Lochan Shrivas vs The State Of Chhattisgarh on 14 December, 2021

Author: B.R. Gavai

Bench: B.V. Nagarathna, B.R. Gavai, L. Nageswara Rao

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 499–500 OF 2018

LOCHAN SHRIVAS ...APPELLANT(S)

VERSUS

THE STATE OF CHHATTISGARH ...RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. The appellant has approached this Court being aggrieved by the judgment and order passed by the High Court of Chhattisgarh, Bilaspur dated 17 th November 2017, thereby dismissing the appeal preferred by the appellant challenging the judgment and order dated 17 th June 2016, passed by the Additional Sessions Judge, Fast Track Court, Raigarh (hereinafter referred to as the "trial judge") vide which the trial judge convicted the appellant for the offences punishable under Sections 363, 366, 376(2)(i), 377, 201, 302 read with Section 376A of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC") and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the "POCSO Act"). Vide the same judgment and order, the appellant was sentenced to death for the offence punishable under Section 302 of the IPC. For the other offences for which the appellant was found guilty, sentences of rigorous imprisonment of 3 years, 5 years, 7 years and life imprisonment have been awarded to the appellant. The trial judge has also made a reference being Cr. Ref. No. 1 of 2016 to the High Court under Section 366 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") for confirmation of death penalty. Vide the impugned judgment and order, the High Court while dismissing the appeal of the appellant, has confirmed the death penalty.

2. The prosecution case in brief is thus:

Complainant–PW–1 Gudiya Parveen w/o PW–2–Mohd.

Armaan resided at D–29, 4th Floor, Bajrangdheepa Colony with her husband and her minor victim daughter aged 3 years. At about 10.00 am, on 24 th February 2016, she had gone downstairs to wash clothes. At that time, she called her husband for bathing the victim. Her husband told her that the victim had gone downstairs to play. PW–1 then went upstairs and told her husband that the victim was not downstairs. Thereafter, her husband (PW–2) and she started looking for the victim, but the victim was not found anywhere. Since the victim could not be found, PW–1 went to Jutemill Police Station and lodged a report of the victim going missing. They continued the search and ultimately returned to their house at around 03.00–04.00 am in the morning.

PW–3–Mohd. Sahid alias Raju Khan told her that appellant–Lochan Shrivas, a resident of D–15 in the same building had said that if they would allow him to conduct a worship, he could find their child in an hour. Therefore, they agreed to conduct the worship. After the worship, the appellant informed them that the child was tied and kept inside a sack in the bushes near a pole beside the road in Amlibhauna. On this, PW–1 and other prosecution witnesses developed a suspicion, and as such, PW–3 informed the police. The police interrogated the appellant, who confessed his crime before them. Thereafter, on a memorandum under Section 27 of the Indian Evidence Act, 1872 (hereinafter referred to as the “Evidence Act”), a sack from the bushes was recovered, wherein the dead body of the deceased soaked in blood was found (Ex.–P.12). On the basis of the oral report (Ex.–P.1) of PW–1, a First Information Report (hereinafter referred to as “FIR”) (Ex.–P.36) came to be registered for the offence punishable under Section 363 of the IPC. After completion of investigation, a charge–sheet came to be filed before the trial judge for the offences punishable under Sections 363, 376, 377, 302, 201 of the IPC and Section 6 of the POCSO Act.

3. Charges came to be framed for the offences punishable under Sections 363, 376(2)(i), 377, 201, 302 read with Section 376A of the IPC and Section 6 of the POCSO Act. The accused pleaded to be not guilty and claimed to be tried. At the conclusion of the trial, the trial judge recorded the aforesaid order of conviction and sentence. Being aggrieved thereby, an appeal was preferred by the appellant and also a reference was made by the trial judge under Section 366 of the Cr.P.C. By the impugned judgment and order, the High Court dismissed the appeal filed by the appellant and confirmed the death sentence. Hence, the present appeals.

4. We have heard Shri Anand Grover, learned Senior Counsel appearing on behalf of the appellant and Shri Nishanth Patil, learned counsel appearing on behalf of the respondent–State.

5. Shri Anand Grover, learned Senior Counsel appearing on behalf of the appellant submitted that the present case is a case based on circumstantial evidence. He submitted that the prosecution has utterly failed to establish the incriminating circumstances and in any case, failed to establish the

chain of events, which leads to no other conclusion than the guilt of the accused. He submitted that there are many missing links in the prosecution case, and as such, the judgment and order of conviction as recorded by the trial judge and confirmed by the High Court is not sustainable in law. The learned Senior Counsel submitted that the main incriminating circumstance, on which the prosecution relies, is the recovery of the dead body of the victim. He submitted that the recovery is from an open place accessible to one and all. He therefore submitted that the said recovery is of no assistance to the prosecution case. He further submitted that the alleged recovery of black jeans half pant (Ex.P.15) of the deceased and the white gamchha (Ex.P.16) is from a place accessible to one and all. He submitted that in any case, the Forensic Science Laboratory (hereinafter referred to as the "FSL") reports are inconclusive, and therefore, the prosecution has failed to establish the link between the recovered materials and the crime.

