Supreme Court of India
Shankarlal Gyarasilal Dixit vs State Of Maharashtra on 17 December, 1980
Equivalent citations: 1981 AIR 765, 1981 SCR (2) 384
Author: Y Chandrachud
Bench: Chandrachud, Y.V. ((Cj)

PETITIONER:
SHANKARLAL GYARASILAL DIXIT

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT17/12/1980

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
SEN, A.P. (J)
ISLAM, BAHARUL (J)

CITATION:
1981 AIR 765 1981 SCR (2) 384
1981 SCC (2) 35
CITATOR INFO :
R 1984 SC1622 (156,159,161,173)

ACT:
Evidence-Circumstantial evidence-Tests to be applied while evaluating circumstantial evidence-Falsity of defence-If could take the place of proof of facts- "Shadow of doubt" meaning of.

HEADNOTE:
The prosecution alleged that when the deceased girl did not return home for quite some time from play her mother, alongwith two neighbouring women went in search of her. Believing that she might be in the appellant's house. they repeatedly knocked at the door which was locked from inside, but there was no response from within. At that moment P.W. 5 who lived next to the appellant's house, arrived on the scene. P.W. 5 climbed over the roof of his house, entered the appellant's house through the open court-yard and opened the front door. On entering the house, according to the prosecution, the three ladies saw the appellant lying on a cot in the court-yard with a cover pulled upto his face and the dead body of the child in the bath room, wrapped in a blanket. The mother lifted her dead child threw the blanket

and ran home with the dead body. The girl's underpant was missing.

The dead child had injuries on her person and her private parts were swollen. Postmortem examination of the dead body showed that the vagina of the child was lacerated and her hymen ruptured and that death occurred as a result of asphyxia. Examination of the appellant showed that there was a mark of dry semen on his underpant and marks of bruises over his left thigh. There was no smegma around the corona glandis and there was a small abrasion over the base of his glans-penis which had a bluish discolouration on it.

The appellant pleaded that he knew nothing of the crime and that he was falsely implicated in the murder.

The appellant was convicted and sentenced for offences under sections 376 and 302 I.P.C. by the trial court and the conviction and sentence had been confirmed by the High Court.

Allowing the appeal,

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HELD : In a case of circumstantial evidence it is necessary for the Court to find whether the circumstances on which the prosecution relies are established by satisfactory evidence, often described as clear and cogent and whether the circumstances are of such a nature as to exclude every other hypothesis save the one that the appellant is guilty of the offences of which he is charged. In other words, the circumstances have to be of such a nature as to be consistent with the sole hypothesis that the accused is guilty of the crime imputed to him. [390 B-C]

It is not necessary that in every case depending on circumstantial evidence, the whole of the law governing cases of circumstantial evidence should be set
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out in the judgment. Legal principles are not magic incantations. Their importance lies more in their application to a given set of facts than in their recital in the judgment. The simple expectation is that the judgment must show that the finding of guilt if any has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis. [395D-E]

In the instant case the prosecution story that the appellant was not on good terms with his mother, brothers and wife, that he was living alone in the house and that on the day of occurrence the young school boys who were his tenants were not in the house and that, therefore, he was all alone is proved. That P.W. 5 climbed over the roof of his house, entered the appellant's house and opened the front door is also proved. [390H]

But it is impossible to say that the appellant was in the house when P.W. 5 and the three ladies entered the house. None of the four persons made any attempt to elicit any information from the appellant about the presence of the

dead body in the bath room though it was alleged that everyone saw him lying on a cot in the court yard. Even if the ladies would not exchange a single word with him, P.W. 5 would have instinctively enquired from him as to how the dead body of the child was lying in the bath room. P.W. 5 categorically stated that he had no talk with the appellant at all. His claim that he called out to the appellant to open the door but that he declined to do so was a clear improvement over what he narrated to the police immediately after the incident. [392A-H]

