

CASE DETAILS

INDRAKUNWAR

v.

THE STATE OF CHHATTISGARH

(Criminal Appeal No. 1730 of 2012)

OCTOBER 19, 2023

[ABHAY S. OKA AND SANJAY KAROL, JJ.]

HEADNOTES

Issue for consideration: Whether, in explaining the purported incriminating circumstance against her, the convict-appellant ought to have disclosed, over and above denial of any relationship with the deceased child, the specifics of her miscarriage and its aftermath; particularly when the prosecution has failed to discharge its burden of establishing such relationship between the deceased and the convict -appellant.

Constitution of India – Right to Privacy – Personal life of a woman accused of committing a crime – Failure of Prosecution to discharge its duty:

Held: The essence of a woman's fundamental right to equality and privacy, regarding private matters of bodily and psychological integrity is the ability to make autonomous decisions about her own body and reproductive choices – It is entirely within the realm of privacy of a woman to decide whether or not to bear a child or abort her pregnancy (within the framework of law) – In the instant case, the guilt has been placed on appellant-convict without any solid foundation thereto since no relationship of any nature whatsoever could be established between her and the deceased child discovered in the dabri – The conclusion drawn is simply on the basis that the convict-appellant was a woman living alone and had been pregnant (as admitted in the statement u/s. 313 CrPC) – This, in the Court's view, was in itself suspect since she had been 'deserted' by her husband – Her statement, nowhere reflects an answer to a question concerning the particulars of the child that she was admittedly carrying but denied that the deceased was not the one recovered from the dabri – Although there is a requirement by law

to disclose the aspects required to adjudicate in a criminal matter, such duty cannot unreasonably and unwarrantedly step over the fundamental right of privacy. [Paras 27, 36]

Code of Criminal Procedure, 1973 – s. 313 – Principles as evolved over period of time for statements u/s. 313 Cr.PC.:

Held: 1. The object, evident from the Section 313 Cr.PC. itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them; 2. The intent is to establish a dialogue between the Court and the accused – This process benefits the accused and aids the Court in arriving at the final verdict; 3. The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., *audi alteram partem*; 4. The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece; 5. In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation – The accused may not be put to prejudice by any omission or inadequate questioning; 6. The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason; 7. This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence – It does not discharge but reduces the prosecution's burden of leading evidence to prove its case – They are to be used to examine the veracity of the prosecution's case; 8. This statement is to be read as a whole – One part cannot be read in isolation; 9. Such a statement, as not on oath, does not qualify as a piece of evidence u/s. 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution; 10. The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them; 11. The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence – The defence so articulated must be carefully scrutinized and considered; 12. Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision. [Para 34]

Penal Code, 1860 – s. 302 – Prosecution case that the convict-appellant had relations with a co-villager as a result of which she conceived a child – She, upon giving birth, allegedly killed this child and threw the corpse into a dabri (small water body- pond) – The High Court upheld the conviction u/s. 302 IPC and the order of sentence passed by the trial Court – Propriety:

Held: It is established that negative inferences cannot be drawn for a question or incriminating circumstance not put to an accused while making a statement u/s. 313 Cr.P.C – Her statement, nowhere reflects an answer to a question concerning the particulars of the child that she was admittedly carrying but denied that the deceased was not the one recovered from the dabri – It is a matter of record that none of the witnesses has seen the convict-appellant throwing the deceased child into the dabri; as hitherto observed, no conclusive proof, of any nature, of relationship had been put forth by the prosecution; no evidence has been led to cast doubt upon the version of the convict – The statement of the doctor is silent on the death of the deceased having occurred prior to or after birth, although in examination in chief, the doctor has deposed that the death of the deceased child was homicidal in nature; however, in the cross-examination, it is admitted that such fact does not form part of the record, thereby calling into question the conclusion itself as it is a vital piece of information that has been omitted – Therefore, the conviction recorded against the convict-appellant to be entirely based on mere presumption, with the actual evidence on record failing to establish the prosecution case much less beyond reasonable doubt. [Paras 36, 41, 43]

LIST OF CITATIONS AND OTHER REFERENCES

Shafin Jahan v. Asokan K.M. (2018) 16 SCC 368 : [2018] 4 SCR 955; *S. Khushboo v. Kanniammal* (2010) 5 SCC 600 : [2010] 5 SCR 322; *K.S. Puttaswamy (Privacy-9J.) v. Union of India* (2017) 10 SCC 1: [2017] 10 SCR 569 – relied on.