6. Shri Grover submitted that the evidence of PW-9 Chameli Sarthi, Constable would reveal that she had gone to the spot from where the body of the victim was alleged to have been recovered at around 06.00 am. It is thus clear that the police were already aware about the place from where the body was alleged to have been recovered on a memorandum under Section 27 of the Evidence Act.

7. He further submitted that the finger nails of the appellant were cut by a barber PW-8 Kishore Shrivas and not by any forensic expert. He therefore submitted that the circumstance of finding human blood on the said nails is of no use to the prosecution case. This is particularly so in view of the long delay in seizure of the nail samples and sending them to the FSL. The learned Senior Counsel further submitted that it is improbable that the prosecution could have called the photographer at such a short notice. He submitted that the alleged recovery is at around 08.00 am which are not the business hours, and as such, the very evidence regarding photography and videography becomes doubtful.

8. The learned Senior Counsel for the appellant further submitted that the entire record would reveal that the appellant was not given an opportunity of meaningfully defending the case. He submitted that since the Raigarh District Bar Association had taken a resolution that no lawyer from the Bar would appear for the appellant, it was difficult for him to engage a lawyer. The lawyer appointed by the court from a list of panel lawyers, also was not given sufficient opportunity to defend the case of the appellant. He submitted that the evidence of PWs 1 and 2, the mother and the father of the victim, were recorded on the very same day on which the lawyer was appointed for the appellant. He further submitted that the trial court recorded the judgment and order of conviction, and the sentence on the very same day without giving an appropriate opportunity to the appellant. The learned Senior Counsel therefore submitted that the prosecution has failed to prove the case beyond reasonable doubt and the appeals deserve to be allowed.

9. The learned Senior Counsel, in the alternative, would submit that in any case, the death penalty would not be warranted in the facts of the present case. He submitted that the trial court as well as the High Court has taken into consideration only the aspect of crime and they have not dealt with the aspect regarding the criminal. It is submitted that the trial court as well as the High Court has not taken into consideration the socio-economic background of the appellant so also the possibility of the appellant being reformed or rehabilitated. It is therefore submitted that the imposition of

death penalty in the facts of the present case is not at all warranted.

10. Shri Nishanth Patil, learned counsel appearing on behalf of the respondent-State, on the contrary, submitted that the prosecution has established the case beyond reasonable doubt. It is submitted that the prosecution has proved all the incriminating circumstances beyond reasonable doubt. He further submitted that the prosecution has also established the link of proved circumstances, which leads to no other conclusion than the guilt of the accused.

11. Shri Patil further submitted that the appellant has committed a heinous act of rape on a minor girl and then brutally killed her, and as such, the case warrants for no other penalty than the death penalty.

12. With the assistance of the learned counsel for the parties, we have scrutinized the entire evidence on record in depth. Normally, this Court while exercising its jurisdiction under Article 136 of the Constitution of India, would not go into detailed analysis of the evidence. However, since in the present case, the trial court has imposed death penalty, which is confirmed by the High Court, we have scrutinized the evidence minutely.

13. The law with regard to conviction in cases based on circumstantial evidence has been very well crystalised in the celebrated case of Hanumant, son of Govind Nargundkar v. State of Madhya Pradesh1. A three-Judge Bench of this Court, speaking through Mehr Chand Mahajan, J., observed thus:

> 1 1952 SCR 1091 "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act much have been done by the accused."

14. It is thus clear that for resting a conviction in the case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn, should be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis, but the one proposed to be proved. There must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused, and it must be such as to show that within all human probabilities, the act must have been done by the accused.

15. Subsequently, this Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra2, observed thus:

> "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 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047] "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions." (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any 2 (1984) 4 SCC 116 other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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

16. As has been held by this Court, in a case of circumstantial evidence, before the case can be said to be fully established against an accused, it is necessary that the circumstances from which the conclusion of guilt is to be drawn, should be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. They should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. They should exclude every hypothesis except the one to be proved. 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 probabilities, the act must have been done by the accused.

17. The aforesaid view has been consistently followed by this Court in a catena of decisions.

18. The circumstances, which the trial court has culled out in its judgment while holding that the prosecution has proved its case beyond reasonable doubt, are thus:

> "1. The accused telling PW5 Munni that he can tell the location of the missing victim in an hour if he does Pooja.

