Raj Kumar Singh @ Raju @ Batya vs State Of Rajasthan on 6 May, 2013

Equivalent citations: AIR 2013 SUPREME COURT 3150, 2013 (5) SCC 722, 2013 AIR SCW 3449, AIR 2013 SC (CRIMINAL) 1630, 2013 CRILR(SC MAH GUJ) 865, 2013 (6) SCALE 635, (2013) 127 ALLINDCAS 12 (SC), (2013) 3 ALLCRILR 815, (2013) 3 MH LJ (CRI) 498, (2013) 3 CRILR(RAJ) 865, 2013 CALCRILR 3 790, (2013) 3 JCR 209 (SC), 2013 CRILR(SC&MP) 865, 2013 ALL MR(CRI) 2240, 2013 (4) KCCR 306 SN, 2013 (2) KER LT 133 SN, (2013) 2 CURCRIR 649, (2013) 2 RAJ LW 1798, (2013) 2 UC 1362, (2013) 2 CHANDCRIC 205, (2013) 6 SCALE 635, (2013) 3 BOMCR(CRI) 54, (2013) 2 DLT(CRL) 867, (2013) 82 ALLCRIC 431, 2013 (3) ALD(CRL) 772

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Bench: Fakkir Mohamed Ibrahim Kalifulla, B.S. Chauhan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 931-932 of 2009

Raj Kumar Singh @ Raju @ Batya …Appellant

Versus

State of Rajasthan …Respondent

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. These appeals have been preferred against the impugned judgment and order dated 4.1.2008, passed by the High Court of Rajasthan (Jaipur Bench) in D.B. Crl.A. Nos. 1250 and 1749 of 2003 by

way of which, the High Court has dismissed the aforesaid appeals and affirmed the judgment and order dated 5.8.2003 of the learned Additional Sessions Judge (Fast Track) No. 1, Jaipur District in Sessions Case No. 19 of 2002 by way of which, the appellant stood convicted for the offences punishable under Sections 302, 376 and 201 of the Indian Penal Code, 1860, (hereinafter referred to as `the IPC'), and was awarded a sentence of life imprisonment alongwith a fine of Rs.1,000/- under Section 302 IPC; 10 years rigorous imprisonment alongwith a fine of Rs.1,000/- under Section 376 IPC, and rigorous imprisonment of 5 years alongwith a fine of Rs.500/- under Section 201 IPC, and in default of depositing such fine, to further suffer rigorous imprisonment for a period of six months. The substantive sentences, however, were ordered to run concurrently.

2. As per the case of the prosecution, the necessary facts related to the present case are as under:

> A. Pooja, a 4 year old girl, went missing on 22.5.2001. Her family members searched for her relentlessly and also reported the matter to the police. She was eventually found lying dead on the roof of a lonely house on 24.5.2001. Rohtash (PW.1), father of the deceased, submitted a written report (Ex.P-1) of the incident at Police Station, Kotputli and upon the receipt of such report, a case under Sections 302 and 201 IPC was registered, and investigation pertaining to the same also commenced. Thereafter, postmortem was performed on the dead body, necessary memos were drawn, and statements of witnesses were recorded. The appellant was arrested on 27.5.2001 and upon completion of the investigation, chargesheet was filed.

B. The trial court concluded the trial and convicted the appellant under Sections 302, 376 and 201 IPC, vide impugned judgment and order dated 5.8.2003 and awarded the sentence as referred to hereinabove . C. Aggrieved, the appellant filed an appeal in the High Court which was dismissed vide impugned judgment and order dated 4.1.2008.

Hence, these appeals.

