

Ramkirat Munilal Goud
v.
State of Maharashtra Etc.

(Criminal Appeal No(s). 1954-1955 of 2022)

07 May 2025

[Vikram Nath, Sanjay Karol and Sandeep Mehta,* JJ.]

Issue for Consideration

Matter pertains to the correctness of the order passed by the High Court upholding the conviction and death sentence of the appellant for causing rape and murder of a child aged 3 years and 9 months.

Headnotes[†]

Penal Code, 1860 – ss.302, 363, 376(2), 201 – Rape and murder of a child – Prosecution case that gruesome rape and murder of a child at the tender age of 3 years and 9 months – Dead body of child recovered from pond located at a distance of one kilometer from appellant’s house – Prosecution case based on circumstantial evidence-last seen together circumstance, extra-judicial confession, and FSL report regarding the soil found stuck in the shoes of the appellant, matching with the soil of the pond where the child’s dead body found – Trial court convicted the appellant and sentenced him to death – High Court upheld the order – Correctness:

Held: Flawed and tainted investigation eventually led to the failure of the prosecution case – Evidence of the witnesses of last seen circumstance vacillating, shaky and tainted with wholesale improvements, and thus, unworthy of credence – Conduct of the witnesses of the last seen circumstance in failing to timely step forward to make a disclosure to the Investigating Officer that they had seen the appellant and the child victim together on the date of the incident in spite of the fact that the police officers were regularly visiting the area, clearly indicates that the witnesses were untrustworthy and were created by the investigation agency for ulterior motive – Investigating Officer made no effort to record the statements of the witnesses of last seen circumstance in the spot panchnama, at the earliest available opportunity, rather did not

^{*} Author

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record their statements at all, and the witnesses were examined for the first time three days later by the second Investigating Officer, which omission is vital and indicative of gross negligence on the part of the Investigation Officer – Evidence of extra-judicial confession as deposed by one prosecution witness also unacceptable because the said witness too did not step forward to inform the police regarding the fact of the so called extrajudicial confession made by the appellant before him, in spite of being aware that the police was searching for the child – FSL report regarding the similarity of soil samples also inconsequential – Prosecution did not to place on record the reports pertaining to the comparison of the samples taken from the other watchmen – Thus, the prosecution withheld important evidence thereby, compelling the court to draw adverse inference against the prosecution – Despite there being any reliable evidence, the appellant was convicted and sentenced by the courts below and has suffered incarceration for 12 years of which 6 years were under the threat of death penalty – Findings recorded in the impugned judgments holding the appellant guilty, based on conjectures and surmises and thus, both the judgments and the order of sentence unsustainable and quashed and set aside. [Paras 75-79].

Case Law Cited

Sharad Birdhichand Sharda v. State of Maharashtra [1985] 1 SCR 88 : (1984) 4 SCC 116 – referred to.

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023; Protection of Children from Sexual Offences Act, 2013.

List of Keywords

Murder; Rape; Child victim; Shabby and perfunctory investigation; Inherent improbability in prosecution case; Test identification; Damocles sword of impending death penalty; Ante mortem injuries; DNA profiling; Links of circumstantial evidence; Death sentence; Unimpeachable evidence; Circumstantial evidence; Forcible sexual assault; Blind murder; Reliable witness; Last seen together; Intensive combing operations; Significant loophole and grave shortcoming of prosecution case; Flawed and tainted investigation;

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Extra-judicial confession; Blood stained soil; Foundation of arrest lacking; Inconsequential recoveries; FSL report; Physio-chemical characteristics; Spectro-chemical composition; Rape and murder of a child aged 3 years and 9 months; Evidence of the witnesses of last seen circumstance; Conduct of the witnesses; Investigating Officer; Death penalty.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No(s). 1954-1955 of 2022

From the Judgment and Order dated 25.11.2021 of the High Court of Judicature at Bombay in CC No. 1 and CRA No. 661 of 2019

Appearances for Parties

Advs. for the Appellant:

A Raghenb Basant, Sr. Adv., Ms. Fauzia Shakil, Ms. Aathma Sudhir Kumar, Ms. Shreya Rastogi, Ms. Pratiksha Basarkar, Ms. Kaushitaki Sharma, Ms. Hima Bhardwaj.

Advs. for the Respondents:

Ms. Rukhmini Bobde, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Ms. Soumya Priyadarshinee, Vinayak Aren, Amlaan Kumar, Jatin Dhamija, Naveen Kumar Bhardwaj.

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

Mehta, J.

1. Heard.
2. The instant case is yet another classic example of shabby and perfunctory investigation leading to failure of the prosecution case involving a gruesome incident of rape and murder of the budding life of a tender young girl¹ aged about 3 years and 9 months.
3. Despite the shabby investigation, the overzealous approach of the Courts below, to impart justice, in a sense that someone must be held

¹ Hereinafter, referred to as 'child' or 'child victim'.

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responsible for the crime, has led to the conviction of the appellant herein², who was a young man aged about 25 years at the time of the incident and has remained incarcerated for more than 12 years with the Damocles sword of impending death penalty hanging over his head for more than 6 years.

4. Succinctly stated, the facts relevant and essential for disposal of the appeals may be noted hereinbelow.
5. The complainant, Manoj Bhaskar Sadavarte (PW-1)³ a painter by profession, used to reside at Old Waghbil Gaon, Banjari Chawl, Laxminagar, Thane(W) along with his mother and daughter, i.e., the deceased child victim. On 30th September, 2013, at about 10:00 A.M., the complainant's mother had gone out of the house to fetch water. At about 10:30 A.M., the complainant left his house to attend to some work. The child victim was alone in the house when the complainant went out. She came out of the house to play with the family pet dog. The complainant returned home at about 10:45 A.M. and noticed that his daughter and the pet dog were nowhere to be seen. Initially, he assumed that his child might have gone out in the vicinity to play with the dog and, thus, he set out to look for her in areas near his house. However, he could neither locate the child victim nor the pet dog. When the complainant's mother came back to the house, he inquired about the whereabouts of the child from her, but she too was unaware about the same. Concerned about the child's well-being, he and his mother commenced a frantic search for his daughter.
6. The complainant inquired from two persons living in the neighbourhood, who told him that they had seen the child playing with the dog. Thereafter, he went to the watchmen chawl located near his room, where several watchmen used to reside. The pet dog was found in the chawl, but his child was nowhere to be seen. The complainant got suspicious that some unknown person/s might have kidnapped his child. Accordingly, he proceeded to Police Station Kasarvadavali, Thane and lodged a complaint regarding his child, having gone missing. The police registered an FIR, bearing Crime No. I-306 of

2 Hereinafter, referred to as 'accused appellant'.

3 Hereinafter, referred to as 'complainant'.

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2013, for the offence punishable under Section 363 of the Indian Penal Code, 1860.⁴ Investigation was assigned to the Assistant Police Inspector (API) Vikas Sarjerao Lokre (PW-16)⁵ who prepared the spot *panchnama*⁶ of the place of the incident on 1st October, 2013. The *panchnama* records the place where the child victim was last seen and the place from where she was purportedly kidnapped. The *panchnama* also gives out the names of the persons who had seen the child and the dog on 30th September, 2013, in the sequence enumerated below:-

Time	Person
Around 10:45 A.M.	Premshankar Jayshankar Gupta
Around 11:00 A.M.	Raju Pukraj Choudhari (Owner of Ashapura Grocery Shop)
Around 11:15 A.M.	Jaybhim Channappa Kamble and some other people.
Around 12:00 P.M.	Dipendrakumar Dhirendranath Shukla (PW-9)
Around 12:15 P.M.	Pradipkumar Ganesh Rawat (PW-14)

The aforesaid *panchnama* was drawn up on 1st October, 2013 between 07:30 A.M. to 08:45 A.M.