2. PW5 Munni telling PW3; Mo Sahid alias Raju Khan what the accused had told her as above.

3. PW3 Mo Sahid alias Raju Khan telling the victim's parents of the above conversation.

4. The deceased's parents PW1 Gudiya Parveen and PW2 Mo Armaan asking the accused to perform the Pooja.

5. The accused saying that the victim's body was in a gunny sack near an electricity pole on the side of the road in Amlibhauna.

6. PW3 Mo Sahid alias Raju Khan telling the police of the aforesaid claims by the accused.

7. Police questioning the accused and the accused going along with the police to locate the victim's dead body in a gunny sack in Amlibhauna.

8. The accused leading the police to recover the pillow and the towel from his home□

9. The accused leading the police to the rubbish dump where he had thrown the victim's pants.

10. Material used in a Pooja being recovered from the home of the victim

11. According to Ex P 46, the fact that blood was found under the accused's nails and that the victim's vaginal slide had traces of human sperm."

19. The High Court also by giving an elaborate reasoning has held that the prosecution has proved the chain of incriminating circumstances, which leads to no other conclusion than the guilt of the appellant.

20. We will now consider the evidence led on behalf of the prosecution to establish the incriminating circumstances against the appellant.

21. PW□1□Gudiya Parveen, mother of the victim has deposed that she lived in D□29, 4th Floor, Bajrangdheepa Colony. The appellant lived downstairs in D□15 in the same building. On 24th February 2016 at about 10.00 am, she had gone downstairs to wash clothes. She had called her husband for bathing the victim. However, her husband told her that the victim had gone downstairs to play. Thereafter, they searched for the victim but she was not found, and therefore, they went to Jutemill Police Station and lodged the report of the victim going missing. On the basis of the oral report (Ex.□P.1), an FIR (Ex.□P.36) came to be registered. The oral report (Ex.□P.1) is duly proved in the evidence of PW□1 whereas, the FIR (Ex.□P.36) has been proved in the evidence of PW□16□ Dinesh Bahidar, Assistant Sub□Inspector.

22. It could thus be seen that the first circumstance that the prosecution has proved, is that the victim went missing at around 10.00 am, and thereafter, they started searching for her. When the victim was not found anywhere, an oral report (Ex.P.1) came to be lodged at around 22.00 hours on 24th February 2016 on the basis of which, an FIR (Ex.P.36) came to be registered.

23. PW1, in her testimony, has further stated that she and her husband PW2 Mohd. Armaan tried to search for the child. Since she could not be found, they returned at around 03.00 04.00 am. When they returned home, Raju Khan (PW3) informed them that appellant Lochan Shrivas, a resident of D15, has stated that if they would allow him to conduct a worship, he could find the child in an hour. Then, PW1 agreed for conducting the worship. She arranged for the things required for worship – vermilion, lemons, earthen lamps, incense sticks and coal. After these things had been brought, the appellant performed the worship in the room of PW1. He had asked them to cover all the pictures of Allah by a cloth. After performing the worship, the appellant told them that the child was inside a sack in the bushes near a pole beside the road in Amlibhauna.

24. Similar is the evidence of PW2 Mohd. Armaan, the husband of PW1 and father of the victim. PW3 Raju Khan, who is a neighbour, had stated in his evidence that when they could not find the victim, they returned at around 03.00 03.30 am. He stated that when they returned, Munni alias Sarbari (PW5) told them that appellant Lochan Shrivas, who lived in D15 was telling her that the child could be traced by worship. Accordingly, the worship was performed, and after that, appellant Lochan said that the victim was inside a sack in the bushes near a pole beside Amlibhauna road.

25. PW5 Munni alias Sarbari, who is also a resident of Bajrangdheepa colony, stated that she had also joined for searching the victim. However, since the victim was not found, they returned. At about 03.00 03.30 am on 25 th February 2016, the appellant met her and said, “If you conduct worship, your child will be found.” She told the same to Raju Khan (PW3). Then, the appellant conducted worship and said that the deceased was inside a sack in the bushes near a pole beside the road in Amlibhauna.

26. It could thus be seen that the prosecution has proved beyond reasonable doubt that the appellant, on his own, told PW5 Munni alias Sarbari that if a worship was performed, the whereabouts of the victim could be found. PW5 Munni alias Sarbari informed this fact to PW3 Raju Khan, who in turn, informed the same to PWs 1 and 2. Accordingly, a worship came to be performed. After the worship was performed, the appellant told them that the victim could be found in a sack in the bushes near a pole beside the road in Amlibhauna.

27. PW19 Amit Patley, Sub Inspector, Investigating Officer (hereinafter referred to as the “IO”), has also seized the materials which were used for performing the worship (Ex.P.18). The said panchnama is witnessed by Raju Khan (PW

3). The said seizure panchnama therefore corroborates the ocular version of PWs 1, 2, 3 and 5.