3. Ms. Vibha Datta Makhija, learned Amicus Curiae, has submitted that the circumstances relied upon by the prosecution have not been satisfactorily established, and that additionally, the circumstances said to have been established against the appellant do not provide a complete chain that is required to prove the guilt of the appellant. There are material contradictions in the depositions of Rohtash (PW.1), Indira (PW.2), Kalawati (PW.3) and Naurang (PW.4), who are father, mother, grandmother and grandfather of the deceased, respectively. Their depositions have wrongly been relied upon by the courts below, as no reliance can be placed on their evidence. Moreover, the statements of the witnesses are self contradictory, and the standard of proof required to convict a person in a case of circumstantial evidence, has not been met either. The law requires, that the circumstances relied upon in support of the conviction must be fully established, and that the chain of evidence furnished by those circumstances must be so complete, so as not to leave any reasonable doubt for a conclusion, consistent with the innocence of the accused. The circumstances from which the conclusion of guilt is to be drawn, must not only be fully established, but also be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. They must not be capable of being explained by way of any other hypothesis except the guilt of the accused, and

when all the said circumstances are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. Thus, the appeals deserve to be allowed.

4. Per contra Ms. Pragati Neekhra, learned counsel appearing on behalf of the State, has opposed the appeals, contending that the judgments of the courts below do not warrant any interference. The circumstances relied upon by the courts below stand fully established, the chain of circumstances is complete, and every link in the said chain indicates that the appellant alone, could be the accused. The discrepancies in the evidence of the witnesses are so minor, that none of the same go to the root of the case and disturb such a conclusion as mentioned hereinabove. The medical evidence also fully supports the ocular evidence, and there is no contradiction between the two. The appellant had approached the family of the victim and asked them to pay to him, a sum of Rs.2,000/-, as he would bring Pooja back to them. The injuries found on the person of the deceased and the appellant-accused co-relate him to the evidence relating to the recoveries, clearly indicating that the appellant alone is guilty of the offence. Thus, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel and perused the record.

There is no ocular version of the incident and the entire case of the prosecution is based on circumstantial evidence.

6. The courts below have found the following circumstances forming an incriminating chain against the appellant:

I. Conduct of the appellant.

II. False explanation given by the appellant.

III. Evidence relating to injuries on the person of the deceased. IV. Evidence relating to injuries on the appellant.

7. The depositions with respect to the conduct of the appellant have been considered by the courts below, and 4 witnesses (family members of the deceased) have been examined in this respect. All 4 have deposed that the appellant had approached them and had asked them for the payment of a sum of Rs.2,000/-, to bring Pooja home, and this circumstance has thus been held to have been proved against him.

8. We have also been taken through the evidence of the witnesses on this aspect.

Rohtash (PW.1), the father of the deceased, has deposed that they had reported the case to the police in the morning at around 8 O' Clock as Pooja was found to be missing. The appellant had thereafter arrived at around 4 O'Clock in the evening, and had asked Rohtash (PW.1), to pay to him, a sum of Rs.2,000/-, stating that he would bring Pooja back. They had informed the police about this fact while lodging the FIR. In his cross examination, Rohtash (PW.1) admitted that the issue of the

appellant asking for a sum of Rs.2,000/- had not been mentioned in the FIR. Then the witness himself voluntarily deposed, that the sum of Rs.2,000/- was asked for after the said report had already been written. He further deposed that he had never seen the appellant before he had asked him for the said amount of Rs.2,000/-. The witness also deposed that the police had not made any inquiry from him in this regard, and then made a statement to the contrary alleging that the police had questioned him vigorously. It may also be pertinent to mention that in his deposition, Rohtash (PW.1) was unable to mention the particular date on which the appellant had approached his family, and had asked for a sum of Rs.2,000/-.

9. Indira (PW.2), the mother of the deceased, Kalawati (PW.3), grandmother and Naurang (PW.4), grandfather of Pooja (deceased) had deposed that Rohtash (PW.1) had registered a report in the police station at 8 O'Clock about the fact that their daughter Pooja had gone missing and further deposed that, at about 4 O'Clock in the evening, on the same day, one boy had come to her and had asked her to pay to him a sum of Rs.2,000/-, as in return for the same he would bring back her daughter. Indira (PW.2) identified the appellant in court as the person who had asked to pay the said sum of Rs.2,000/-. All of them have further deposed that he had been caught by them and had been handed over to the police. In her cross-examination, she has admitted that the appellant had also been beaten up by them, and thereafter, had been handed over to the police on the same day.