7. Vikas Sarjerao Lokre (PW-16), the 1st Investigating Officer rounded up some 15 to 20 watchmen from the chawl and collected their forensic/blood samples.
8. The dead body of the child victim was recovered on 2nd October 2013, lying in a muddy water pond at a distance of about one kilometer from the watchmen chawl and the same was forwarded to Civil Hospital, Thane, where the Medical Officer, Dr. Mahendra Vithalrao Kendre (PW-10), examined the same and found it to be in a highly decomposed condition. Thus, the body was forwarded to the J.J. Hospital for an autopsy as no forensic expert was available

4 Hereinafter, referred to as 'IPC'.

5 Hereinafter, referred to as '1st Investigating Officer (PW-16)'.

6 Exhibit No. 30.

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at the Civil Hospital, Thane. At the J.J. Hospital, the dead body of the child victim was subjected to post mortem by a medical board, comprising of Dr. Sadanand Sangram Bhise (PW-11), along with Dr. N.S. Jagtap and Dr. G.D. Niturkar and the post mortem report⁷ was issued. The post mortem report refers to numerous injuries on the external and internal genitalia as well as the anus of the child victim. Few contusions were also found over the skull of the child victim. The brain had liquified and was in an advanced stage of decomposition. The medical board opined that the injuries, mentioned in Column No. 17 to 19 of the post mortem report, were *ante* mortem in nature and the head injury was sufficient to cause death in the ordinary course of nature.

9. On 3rd October, 2013, the investigation was handed over to Deputy Superintendent of Police, Mandar Vasant Dharmadhikari (PW-18).⁸
10. The accused appellant was arrested on 3rd October 2013, *vide* arrest *panchnama*⁹ and he was subjected to medical examination. The Medical Officer (PW-10) of the Civil Hospital, Thane, found an abrasion on the foreskin of the penis of the accused appellant. The prosecution has tried to link the said injury with the crime, claiming that the injury may have been received when the accused appellant had sexually assaulted the child victim.
11. On the pointing out of the accused appellant, the Investigating Officer, Mandar Vasant Dharmadhikari (PW-18) claims to have visited room No. 2 (place of incident) and room No. 4 of the watchmen chawl, in which the accused appellant used to reside. A few articles were recovered and seized from room No. 4, to be specific, the *lungi*, *baniyan*, the watchman's dress and the shoes of the accused appellant. Blood stained soil and blood stained stone slabs were recovered from room No. 2.
12. As per the prosecution case, the accused appellant confessed before the Investigating Officer (PW-18) that he had committed the crime with the child victim in the said room. The *lungi* of the accused appellant was allegedly blood-stained, and the shoes had some soil/

7 Exhibit No. 58.

8 Hereinafter, referred to as '2nd Investigating Officer (PW-18)'.

9 Exh. 82.

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mud stuck in their sole. The Investigating Officer (PW-18) also claims to have collected blood samples of the accused appellant for DNA profiling. The forensic science laboratory (FSL) report¹⁰ concludes that the source of blood on the *lungi* could not be identified. The DNA profiling tests, conducted using the blood of the accused appellant and the DNA samples collected from the child's body, did not lead to any conclusive opinion.

13. The prosecution's case was entirely based on three links of circumstantial evidence:
 - (i) Last seen together circumstance;
 - (ii) Extra-judicial confession; and
 - (iii) FSL report regarding the mud/soil found stuck in the shoes of the accused appellant, matching with the soil of the pond where the child victim's dead body was found.
14. The prosecution relied upon the evidence of Dipendrakumar Dhirendranath Shukla (PW-9), Pradipkumar Ganesh Rawat (PW-14) and Sanjay Ganesh Rawat (PW-15) for proving the purported theory of 'last seen together' and Anil Mahatam Singh (PW-17), the Supervisor, under whom the accused appellant was working, for proving the so called extra-judicial confession made by the accused appellant. The prosecution also relied upon the FSL report¹¹ as per which the soil/mud stuck in the sole of the accused appellant's shoes was opined to be having characteristics as similar to the soil found near the pond from where the child victim's body was recovered.
15. Learned Additional Sessions Judge, Thane¹² found the prosecution evidence on the aforementioned links of circumstantial evidence to be reliable and credible and by placing reliance thereupon, the trial Court convicted the accused appellant for the offences punishable under Sections 302, 363, 376(2)(i) and 201 of the IPC and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2013, *vide* judgment dated 5th March, 2019 and sentenced him *vide* sentence order dated 8th March, 2019 in the terms indicated below: -

10 Exh. 99.

11 Exh. 105

12 Hereinafter, referred to as 'trial Court'.

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S. No.	Section	Sentence Awarded
1.	302 of the IPC	Sentenced to be Hanged by Neck till Death.
2.	376(2)(i) of the IPC	Sentenced to undergo Rigorous Imprisonment for Life which shall mean imprisonment for the remainder of his natural life and to pay a fine of Rs.5,000/- (Rupees Five Thousand Only). In case of default in payment of fine, he shall suffer Rigorous Imprisonment for one year.
3.	363 of the IPC	Sentenced to undergo Rigorous Imprisonment of 5 years and to pay a fine of Rs.5,000/- (Rupees Five Thousand Only). In case of default in payment of fine, he shall suffer Rigorous Imprisonment for six months.
4.	201 of the IPC	Rigorous Imprisonment of 3 years and to pay a fine of Rs.5,000/- (Rupees Five Thousand Only). In case of default in payment of fine, he shall suffer Rigorous Imprisonment for six months
All the substantive sentences of imprisonment of the accused shall run concurrently. After realization of the fine amount, it shall be given to the parents of the deceased girl.		

16. The appeal¹³ preferred by the accused appellant and the reference¹⁴ forwarded by the trial Court, were decided by the High Court of Judicature at Bombay¹⁵ *vide* judgment dated 25th November, 2021, whereby the conviction of the accused appellant and the death sentence awarded to him have been confirmed and the appeal preferred by the accused appellant has been dismissed. The said judgment dated 25th November, 2021, rendered by the High Court and along with the judgment dated 5th March, 2019, and the order of sentence dated 8th March, 2019, rendered by the trial Court, are subject matter of challenge in these appeals by special leave.

¹³ Criminal Appeal No. 661 of 2019

¹⁴ Confirmation Case No. 1 of 2019

¹⁵ Hereinafter, referred to as 'High Court'.