It is thus clear that when PWs 1, 2, 3 and 5 returned to their place of residence, the appellant informed PW-5 that if they perform a worship, the deceased could be found. Accordingly, a worship was performed and after performing the said worship, the appellant said that the deceased could be found in a sack in the bushes near a pole beside the road in Amlibhauna. This circumstance could be an important circumstance for considering the conduct of the appellant under Section 8 of the Evidence Act. Reliance in this respect could be placed on the judgments of this Court in the cases of Prakash Chand v. State (Delhi Administration)3, Himachal Pradesh Administration v. Shri Om Prakash 4 and A.N. Venkatesh and Another v. State of Karnataka5.

28. The next and the most important circumstance on which the prosecution relies, is the recovery of dead body of the victim on a memorandum of the appellant under Section 27 of the Evidence Act. The evidence of PWs 1, 2, 3 and 5 3 (1979) 3 SCC 90 4 (1972) 1 SCC 249 5 (2005) 7 SCC 714 would reveal that immediately after the appellant performing worship and telling them that the victim was inside a sack in the bushes near a pole beside the road in Amlibhauna, a suspicion arose and Raju Khan (PW-3) immediately informed the police and the police arrived. The evidence of all the four witnesses is consistent in that regard. Amit Patley, IO(PW-19) also corroborated this fact with regard to the police receiving the said information. In his evidence, PW-19 stated that he registered the said information in Rojnamcha No.2 dated 25 th February 2016 at 06.10 am. The said Rojnamcha entry has been exhibited at Ex.-P.38 and its attested copy is at Ex.-P.38-C.

29. PW-19, in his evidence, stated that after receiving the information, he immediately went to the spot and took the appellant into his custody and interrogated him. He stated that the appellant, on being interrogated, stated thus:

> "The previous day on 24.02.2016, at about 10:00, he had been alone in his room. The deceased who lived in D-29 on the floor above his house was coming downstairs whom she persuaded and took into his room and closed his room from inside and got the pants worn by the deceased removed and forcibly made physical relation with her. Meanwhile, the deceased started crying loudly so he pressed the mouth and nose of the deceased with a pillow. By making physical relation, excessive bleeding started, seeing which he got nervous and thinking that the secret should not be revealed, he murdered the deceased by strangulating her and wipe the blood and the ejaculated sperm smeared on his penis with a towel kept in the room. He filled the dead body of the deceased in a plastic sack of lentil by twisting her hands and legs. He tied the bag with a plastic rope. He wore his clothes. He filled the pants worn by the deceased in a polythene and threw it from the balcony to the place where garbage is disposed and entering the room placed the dead body of the deceased that he had filled in a plastic sack, in a yellow bag. He locked the room, carried the bag in hands and went on foot to hide the dead body in a bush near electric pole at Amlibhouna road and stated of keeping the bag in his home on returning and of keeping the pillow with which he had pressed the nose and mouth of the deceased and the towel with which he had wiped the blood and semen on his penis, in his room and stated of getting the dead body of the deceased, her pants, pillow and towel recovered."

30. The memorandum statement under Section 27 of the Evidence Act was duly executed and the same was marked as Ex.P.11. The prosecution has examined PW-3 Raju Khan, who is a witness to the said memorandum statement.

31. PW-19 further stated that thereafter, in the presence of the witnesses, he recovered a blue plastic bag bearing a map of India and the text "No.1 Dal Best Quality Dal", which had been tied with a plastic rope. He got the bag cut open by Raju Khan (PW-3) in the presence of the father of the deceased (PW-2) and other witnesses. In the said sack, the dead body of the victim soaked in blood and in a naked condition was found. The body was identified by PW-2, who is the father of the deceased. The recovery panchnama is duly executed under Ex.P.12. The prosecution has relied on the evidence of PW-3, who was a panch witness to the said panchnama.

32. The said recovery on the memorandum of the appellant under Section 27 of the Evidence Act, has been attacked by the defence on the ground that the same is from an open place, accessible to one and all. In this respect, it is apposite to rely on the following observations of this Court in the case of State of Himachal Pradesh v. Jeet Singh6:

> "26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in 6 (1999) 4 SCC 370 the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances.

Until such article is disinterred, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others." It could thus be seen that this Court has held that what is relevant is not whether the place was accessible to others or not, but whether it was ordinarily visible to others. If the place at which the article hidden is such where only the person hiding it knows until he discloses that fact to any other person, then it will be immaterial whether the concealed place is accessible to others.