If the evidence of the 4 witnesses on this very issue is carefully examined, it becomes evident that material contradictions exist therein, and that further, not only do such material contradictions exist, but embellishments and improvements have also been made to the version of events. In the event that the appellant had come to them and asked them for money, and they had caught hold of him and called the police, and the police had arrested him, there exists no rational explanation as regards why such a pertinent fact has been excluded from the FIR. Secondly, in case the witnesses i.e. the family members of the deceased had caught hold of the appellant, why has PW.4, grandfather of the deceased, deposed that the appellant was shown to them immediately after his arrest, if the witnesses had in fact caught hold of him, and had themselves handed him over to the police, the question of the police showing the appellant to them could not arise.

10. All recoveries were made on 24.5.2001, and the appellant was identified as the accused only on the ground that four witnesses i.e. PWs. 1 to 4, had deposed to the effect that he had asked them for a sum of Rs.2,000/- to bring back their child. No one has explained how the appellant was actually arrested. PWs.1 to 4 have made categorical statements to the effect that when the appellant had asked them for money to bring back the girl, they had caught hold of him and handed him over to the police on 24.5.2001 itself. However, Gopi Singh (PW.14), the Investigating Officer has made it clear that the appellant had been arrested on 27.5.2001 by Ext. P-14, and that there was no independent witness for the said arrest. An FIR was lodged on 24.5.2001 without naming any person, as the FIR itself reveals that some one had killed Pooja and had dumped her in the abandoned dharamshala.

Naurang (PW.4), grandfather of Pooja has deposed that the police had shown the accused to them as soon as he was arrested. Therefore, there exists a material contradiction as regards the issue of the arrest of the appellant.

We have examined the original documents/records. There is over- writing on the arrest memo and Gopi Singh (PW.14), the Investigating Officer has admitted in his cross-examination that there did in fact exist some over-writing underneath the signatures in Ext. D-1, and that the same, i.e., the over-writing, did not bear his initials.

11. So far as the recovery of the clothes of the accused which were recovered with blood and semen stains is concerned, there are numerous contradictions. Hari Singh (PW.9), the constable who made the said recoveries has deposed that on 27.5.2001, he had made the recovery of a light brown shirt, a white coloured vest on which there were blood like stains, one cream coloured underwear on which blood like stains and semen stains were found. The same were recovered from the appellant. Therefore, it is clear that the recoveries of the clothes of the appellant were made on 27.5.2001, and not on 24.5.2001. If the appellant had in fact been arrested as per the version of events narrated by PWs.1 to 4 on 24.5.2001, there would be no occasion for the police to make the recovery of his clothes on 27.5.2001. The statement of Rohtash (PW.1) was recorded on 27.5.2001, though the same was shown as recorded on 24.5.2001, and the statement of all other witnesses was recorded on 27.5.2001. It is thus, difficult to understand how such a material discrepancy in the evidence has been ignored by the courts below while convicting the appellant. Exts.P-23 to P-39 are the relevant photographs. They do not bear the signature of any person and therefore, it is difficult to comprehend how these material exhibits were sent for FSL report.

The High Court has doubted and in fact disbelieved the recovery of clothes at the instance of the appellant, and has remarked that the evidence of such recovery was fabricated and false.

12. The postmortem report (Ex.P-21) revealed the following anti- mortem injuries on her body:

> "Body swollen, Abdomen distended, eyes protruded, lips swollen, no maggots over body, skin pealed off here and there, mouth semi opened, bleeding from both nostrils and Lt. ear, PM rigidly absent due to second stage of relaxer, PM lividity present over dependent parts of body, back of chest presents and both buttocks blush black, labia majora swollen and teared, hymen teared, vaginal walls teared. Rectum protruding through posterior vagina wall, posterior fornix ruptured.
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> In the opinion of Medical Board the cause of death was neurogenic shock, coma due to head injury."