Geeta Devi v. State of U.P 2022 SCC OnLine 57; *Shakti Vahini v. Union of India* (2018) 7 SCC 192 : [2018] 3 SCR 770; *Suchita Srivastava v. Chandigarh Admn.* (2009) 9 SCC 1 : [2009] 13 SCR 989; *Xv. The Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Ors* 2022 SCC OnLine SC 905; *XYZ v. The State of Gujarat*

& Ors. Criminal Appeal No. /2023 (@ Slp (Crl.) Dy. No. 33790/2023) – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1730 of 2012.

From the Judgment and Order dated 20.04.2010 of the High Court of Chhattisgarh at Bilaspur in CRLA No. 605 of 2005.

Appearances:

Surya Narayan Singh, Sr. Adv., Naresh Kumar, Shantanu Sharma, Advs. for the Appellant.

Gautam Narayan, Ms. Asmita Singh, Harshit Goel, Ms. Akriti Arya, Siddhant Singh, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

SANJAY KAROL J.,

1. The questions arising for consideration in the present appeal are:

- 1) To what extent does the right to privacy shield the matters concerning the personal life of a woman accused of committing a crime, particularly when the prosecution has failed to discharge its duty?
- 2) To what extent are the rights or duties of the accused to explain the incriminating circumstances appearing against them in a statement under Section 313 of the Code of Criminal Procedure¹?

2. This appeal at the instance of the convict-appellant impugned a judgment of the High Court of Chhattisgarh passed in Criminal Appeal No.605 of 2005 dated 20th April 2010, whereby the judgment of conviction under Section 302 of Indian Penal Code, 1860² and order of sentence

¹ Hereinafter referred to as ‘CrPC’

² Hereinafter referred to as ‘IPC’

dated 4th July 2005 passed by the Additional Sessions Judge, Baikunthpur, District Koriya (Chhattisgarh) in Sessions Trial No. 525 of 2004 was upheld.

BACKGROUND OF THE CASE

3. Eschewing unnecessary details, the facts of the case put forward by the prosecution are:

3.1 The convict-appellant had relations with a co-villager, namely, Baiga Gond, as a result of which she conceived a child. She, upon giving birth, allegedly killed this child and threw the corpse into a dabri (small water body- pond).

3.2 An FIR (First Information Report) dated 14th September 2004, the very day on which the alleged corpse of the newborn child of the convict-appellant was found, stood registered. After due investigation, the chargesheet was filed on 13th October 2004, and eventually, the accused was charged with committing an offence punishable under Section 302 of the IPC.

4. The Trial Court, having recorded the statements of various witnesses, observed that the case is the one resting upon circumstantial evidence.

4.1 The prosecution declared five of the eight witnesses examined hostile, including Jai Mangal Singh - PW1, at whose instance the FIR was registered.

4.2 The other witnesses, for instance, Sumitra - PW4, is recorded to be “guessing” about the convict-appellant being pregnant; Kuwarobai - PW8 refused that she ever saw the convict-appellant pregnant as also that she would use a ‘chadar’ to hide her pregnancy.

4.3 Yet, referring to the statements of PW1, Suraj Kumar Singh - PW2, Rambaran Singh - PW3, PW4, Ram Jhalako - PW5, Birhulia - PW6, Rambai - PW7, A.R. Manikpuri (Head Constable) - PW9 to establish the presence of the body of the deceased child in ‘Suraj ki dabri’ the statement under Section 313 CrPCof the convict-appellant along with the statement of Dr. Divya Rani Tigga - PW11 regarding the signs of recent delivery on the person of the convict-appellant found the following circumstances to have been proved: -

- a) The accused was living in the village alone as her husband deserted her. Also that, she was pregnant.
- b) In the dabri (small pond), the body of a newborn baby was found on 14th September 2004, and a few days before that, i.e., 2-3 days, the accused had delivered a child.
- c) The accused did not state anything nor tell anyone about the delivery.

4.4 Given the above, the Trial Court found the offence punishable under Section 302 IPC to have been proved beyond reasonable doubt.

5. The High Court, in the judgment impugned before us, taking note of the testimony of PW11, who deposed that she had, upon examination, found the convict-appellant to have delivered a child and that the deceased had suffered injuries, convicted the accused. However, the doctor admits that the death of the child being prior to or after the birth remains unmentioned. The same was noted to be of no consequence as the injuries recorded on the body of the deceased child established the death to be homicidal in nature. In conclusion, the High Court held that the conviction under Section 302 IPC was warranted.