33. It will also be relevant to refer to the following observations of this Court in the case of John Pandian v. State represented by Inspector of Police, Tamil Nadu7:

> "57. It was then urged by the learned counsel that this was an open place and anybody could have planted veechu aruval. That appears to be a very remote possibility. Nobody can simply produce a veechu aruval planted under the 7 (2010) 14 SCC 129 thorny bush. The discovery appears to be credible. It has been accepted by both the courts below and we find no reason to discard it. This is apart from the

> fact that this weapon was sent to the forensic science laboratory (FSL) and it has been found stained with human blood. Though the blood group could not be ascertained, as the results were inconclusive, the accused had to give some explanation as to how the human blood came on this weapon. He gave none. This discovery would very positively further the prosecution case."

34. A perusal of the material placed on record would reveal that the dead body of the deceased was recovered on the basis of the information supplied by the appellant that he had concealed the body in a sack in the bushes near a pole beside the road in Amlibhauna. The evidence of PW-7 Krishna Kumar Jaiswal, Photographer would reveal that after he received the notice, he went to the spot and clicked the photographs (Ex. P.23). He has further stated that he has also made the videography of the entire procedure.

35. It will also be relevant to refer to the following observations made by the High Court in para (35) of the impugned judgment:

> "35. We have gone through the video movie prepared and after watching the video, we are of the view that the recovery of dead body was made from a place which cannot be said to be accessible to an ordinary person without prior knowledge as the body recovered was kept concealed in a gunny bag inside the shrubs situated at sufficient distance from the main road. In the statement under Section 313 CrPC, the accused/appellant failed to explain how he came to know that the deceased had been murdered and thrown in the shrubs after wrapping her in a gunny bag……." It could thus be seen that the High Court had itself viewed the video and on seeing the same, it was of the view that the recovery of the dead body was made from a place, which cannot be said to be accessible to an ordinary person without prior knowledge since the body recovered was kept concealed in a gunny bag inside the shrubs situated at sufficient distance from the main road.

36. Insofar as the reliance placed by the appellant on the judgment of this Court in the case of Krishan Mohar Singh Dugal v. State of Goa[8] is concerned, in the said case, the accused was convicted for the offence punishable under Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985, solely on the basis of recovery at the 8 (1999) 8 SCC 552 instance of the accused on the basis of memorandum statement under Section 27 of the Evidence Act. In the said case, the recovery was from a place under the coconut tree, which was accessible to one and all. It was not a case of concealment in a place, which was only within the knowledge of the person concealing it. In any event, in the said case, the conviction was solely on the basis of the said recovery and as such, was found to be untenable.

37. Insofar as the reliance placed by the appellant on the judgment of this Court in the case of Nilesh Dinkar Paradkar v. State of Maharashtra[9] is concerned, in the said case, the conviction was solely on the basis of identification by voice and as such, was not found to be tenable. As such, these cases would not be of any assistance to the case of the appellant.

38. It has been sought to be urged on behalf of the appellant that from the evidence of PW-9 Chameli Sarthi, it is clear that the police already knew about the place where the dead body was concealed. PW-9 had taken the dead body of the deceased to District Hospital, Raigarh. It will be 9 (2011) 4 SCC 143 apposite to refer to the relevant portion of the deposition of PW-9:

> "We went to the place of incident Amlibhowna at 6 a.m. from the outpost. From there, we directly went to the hospital with all. Today, I cannot state at what time we left the place of incident Amlibhowna. The witness now says, "Perhaps we left at 8-9 O' clock. Along with Prakash Tiwari, Sub-Inspector Amit Patle was also present with me and policemen from other police station were also present. Two person were going ahead taking the dead body in an auto-rickshaw, we were following by our bikes." PW-9 stated that she went to the place of incident Amlibhauna at 06.00 am from the outpost. It is to be noted that according to the evidence of PWs 1, 2, 3 and 19, PW-3 informed PW-19 about the incident at around 06.00 am. The said information was registered in the Rojnamcha at around 06.10 am. What is stated by this witness is that she went to Amlibhauna which is a locality. However, that by itself would not be sufficient to come to a conclusion that the police already knew about the place from where the dead body was recovered. She stated that she had left for the hospital at around 08.00-09.00 o'clock. The evidence of a witness cannot be read in piecemeal. The evidence has to be read as a whole. If the evidence of this witness is read as a whole, the attack on her evidence is not justified. In any case, the recovery of the body on the information given by the appellant, is duly proved by the memorandum of the appellant under Section 27 of the Evidence Act (Ex.-P.11) and the recovery panchnama (Ex.-P.12). That apart, the oral testimony of PWs 1, 2, 3, 5 and 19 corroborates the same.
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> 39. We are therefore of the considered view that the prosecution has proved beyond reasonable doubt that the recovery of the dead body of the deceased on the memorandum of the appellant under Section 27 of the Evidence Act, was from a place distinctly within the knowledge of the appellant.
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> 40. Another circumstance against the appellant is the recovery of the black jeans half pant of the deceased (Ex.-P.15) from the dumping area and the gamchha and pillow (Ex.-P.16) from the house of the appellant. PW-3 is a panch witness to the recovery of black jeans half pant (Ex.-P.15).