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17. Mr. Raghenth Basant, learned senior counsel representing the accused appellant, vehemently and fervently contended that the prosecution has failed to prove even one of the three projected incriminating circumstances relied upon by it so as to bring home the guilt of the accused appellant. The evidence of the witnesses of the last seen circumstance is highly vacillating and self-contradicting and perfunctory and hence, the same deserves to be discarded in *toto*. All these witnesses were fully aware about the disappearance of the child victim on 30th September, 2013, itself when the police came to the area and started making enquiries. However, none of them stepped forward to inform the 1st Investigating Officer (PW-16) that they had seen the child victim and the accused appellant together. The statements under Section 161 of the Code of Criminal Procedure, 1973¹⁶ of these witnesses were recorded by the 2nd Investigating Officer (PW-18) as late as on 3rd October, 2013. As per learned senior counsel, the conduct of the witnesses, in keeping silent and their failure in making a timely disclosure to the 1st Investigating Officer (PW-16) about having seen the child victim in the company of the accused appellant on the fateful day, i.e., 30th September, 2013, and even after the dead body was recovered, i.e., on 2nd October, 2013, makes their entire testimony doubtful and unworthy of credence.
18. Learned senior counsel further submitted that, if at all, the witnesses had seen the child victim in the company of the accused appellant on the alleged day, their natural reaction would have been to disclose the said fact, that they had seen the accused appellant along with the child victim, to the father of the girl child who had initiated the search operations in the afternoon of 30th September, 2013 itself and made enquiries at the watchman chawl as well. He submitted that investigation agency has resorted to padding by creating the evidence of the witnesses of last seen together theory.
19. Shri Basant, further, submitted that the evidence of extra-judicial confession, sought to be proved through Anil Mahatam Singh (PW-17), is also unreliable and unworthy of credence. While deposing on oath, the witness in his examination-in-chief, did not pertinently state that the accused appellant had made any extra-judicial

16 Hereinafter being referred to as the 'CrPC'.

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confession in his presence. It is only on the leading questions put by the Public Prosecutor, during cross-examination, that the witness tried to impute that the accused appellant had admitted, in his presence, that he had made a mistake.

20. As per Shri Basant, the evidence of extra-judicial confession is even otherwise of very weak nature and thus, the conviction cannot be solely based on such evidence. In addition thereto, his contention was that the version of the witness (PW-17) regarding the so-called extra-judicial confession made by the accused appellant, is very vague and vacillating and hence, no reliance can be placed on his testimony.
21. Learned senior counsel further submitted that, admittedly, the 1st Investigating Officer (PW-16) collected the forensic samples from numerous watchmen living in the same chawl, where the accused appellant was residing, however, the FSL report pertaining to these samples never saw light of the day. Hence, an adverse inference has to be drawn that these reports were not favouring the prosecution's story, which is why the same was held back from the Court.
22. Learned senior counsel further submitted that the FSL report¹⁷ indicating a match between the mud/soil found on the shoes of the accused appellant, and the mud/soil found near the pond, from where the dead body of the child victim was recovered, is also vague and inconsequential. Firstly, the very factum of recovery of the soiled shoes at the instance of the accused appellant is dubitable. It is impossible to believe that the accused appellant, who was a free bird till 3rd October 2013, would meticulously preserve the worthless incriminating articles *i.e.*, his shoes, *lungi* and the watchman uniform, for the police to recover the same and thereby, face the risk of being incriminated.
23. Secondly, Shri Basant submitted that the FSL report depicting that the soil on the shoes was similar to the mud/soil of the location from where the victim child's body was recovered is merely suggestive in nature and not conclusive. He urged that, if at all, the prosecution wanted to establish that the soil was from the same source, then a more exhaustive exercise was required to be conducted by collecting soil samples from different surrounding locations thereby,

17 *Supra* note 11.

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excluding the possibility of mud/soil found on the shoes being from the locality where the accused appellant resided. He submitted that the prosecution was under a burden to establish that the mud/soil of this kind was not to be found anywhere else except in and around the pond, from where the dead body of child victim was recovered. He thus urged that unless the prosecution excluded this possibility by adducing proper evidence, the FSL report would remain vague and inconclusive.

24. Shri Basant concluded his submissions by urging that the prosecution has miserably failed to prove a complete and unbreached chain of incriminating circumstances, by leading reliable evidence, and hence, the accused appellant is entitled to be acquitted by giving him the benefit of doubt.

Submissions on behalf of the respondent State:

25. *Per contra*, Ms. Rukhmini Bobde, learned standing counsel for the State of Maharashtra, vehemently and fervently opposed the submissions advanced by Shri Basant. She urged that the prosecution has established the guilt of the accused appellant by leading unimpeachable and complete chain of circumstantial evidence in the form of motive, last seen together circumstance, extra-judicial confession and the scientific evidence in the form of FSL report, which establishes that the shoes of accused appellant recovered by the 2nd Investigating Officer (PW-18) in furtherance of the information provided by him under Section 27 of the Indian Evidence Act, 1872, bore soil matching with that of the pond where the dead body of the child victim had been disposed of by the accused appellant after committing the crime.
26. She urged that neither the witnesses of the circumstance of last seen together and extra-judicial confession had any animosity against the accused appellant, nor the Investigating Officers bore any ill will against the accused appellant so as to falsely implicate him for the crime without any justification.
27. She further urged that the investigation was conducted in a fair, transparent and unbiased manner and without being influenced by any extraneous consideration, the Investigating Officers, being Vikas Sarjerao Lokre (PW-16) and Mandar Vasant Dharmadhikari (PW-18), faithfully collected unimpeachable incriminating evidence against the accused appellant.

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28. She concluded her submissions urging that the finding of guilt of the accused appellant, as recorded by the trial Court and affirmed by the High Court, are based on unimpeachable and reliable circumstantial evidence led by the prosecution which irrefutably points to the guilt of the accused appellant and is inconsistent with his innocence or the guilt of any other person. Thus, this Court should be loath to interfere with the concurrent findings of facts while exercising jurisdiction under Article 136 of the Constitution of India. She also urged that looking to the heinous nature of the crime, the death sentence awarded to the accused appellant is fit to be confirmed.
29. She implored the Court to dismiss the appeals and confirm the conviction and sentence awarded to the accused appellant.

Discussion and Conclusion: -

30. We have given our thoughtful consideration to the submissions advanced at the bar and have meticulously perused the impugned judgments. We have also carefully scanned and analysed the evidence led by the prosecution in its endeavour to bring home the charges against the accused appellant.
31. Admittedly, the case of the prosecution is based entirely on circumstantial evidence. The position of law in a case based entirely on circumstantial evidence, is well-settled by a catena of decisions of this Court, wherein this Court has categorically held that the prosecution has to prove the entire chain of incriminating circumstances by adducing unimpeachable evidence, which leads to only one hypothesis that is consistent with the guilt of the accused, inconsistent with his innocence or the guilt of anyone else. The chain of circumstances sought to be relied upon by the prosecution must be complete in all aspects and must unerringly link the accused with the crime. In case of any breach in the chain of incriminating circumstances, the Court would be left with no option but to acquit the accused by giving him the benefit of doubt. The law with regard to conviction based on circumstantial evidence has been crystalized by this Court in the case of ***Sharad Birdhichand Sharda v. State of Maharashtra***¹⁸, wherein it was held:

18 (1984) 4 SCC 116.

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“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:

(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 v. State of Maharashtra* [(1973) 2 SCC 793] where the observations were made: [SCC para 19, p. 807]

“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.