6. It is observed that the Courts below, in holding the accused guilty, primarily relied on the testimonies of eight independent witnesses, the testimony of the doctor PW11, and the statement of the accused under Section 313 Cr.P.C.

OUR VIEW

7. Awarding the punishment of life imprisonment requires due appreciation of evidence and cannot be awarded mechanically and in a perfunctory manner. The law requires that the High Court, must, only after re-appreciation of evidence confirm or overturn the findings of fact returned by the Trial Court. Recently, this Court in **Geeta Devi v. State of U.P.**³ has succinctly dealt with this issue.

³ 2022 SCC OnLine 57 (2-Judge Bench)

8. The judgment under challenge, which we are constrained to observe, makes only general and sketchy observations, unlike the appreciation of evidence as is required by law, in respect of testimonies of the witnesses and other evidence. This approach cannot be appreciated, especially when the conviction rendered is for a serious offence, that is, Section 302 IPC. In **Geeta Devi** (*supra*), the Court found it fit to remand the matter to the High Court for consideration afresh, but in the present case, such course will not be prudent given that this appeal dates back to the year 2010. Hence, we proceed to examine the evidence on record.

9. The testimony of Jai Mangal Singh – PW1, who was Sarpanch at the time of the incident, also reveals that he was informed by a villager about the dead body of a newborn child found in the pond but did not know to whom it belonged to. Also, he had no knowledge about the pregnancy of the accused. He did not know when and by whom the child was thrown. In his cross-examination, he stated that there were houses belonging to other people near the dabri where the dead body was found. Significantly, we find none of them stands examined, testifying to the presence of the accused near the pond, nor does this witness testify to such an effect.

10. Suraj Kumar Singh - PW2, who saw the dead body of a child in his dabri, admits the place to be open from all sides, having access by all. He further deposes that he did not see any woman, much less the accused, throw the child.

11. Rambaran Singh -PW3, who was informed by PW2 of the dead body of a child lying in the dabri, admits having no knowledge as to whom the child belonged to. His testimony reveals the reason for suspicion and doubting the accused, for she being the only one without a husband.

12. Smt. Sumitra - PW4, in her testimony, only discloses the factum of the accused being pregnant. The testimonies of PW5 and PW6 are also to similar effect.

13. Similarly, though, Smt. Rambai - PW7 denies any knowledge of the accused being pregnant but only adds that the accused's body looked as though she had just delivered a child. However, the latter part is denied by PW8.

14. The testimony of the Investigating Officer - PW10 is only to the effect of spot verification and conduct of procedural formalities.

15. PW11 is the Medical Officer who examined the child's dead body and the accused person. She gave her opinion that the child was delivered prematurely, i.e., prior to 9 months. She also stated that the child died within 45 to 50 hours of the medical examination, and its death was homicidal in nature. On examination, she found the accused to be physically weak. She admitted not to have mentioned as to whether the child had died before or after birth. She did not even mention if the child belonged to the accused person.

16. Thus, none of these witnesses could prove, much less beyond a reasonable doubt, the prosecution case of the accused having thrown the child in the dabri after delivery or having caused the death.

17. In her defense, the convict-appellant categorically denied the accusation of having killed any child, much less the child in question. She states that Baiga Gond, who had fathered the child she was carrying, in an endeavor to get rid of the child, forcibly tried to have her take some medicine. He pushed her into 'Suraj ki dabri' on her refusal, leading to her miscarriage. The further defence set up by her was that she had not killed the child and was being falsely implicated.

18. A perusal of the statement of the convict-appellant gives rise to the question as to whether she had admitted her guilt? Whether upon such a statement, the onus on the prosecution stood shifted? Whether it could be said that the convict-appellant was obliged to disclose her pregnancy, if so, and what became of such child that she was allegedly carrying?

19. Further, what must be considered is whether the convict-appellant has no right of privacy of not disclosing the prosecution or the Court as to what happened to her child which she was carrying in her womb, particularly when the prosecution failed to discharge the initial burden and onus of establishing the deceased, in any manner to be related to the accused?

20. Is not, inherent in a lady the right of confidentiality and privacy in matters concerning her personal life, of not disclosing any circumstances, as may be required by law?

LAW ON PRIVACY

21. In searching for answers to the questions above, it is pertinent for us to intervene when structures of injustice and persecution deeply entrenched in patriarchy are destructive of constitutional freedom.⁴ The right to privacy is the underpinning of human dignity and is fundamental to the realization of human rights.

