned judgment: -
 - 11.1 That the prosecution has not been able to establish that the body of the victim girl was dumped in the bathroom by the accused. The bathroom where the body was found was located outside the house of the accused and was open and easily accessible to all and sundry. The accused was not in the house at the time of the incident and thus, the possibility of someone else having committed the crime cannot be ruled out.
 - 11.2 That the body of the deceased was discovered at around 7:30 pm and the police officials arrived at the scene for the first time at around 9:00 pm i.e. after a delay of 1.5 hours. Admittedly, local people arrived at the crime scene during this time and thus, the possibility of the public tampering with the body of the deceased and disturbing and contaminating the crime scene cannot be ruled out which brings the integrity of samples collected during the investigation under a shadow of doubt.
 - 11.3 That the scene of occurrence and body of the deceased remained unsealed and unguarded for around 14 hours until 9:00 am of 5th April, 2012, i.e., the time when inquest was prepared. This renders every subsequent seizure of samples or evidence collected from the house of the accused or the body of the deceased unreliable with a strong possibility of degradation and contamination of body and so also the tampering of evidence.
 - 11.4 That as per the statement of AP Chandran, Investigating Officer (PW-24), the underwear was found on the body of the deceased while as per the Inquest Report¹¹, the underwear

11 Exhibit P-19

Abdul Nassar v. State of Kerala & Anr.

(MO 11) was found in the kitchen. Further, none of the witnesses to the inquest report were examined and also the contents of the inquest report have not been proved by the Investigating Officer (PW-24) in his deposition.

- 11.5 That the blood stains were only found in the north-west room which is admittedly not the room where the crime was committed and there is no tangible evidence on record to explain how the dead body was taken unnoticed from the crime scene to the bathroom situated outside the house of the accused.
- 11.6 That no seizure memo was prepared for the collection of the clothes of the deceased i.e. midi skirt, petticoat, top and underwear seized by the Investigating Officer (PW-24) and even the inquest report¹² does not mention that these items were sealed.
- 11.7 That the chain of custody of all articles seized by the police has not been established and there has been a lapse in sending the material articles for forensic examination. Also, the manner of storage of the biological samples has been improper which is contrary to the mandate laid down by this Court in *Rahul v. State (NCT of Delhi)*¹³ and *Prakash Nishad @ Kewat Zinak Nishad v. State of Maharashtra*.¹⁴
- 11.8 That the findings of the DNA Report¹⁵ dated 11th January, 2024 and FSL Report¹⁶ of seminal stains, blood and hair dated 4th January, 2024 cannot be relied upon due to the absence of corroborative evidence of seizure and reasons behind the findings of the experts. Thus, these reports do not meet the standards of expert evidence enumerated under Section 45 of the Indian Evidence Act, 1872.
- 11.9 That it is a settled position of law that the accused must be given an opportunity to explain all evidence against him during

12 Exhibit P-19

13 [2022] 9 SCR 1129 : (2023) 1 SCC 83

14 [2023] 8 SCR 152 : 2023 SCC OnLine SC 666

15 Exhibit P-14

16 Exhibit P-13

Digital Supreme Court Reports

the recording of his statement under Section 313 CrPC which has not been complied with in the instant case inasmuch as the findings of DNA examination and serological examination were not put to the accused and thus, the same cannot be relied upon in support of the prosecution case.

- 11.10 That the disclosure statement¹⁷ made by the accused cannot be relied upon as the exclusive knowledge or access of the accused to the terrace from which the alleged recovery was made is not shown by the prosecution and the recovered articles were not identified in TIP¹⁸ or adequately link with the deceased.
- 11.11 That the material witness, Amina Thana who had last seen the deceased going towards the Madrassa, and other witnesses namely, Muhammad Shan, Kunhiappa, and Keshavan who were part of the search party were not examined by the prosecution.
- 11.12 That the testimony of the prosecution witnesses, Nazarudheen (PW-2), Shamsudheen (PW-8) and Unnikrishnan (PW-12) cannot be relied upon. Nazarudheen (PW-2) stated that he went to the house of the accused on four occasions, and it was during his fourth visit, he found the dead body of the victim in the bathroom. It was contended that PW-2 had even searched the bathroom on his third visit but did not find anything and thus apparently, the recovery of the dead body is a planted one.
- 11.13 That there is no eyewitness to the alleged incident and the case of the prosecution hinges entirely on circumstantial evidence. The prosecution has failed to prove the complete chain of incriminating circumstances pointing towards the guilt of the accused. In this regard, learned senior counsel relied upon the judgments of this Court in *Hanumant v. State of Madhya Pradesh*,¹⁹ *Sharad Birdhichand Sarda v. State of Maharashtra*²⁰ to submit that it is settled law that in a case of