He is also a witness to the spot panchnama (Ex.-P.17) where the worship was conducted. It is further noted that on the gamchha seized from the house of the appellant, blood-stains were found. Much attack has been made by the defence on the ground that the FSL Report does not connect the appellant with the said blood found on gamchha. To consider this submission, we may gainfully refer to the following observations of this Court in the case of R. Shaji v. State of Kerala10:

> "30. It has been argued by the learned counsel for the appellant that as the blood group of the bloodstains found on the chopper could not be ascertained, the recovery

of the said chopper cannot be relied upon.

31. A failure by the serologist to detect the origin of the blood due to disintegration of the serum does not mean that the blood stuck on the axe could not have been human blood at all.

Sometimes it is possible, either because the stain is insufficient in itself, or due to haematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of the blood in question. However, in such a case, unless the doubt is of a reasonable dimension, which a judicially conscientious mind may entertain with some objectivity, no benefit can be claimed by the accused in this regard. Once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or non-matching of blood group(s) loses significance. (Vide Prabhu Babaji Navle v. State of Bombay [AIR 1956 SC 51 : 1956 Cri LJ 147] , Raghav Prapanna Tripathi v. State of U.P. [AIR 1963 SC 74 : (1963) 10 (2013) 14 SCC 266 1 Cri LJ 70] , State of Rajasthan v. Teja Ram [(1999) 3 SCC 507 : 1999 SCC (Cri) 436] , Gura Singh v. State of Rajasthan [(2001) 2 SCC 205 : 2001 SCC (Cri) 323 : AIR 2001 SC 330] , John Pandian v. State [(2010) 14 SCC 129 :

(2011) 3 SCC (Cri) 550] and Sunil Clifford Daniel v. State of Punjab [(2012) 11 SCC 205 :

(2013) 1 SCC (Cri) 438] .)

32. In view of the above, the Court finds that it is not possible to accept the submission that in the absence of a report regarding the origin of the blood, the accused cannot be convicted, for it is only because of the lapse of time that the blood could not be classified successfully. Therefore, no advantage can be conferred upon the accused to enable him to claim any benefit, and the report of disintegration of blood, etc. cannot be termed as a missing link, on the basis of which the chain of circumstances may be presumed to be broken."

41. The next circumstance is the finding of the blood-stains on the nail clipping of the appellant. PW-8 Kishore Shrivas is a barber. He has stated that on being called by the police, he cut the nails of both the hands of the appellant. The said nails were cut under the panchnama Ex.-P.19, which is signed by the said barber as well as PW-3. The said circumstance is attacked on the ground that the IO had not called the forensic team for seizure of the said nails.

However, even if this circumstance is excluded, we find that the other circumstances, which have been discussed in detail by us in the foregoing paragraphs, conclusively bring home the guilt of the appellant.

42. The panchnamas are sought to be attacked on the ground that PW-3 is the only panch witness to all these panchnamas. We are of the view that this contention deserves no merit in the light of the following observations of this Court in the case of Himachal Pradesh Administration (supra):

> "10. Further having held this it nonetheless said that there was no injunction against the same set of witnesses being present at the successive enquiries if nothing could be urged against them. In our view the evidence relating to recoveries is not similar to that contemplated under Section 103 of the Criminal Procedure Code where searches are required to be made in the presence of two or more inhabitants of the locality in which the place to be searched is situate. In an investigation under Section 157 the recoveries could be proved even by the solitary evidence of the Investigating Officer if his evidence could otherwise be believed. We cannot as a matter of law or practice lay down that where recoveries have to be effected from different places on the information furnished by the accused different sets of persons should be called in to witness them. In this case PW 2 and PW 8 who worked with the deceased were the proper persons to witness the recoveries as they could identify some of the things that were missing and also they could both speak to the information and the recovery made in consequence thereof as a continuous process. At any rate PW 2 who is alleged to be the most interested was not present at the time of the recovery of the dagger."