22. Right to Privacy is regarded as one of the most crucial human rights in the contemporary day. In many different countries and civilizations, privacy is cherished. It is also protected by numerous international and regional human rights treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and many more.

23. The importance of this right was underscored by U.S. Supreme Court as far as the year 1958⁵ by quoting William Pitt, Earl of Chatham:

“The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail; its roof may shake, the wind may blow through it, the storms may enter; the rain may enter but the King of England cannot enter, all his forces dare not cross the threshold of the ruined tenement.”

24. In **K.S. Puttaswamy (Privacy-9J.) v. Union of India**,⁶ this Court, speaking through Dr. D.Y. Chandrachud, J. (as the learned Chief Justice then was) while discussing the essential nature of privacy observed:

“297. What, then, does privacy postulate? Privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifested in the ability to make

4 Joseph Shine v Union of India 2019 3 SCC 39 (5-Judge Bench)

5 Miller v United States 357 U.S. 301(1958)

6 (2017) 10 SCC 1

decisions on matters intimate to human life. The autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The body and the mind are inseparable elements of the human personality. **The integrity of the body and the sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop.** Without the ability to make choices, the inviolability of the personality would be in doubt. Recognising a zone of privacy is but an acknowledgment that each individual must be entitled to chart and pursue the course of development of personality. Hence privacy is a postulate of human dignity itself. Thoughts and behavioural patterns which are intimate to an individual are entitled to a zone of privacy where one is free of social expectations. In that zone of privacy, an individual is not judged by others. Privacy enables each individual to take crucial decisions which find expression in the human personality. It enables individuals to preserve their beliefs, thoughts, expressions, ideas, ideologies, preferences and choices against societal demands of homogeneity. Privacy is an intrinsic recognition of heterogeneity, of the right of the individual to be different and to stand against the tide of conformity in creating a zone of solitude. Privacy protects the individual from the searching glare of publicity in matters which are personal to his or her life. Privacy attaches to the person and not to the place where it is associated. **Privacy constitutes the foundation of all liberty because it is in privacy that the individual can decide how liberty is best exercised. Individual dignity and privacy are inextricably linked in a pattern woven out of a thread of diversity into the fabric of a plural culture.**

298. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably intertwined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realisation of the full value of life and liberty. Liberty has

a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. **Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life.** Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. ...The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. **The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual...** The freedoms under Article 19 can be fulfilled where the individual is entitled to decide upon his or her preferences. ... Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. **Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination.”**

(Emphasis supplied)

25.. In matters concerning women, this Court has repeatedly stated that much is left to be desired in securing constructive equality. We may refer to what Krishna Iyer J. has stated⁷:

“The fight is not for woman’s status but for human worth. The claim is not to end inequality of women but to restore universal justice. The bid is not for loaves and fishes for the forsaken gender but for cosmic harmony which never comes till woman comes”.

7 V.R.Krishna Iyer, Law and Life, Vikas Publishing House, New Delhi, 1979, p. 31.

26.. We also find this Court to have recognized, in **Shakti Vahini v. Union of India**⁸, that the right to choose a partner is a fundamental right under Article 19 and 21 of the Constitution of India. In the celebrated case, **Shafin Jahan v. Asokan K.M.**⁹ it was observed:-

“84. ... The choice of a partner whether within or outside marriage lies within the exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which is inviolable.”

In **S. Khushboo v. Kanniammal**¹⁰, this Court observed:

“46. ... While there can be no doubt that in India, marriage is an important social institution, we must also keep our minds open to the fact that there are certain individuals or groups who do not hold the same view. To be sure, there are some indigenous groups within our country wherein sexual relations outside the marital setting are accepted as a normal occurrence. Even in the societal mainstream, there are a significant number of people who see nothing wrong in engaging in premarital sex. **Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and criminality are not coextensive.**”

(Emphasis supplied)

27. The essence of a woman’s fundamental right to equality and privacy, regarding private matters of bodily and psychological integrity is the ability to make autonomous decisions about her own body and reproductive choices. It is entirely within the realm of privacy of a woman to decide whether or not to bear a child or abort her pregnancy (within the framework of law).