(Emphasis Supplied)

32. Having noted the principles governing a case based purely on circumstantial evidence, we now proceed to discuss the evidence

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led by the prosecution in the present case in its endeavour, to bring home the charges against the accused appellant.

33. The theory set out by the prosecution in its case is that the accused appellant had seen the child victim alone, playing with her dog on the morning of 30th September, 2013. As there was no one else in the vicinity, the accused appellant, driven by lust, took advantage of the situation, kidnapped the child and thereafter took her to room No. 2 of the watchmen chawl where he subjected the child victim to forcible sexual assault. In this process, the child tried to resist and cried out for help, upon which the accused appellant smashed the head of the child victim on the floor tiles, leading to fractures on the skull of the child and ultimately resulting in her death. For establishing the guilt of the accused appellant, the prosecution relied on three circumstances: -
- i. Last seen together circumstance;
 - ii. Extra-judicial confession; and
 - iii. FSL report indicating presence of soil on the shoes of the accused appellant which tallied with the soil of the pond from where the dead body of the child victim was found.
34. As has been noted above, the case was of a blind murder. The allegations as set out in the complaint¹⁹ filed by the complainant (PW-1) indicate that the complainant and his mother had gone out of the house at 10:30 A.M. in relation to some work, leaving the child victim alone in the house. The complainant returned at about 10:45 A.M. and at that time, neither the child nor the pet dog of the complainant was present in the house. The complainant immediately launched a search for the child, making inquiries from his mother and the people in the vicinity but to no avail.
35. Hence, what can be deduced from the version set out in the complaint is that the child victim went out of the house between 10:30 A.M. to 10:45 A.M. and was not seen by the complainant thereafter. As per the complaint, the complainant came back to the house around 10:45 A.M., and could not find the child, on which he started searching for her.

¹⁹ Exh. 61.

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36. In this process, the complainant (PW-1) visited the watchmen chawl, which is situated in close vicinity to his house. He found his dog in the said chawl, however, the child was nowhere to be seen. Thus, presumably the child victim must have gone missing within the small window of 10:30 A.M. and 10:45 A.M. It is undisputed that the child victim's body was recovered from a pond, which is around one kilometer away from the purported place of the incident, i.e., room No. 2 of the watchmen chawl, on 2nd October, 2013. We are of the *prima facie* opinion that the case of the prosecution, particularly on the aspect of time, manner and place of the incident is doubtful.
37. It is admitted that the complainant had started the search operations around 10:45 A.M. and had also searched in and around the watchmen chawl. As is borne out from the evidence available on record, the area where the complainant resided is thickly populated and inhabited by a large number of persons who work as watchmen. The prosecution claims that the incident took place in broad daylight sometime after 10:30 A.M. Mainfestly thus, there was hardly any possibility that the accused appellant could have carried the child victim's dead body to the pond, which was located one kilometer away, without being noticed. Hence, two possible scenarios arise: -
- (i) That the incident did not take place in the chawl as claimed by the prosecution; and/or
 - (ii) The incident did not take place at the time or in the manner alleged by the prosecution.
38. Having noted this inherent improbability in the prosecution case, we now proceed to discuss the evidence of the material prosecution witnesses.
39. For the purpose of appreciating the circumstance of last seen together, the relevant witnesses are the complainant, i.e., Manoj Bhaskar Sadavarte [(PW-1), father of the deceased child], Dipendrakumar Dhirendranath Shukla (PW-9), Pradipkumar Ganesh Rawat (PW-14) and Sanjay Ganesh Rawat (PW-15).
40. The complainant, Manoj Bhaskar Sadavarte (PW-1) virtually repeated the story as set out in the complaint²⁰. He tried to introduce an

20 *Supra* note 19.

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improvement that on the same day, i.e., the day of the incident, at about 2:00 P.M., he went to the watchmen chawl while he was searching for his daughter and saw the accused appellant standing behind his house and his legs were soiled with mud. He was wearing *lungi* and *banyan*. The witness enquired from the accused appellant regarding his daughter (child victim), but the accused appellant did not tell him anything.

41. In examination-in-chief, the witness stated that on seeing the accused appellant with his legs soiled with mud/soil, he started suspecting him. He admitted having made inquiries from his neighbour, Devidas Kale, shop owner Raju Pukraj Choudhari and rickshaw driver Jaybhim Channappa Kamble and other female members in the crowd. All these witnesses stated that they had seen the little girl playing with the dog. He proved the spot *panchnama*. In the cross-examination, he admitted that the name of the accused appellant as a suspect was not mentioned in the complaint. He had gone to the chawl three times on 30th September, 2013, and his suspicion was on the accused appellant. He made the following important admission in his cross-examination: -

“On 03.10.2013 police recorded my supplementary statement in between 11.30 a.m. to 12.00 noon. Till that time nobody has stated that they had seen any person who took my daughter.”

42. Dipendrakumar Dhirendranath Shukla (PW-9) deposed in his evidence that he was working as a watchman and used to reside in a transit camp which was in front of Unnati Woods. At a distance of about 2 to 3 lines from his house, some 15 to 20 watchmen used to reside. The witness admitted that he did not know the accused appellant by name but recognized him by his face as he used to regularly pass through the road in front of the witness's house. The accused appellant was also residing in the same chawl. The witness stated that on 30th September, 2013, at around 11:30 A.M. to 12:00 P.M., he was taking lunch when he saw a small girl, aged about 2 ½ to 3 years, heading down the road with a dog. He could see the child from the open gate of his house. At about 01:00 P.M., the witness and his father came back to the house for some work, and, at that time, he noticed that the dog he had seen with the child was wandering around on the road, but the child was nowhere to be seen. The witness claims to have seen the accused appellant coming

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from behind the bushes at around the same point of time. He was wearing a watchman's uniform. The witness thereafter went back to work. At about 04:00 P.M., when he came back to his house, he noticed that people were searching for a small girl. He was shown the photograph of the missing girl (child victim), which he identified to be the same child whom he had seen earlier in the afternoon. He further stated that the body of the child victim was found in the pond on 2nd October, 2013, after which he narrated the entire incident, witnessed by him, to the police.

43. In his cross-examination, the witness (PW-9) admitted that on 30th September, 2013, the police made inquiries from him in relation to the case, but his statement was not recorded on that date. On 2nd October 2013, the police again visited the crime scene, but his statement was still not recorded. He further stated that some 25 to 30 north Indian people were residing in the transit camp and were working as watchmen. The police summoned all these people for the purposes of inquiry. The witness was confronted with certain improvements *vis-à-vis* his previous statement recorded under Section 161 of the CrPC. However, these improvements are trivial and inconsequential for our purpose. The witness denied the suggestion given by the defence that he was making a false deposition regarding having seen the accused appellant coming from behind the bushes. However, he admitted that the police did not call him for the test identification of the accused appellant.
44. What is pertinent to note from the statement of this witness is that he was aware on 30th September, 2013, itself that the child victim had gone missing and people were searching for her. The police visited the vicinity on 30th September, 2013; 1st October, 2013 and 2nd October, 2013 as well, but the witness (PW-9) did not divulge the vital information to the police that he had seen the child with the dog in the vicinity of watchmen chawl and the accused appellant coming out of the bushes. Apparently, thus, the conduct of the witness in maintaining stoic silence and not divulging to the police at the first available opportunity that he had seen the child victim in the afternoon of 30th September, 2013, or that he had seen the accused appellant coming out from the bushes makes his entire testimony doubtful.
45. As is borne out from the record, the statement of this witness (PW-9) was recorded by the Mandar Vasant Dharmadhikari

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(PW-18), the Investigating Officer, under Section 161 of the CrPC on 3rd October, 2013. Hence, the conduct of the witness (PW-9), in remaining indifferent and failing to disclose the vital fact of having seen the accused appellant and the child victim on 30th September, 2013, despite the search operations being undertaken and the police having visited the crime scene twice within his knowledge. This vital omission on part of the witness (PW-9) completely discredits his version and thus, we conclude that Dipendrakumar Dhirendranath Shukla (PW-9) is not a reliable witness.