13. As already described, the dead body of Pooja was subjected to an autopsy by the Medical Board. Dr. Laxman Singh (PW.12) deposed that the body was swollen, abdomen distended, eyes protruding, lips swollen, no maggots over body, skin pealed off here and there, mouth semi opened, bleeding from both nostrils and left ear. PM rigidly absent due to second stage of relaxation, PM lividity present over dependent parts of body, back of chest present and both buttocks bluish black. Labia majora swollen and hymen torn. Vaginal walls torn. Rectum protruding through posterior vaginal wall, posterior fornix ruptured. The cause of death was neurogenic shock, coma due to head injury. The testimony of Dr. Laxman Singh clearly reveals that the innocent helpless soul Pooja was first subjected to monstrous sexual assault, and was then mercilessly killed by inflicting injuries on

her head so that there remains no direct evidence against culprit.

14. The appellant after his arrest on 27.5.2001 was medically examined by Dr. Laxman Singh (PW.12) on May 28, 2001 and vide his medical examination report (Ext. P-22), an abrasion of the size of 0.2 x 0.2 cm on the corona penis was found. The body of the penis and glands therein were swollen and tenderness and inflammation was present. There was nothing to suggest that the appellant was incapable of indulging in intercourse.

15. The evidence of Daulat Ram (PW.7), the driver had been to the extent that on 22.5.2001, the appellant had travelled with him to certain places and had slept in his jeep that night and did not go to his house, and the appellant could not furnish any explanation as to why he had slept in the jeep and did not go to his house. Therefore, his conduct was suggestive of the fact that the offence had been committed by him.

The trial court also doubted the conduct of the appellant for the reason that he had slept in the jeep though he was neither the driver of a jeep nor the servant of Daulat Ram (PW.7), the driver. The High Court had taken note of the appellant's statement under Section 313 of Code of Criminal Procedure, 1973, (hereinafter referred to as `Cr.P.C.'), wherein the appellant had replied that the aforesaid deposition was wrong, and held that explanation furnished by him was false.

16. The courts below have proceeded on the basis that there was no evidence of enmity against any of the witnesses which may lead to the presumption that the appellant has been falsely implicated in the case.

17. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that `may be' proved and `will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason, that the mental distance between `may be' and `must be' is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between `may be' true and `must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between `may be' true and `must be' true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant Govind Nargundkar & Anr. v. State of M.P., AIR 1952 SC 343; Shivaji Sahabrao Bobade & Anr. v. State of Mahrashtra, AIR 1973 SC 2622; Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622; Subhash Chand v. State of Rajasthan, (2002) 1 SCC 702; Ashish Batham v. State of M.P., AIR 2002 SC 3206; Narendra Singh & Anr. v. State of M.P., AIR 2004 SC 3249; State through CBI v. Mahender Singh

Dahiya, AIR 2011 SC 1017; and Ramesh Harijan v. State of U.P., AIR 2012 SC 1979)

18. In Kali Ram v. State of Himachal Pradesh, AIR 1973 SC 2773, this Court observed as under:

> "Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where in the guilt of the accused is sought to be established by circumstantial evidence."

19. In R. v. Hodge 168 ER 1163, the court held that before a person is convicted entirely on circumstantial evidence, the court must be satisfied not only that those circumstances were consistent with his having committed the act, but also that the facts were such, so as to be inconsistent with any other rational conclusion other than the one that the accused is the guilty person.

20. In Sharad Birdhichand Sarda (Supra), this Court held as under:

> "The facts so established should be consistent only with the hypothesis of the ?guilt of the accused. There should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. 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."
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> A similar view has been reiterated in Krishnan v. State Represented by Inspector of Police, (2008) 15 SCC 430; Pawan v. State of Uttaranchal, etc. etc. (2009) 15 SCC 259; and State of Maharashtra v. Mangilal, (2009) 15 SCC 418.

21. In M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200, this Court held, that if the circumstances proved in a case are consistent either with the innocence of the accused, or with his guilt, then the accused is entitled to the benefit of doubt. When it is held that a certain fact has been proved, then the question that arises is whether such a fact leads to the inference of guilt on the part of the accused person or not, and in dealing with this aspect of the problem, benefit of doubt must be given to the accused and a final inference of guilt against him must be drawn only if the proved fact is wholly inconsistent with the innocence of the accused, and is entirely consistent with his guilt.