43. We are therefore of the considered view that the prosecution has established the following circumstances beyond reasonable doubt:

(i) The victim was reported missing and an FIR was lodged in this regard;

(ii) The appellant had claimed that he could disclose the whereabouts of the victim by performing a worship;

(iii) The said worship came to be conducted by the appellant in the early hours of 25th February 2016 in the presence of PWs 1, 2, 3 and 5 and the appellant disclosed to them that the dead body of the victim was inside a sack in the bushes near a pole beside the road in Amlibhauna;

(iv) A suspicion arose in the minds of PWs 1, 2, 3 and 5 and they immediately informed the police. The said information is recorded in Rojnamcha No. 2 under Ex.☐ P.38;

(v) Police immediately reached the spot and interrogated the appellant. On interrogation, a memorandum under Section 27 of the Evidence Act came to be recorded;

(vi) On the basis of memorandum of the appellant under Section 27 of the Evidence Act, the dead body of the victim (Ex.☐P.12) was recovered from a sack which was concealed by the appellant under the bushes from a place distinctly within his knowledge; and

(vii) On a memorandum of the appellant under Section 27 of the Evidence Act, a black jeans half pant of the victim (Ex.☐P.15) and a gamchha of the appellant (Ex.☐P.16), were recovered from the dumping area behind D Block in Nagar Nigam Colony and the house of the appellant respectively.

44. We are of the considered view that the aforesaid proven circumstances establish a chain of circumstances, which leads to no other conclusion than the guilt of the appellant. Apart from that, in the statement recorded under Section 313 Cr.P.C., though all these incriminating circumstances have been put to the appellant, he has not offered any explanation except saying that it is wrong and false. In this respect, we may refer to the following observations of this Court in the case of Sharad Birdhichand Sarda (supra):

> "151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this : where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.
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> 45. It is trite law that though the false explanation cannot be taken to complete a missing link in the chain of circumstances, it can surely be taken to fortify the conclusion of conviction recorded on the basis of the proven incriminating circumstances. We find that the non□explanation of the circumstances would fortify the finding, which is based on the chain of incriminating circumstances that leads to no other conclusion than the guilt of the appellant.
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> 46. An important aspect arises for consideration in the present appeals so also in the various other appeals where the accused is not given an appropriate opportunity of defending the case. In the present case, we find that the charges were framed on 6th May 2016. On 6th June 2016, the accused appeared before the court and submitted that he was not competent to engage a lawyer at his own cost. As such, the trial judge appointed Shri Kamlesh Saraf from the Panel as the lawyer to represent the accused. Immediately on the next day, the evidence of PWs 3 to 7 were recorded.

The trial judge passed the judgment and order of conviction on 17th June 2016 and also awarded death penalty on the same day. We find that though a speedy trial is desirable, however, sufficient time ought to have been given to the counsel for the accused to prepare for the case after he was appointed. Even insofar as the award of sentence is concerned, some period ought to have been given between the date of conviction and the award of sentence, specifically when a death penalty was awarded. However, from the evidence which we have scrutinized in depth, we do not find that any prejudice was caused to the accused inasmuch as the witnesses have been cross□examined in detail by the lawyer appointed by the court.

47. That leaves us with the question of sentence. We will have to consider as to whether the capital punishment in the present case is warranted or not.

48. Recently, this Court in the case of Mohd. Mannan alias Abdul Mannan v. State of Bihar11, after considering earlier judgments of this Court on the present issue in the cases of Bachan Singh v. State of Punjab12 and Machhi Singh and Others v. State of Punjab13, observed thus:

> "72. The proposition of law which emerges from the judgments referred to above is itself death sentence cannot be imposed except in the rarest of rare cases, for which special reasons have to be recorded, as mandated in Section 354(3) of the Criminal Procedure Code. In deciding whether a case falls within the category of the rarest of rare, the brutality, and/or the gruesome and/or heinous nature of the crime is not the sole criterion. It is not just the crime which the Court is to take into consideration, but also the criminal, the state of his mind, his socio□economic background, etc. Awarding death sentence is an exception, and life imprisonment is the rule."

49. This Bench, recently, in the case of Mofil Khan and Another v. The State of Jharkhand14, has observed thus:

> 11 (2019) 16 SCC 584 12 (1980) 2 SCC 684 13 (1983) 3 SCC 470 14 RP(Criminal) No. 641/2015 in Criminal Appeal No.1795/2009 dated 26.11.2021 "8. One of the mitigating circumstances is the probability of the accused being reformed and rehabilitated. The State is under a duty to procure evidence to establish that there is no possibility of reformation and rehabilitation of the accused. Death sentence ought not to be imposed, save in the rarest of the rare cases when the alternative option of a lesser punishment is unquestionably foreclosed (See:

Bachan Singh v. State of Punjab (1980) 2 SCC

684). To satisfy that the sentencing aim of reformation is unachievable, rendering life imprisonment completely futile, the Court will have to highlight clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the Court focuses on the circumstances relating to the criminal, along with other circumstances (See: Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498). In Rajendra Pralhadrao Wasnik v. State of Maharashtra (2019) 12 SCC 460, this Court dealt with the review of a judgment of this Court confirming death sentence and observed as under:

> "45. The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the "special reasons" requirement of Section 354(3) CrPC and ought not to be taken lightly since it involves snuffing out the life of a person. To effectuate this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated. This can be achieved by bringing on record, inter alia, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence

about his mental make-up, contact with his family and so on.