28. This Court in **Suchita Srivastava v. Chandigarh Admn.**¹¹, observed that the statutory right of a woman to consent or not, to a termination of pregnancy in accordance with the Medical Termination of

8 (2018) 7 SCC 192 (3-Judge Bench)

9 (2018) 16 SCC 368 (3-Judge Bench)

10 (2010) 5 SCC 600(3-Judge Bench)

11 (2009) 9 SCC 1 (3-Judge Bench)

Pregnancy Act, 1971 is deduced from a woman's right to privacy, dignity and bodily integrity.

29. In **X v. The Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Ors.**¹², this Court observed that the right of a woman to become pregnant is not married to her marital status. It is a choice irrespective thereof. In case the pregnancy is warranted, it is equally shared by both partners. However, in case of an unwanted or incidental pregnancy, the burden invariably falls on the pregnant woman affecting her mental and physical health. It was held that it is the woman's decision alone to undergo medical termination of pregnancy particularly when it is her mental or physical health that is in question.

30.. Recently, this Court in **XYZ v. The State of Gujarat & Ors.**¹³ in the context of abortion reiterated that the right of every woman to make reproductive decisions, including the decision to terminate the pregnancy, is within her competence and authority. The right of every woman to make reproductive choices without undue interference from the state is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical well-being also injures the dignity of women.

31. The above discussion was only to point out that the right to privacy is inviolable. Unfortunately, the view taken and the language adopted by both the Courts below lays to waste such a right inherent in the convict-appellant. It is apparent that the guilt has been placed on her without any solid foundation thereto since no relationship of any nature whatsoever could be established between her and the deceased child discovered in the dabri. The conclusion drawn is simply on the basis that the convict-appellant was a woman living alone and had been pregnant (as admitted in the statement under 313 CrPC). This, in the Court's view, was in itself suspect since she had been 'deserted' by her husband.

32. Such a view being taken, i.e., thrusting upon a woman the guilt of having killed a child without any proper evidence, simply because she

12 2022 SCCOnLine SC 905(3-Judge Bench)

13 Criminal Appeal No. /2023 (@ Slp (Crl.) Dy. No. 33790/2023)

was living alone in the village, thereby connecting with one another two unrelated aspects; reinforces the cultural stereotypes and gendered identities which this Court has explicitly warned against.¹⁴

33. Keeping in view the understanding of the principles of privacy and the propositions of law in regard thereto, we now travel to what, by law, may be required of the convict-appellant in her statement under Section 313 Cr.P.C.

34. A perusal of various judgments¹⁵ rendered by this Court reveals the following principles, as evolved over time when considering such statements.

34.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

34.2 The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.

34.3 The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., *audi alterum partem*.

14 In striking down Section 497 IPC, the Constitution Bench in *Joseph Shine v Union of India* (2019) 3 SCC 39 has engaged in an extensive discussion in regard to stereotypes and has found such stereotypes to be offending Article 14 of the Constitution of India.

15 *Premchand v. State of Maharashtra* (2023) 5 SCC 522 (2-Judge Bench); *Jai Dev v. State of Punjab* [AIR 1963 SC 612]; *Asraf Ali v. State of Assam* (2008) 16 SCC 328 (2-Judge Bench); *Inspector of Customs v. Yashpal* (2009) 4 SCC 769 (3-Judge Bench); *Fainul Khan v. State of Jharkhand* (2019) 9 SCC 549 (2-Judge Bench); *Mohd. Firoz v. State of M.P.* (2022) 7 SCC 443 (3-Judge Bench); *Bishnu Prasad Sinha v. State of Assam* (2007) 11 SCC 467 (2-Judge Bench); *Dehal Singh v. State of H.P.* (2010) 9 SCC 85 (2-Judge Bench); *Brajendrasingh v. State of M.P.* (2012) 4 SCC 289 (2-Judge Bench); *Sharad Birdhichand Sarda v. State of Maharashtra* (1984) 4 SCC 116 (3-Judge Bench); *Hate Singh Bhagat Singh v. State of Madhya Pradesh* [1951 SCC 1060]; *Shamu Balu Chaugule v. State of Maharashtra* (1976) 1 SCC 438; *Paul v. State of Kerala* (2020) 3 SCC 115 (2-Judge Bench); *Kalicharan v. State of U.P.* (2023) 2 SCC 583 (2-Judge Bench); *Nasib Singh v. State of Punjab* (2022) 2 SCC 89 (3-Judge Bench); *Jai Prakash Tiwari v. State of Madhya Pradesh* 2022 SCC OnLine SC 966 (3-Judge Bench); *Satbir Singh v. State of Haryana* (2021) 6 SCC 1 (2-Judge Bench); *Bable v. State of Chhattisgarh* (2012) 11 SCC 181 (2-Judge Bench); and *Selvi v. State of Karnataka* (2010) 7 SCC 263 (3-Judge Bench).