Similarly, in Sharad Birdhichand Sarda (Supra), this Court held as under:

> ? "Graver the crime, greater should be the standard of proof. An accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof. When on the evidence two possibilities are available or open, one which goes in the favour of the prosecution and the other benefits an accused, the accused is undoubtedly

entitled to the benefit of doubt. The principle has special relevance where the guilt or the accused is sought to be established by circumstantial evidence.

22. In an Essay on the Principles of Circumstantial Evidence by William Wills by T. & J.W. Johnson & Co. 1872, it has been explained as under:

> ?“In matters of direct testimony, if credence be given to the relators, the act of hearing and the act of belief, though really not so, seem to be contemporaneous. But the case is very different when we have to determine upon circumstantial evidence, the judgment in respect of which is essentially inferential. There is no apparent necessary connection between the facts and the inference; the facts may be true, and the inference erroneous, and it is only by comparison with the results of observation in similar or analogous circumstances, that we acquire confidence in the accuracy of our conclusions. ?· The term PRESUMPTIVE is frequently used as synonymous with CIRCUMSTANTIAL EVIDENCE; but it is not so used with strict accuracy, The word" presumption," ex vi termini, imports an inference from facts; and the adjunct "presumptive," as applied to evidentiary facts, implies the certainty of some relation between the facts and the inference. Circumstances generally, but not necessarily, lead to particular inferences; for the facts may be indisputable, and yet their relation to the principal fact may be only apparent, and not real; and even when the connection is real, the deduction may be erroneous. Circumstantial and presumptive evidence differ, therefore, as genus and species.
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> The force and effect of circumstantial evidence depend upon its incompatibility with, and incapability of, explanation or solution upon any other supposition than that of the truth of the fact which it is adduced to prove; the mode of argument resembling the method of demonstration by the reductio ad absurdum.”

23. Thus, in view of the above, the Court must consider a case of circumstantial evidence in light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion, that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.

24. This Court in Babu v. State of Kerala, (2010) 9 SCC 189 has dealt with the doctrine of innocence elaborately and held as under:

> “27. Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken

> into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction. Statutes like the Negotiable Instruments Act, 1881; the Prevention of Corruption Act, 1988; and the Terrorist and Disruptive Activities (Prevention) Act, 1987, provide for presumption of guilt if the circumstances provided in those statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. However, such a presumption can also be raised only when certain foundational facts are established by the prosecution. There may be difficulty in proving a negative fact.
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> 28. However, in cases where the statute does not provide for the burden of proof on the accused, it always lies on the prosecution. It is only in exceptional circumstances, such as those of statutes as referred to hereinabove, that the burden of proof is on the accused. The statutory provision even for a presumption of guilt of the accused under a particular statute must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution."

25. In a criminal trial, the purpose of examining the accused person under Section 313 Cr.P.C., is to meet the requirement of the principles of natural justice i.e. audi alterum partem. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. No matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination under Section 313 Cr.P.C., cannot be used against him and have to be excluded from consideration.

26. In State of Maharashtra v. Sukhdev Singh, AIR 1992 SC 2100, this Court observed as under:

> "...if there is no evidence or circumstance appearing in the prosecution evidence implicating the accused with the commission of the crime with which he is charged, there is nothing for the accused to explain and hence his examination under Section 313 of the Code would be wholly unnecessary and improper. In such a situation the accused cannot be questioned and his answers cannot be used to supply the gaps left by witnesses in their evidence."

27. In Mohan Singh v. Prem Singh & Anr., AIR 2002 SC 3582, this Court held:

> "The statement of the accused under Section 313 CrPC is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. If the exculpatory part of his statement is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of

his statement under Section 313 CrPC cannot be made the sole basis of his conviction."