17 Exhibit P-23

18 Test Identification Parade

19 [1952] 1 SCR 1091 : (1952) 2 SCC 71

20 [1985] 1 SCR 88 : (1984) 4 SCC 116

Abdul Nassar v. State of Kerala & Anr.

circumstantial evidence, the chain of circumstances must be so complete that it is consistent only with the guilt of accused and every other possible hypothesis is excluded.

- 11.14 That the instant case does not fall within the purview of the rarest of rare cases. The High Court affirmed the death sentence awarded to the accused without advert to the relevant mitigating and aggravating circumstances pertaining to the accused.

He thus implored the Court to accept the appeals and set aside the impugned judgments.

Submissions on behalf of Respondent-State: -

12. *Per contra*, Shri R. Basant, learned senior counsel representing the State, vehemently and fervently opposed the submissions advanced by the learned senior counsel for the accused appellant and submitted that every reasonable hypothesis points towards the guilt of the accused. He urged that two Courts, i.e., the trial Court as well as the High Court, have recorded concurrent findings of facts, convicting the accused and hence, this Court in the exercise of its jurisdiction under Article 136 of the Constitution of India should be slow to interfere with such concurrent findings of facts. He advanced the following submissions while supporting the impugned judgment and imploring the Court to dismiss the appeals: -

- 12.1 That the blood stains were found inside the house of the accused, beneath the cot and on the cot, and the DNA Report²¹ establishing that the blood stains found were that of the deceased.
- 12.2 That the seminal stains on the vaginal swab and smear of the deceased collected by Forensic Surgeon (PW22) also matched with the DNA of the accused as per the DNA Report (Exhibit P-14).
- 12.3 That the Inquest Report (Exhibit P-19) is an admissible piece of evidence since the same was prepared by the Investigation Officer (PW-24) while discharging his official duties under

21 Exhibit P-14

Digital Supreme Court Reports

Section 174 CrPC. In this regard, the learned counsel placed reliance on *Rameshwari Dayal and Others v. State of U.P.*²² and *George and Others v. State of Kerala and Another*.²³

- 12.4 That no explanation has been given by the accused for recovery of the writing pad (MO3), pen (MO4), plastic cover (MO5), plastic carry bag (MO6) and the underwear of the victim (MO11) from the roof of his own house.
- 12.5 That the learned counsel for the appellant contended that Nazarudheen (PW2) went to the house of the accused four times on the date of the incident i.e. 4th April, 2012. The body of the deceased was found by him on the fourth visit, and PW2 had even searched the bathroom on his third visit but did not find anything. However, he submitted that it is clear from the evidence of Nazarudheen (PW2) that he had a grave suspicion against the accused, and he informed this fact to Shamsudheen (PW8) and Unnikrishnan (PW12). The accused became apprehensive after the third visit of Nazarudheen (PW2) and thus, he told PW2 that he did not have the key to his house. In the meantime, he shifted the body from the bedroom to the bathroom in an attempt to hide the dead body in the septic tank.
- 12.6 That the instant case falls within the rarest of rare cases as the accused was in a relationship of trust, belief, and confidence with the deceased, being the father of a friend of the deceased and there are no extenuating circumstances which can be said to mitigate the enormity of the crime.

On these submissions, Mr. Basant implored the Court to dismiss the appeals and affirm the impugned judgement.

Discussion and Conclusion:-

- 13. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the judgments of the trial Court and High Court as well as the evidence available on record.

22 [1978] 3 SCR 59 : (1978) 2 SCC 518

23 [1998] 2 SCR 303 : (1998) 4 SCC 605

Abdul Nassar v. State of Kerala & Anr.