46. Pradipkumar Ganesh Rawat (PW-14) stated, in his evidence, that he was residing near the Unnati Woods and used to work as a watchman. His duty hours were between 08:00 A.M. to 08:00 P.M. He used to go home to have lunch usually around 12:00 P.M. The witness (PW-14) claimed that he knew the accused appellant from before because he too was engaged as a watchman and was residing at a gap of 4 to 5 rooms from the room in which the witness resided. He stated that the accused appellant went to take lunch at about 12:00 P.M. on 30th September, 2013. The witness (PW-14) proceeded towards his house for lunch at 12:10 P.M. He claims to have seen the accused appellant standing with a small girl and an English dog on the road, which was besides the forest. At that time, the accused appellant was wearing his watchman uniform. The witness did not pay much heed to this event and proceeded to his house for lunch. When he was returning at about 12:50 P.M., he noticed that the dog was tied to the window of the room where Sanjay Ganesh Rawat (PW-15) used to reside. On 2nd October, 2013, when the witness was called to the police station, he came to know that the dead body of the child victim had been found in the pond. The police showed him the photograph, and the witness identified it to be of the same child who was with the accused appellant. The witness claimed that he divulged to the police that he had seen the child victim with the accused appellant at about 12:40 P.M. on 30th September, 2013, upon which the police recorded his statement. However, no such statement of the witness is available on record and rather, the evidence of 2nd Investigating Officer (PW-18) is to the contrary.
47. In his cross-examination, the witness (PW-14) stated that the pond from where the body of the child victim was found is at a distance of about one kilometer from his house. He came to know on 1st October,

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2013, that a girl was missing from the area. The police called about 30 watchmen to the police station for the purpose of inquiry, as suspects and he was also one amongst them. The witness denied the suggestion that his statement was not recorded on 2nd October, 2013. Immediately thereafter, he stated that the police recorded his statement on the next morning. A suggestion was given to the witness that he was speaking a falsehood when he stated that he had seen the dog tied to Sanjay Ganesh Rawat's (PW-15) room or that he had seen the accused appellant along with the child victim and an English dog. He denied the suggestion given by the defence, that the police had threatened him and thus, he gave a statement, incriminating the accused appellant.

48. At this stage, we may note that the statement of this witness (PW-14) was recorded under Section 164 of the CrPC and was exhibited by the prosecution as Ext. 94. It was *inter alia* noted in the said statement that the accused appellant and his father left for lunch at about 12:00 P.M., whereas he (the witness) left for lunch at 12:10 P.M. While he was proceeding, he saw the accused appellant standing on the road. He had lunch at his room and left to report for duty at about 12:40 P.M. At that time, he saw a dog tied to the window of a room. He later learnt that the accused appellant had tied the said dog there. Subsequently, he also came to know that a 3-year-old girl child was missing and that her dead body was found near the chawl.
49. Apparently, thus, while testifying on oath, the witness has made wholesale improvements from the version as set out in his statement under Section 164 of the CrPC wherein he did not utter a word about having seen the child victim on 30th September, 2013. These improvements are most vital and have a direct bearing on the credibility of the deposition of the witness (PW-14). We are convinced that the witness (PW-14) deliberately modulated and twisted the facts in order to lend succour to the prosecution's case against the accused appellant. Thus, findings recorded by the trial Court as well as the High Court that the witness (PW-14) has given unimpeachable testimony supporting circumstance of the last seen together, are untenable and unsustainable on the face of the record. For record, we may note that this witness (PW-14) too, did not come forward to state about the circumstance of last seen together to the police officials who visited the crime scene on 30th September, 2013; 1st

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October, 2013 and 2nd October, 2013. The witness has also made blatant improvements from his earlier version recorded under Section 164 of the CrPC, and hence, his testimony cannot be relied upon so as to lend credence to the last seen circumstance.

50. Sanjay Ganesh Rawat (PW-15) stated that he was residing near the Unnati Wood Society in the year 2013 and was working as a watchman in Phase No. 1, Building No. 3. On the day of the incident, he went home to take lunch at about 01:00 P.M. and saw that a dog was tied to the window of his room. When he came back after taking lunch, he saw a person with long hair enquiring from the accused appellant that “the dog is here, so where is the child?” The accused appellant was wearing a *lungi* and *baniyan* at that point in time.
51. We feel that the evidence of the witness (PW-15) is neither here nor there because the witness does not give any indication of having seen the accused appellant with the child. The so-called person having long hair was not pinpointed by the prosecution, and hence, the testimony of this witness does not lend any support to the prosecution case.
52. Vikas Sanjerao Lokre [(PW-16), 1st Investigating Officer] was working as an Assistant Police Inspector at the Police Station Kasarvadavali on 30th September, 2013. He was assigned the investigation of the present case on 30th September, 2013. The witness (PW-16) stated that upon receiving the investigation file, he visited the site and undertook a search for the girl. He conducted intensive combing operations throughout the area. On 1st October, 2013, he prepared the spot *panchnama* (search *panchnama*). The said *panchnama* was exhibited by the prosecution as Exh. 34 and it bears the signatures of the witness (PW-16) and the complainant (PW-1) in addition to the *panchas*. The *panchnama* gives specific reference to the complainant having made inquiries from Premshankar Jayshankar Gupta at 10:45 A.M., Raju Pukraj Choudhari at 11:00 A.M., Jaybhim Channappa Kamble at 11:15 A.M. It also mentioned in the *panchnama* that the complainant made enquiries from Dipendrakumar Dhirendranath Shukla (PW-9) and Pradipkumar Ganesh Rawat (PW-14) as well. The *panchnama* specifically records that all these persons had seen the child victim along with the dog in a time bound sequence commencing from 10:45 A.M. onwards. However, there is no whisper in the *panchnama* regarding any of the witnesses having divulged that the child victim had been seen in the company of the accused

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appellant. This is a significant loophole and a grave shortcoming in the prosecution case. It may be stated that the 1st Investigating Officer (PW-16) did not make any effort to make an enquiry from Premshankar Jayshankar Gupta, Raju Pukraj Choudhari and Jaybhim Channappa Kamble, either on 30th September 2013 or 1st October 2013. In the natural course of events, these persons would have been the first in the line of sight of the Investigating Officer (PW-16) to unfurl the sequence of events and to take leads about the child victim's whereabouts. Had there been any sincerity in the 1st Investigating Officer's actions, he would have immediately ventured to make a thorough investigation into the persons whose names surfaced in the *panchnama* without losing any time. However, no such effort was made by the Investigating Officer (PW-16).