Secondly the girl's father did not inform the police, either when he went to the police station for the first time or when he went there a second time to record the first information report, that the appellant was present in the house when the ladies entered it. In the statement made to the police immediately after the incident all that he stated was that the girl had died a mysterious death. The disclosure made by him to police in his complaint leaves no manner of doubt that the appellant was not present in his house at the time of the recovery of the dead body. In his cross-examination he admitted that his wife did not tell him that it was the appellant who killed their daughter and that the particular portion in the F.I.R. in which it was stated that his wife had told him that their daughter was killed by the appellant was not correctly recorded. [393A-B]

Once the crucial link in the chain of circumstances that the appellant was in the house at the time when the dead body was discovered snaps the entire case would have to rest on slender tit bits. [394B]

The course of contemporaneous and subsequent events strengthens the inference that the appellant was not in the house when the dead body was discovered. The police inspector who visited the house for making the panchnama of the scene of the offence did not state whether the house was open or locked when he and the punchas entered it. If the appellant's complicity in the crime was suspected, attempts would have been made to arrest him immediately. It is not known as to who arrested him and from where and in what circumstances. All that was stated was that the appellant was produced before him in the course of the day. [393D-F]

It is improbable that the appellant would have kept the underpant of the child under his pillow while escaping from the house. The discovery of a blood
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stain on the appellant's pant and of a dry stain of semen on his underpant are circumstances far too feeble to establish that the appellant raped or murdered the girl. Absence of smegma around the appellant's corona glandis would not necessarily establish that he had a recent intercourse nor do the other circumstances like bruises on the thigh establish his involvement in the crime. If the girl was raped she was raped without resistance. [394E-F]

The argument of the prosecution that the total

ignorance of the incident pleaded by the appellant is false and would itself furnish a link in the chain of caution is without substance because falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance if other circumstances point unfailingly to the guilt of the accused. [395A-B]

The High Court was in error in saying that what the Court has to consider is whether the cumulative effect of the circumstances establishes the guilt of the accused beyond the "shadow of doubt". "Shadow of doubt" even in cases which depend on direct evidence is shadow of "reasonable' doubt. In its practical application the test which requires the exclusion of other alternative hypotheses is far more rigorous than the test of proof beyond reasonable doubt. Secondly, the High Court's view that such a person as the appellant could not be an asset to his wife and children and for that reason should be awarded the sentence of death is not correct because unfaithful husbands, unchaste wives and unruly children are not for that reason to be sentenced to death if they commit murders unconnected with the state of their equation with their family and friends. The passing of the sentence of death must elicit the greatest concern and solicitude of the Judge because, that is one sentence which cannot be recalled. [395F-G, 396H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 766 of 1980.

Appeal by Special Leave from the Judgment and Order dated 27/ 28-2-80 of the Bombay High Court (Nagpur Bench) in Criminal Appeal No. 331/79 and confirmation case No. 3 of 1979.

M. R. Daga, R. A. Gupta and N. P. Paliwal for the Appellant.

H. R. Khanna and M. N. Shroff, for the Respondent. The Judgment of the Court was delivered by CHANDRACHUD, C. J. The appellant Shankarlal Gyarasilal Dixit who is 30 years of age, was convicted by the learned Additional Sessions Judge, Akola, for offences under sections 376 and 302 of the Indian Penal Code on the charge that on December 10, 1978 he raped a five year old girl called Sunita and thereafter committed her murder. He was sentenced to rigorous imprisonment for 7 years for the offence of rape and to death for the offence of murder. The order of conviction and sentence having been confirmed by a Division Bench of the Bombay High Court by its judgment dated February 27-28, 1980, he has filed this appeal by special leave.

The appellant lives in a locality called Marwadipura in the town of Karanja, District Akola. His house

is situated near a temple called Gopal Mandir, and a little beyond the temple is a public well. Ramrao Wagh, the father of the deceased Sunita, used to reside in a house near about the well.