14. Indisputably, the prosecution case rests on circumstantial evidence. The law with regard to a case based purely on circumstantial evidence has very well been crystalized in the judgment of this Court in the case of Sharad Birdhichand Sarda (supra), wherein this Court held thus:

“152. 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 most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up to date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625: AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]:

“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 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.”

153. 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:

Digital Supreme Court Reports

(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 Sahabro Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“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.

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

15. In the light of these guiding principles, we will have to examine the facts of the present case.

Abdul Nassar v. State of Kerala & Anr.

16. Before delving into the discussion with respect to the submission regarding the breach in the link evidence on which the entire focus was laid by the learned senior counsel for the appellant, we would like to discuss the other important pieces of evidence on which the trial Court as well as the High Court relied upon so as to record and uphold the conviction recorded against the accused appellant.
17. The High Court primarily relied upon the deposition of maternal uncle of the deceased child namely, Saleem(PW-1), another maternal uncle of the deceased child namely, Nazarudheen (PW-2), mother of the deceased, Suhara (PW-9), and the Madrassa teacher, Ibrahim Darimi (PW-10). The summary of the evidence of these witnesses can be extracted from paragraphs 8 to 11 of the impugned judgment rendered by the High Court which is reproduced hereinbelow for the sake of convenience:-

“8. PW1 is the uncle (mother’s brother) of the deceased.
He gave FI statement regarding the fact that the girl was missing from their house. Ext.P1 is the FI statement given at 7.00 p.m. on 4/4/2012. In the statement, he has stated that she had gone to the madrassa at about 7 am on 4/4/2012. Since she did not come back by about 10 am, he had gone and enquired at the Madrassa, and he was told that she had not reached there. When enquired with the people in the locality, they told that she was seen within 100 meters of the madrassa. They went and checked up in the locality and the house of relatives where she would normally go. Since no information was received, a complaint was filed.

9. PW9 is the mother of the deceased child., She deposed that the victim was studying in the 3rd standard in Government L.P. School at Kavalamukkatta in 2012. The birth certificate had been produced by the Headmaster of the School PW5 and marked as Ext.P3. In Ext.P3, her date of birth was shown as 25/8/2002.

10. PW10, the teacher in the madrassa deposed that she was studying in the 3rd standard and normally she comes at 7.00 a.m. and the class will be over by 9.00 a.m. On 4/4/2012, there was an examination, but she did not come.

Digital Supreme Court Reports

11. PW2 is another uncle (mother's brother), of the deceased. He deposed that while conducting search for the minor girl, he got information from a lady by name Amina that she saw her granddaughter and the victim going together in the direction of madrassa. When he enquired in the madrassa, he was informed that she did not reach there. The house of the accused is very near to the madrassa. PW2 conducted a search near the house of the accused also. The house of the accused was found locked. During a second search, PW2 again reached near the house of the accused by around 4.00 p.m. Even at that time, the house was found locked. By about 6.45 p.m., he along with certain other persons reached near the house of the accused. The accused was found sitting on the veranda. When they asked the accused about the girl, he told them that he also went in search for her, and he reached the house only at that time PW2 also searched the shed and the bathroom of the said house. He asked the accused to open the house in order to conduct a search. Accused told him that the key was with his wife and that he would go and bring it. PW2 therefore went to search in the pond which was situated near the house of the accused. He again went near the madrassa where he met a few other persons including PW8. However, PW2 had some suspicion regarding the accused which he communicated to them. They therefore came to the house of the accused. They found the house of the accused locked. PW12 had a torch with him. He went to the bathroom and found a heap of clothes. He called others. PW8 entered the bathroom and removed the clothes and found the dead body of the girl lying beneath the clothes. They shouted for the people in the locality. Many people gathered and the police also had come, PW8 and PW12 who were also along with PW2 had supported the above version."
18. Neither there is any doubt, nor any argument was raised by the learned counsel for the appellant that any of these witnesses bore an animus against the accused so as to influence them for deposing falsely against the accused. All these witnesses are either related to the victim or were residents of the neighbourhood who could not

Abdul Nassar v. State of Kerala & Anr.