53. The statements of Dipendrakumar Dhirendranath Shukla (PW-9) and Pradipkumar Ganesh Rawat (PW-14), the star prosecution witnesses of the last seen circumstance, were recorded by the 2nd Investigating Officer (PW-18) for the first time as late as 3rd October 2013, as is borne out from his deposition. Apparently, thus, till 3rd October 2013, there was not a shred of evidence on the investigation file which could have incriminated the accused appellant for the crime. In spite thereof, the accused appellant was arrested in this case.
54. The investigation was handed over by Vikas Sarjerao Lokre (PW-16) to Inspector Mandar Vasant Dharmadhikari (PW-18), on 3rd October, 2013, who continued the investigation thereafter. At the cost of repetition, it may be noted that the 1st Investigating Officer (PW-16), did not make any effort to record the evidence of the most material prosecution witnesses, namely, Dipendrakumar Dhirendranath Shukla (PW-9) and Pradipkumar Ganesh Rawat (PW-14), who later on vouched to the last seen circumstance as projected by the prosecution. This omission is fatal to the prosecution case, as it impinges on the credibility of the witnesses' version and also gives a clear indication about flawed and tainted investigation.
55. It is only when Mandar Vasant Dharmadhikari (PW-18, 2nd Investigating Officer), took over investigation of the case on 3rd October, 2013, that the statements of the witnesses of the last seen circumstance were recorded for the first time. The witness made the categorical admissions in his cross-examination which are reproduced as under: -

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“(9) In the spot panchanama at Exh.30 names of witnesses Dipendra Shukla and Pradeep Rawat are mentioned. I have not enquired with Shri Lokare as to whether he recorded statements of both these witnesses and I have also not recorded statement of Shri Lokare to that respect. Prior to 03.10.2013 said witnesses never stated that they had seen the deceased girl with the accused. It is true to say that said both the witnesses are residing in the transit camp.”

56. Thus, we have no hesitation in holding that the witnesses, namely, Dipendrakumar Dhirendranath Shukla (PW-9) and Pradipkumar Ganesh Rawat (PW-14), were created by the Investigating Officers, by way of padding, because a case of sensational nature was not being solved. Their evidence is totally false and unworthy of credence. The witness Sanjay Ganesh Rawat (PW-15) did not state in his testimony that he had seen the child victim in the company of the accused appellant, and hence, his evidence does not give any support to the circumstance of last seen together. Thus, we have no hesitation in holding that the prosecution miserably failed to prove the circumstance of last seen together by leading credible evidence.
57. The second segment of circumstantial evidence on which the prosecution heavily relied upon was that of the extra-judicial confession allegedly made by the accused appellant to Anil Mahatam Singh (PW-17), who was the Supervisor under whom the accused appellant was working. The witness (PW-17) stated that he knew the accused appellant, who had joined duty as a watchman about 6 to 7 days before the incident. On 30th September 2013, a small girl went missing. On that day, the accused appellant was assigned work at Phase 2 Building No. 5 and had reported for duty. The police came to the building for the purpose of inquiry and took some watchmen from there. On the next day, i.e., on 1st October 2013, he went for a round but did not find the accused appellant on duty. The accused appellant was summoned through his father. The accused appellant turned up at the project and, upon being questioned by the witness about his absence from duty, he claimed to be tensed up and stated that he could not perform his duties and that he would be going back to his village on the same day. The witness (PW-17) was cross-examined by the Public Prosecutor and while answering the leading questions put to him, he admitted that he had stated before the police that the accused appellant told him that he could

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not work as he was tensed up and that he had made a mistake. The witness (PW-17) also agreed to the suggestion of the public prosecutor that the accused appellant divulged before him that he had been called by the police the day before and in reference thereto, he had committed a mistake.

58. The significant fact which requires mention at this stage is that the statement of Anil Mahatam Singh (PW-17) recorded under Section 164 of the CrPC, was proved at the instance of the prosecution as Exh. 78, wherein the witness stated that on 1st October, 2013, he did not see the accused appellant while marking attendance. He then made inquiries about the accused appellant's absence and summoned him to the circle.
59. When the witness asked the accused appellant about his absence, the accused appellant replied that he was tensed up. On hearing this, the witness told the accused appellant that staying idle would not help and that he should resume his duty to relieve the tension. The accused appellant agreed and complied with the suggestion and resumed his duty. Thus, in the previous statement of the witness (PW-17) recorded under Section 164 of the CrPC, there is no reference to any extra-judicial confession having been made by the accused appellant. Furthermore, the statement of the said witness under Section 161 of the CrPC was recorded as late as on 12th October 2013, as stated by the Investigating Officer (PW-18).
60. Hence, the statement of the witness (PW-17) on the aspect of extra-judicial confession is full of improvements and contradictions and hence, it is totally unreliable. If at all, the accused appellant had made an extra-judicial confession before the witness on 1st October, 2013, his immediate reaction would have been to rush to the police and divulge this fact to the Investigating Officer (PW-16). However, he made no such effort whatsoever.
61. In this background, the evidence of PW-17 regarding the extra-judicial confession, [which is otherwise also a very weak piece of evidence], is totally unreliable and unacceptable and does not lend succour to the prosecution case.
62. In a case based on circumstantial evidence, the evidence of Investigating Officer/s is of utmost importance. The Investigating Officer, Vikas Sarjerao Lokre (PW-16) stated in his evidence as below: -

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Examination in Chief of PW-16

“....Then we called the dog squad to take the search of the victim girl. We have taken the efforts but said girl was not traced out. Accordingly I have submitted the report. Now shown to me. It bears my signature as well as signature of the authority of Dog Squad. Contents are true and correct. It is at Exh.70. Then I have circulated the photograph of the victim girl to the various police stations for her search. Now that letter shown to me. It bears my signature. Contents are true and correct. It is at Exh.71. I have also forwarded the wireless message inter-state along with the detail description of the victim girl. Now that wireless message shown to me. It bears signature of Sr. PI Dharmadhakari. I know his signature. Contents are true and correct. It is at Exh.72. Then, I have recorded the statements of those witnesses who had lastly seen that girl. I have also recorded the statement of the mother of victim girl.