28. In Dehal Singh v. State of H.P., AIR 2010 SC 3594, this Court observed:

"Statement under Section 313 of the Code of Criminal Procedure is taken into consideration to appreciate the truthfulness or otherwise of the case of the prosecution and it is not an evidence. Statement of an accused under Section 313 of the Code of Criminal Procedure is recorded without administering oath and, therefore, the said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act. The appellants have not chosen to examine any other witness to ?support this plea and in case none was available they were free to examine themselves in terms of Section 315 of the Code of Criminal Procedure which, inter- alia, provides that a person accused of an offence is a competent witness of the defence and may give evidence on oath in disproof of the charges. There is reason not to treat the statement under Section 313 of the Code of Criminal Procedure as evidence as the accused cannot be cross- examined with reference to those statements. However, when an accused appears as a witness in defence to disprove the charge, his version can be tested by his cross-examination."

29. In State of M.P. v. Ramesh, (2011) 4 SCC 786, this Court held as under:

"The statement of the accused made under Section 313 CrPC can be taken into consideration to appreciate the truthfulness or otherwise of the prosecution case. However, as such a statement is not recorded after administration of oath and the accused cannot be cross-examined. his statement so recorded under Section 313 CrPC cannot be treated to be evidence within the meaning of Section 3 of the Evidence Act. 1872. Section 315 CrPC enables an accused to give evidence on his own behalf to disprove the charges made against him. However, for such a course, the accused has to offer in writing to give his evidence in defence. Thus, the accused becomes ready to enter into the witness box, to take oath and to be cross-examined on behalf of the prosecution and/or of the accomplice, if it is so required."

30. In Rafiq Ahmed @ Rafi v. State of U.P., AIR 2011 SC 3114, this Court observed as under:

"It is true that the statement under Section 313 CrPC cannot be the sole basis for conviction of the accused but certainly it can be a relevant consideration for the courts to examine, particularly when the prosecution has otherwise been able to establish the chain of events...."

31. In Dharnidhar v. State of U.P. & Ors., (2010) 7 SCC 759, this Court held:

"The proper methodology to be adopted by the Court while recording the statement of the accused under Section 313 CrPC is to invite the attention of the accused to the

> circumstances and substantial evidence in relation to the offence, for which he has been charged and invite his explanation. In other words, it provides an opportunity to an accused to state before the court as to what is the truth and what is his defence, in accordance with law. It was for the accused to avail that opportunity and if he fails to do so then it is for the court to examine the case of the prosecution on its evidence with reference to the statement made by the accused under Section 313 CrPC."

32. In Ramnaresh & Ors. v. State of Chhattisgarh, AIR 2012 SC 1357, this Court held as under:

> "It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 CrPC is upon the court. One of the main objects of recording of a statement under this provision of CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering conviction. Even under the latter, he faces the consequences in law."

33. In Munish Mubar v. State of Haryana, AIR 2013 SC 912, this Court, while dealing with the issue of the examination of the accused under Section 313 Cr.P.C. held, that the accused has a duty to furnish an explanation in his statement under Section 313 Cr.P.C. as regards any incriminating material that has been produced against him. Such a view was taken in light of the fact that there existed evidence to show that the accused had parked his car at the Delhi Airport, and that the same had remained there for several hours on the date of commission of the crime in question. Thus, in light of the fact that such a fact had been established, and that such circumstances also simultaneously existed, the accused was expected to explain the reason for which he had gone to the airport, and why the car had remained parked there for several hours.

34. In Ramnaresh (Supra), this Court had taken the view that if an accused is given the freedom to remain silent during the investigation, as well as before the Court, then the accused may choose to maintain silence or even remain in complete denial, even at the time when his statement under Section 313 Cr.P.C. is being recorded. However, in such an event, the Court would be entitled to draw an inference, including such adverse inference against the accused, as may be permissible in accordance with law. While such an observation has been made, this part of the judgment must be read alongwith the subsequent observation of the court stating that if he keeps silent or furnishes an explanation, in both cases, the same can be used against him for rendering a conviction, in so far as it supports the case of the prosecution.

35. In Brajendrasingh v. State of M.P., AIR 2012 SC 1552, this Court held, that it is equally true that a statement under Section 313 Cr.P.C., simpliciter cannot normally be made the basis for convicting the accused. But where the statement of the accused under Section 313 Cr.P.C. is in line with the case of the prosecution, then the heavy onus of providing adequate proof on the prosecution, that is placed is to some extent, reduced.