have entertained any motive for falsely implicating the accused and that too, for such a heinous offence. The evidence of these witnesses portrays the following sequence of the events:-

- 18.1 The child victim had proceeded from the house for going to the Madrassa at 6:30 am on 4th April, 2012. She did not reach the Madrasa on which a search was started.
- 18.2 Since the last location of the child victim was found near the house of the accused, Nazarudheen (PW-2) [the maternal uncle of the deceased] conducted the search near his house which was found locked.
- 18.3 The search proceedings continued and Nazarudheen (PW-2) again reached near the house of the accused at around 4:00 pm. Even at that time, the house of the accused was locked.
- 18.4 At around 6:45 pm, Nazarudheen (PW-2) accompanied with certain other persons reached near the house of the accused and the accused was found sitting in the veranda of the house.
- 18.5 On inquiry being made from the accused about the girl, he replied that he had also gone for search of the child and had reached back to his house only at that time.
- 18.6 Nazarudheen (PW-2) also searched the shed and the bathroom of the house of the accused. He asked the accused to open the house in order to conduct a search. The accused told him that the key was with his wife, and he would go to fetch it.
- 18.7 Nazarudheen (PW-2) went to search in the pond which was situated near the house of the accused. He again went near the Madrassa where he met few other members of the search party including Shamsudheen (PW-8).
- 18.8 The conduct of the accused raised suspicion upon which Nazarudheen (PW-2) along with the other members of the search party [Shamsudheen(PW-8) and Unnikrishnan(PW-12)] came back to the house of the accused which was still locked.
- 18.9 Unnikrishnan (PW-12) had a torch with him. He lighted the torch and went to the bathroom and in illumination thereof, he found a heap of clothes. He called the other members of the search party. Shamsudheen (PW-8) entered the bathroom

Digital Supreme Court Reports

and removed the clothes and found the dead body of the child victim lying beneath the clothes.

- 18.10 A hue and cry was raised, and many people gathered there. The parents of the deceased child were also called.
- 18.11 The people of the locality caught hold of the accused and he was taken to the hospital where certain injuries were noted on his body. Shamsudheen (PW-8) and Unnikrishnan (PW-12) also fully supported the version of Nazarudheen (PW-2) in their depositions.
- 18.12 The dead body of the deceased child was subjected to postmortem at the hands of Dr. P.A. Sheeju (PW-22) who took note of a total of 37 ante-mortem injuries in the postmortem report²⁴. The doctor opined that the victim died due to manual compressive and ligature constrictive strangulation. The injuries on the body and external genitalia were suggestive of forcible vaginal penetrative sex.
19. A holistic view of the evidence of Nazarudheen (PW-2), Shamsudheen (PW-8) and Unnikrishnan (PW-12) would show that their initial attempts to search the house of the accused did not succeed because the same was found to be locked. At that time, these witnesses had also checked inside the bathroom which is just adjacent to the house of the accused. The accused has not denied that this bathroom was a part and parcel of his property.
20. When the initial search of the bathroom was taken, nothing was seen therein. Immediately thereafter, the accused posed to the search party that the key to the lock of his house was with his wife. There was an intervening gap in these two events. After some interregnum, when the witnesses Nazarudheen (PW-2), Shamsudheen (PW-8) and Unnikrishnan (PW-12) went into the bathroom of the accused, they found the dead body of the child lying there. It shows that when the witnesses kept on persevering to search the house of the accused, he tried to parry their attempts. Taking advantage of the gap wherein the witnesses had gone to the Madrassa, he shifted the dead body from inside of the house to the bathroom and that is why the dead body was found lying in the bathroom on second search being made.

Abdul Nassar v. State of Kerala & Anr.