Then on 02.10.2013 when our police squad was taking the search of that girl we had found dead body of one small girl in the muddy pond near about 2.00 p.m. Then we called the person from Fire Brigade and removed that dead body out of the pond. I called two panch witnesses and prepared panchanama of that spot in their presence. That panchanama is at Exh.38. Now shown to me. It bears my signature, signatures of two panch witnesses. Contents are true and correct. Measurement of said pond is 25 X 15 ft. It was behind the Unnati Wood Society, in one field near one nala. There was cloth on the said dead body i.e. pink colour full sleeves T-shirt. On the distance of 20 ft. I have found the stamp-marks of the legs of dog from the said pond. I have seized the water of that pond and earth which was out of the pond. I sealed it with the signature of panch witnesses. Then I have deposited said muddemal by preparing muddemal receipt with the muddemal clerk. Now that receipt shown to me. It bears my signature. Contents are true and correct. It is at Exh.73. Then I have prepared the inquest panchanama of the dead body in presence of two panch witnesses. That time complainant identified

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his daughter. That inquest panchanama is at Exh.47. Now shown to me. It bears my signature and signatures of two witnesses. Contents are true and correct. Then I have forwarded the said dead body for post-mortem at Civil Hospital, Thane. The said letter is now shown to me. It bears my signature. Contents are true and correct. It is at Exh.74. Then Civil Hospital referred the dead body to J.J. Hospital. Therefore, I have issued a letter to J.J. Hospital. Said letter is at Exh.56. It bears my signature. Contents are true and correct. Moreover, it also bears the acknowledgment of J.J. Hospital. Then I have also issued request letter to J.J. Hospital that while conducting the post-mortem it should be conducted under the photography and video shooting. The said letter is at Exh.57. It bears my signature. Contents are true and correct. Then doctor has issued Advance Cause of Death Certificate which mentioned the reason that death due to head injury with evidence of extensive genital injuries- unnatural. Then I have added sections in the present offence and accordingly issued letter to the concerned Court.....”

Cross-Examination of PW-16

On 01.10.2013 I have recorded the statements of witnesses Ganesh Dhaki, Jayashri Datar, Arti Navin Dhondi. It is true to say that they have not stated that they had seen the victim girl. There are five names comes in the panchanama at Exh.30, out of those on 01.10.2013 I have recorded the statement of one witness by name Premshankar Gupta. He has not stated that he had seen that girl along with accused. On 01.10.2013 I have also visited to the watchman chawl. I went there for only one time. Near about 30 to 40 watchmen were residing there. But on 01.10.2013 I have not recorded statement of single watchman.

When I visited to the house of complainant there was no dog. I have not prepared the panchanama of that female dog and also not obtained her photographs. Moreover, where I found the scratches of the nails of dog I have not obtained the photographs of that place and also not called expert to identify those scratches.

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Alleged pond is on the open space and it is accessible for anybody. It is not true to say that dead body of the said girl was fully decomposed. It is true to say that where said dog was tied on the window of the room of watchman, I have not recorded statement of that watchman. I have recorded the statement of grandmother of deceased girl by name Mayavati Bhaskar Sadavarte on 01.10.2013. She has also stated that she has taken the search of their granddaughter in the watchman chaw]. But she has not expressed her doubt towards any watchman. **I have not recorded the statement of any witness on 01.10.2013 stating that anybody had seen that girl along with accused. Virendrakumar Shukla and Pradeeikumar Rawat are residing in the transit chawl. Ashapura Kirana Shop is on the distance of 10 to 15 minutes from the alleged pond.** Witness Pushkaran Chaudhary has stated that when he had seen that girl he told to her to go to her house. That time she proceeded towards her house. That time was of 11.00 a.m. It is not true to say that I am deposing false that Jaybhim Kamble had seen that girl along with dog at Manera Chawl. It is not true to say that I am deposing false that I had seen the scratches of dog's nails on the window where dog was tied. It is not true to say that I have not recorded the statements of witnesses as per their say. It is not true to say that I have not prepared panchanama at Exh.38 on the spot. It is not true to say that her father was not identified the dead body because her face was not identifiable. It is not true to say that I am deposing false that there was stamp-mark of that dog near the pond. It is not true to say that inquest panchanama was not prepared as per Exh.47. It is not true to say that I have not seized the clothes of that girl vide Exh.23 and not deposited muddemal in presence of panch. witnesses. It is not true to say that I have not taken the opinion of the doctor that why such genital injuries were caused to deceased girl. But to that respect no document is filed along with the charge-sheet."

(Emphasis supplied)

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63. The significant facts, which can be deduced from the evidence of the Investigating Officer (PW-16), are that he made fervent attempts to trace the child victim on 30th September, 2013 and 1st October, 2013. In the spot *panchnama*²¹ prepared by the witness on 1st October, 2013 between 7.30 A.M. to 8.45 A.M., there is a clear reference to the witnesses of the last seen circumstance, but in spite thereof, the officer made no effort whatsoever to record the statements of those witnesses. This is grave infirmity in the investigation which impinges on the credibility of the Investigating Officer and the witnesses of the last seen circumstance. The present case, being a case of grave nature, it does not stand to reason that in spite of the names of the witnesses of last seen circumstance having been mentioned in the spot *panchnama* prepared on 1st October, 2013, and despite the fact that the witness (PW-16) was making strenuous efforts to trace out the child victim from 30th September, 2013 and 1st October, 2013, none of the witnesses claimed to have seen the child victim in the company of the accused appellant were examined by the Investigating Officer (PW-16). It is difficult, if not impossible, to believe that even though fervent efforts were going on to search for the missing child in the colony, the witnesses who claimed to have seen the child victim with the accused appellant would not have stepped forward to give leads to the 1st Investigating Officer (PW-16) at the earliest possible opportunity. These significant omissions and fundamental flaws in the investigation are sufficient to satisfy us that the witnesses of the last seen circumstance were created to add padding to the prosecution case and as a matter of fact, none of them had seen the accused appellant and the deceased (child victim) together.
64. In the cross-examination of Mandar Vasant Dharmadhikari [(PW-18), i.e., 2nd Investigating Officer], the following significant facts were elicited: -

“In the spot panchanama at Exh.30 names of witnesses Dipendra Shukla and Pradeep Rawat are mentioned. I have not enquired with Shri Lokare as to whether he recorded statements of both these witnesses and I have also not recorded statement of Shri Lokare to that respect. Prior to 03.10.2013 said witnesses never stated that they had seen the deceased girl with the

21 *Supra* note 6.

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accused. It is true to say that said both the witnesses are residing in the transit camp. I have not prepared the panchanama of female dog and also not included her photograph in the documents. In the complaint at Exh. 20 no name of accused is mentioned. All the incidence spots are situated in the open space and anybody can access there.

There is a road connected to Unnati Society and peoples used that road. It is not true to say that there is no documentary evidence produced on record regarding the said chawl where accused was residing. Accused is residing in the present chawl, showing the said fact there is no documentary evidence on record. But it has come in the statements of witnesses. Complainant has not stated that whether any witness had seen the deceased girl with the accused. But he has stated it in supplementary statement.

In the present matter T.I. Parade was not conducted. It is true to say that during the investigation some witnesses were knowing to the accused and some witnesses were not knowing to him. When I have arrested the accused I have not examined his private part. It is not true to say that at the time of arrest there was no abrasion on the foreskin of accused. It is not true to say that to involve the accused in the present matter we made abrasion on his private part. It is mandatory that after the arrest of accused within 24 hours he has to forward for his medical examination. It is not true to say that I have not forwarded him for examination immediately.”

(Emphasis supplied)

65. Thus, the witness (PW-18) affirms the fact that the witnesses of the last seen theory who were residing in the transit camp did not step forward to disclose to the police that they had seen the deceased girl with the accused appellant. Neither of the two Investigating Officers uttered a word regarding the witness Anil Mahatam Singh (PW-17) coming forward and disclosing that the accused appellant had made an extra-judicial confession in his presence.
66. Thus, upon an overall appreciation of the evidence of the two Investigating Officers and the witnesses of the last seen theory

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and so also the sole witness of extra-judicial confession, we are convinced that the entire sequence of events narrated by these witnesses is unreliable and unbelievable. It is clearly a case of concocted depositions secured by the prosecuting agency by way of padding so as to fasten the guilt of this heinous crime, on the accused appellant and thereby lay a claim to have solved the case.