36. In view of the above, the law on the issue can be summarised to the effect that statement under Section 313 Cr.P.C. is recorded to meet the requirement of the principles of natural justice as it requires that an accused may be given an opportunity to furnish explanation of the incriminating material which had come against him in the trial. However, his statement cannot be made a basis for his conviction. His answers to the questions put to him under Section 313 Cr.P.C. cannot be used to fill up the gaps left by the prosecution witnesses in their depositions. Thus, the statement of the accused is not a substantive piece of evidence and therefore, it can be used only for appreciating the evidence led by the prosecution, though it cannot be a substitute for the evidence of the prosecution. In case the prosecution's evidence is not found sufficient to sustain conviction of the accused, the inculpatory part of his statement cannot be made the sole basis of his conviction. The statement under Section 313 Cr.P.C. is not recorded after administering oath to the accused. Therefore, it cannot be treated as an evidence within the meaning of Section 3 of the Evidence Act, though the accused has a right if he chooses to be a witness, and once he makes that option, he can be administered oath and examined as a witness in defence as required under Section 315 Cr.P.C.

An adverse inference can be taken against the accused only and only if the incriminating material stood fully established and the accused is not able to furnish any explanation for the same. However, the accused has a right to remain silent as he cannot be forced to become witness against himself.

37. We have considered the case in the light of the aforesaid settled legal propositions and reached the following inescapable inferences:

> I. Kalawati (PW.3), grandmother of the deceased Pooja, has stated that Indira (PW.2), mother of the deceased Pooja, had removed her silver Kada and had placed it near Pooja. The said Kada has however, not been seized from either the place of occurrence, from their cart, or from the appellant.
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> II. Witnesses PW.1 to PW.4 have submitted, that the pant, shirt, vest, brief and shoes of the appellant were found lying near the dead body of Pooja. This statement has been disbelieved in its entirety by the High Court, and to such extent, it has been held all the witnesses have given a false statement. III. There has been an evidence in respect of recovery of blood stained clothes of the appellant which stand falsified by the deposition of Daulatram (PW.7) who had categorically deposed that when he woke him up while sleeping in the jeep, his clothes did not have any blood stained. Hari Singh (PW.9) admitted in his deposition that in Arrest Memo, Ex.P-14 there was no mention that there was any blood on the body of the accused or his clothes.
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> IV. As per the evidence of PWs.1 to 4, the appellant was apprehended by them when he came and made a demand of Rs.2,000/- to bring Pooja back on 23.5.2001 and was handed over to the police. There could be no explanation by the Investigating Officer as how his arrest had been shown on 27.5.2001.
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> V. Naurang (PW.4) has categorically deposed that the appellant was shown to such witnesses immediately after his arrest by the police.

VI. The High Court has taken the view that the appellant has also furnished a false explanation. Daulatram (PW.7) was a prosecution witness and the appellant has submitted that he has deposed falsely. Such a statement made by the appellant could not be held to be a false explanation.

VII. The discovery of the body of Pooja by Kalawati (PW.3) is also grossly suspect, owing to the fact that it is neither natural to defecate on the roof of a house, nor to go to the roof of a vacant building in the wee hours of the morning. VIII. Even if the missing report was filed at 8 O'Clock in the morning of 23.5.2001 and the appellant had approached the witnesses to pay to him a sum of Rs.2,000/-, to bring Pooja back the very same day, there is no reason why the said fact is found to be missing in the FIR that was lodged on 24.5.2001. IX. In their statements recorded under Section 161 Cr.P.C., witnesses PW.1 to PW.4 have expressed the doubt that they had with respect to the appellant. It is pertinent to note however, that all the statements were recorded on 27.5.2001 and there is no explanation for why such a statement is missing in the FIR lodged on 24.5.2001.

X. Statement of Rohtash (PW.1) was shown to have been recorded on 27.5.2001 though the same was recorded on 24.5.2001 as is evident from the overwriting in the original record.