21. The Investigating Officer (PW-24) apprehended the accused and arrested him. At the time of arrest, the accused was found having injuries which appear to have been caused by the local people before his arrest.
22. The Investigating Officer (PW-24) interrogated the accused and recorded his disclosure statement²⁵ and acting in furtherance thereof, the school bag containing the writing pad and footwear etc. of the victim were recovered. These articles were identified by Suhara(PW-9), the mother of deceased.
23. The summary of the scientific evidence and the carrying of the samples by the police officials for forensic examination are contained in paragraph 13 of the impugned judgment rendered by the High Court and the same is being reproduced hereinbelow for the sake of ready reference:-

“13. The investigating officer had also taken steps for conducting scientific evidence by sending about 16 sealed packets to the Forensic Science Laboratory, PW20 had conducted the examination of seminal stain on item Nos.1 to 5, 12 and 13(a) and the same was detected in all those items. The items were a midi skirt M07, a dhoti MO14, a towel and vaginal swab. Blood was also detected on the midi skirt, petticoat, dhoti, a full sleeve shirt, cotton gauze etc. The blood was found to be of human origin. Further, nail cuttings were also examined by PW20. But no foreign tissues were detected. Various other items were sent by PW20 for DNA analysis. Pw21 has conducted a DNA analysis. DNA typing showed that the seminal stains in item Nos. I and 13(a) belonged to the accused. Item No.1 is the midi skirt and item No. 13(a) is the vaginal swab. Item No.16 was the blood sample taken from the accused. It is further reported that the DNA typing showed that the blood stains in items Nos. 5 and 6 and the cells on the nail cuttings in item Nos.17(a) and 17(b) belonged to the accused. Item No.5 is the reddish brown coloured torn single dhoti and item No.6 is the green coloured torn and soiled full sleeve shirt with self-lines. Further DNA typing

Digital Supreme Court Reports

shows that item Nos.1, 7, 8 and 12 and vaginal cells in item No:13(a) belonged to the deceased. Item No.7 is the blood stain collected in cotton gauze from the floor beneath the cot and item No.8 is the blood stain collected in the cotton gauze from the cot. Ext.P14 is the report prepared by PW21.”

24. Though learned counsel for the appellant has vehemently and fervently criticised the link evidence, but after going through the testimony of the Investigating Officer (PW-24), DNA expert (PW 4) Constable Nisha (PW-16) and on an overall appreciation of the evidence of the witnesses mentioned above, we find that the prosecution has given convincing link evidence to establish the safe keeping of the samples right from the time of the seizure till receipt at the forensic laboratory. The accused himself has not claimed that after his arrest, the Investigating Officer (PW-24) tried to collect his sample of the semen. Thus, there was no possibility that the semen containing the DNA of the accused could have been planted on the body of the deceased.
25. The following circumstances stand firmly established from a threadbare analysis of the evidence available on record, pointing towards the guilt of the accused appellant: -
 - (i) The child victim was a friend of the daughter of the accused, and they used to go to Madrassa together.
 - (ii) On the date of incident, the child victim was seen with the daughter of the accused. However, she never reached Madrassa.
 - (iii) When the child victim did not return home, an extensive search was conducted and since, the child victim was last seen with the daughter of the accused, the needle of suspicion pointed towards the house of the accused, more particularly because his house was situated close by the Madrassa.
 - (iv) Nazarudheen (PW-2) tried to repeatedly search the house of the accused along with neighbours and in the efforts to trace out the child victim, the witness found the house of the accused locked in his first and second attempts.
 - (v) During the third search attempt, the witness(PW-2) found the accused sitting in *verandah* of his house. Upon being asked

Abdul Nassar v. State of Kerala & Anr.

for the permission to search his house, the accused stated that the keys of the house were with his wife, and he would bring it himself.

- (vi) The witness Nazarudheen (PW-2) during the third attempt, searched the slopping shed and the bathroom adjacent to the house but to no avail whereafter, he went to search the pond near the house of the accused.
- (vii) After searching the pond, the witness(PW-2) fixed the battery of the torch which he had called from his father, since it was dark and reached near the Madrassa.
- (viii) In the fourth attempt, witnesses namely, Nazarudheen (PW-2), Shamsudheen (PW-8) and Unnikrishnan (PW-12) got suspicious of the accused's conduct and resumed the search of the house of the accused and even this time, the house of the accused was locked, and the accused was not present there. PW-12 inspected the bathroom by lighting his torch and found a heap of clothes, which was removed by PW-8 and the dead body of the child victim was discovered concealed thereunder.
- (viii) Two stones of the septic tank inside the house of the accused were also found moved.
- (ix) Blood-stained pink colour midiskirt (MO-7), petticoat (MO-8) and black miditop (MO-9) worn by the deceased child victim were identified by her mother(PW-9), recovered by the police officials from the house of the accused and were seized. An underwear(MO11) of the deceased was also found in the kitchen of the house of the accused.
- (x) Blood stains were found on the cot and floor beneath it.
- (xi) As per the postmortem report²⁶, a total of 37 ante mortem injuries were found on the child victim's body along with injuries on the genitalia, suggestive of forcible penetrative sexual assault. The cause of death was opined to be manual compressive and ligature constrictive strangulation.