67. Deputy Superintendent of Police, Mandar Vasant Dharmadhikari [(PW-18), 2nd Investigating Officer], was assigned the investigation of the case on 3rd October, 2013. He visited the place of the incident and claims to have recovered some blood stained soil from the second room in the watchmen chawl. The evidence of this witness (PW-18) does not indicate as to how he reached the conclusion that the crime had taken place in the said room. The accused appellant was arrested on 3rd October, 2013. Till then, there was no material on the investigation file so as to even cast a minimal suspicion against the accused appellant. The Investigating Officers did not even possess the barest evidence which could have pointed a finger of suspicion towards the accused appellant. Thus, the very foundation for arresting the appellant in this case is lacking. The witness (PW-18) also collected forensic samples and recovered allegedly incriminating materials in furtherance of the information provided by the accused appellant. He claims to have recovered a *lungi*, a *baniyan*, a pair of shoes and the watchman uniform worn by the accused appellant from his room. These recoveries were effected on 8th October, 2013.
68. Both the Investigating Officers had made extensive investigation in the entire area and this definitely would have included the search of the room of the accused appellant. At this stage, it is pertinent to note that Vikas Sarjerao Lokre (PW-16) admitted in his cross-examination that he had visited the watchmen chawl on 1st October 2013. Hence, if at all, these articles were lying in the room of the accused appellant, they would not have escaped the notice of the 1st Investigating Officer (PW-16). Clearly thus, the factum of recovery of incriminating articles at the instance of the accused appellant by the 2nd Investigating Officer (PW-18) does not inspire confidence.
69. In addition to the fact that none of the articles recovered at the instance of the accused appellant tested positive for the presence of the human blood or semen, the fact remains that the accused appellant could not be expected to preserve these worthless incriminating articles for a period of three days, during which he was a free bird, so as to

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provide incriminating material against himself. Thus, these recoveries, apart from being inconsequential, are also doubtful.

70. The FSL report²² and the DNA Analysis Report²³ did not result in any positive finding regarding the presence of human blood or semen on the clothing and other articles seized at the instance of the accused appellant. The DNA analysis report remained inconclusive does not implicate the accused appellant. Neither the trial Court nor the High Court placed reliance on these reports for recording a finding against the accused appellant.
71. The only so-called incriminating scientific report (Exh. 105) against the accused appellant was pertaining to the comparison of the soil/mud on the sole of the pair of shoes recovered at the instance of the accused appellant and the specimen soil recovered from the pond where the dead body of the child victim was found. The said report was exhibited as Ext. 105 and indicates that the soil sample collected from the pair of shoes tallied with the soil sample that was recovered from the pond in respects of hue, physio-chemical characteristics and spectro-chemical composition.
72. First of all, we may observe that there is no evidence to show that the aforesaid observations made by the expert in Ext. 105 are admissible *ipso facto* under Section 293 of the CrPC which is equivalent to Section 329 of the Bharatiya Nagarik Suraksha Sanhita, 2023. It may be noted that the expert who prepared the report was not examined by the prosecution.
73. Furthermore, the findings in this report are absolutely vague and inconclusive. If at all, the prosecution desired to prove without any exception that the soil found on the shoes of the accused appellant was unexceptionally from the location from where the dead body of the child victim was recovered, then the Investigating Officer (PW-18) should have collected soil samples from the other places frequented by the accused appellant. Then only the possibility of the soil not being from any other place visited by the accused appellant could have been excluded.
74. In any event, even if it is held that the soil/mud found on the shoes of the accused appellant tallied with the soil found in the pond, that

²² Exh. 104.

²³ *Supra* note 10.

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would be just an indication of the fact that the accused appellant may have visited the area surrounding the pond at some point of time. This, by itself, would not incriminate the accused appellant in any manner.

75. Resultantly, we conclude: -

- (i) that the evidence of the witnesses of last seen circumstance is vacillating, shaky and tainted with wholesale improvements, and hence, unworthy of credence.
- (ii) the conduct of the witnesses of the last seen circumstance in failing to timely step forward to make a disclosure to the Investigating Officer (PW-16) that they had seen the accused appellant and the deceased child victim together on the date of the incident in spite of the fact that the police officers were regularly visiting Unnati Woods area, right from late hours of 30th September, 2013 onwards, clearly indicates that these witnesses are untrustworthy and were created by the investigation agency for ulterior motive;
- (iii) There was a clear reference to the witnesses of last seen circumstance, namely the complainant, i.e., Manoj Bhaskar Sadavarte [(PW-1), father of the deceased child], Dipendrakumar Dhirendranath Shukla (PW-9), Pradipkumar Ganesh Rawat (PW-14) and Sanjay Ganesh Rawat (PW-15) in the spot *panchnama* (Exh. 34) which was prepared by Vikas Sarjerao Lokre (PW-16, i.e., Investigating Officer) on 1st October, 2013, at around 7.30 A.M. In spite thereof, the 1st Investigating Officer (PW-16) made no effort whatsoever to record the statements of these witnesses at the earliest available opportunity. Rather, the said Investigating Officer did not record the statements of these witnesses at all, and the witnesses were examined for the first time on 3rd October, 2013 by the 2nd Investigating Officer, i.e., Shri Mandar Vasant Dharmadhikari (PW-18). This omission is vital and indicative of gross negligence on the part of the Investigation Officers.
- (iv) The evidence of extra-judicial confession as deposed by Anil Mahatam Singh (PW-17) is also unacceptable because the said witness too did not step forward to inform the police regarding the fact of the so called extra-judicial confession made by the accused appellant before him, in spite of being aware that the police was searching for the child.

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- (v) That the FSL report (Ext. 105) regarding the similarity of soil samples is also inconsequential for the reasons mentioned *supra*.
 - (vi) The reports pertaining to the comparison of the samples taken from the other watchmen never saw the light of the day because prosecution chose not to place the same on record. Hence, it is clearly a case where the prosecution has withheld important evidence thereby, compelling the Court to draw adverse inference against the prosecution.
76. Thus, we are compelled to hold that flawed and tainted investigation has eventually led to the failure of the prosecution case involving the gruesome rape and murder of a child at the tender age of 3 years and 9 months only. Despite there being hardly any reliable evidence on the record of the case, the accused appellant was convicted and sentenced by the Courts below and has suffered incarceration for almost 12 years of which 6 years were under the Damocles sword of death penalty. The findings recorded in the impugned judgments holding the accused guilty of charges framed against him, are based on conjectures and surmises and hence, both the judgments and the order of sentence are unsustainable on the face of record.
77. As an upshot of the above discussion, the impugned judgment dated 25th November, 2021 passed by the High Court and judgment of conviction dated 5th March, 2019, and the order of sentence dated 8th March, 2019, passed by the trial Court, do not stand to scrutiny and are hereby quashed and set aside.
78. Resultantly, the appeals are allowed.
79. The appellant is acquitted of the charges. He is in custody and shall be released forthwith, if not required in any other case.
80. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals allowed.