34.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

34.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

34.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

34.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

34.8 This statement is to be read as a whole. One part cannot be read in isolation.

34.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

34.10 The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.

34.11 The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.

34.12 Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision.

ANSWERS TO THE QUESTIONS

35. In light of the principles listed above, what we must consider is whether, in explaining the purported incriminating circumstance against

her, the convict-appellant ought to have disclosed, over and above denial of any relationship with the deceased child, the specifics of her miscarriage and its aftermath; particularly when the prosecution has failed to discharge its burden of establishing such relationship between the deceased and the convict-appellant.

36. It is established that negative inferences cannot be drawn for a question or incriminating circumstance not put to an accused while making a statement under Section 313 Cr.P.C. Her statement, nowhere reflects an answer to a question concerning the particulars of the child that she was admittedly carrying but denied that the deceased was not the one recovered from the dabri. Although there is a requirement by law to disclose the aspects required to adjudicate in a criminal matter, such duty cannot unreasonably and unwarrantedly step over the fundamental right of privacy.

37. Before examining this case from the lens of circumstantial evidence, it would be apposite to refer to the position in law.

38. In **Shailendra Rajdev Pasvan v. State of Gujarat**¹⁶ this Court observed that the courts ought to have a conscientious approach in a case based on circumstantial evidence, and conviction ought to be recorded only in cases where all the links of the chain are complete, pointing only to the guilt of the accused and none else, also eliminating the element of his innocence. Each link, unless connected together to form a chain, may suggest suspicion, but the same, in itself, cannot take the place of proof and will not be sufficient to warrant the conviction of the accused.

39. In **Munikrishna v. State**¹⁷ this Court, while following the parameters laid down in **Hanumant Govind Nargundkar v. State of Madhya Pradesh**¹⁸ and **Sharad Birdhichand Sarda**¹⁹, observed that in cases based on circumstantial evidence, heavy onus and duty is cast upon the prosecution to prove its case beyond reasonable doubt.

16 (2020) 14 SCC 750 (3-Judge Bench)

17 2022 SCC OnLine SC 1449 (3-Judge Bench)

18 (1952) 2 SCC 71 (3 Judge Bench)

19 (1984) 4 SCC 116(3-Judge Bench)

40. In **Sharad Birdhichand Sarda (supra)**, while discussing the effect of non-explanation, this Court observed that the absence of explanation or a false explanation will amount to an additional link to complete the chain provided the following essential conditions must be satisfied, that is to say, various links in the chain of evidence led by the prosecution have been satisfactorily proved; it should only point to the guilt of the accused with reasonable definiteness, and proximity of the circumstance with the time and situation.

41. It is a matter of record that none of the witnesses has seen the convict-appellant throwing the deceased child into the *dabri*; as hitherto observed, no conclusive proof, of any nature, of relationship had been put forth by the prosecution; no evidence has been led to cast doubt upon the version of the convict. The statement of the doctor is silent on the death of the deceased having occurred prior to or after birth, although in examination in chief, the doctor has deposed that the death of the deceased child was homicidal in nature; however, in the cross-examination, it is admitted that such fact does not form part of the record, thereby calling into question the conclusion itself as it is a vital piece of information that has been omitted.

42. Having considered the gaps mentioned above in the prosecution case, we cannot agree with the learned Courts below that the circumstances conclusively point to the guilt of the convict-appellant, Indrakunwar.

43. Given the foregoing discussion, we find the conviction recorded against the convict-appellant to be entirely based on mere presumption, with the actual evidence on record failing to establish the prosecution case much less beyond reasonable doubt. We are constrained to observe that the High Court has confirmed the view of the Trial Court awarding life imprisonment without supplying any cogent reasons therefor.

44. In that view of the matter, the conviction returned by the Trial Court in Session Trial No.52 of 2004 and affirmed by the High Court in Criminal Appeal No.605 of 2005 is quashed and set aside. The convict-appellant is acquitted of all charges and, if in jail in connection with the instant lis, is set at liberty forthwith. Her bail bonds stand discharged.

45. The questions raised in the instant case are answered as above.
46. The appeal is allowed in the aforesaid terms.
47. Pending Interlocutory application(s), if any, shall stand disposed of.

Headnotes prepared by:
Ankit Gyan

Appeal allowed.