On December 10, 1978 at about 10-30 a.m., Sunita's mother Renukabai, went to the well for fetching water. Sunita accompanied her. Renukabai returned after a little while but Sunita, who was playing with some children, stayed back. She did not come home for quite some time and feeling concerned, Renukabai went in search of her. Unable to find the girl, she went back to her house and told her neighbours, Shilabai Deo and Shobhabai Waghode, that Sunita was missing. The three ladies thereafter went in search of Sunita. Believing that she might be in the appellant's house, they knocked at his door repeatedly. The door was bolted from inside but there was no response from within. As the ladies were running out of their guesses and patience, a teacher called Shrinarayan Sharma, who lived in a house next to the appellant's, arrived on the scene. Sharma climbed over the roof of his house, entered the appellant's house through an open courtyard and opened the front door. The three ladies thereafter entered the house when, it is alleged, they saw the appellant sleeping on a cot in the court-yard, with a cover pulled upto his face. Sunita was lying still and motionless in the bath-room, wrapped in a blanket. Renukabai lifted her dead child, threw the blanket and ran home. Sunita's underpant was missing.

Soon thereafter, Renukabai's husband Ramrao Wagh returned from the bazar at about 12-45 p.m., and learned from her that Sunita's dead body was found in the appellant's house. Sunita had injuries on her person and her private parts were swollen. Ramrao went to the police station and informed the police of the mysterious death of his daughter. He returned to his house with the police and after about half an hour, he went again to the police station and lodged the First Information Report (Exhibit

11), on the basis of which offences were registered against the appellant under sections 376 and 302 of the Penal Code.

P.S.I. Ramdas Katke gave directions for the arrest of the appellant, held an inquest on the dead body of Sunita, sent the dead body for post-mortem examination and went to the appellant's house. From there, he seized a blood-stained tile of the flooring of a room and a blood-stained blanket which was lying in the bath-room. There was a cot in the court-yard of the house and under a pillow, which was lying on that cot, was found a child's underpant. That too was seized.

The appellant was thereafter arrested and on being produced before the investigating officer, he was sent for medical examination.

Dr. S. J. Santani, Assistant Surgeon of the Karanja Municipal Hospital, who performed the post-mortem examination on the dead body of Sunita found six external injuries on her person. Her vagina was lacerated and her hymen was ruptured. From these symptoms Dr. Santani concluded that the girl was raped. From the other injuries, he concluded that she died of asphyxia, probably due to tracheal compression.

Dr. Santani examined the appellant on the same day at 9-00 p.m. The appellant had put on two full-pants, one on top of the other. His underpant was suspected to bear the mark of dried semen. There were marks of bruises over his left thigh, there was no smegma around the corona glandis and there was a small abrasion over the base of his glans- penis which had a bluish discolouration on it.

The defence of the appellant was one of simple denial. He stated that he was falsely implicated in the case at the instance of his brother, mother and his neighbour Shrinarayan Sharma.

There can be no doubt that the deceased Sunita died a homicidal death. The post-mortem report prepared by Dr. Santani shows that she had a contusion over the left cheek, a contusion with soft red bruise and abrasions over the whole of the anterior aspect of the neck, small bruises and abrasions over the lips and mouth, an abrasion over the chest, an abrasion over the right shoulder and an incised wound behind the right ear, below the mastoid process. These injuries, according to Dr. Santani, were sufficient in the ordinary course of nature to cause death.

There is also no reason to doubt that Sunita was raped or at least attempted to be raped before being murdered. The evidence of Dr. Santani shows that her vagina was lacerated and her hymen was ruptured. These are strong indications of her being subjected to a sexual assault. The inquest panchanama shows that her vagina was swollen and a whitish fluid and blood were coming out of it. The evidence of Renukabai and Shilabai that Sunita's underpant was missing points in the same direction.

The important question for determination is whether the appellant can be held guilty for either or both of these offences. There is no direct evidence, in the sense of an eye-witness account, to connect the appellant with the crime. The prosecution, however, relies on the following circumstances in order to establish the charges of rape and murder levelled against him :

(1) The dead body of Sunita was found in the house of the appellant;

(2) The appellant was residing in the house all alone at the relevant time;

(3) Renukabai (PW 2), Shilabai (PW 3) and Shobhabai knocked at the door of the appellant several times and though the door was bolted from inside, there was no response from within;

(4) Shrinarayan Sharma (PW 5), a next-door neighbour, climbed over the roof of his house and seeing that the appellant was sleeping on a cot in the court- yard, he called out for him. On hearing the call, the appellant turned his side and said that he would not open the door;