Similarly, the convict can produce evidence on these issues as well.""

50. In the present case, it is to be noted that the trial court had convicted the appellant and imposed death penalty on the very same day. The trial court as well as the High Court has only taken into consideration the crime but they have not taken into consideration the criminal, his state of mind, his socio-economic background, etc. At this juncture, it will be relevant to refer to the following observations of this Court in the case of Rajendra Pralhadrao Wasnik v. State of Maharashtra15:

> "47. Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasised. Until Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] , the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] placed the 15 (2019) 12 SCC 460 sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict.

Despite the view expressed by the Constitution Bench, there have been several instances, some of which have been pointed out in Bariyar [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150] and in Sangeet v. State of Haryana [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in Sangeet [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] "In the sentencing process, both the crime and the criminal are equally important." Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be undertaken. The process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible."

51. In view of the settled legal position, it is our bounden duty to take into consideration the probability of the accused being reformed and rehabilitated. It is also our duty to take into consideration not only the crime but also the criminal, his state of mind and his socio-economic conditions.

52. The appellant is a young person, who was 23 years old at the time of commission of the offence. He comes from a rural background. The State has not placed any evidence to show that there is no possibility with respect to reformation and the rehabilitation of the accused. The High Court as well as the trial court also has not taken into consideration this aspect of the matter. The appellant has

placed on record the affidavits of Leeladhar Shrivas, younger brother of the appellant as well as Ghasanin Shrivas, elder sister of the appellant. A perusal of the affidavits would reveal that the appellant comes from a small village called Pusalda in Raigarh district of Chhattisgarh. His father was earning his livelihood as a barber. The appellant was studious and hard□working. He did really well at school and made consistent efforts to bring the family out of poverty. The conduct of the appellant in the prison has been found to be satisfactory. There are no criminal antecedents. It is the first offence committed by the appellant. No doubt, a heinous one. The appellant is not a hardened criminal. It therefore cannot be said that there is no possibility of the appellant being reformed and rehabilitated foreclosing the alternative option of a lesser sentence and making imposition of death sentence imperative.

53. A bench consisting of three Judges of this Court had an occasion to consider similar facts in the case of Sunil v. State of Madhya Pradesh16. In the said case too, the appellant□accused was around 25 years of age who had taken away a minor girl. The accused had committed rape on the said minor and caused her death due to asphyxia caused by strangulation. The trial court had sentenced the accused for the offences punishable under Sections 363, 367, 376(2)(f) and 302 of the IPC and awarded him death penalty. The same was upheld by the High Court. In appeal, this Court held thus:

> "12. In the present case, we do not find that the requirements spelt out in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] and the pronouncements thereafter had engaged the attention of either of the courts. In the present case, one of the compelling/mitigating circumstances that must 16 (2017) 4 SCC 393 be acknowledged in favour of the appellant□accused is the young age at which he had committed the crime. The fact that the accused can be reformed and rehabilitated; the probability that the accused would not commit similar criminal acts; that the accused would not be a continuing threat to the society, are the other circumstances which could not but have been ignored by the learned trial court and the High Court.
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> 13. We have considered the matter in the light of the above. On such consideration, we are of the view that in the present case, the ends of justice would be met if we commute the sentence of death into one of life imprisonment. We order accordingly. The punishments awarded for the offences under Sections 363, 367 and 376(2)(f) IPC by the learned trial court and affirmed by the High Court are maintained."

54. We are also inclined to adopt the same reasoning and follow the same course as adopted by this Court in the case of Sunil (supra). The appeals are therefore partly allowed. The judgment and order of conviction for the offences punishable under Sections 363, 366, 376(2)(i), 377, 201, 302 read with Section 376A of the IPC and Section 6 of the POCSO Act is maintained. However, the death penalty imposed on the appellant under Section 302 IPC is commuted to life imprisonment. The sentences awarded for the rest of the offences by the trial court as affirmed by the High Court, are maintained.

55. Before we part with the judgment, we must appreciate the valuable assistance rendered by Shri Anand Grover, learned Senior Counsel appearing on behalf of the appellant and Shri Nishanth Patil, learned counsel appearing on behalf of the respondent□State.

……..……..…….J. [L. NAGESWARA RAO] ……..……..…….J. [B.R. GAVAI] .....J. [B.V. NAGARATHNA] NEW DELHI;

DECEMBER 14, 2021.