Digital Supreme Court Reports

- (xii) As per the FSL report²⁷, the midiskirt worn by child victim, the dhoti of the accused and cotton gauze collected from the scene of crime contained human spermatozoa and semen. The hair collected from the crime scene matched with the hair of the deceased child victim.
- (xiii) The DNA report²⁸ clearly proved that the DNA profile of the semen stains found on the midiskirt (MO-7) matched with that of the accused. Further, the blood stains found on the cot and beneath it were that of the deceased child victim.
- (xiv) The slippers, hard-board writing pad, plastic cover of the writing pad, grey coloured pen and light rose small plastic carry bag belonging to the deceased child victim, as identified by her mother (PW-9), were recovered in furtherance of the voluntary disclosure statement²⁹ of the accused.
26. Based on the analysis of the evidence on the record, we are of the view that the chain of incriminating circumstances required to bring home the guilt of the accused is complete in all aspects. In the present case, we affirm that the prosecution has been able to prove the guilt of the accused appellant by fulfilling the five golden principles (*Panchsheel*) laid down by this Court in the case of ***Sharad Birdhichand Sarda*** (*supra*) and that the circumstances present before us, taken together establish conclusively only one hypothesis that being the guilt of the accused appellant.
27. In the wake of the discussion made hereinabove, there is no doubt in the mind of the Court that the prosecution has proved by leading clinching and convincing circumstantial evidence that the accused had committed forcible and violent sexual assault on the child victim and, thereafter, strangled and killed her.
28. While we concur with the ultimate conclusions reached by the learned trial Court and the High Court, we cannot overlook the deficiencies in the methodology adopted by both the Courts in the appraisal and analysis of the circumstantial evidence. The manner in which the evidence has been scrutinized lacks the depth and rigor expected,

27 Exhibit P-13

28 Exhibit P-14

29 Exhibit P-23

Abdul Nassar v. State of Kerala & Anr.

raising concerns about the adequacy of the evaluative process undertaken to arrive at the said decisions.

29. The Courts have undertaken an examination of the testimonies of the witnesses but has omitted to delineate the inferences derivable therefrom. Moreover, they failed to expound upon how the prosecution has succeeded in constructing an unbroken chain of circumstances that irrefutably establishes the culpability of the accused to the exclusion of any other hypothesis.
30. We deem it essential to enunciate the principles that courts must adhere to while appreciating and evaluating evidence in cases based on circumstantial evidence, as follows:
 - (i). The testimony of each prosecution and defence witness must be meticulously discussed and analysed. Each witness's evidence should be assessed in its entirety to ensure no material aspect is overlooked.
 - (ii). Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact. Thus, the reasonable inferences that can be drawn from the testimony of each witness must be explicitly delineated.
 - (iii). Each of the links of incriminating circumstantial evidence should be meticulously examined so as to find out if each one of the circumstances is proved individually and whether collectively taken, they forge an unbroken chain consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.
 - (iv). The judgment must comprehensively elucidate the rationale for accepting or rejecting specific pieces of evidence, demonstrating how the conclusion was logically derived from the evidence. It should explicitly articulate how each piece of evidence contributes to the overall narrative of guilt.
 - (v). The judgment must reflect that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.
31. Consequently, the appeals lack merit and are hereby dismissed. However, the question of execution of death sentence awarded to

Digital Supreme Court Reports

the appellant has been rendered otiose, considering the fact that he has passed away. Thus, there remains no question of dealing with the aspect of capital punishment awarded to the appellant(since deceased).

32. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals dismissed.

[†]*Headnotes prepared by:* Ankit Gyan