XI. The recoveries are also highly unbelievable as Daulatram (PW.7) and another witness Ummaid (PW.8), who had been declared hostile, have deposed in the court stating that they had been asked to sign on blank papers. In such circumstances, why was Daulatram (PW.7) also not declared hostile by the prosecution? XII. Doctor Laxman Singh (PW.12), has deposed before the court, stating that the appellant had on his person, several injuries and that some of the said injuries that were on his right leg, could have been caused by a blunt weapon. No explanation was furnished by the prosecution with respect to such injuries. Moreover, even if some injuries were found on the private parts of the appellant, the same does not conclusively connect him to the crime.

XIII. Gopi Singh (PW.14), the investigating officer, has deposed in court, that a white semen like substance was seized from the spot. Such a statement is not possible to be taken as true for the reason that the colour of the semen is said to have remained white even after the lapse of several hours.

38. In the instant case, there have been major contradictions/ improvements/embellishments in the deposition of witnesses which cannot be ignored when they are examined in the correct perspective. The chain of links connecting the appellant with the crime appears inconclusive. It is a settled legal proposition that, while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the case of the prosecution, must not prompt the court to reject the evidence thus provided, in its entirety. The irrelevant details which do not in any way corrode the credibility of a witness, cannot be labeled as omissions or contradictions. Therefore, the courts must be cautious and very particular, in their exercise of appreciating evidence. The approach to be adopted is, if the evidence of a witness is read in its entirety, and the same appears to have in

it, a ring of truth, then it may become necessary for the court to scrutinize the evidence more particularly, keeping in mind the deficiencies, drawbacks and infirmities pointed out in the said evidence as a whole, and evaluate them separately, to determine whether the same are completely against the nature of the evidence provided by the witnesses, and whether the validity of such evidence is shaken by virtue of such evaluation, rendering it unworthy of belief. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." It is in fact, the entirety of the situation which must be taken into consideration. While appreciating the evidence, the court must not attach undue importance to minor discrepancies, rather must consider broad spectrum of the prosecution version. The discrepancies may be due to normal errors of perception or observation or due to lapse of memory or due to faulty or stereo-type investigation. After exercising such care and caution, and sifting through the evidence to separate truth from untruth, embellishments and improvements, the court must determine whether the residuary evidence is sufficient to convict the accused. (Vide: Bihari Nath Goswami v. Shiv Kumar Singh & Ors., (2004) 9 SCC 186; Vijay @ Chinee v. State of Madhya Pradesh, (2010) 8 SCC 191; and Sampath Kumar v. Inspector of Police, Krishnagiri, AIR 2012 SC 1249).

In Kehar Singh & Ors. v. State (Delhi Admn.), AIR 1988 SC 1883, this Court has held that if the discrepancies are material it would be safer to err in acquitting than in convicting the accused.

39. In Subhash v. State of Haryana, AIR 2011 SC 349, this Court has held that a significant omission in the statement of a witness recorded under Section 161 Cr.P.C. may amount to a major contradiction. However, it may depend upon the facts of case and in case of a material contradiction the accused becomes entitled for benefit of doubt and thus acquittal.

40. Thus, we find force in the submissions advanced by Ms. Makhija, learned Amicus Curiae, that evidence produced by the prosecution had been very shaky and the chain of links connecting the appellant with the crime appears inconclusive. The circumstantial evidence is completely wanting in this respect. To accept the description of the evidence collected as flimsy, or no evidence would be too short for convicting the appellant for the offence, as many issues/circumstances virtually remained unexplained.

In view of the above, we have no hesitation in holding that the prosecution failed to prove the case against the appellant beyond reasonable doubt and thus, he becomes entitled for benefit of doubt. Thus, the appeals succeed and are allowed. The conviction and sentence imposed on the appellant are set aside. The appellant be released forthwith unless wanted in some other case.

Before parting with the case, we record our appreciation to Ms. Vibha Datta Makhija, Advocate who rendered invaluable service as Amicus Curiae in disposal of these appeals.

.....J. (Dr. B.S. CHAUHAN)
.....J. (FAKKIR MOHAMED IBRAHIM KALIFULLA) NEW DELHI;

May 6, 2013.