(5) Shrinarayan Sharma entered the appellant's house and opened the door whereupon Renukabai, Shilabai and Shobhabai went in. They saw the dead body of Sunita lying in a bath-room and the appellant sleeping on a cot in the courtyard of the house; (6) At the time when Sharma and the three ladies entered the house, no

other person apart from the appellant was in the house;

(7) In spite of the all-round commotion and the discovery of a dead body from his house, the appellant continued to lie unconcerned on the cot. He expressed no surprise, indeed no reaction at all; nor did he challenge or ask any of the four "intruders" as to why one of them entered his house from the roof and the others rushed in to look out for something;

(8) Sunita's underpant was later found under a pillow which was lying on the cot on which the appellant was sleeping;

(9) A human blood-stain of B Group was found on the appellant's pant. Sunita's blood belonged to B Group;

(10) A stain of semen was found on the underpant of the appellant;

(11) There was no smegma around the appellant's corona glandis; there was a small abrasion over the base of his glans penis which had a bluish discolouration; and there were bruises over his right thigh; and (12) The plea of the appellant that he knew nothing of the crime and that he was involved falsely at the instance of his mother, brother and the neighbour Sharma is patently false.

Since this is a case of circumstantial evidence, it is necessary to find whether the circumstances on which the prosecution relies are established by satisfactory evidence, often described as 'clear and cogent' and secondly, whether the circumstances are of such a nature as to exclude every other hypothesis save the one that the appellant is guilty of the offences of which he is charged. In other words, the circumstances have to be of such a nature as to be consistent with the sole hypothesis that the accused is guilty of the crime imputed to him.

There is credible evidence in support of the first circumstance out of the 12 circumstances enumerated above. The evidence of Renukabai (PW 2), Shilabai (PW 3) and Shrinarayan Sharma (PW 5) proves that when they entered the appellant's house they saw the dead body of Sunita lying in a bath-room of the house. The dead body was wrapped in a blanket which Renukabai, the mother of Sunita, discarded while removing Sunita to her own house. The blanket, which bore a few stains of human blood was seized by the police from the appellant's house when they made a panchanama of the scene of offence.

As regards the second circumstance, the evidence of Navalkishore Dixit (PW 8), who is the younger brother of the appellant, shows that after the death of their father on May 1,1978, the appellant started picking up quarrels with the family members, trying to screw money from them for his vices. He beat Navalkishore on November 30 and on December 7 he assaulted their mother. On December 8, Navalkishore left the house with the mother and they went to live with a person called Balkisan Banga. Thus, the only two other members of the family who used to live in the house along with the appellant had left the house two days before the incident. The appellant's wife and their children had

already started residing separately from him in the house of the wife's father in the same town of Karanja.

A few young village boys who were residing at Karanja for their schooling were occupying a part of the appellant's house as his tenants. But the evidence of Shilabai (PW 3) who was a tenant of the appellant in another part of the house, shows that the boys had gone to their village, Dapura, over the week-end. The incident happened on December 10, 1978 which was a Sunday. Thus, there is enough evidence to show that the appellant was living by himself in his house on the date of the incident. The other members of his family had virtually deserted him and his school-boy tenants had gone to their village which was a short distance away from Karanja.

The evidence as regards the third circumstance may also safely be accepted. Renukabai (PW 2) and Shilabai (PW 3) knocked at the appellant's door repeatedly but the door was bolted from inside and there was no response to their request that the door be opened. Plainly, the reason why Shrinarayan Sharma (PW 5) had to climb over the roof of his house for the purpose of entering the court-yard of the appellant's house was that the ladies were unable to make any headway.

A part of the fourth circumstance is easy to accept as proved because there can be no doubt that Shrinarayan Sharma climbed over the roof of his adjoining house and entered the appellant's house. Shrinarayan Sharma is a cousin of the appellant and his testimony on this part of the case accords with the broad probabilities of human affairs.

But though it is true that Shrinarayan Sharma climbed over the roof of his house for the purpose of entering the appellant's house, it seems to us impossible to accept his claim that he saw the appellant sleeping on a cot in the court-yard, that he called out for him and that on hearing the call, the appellant merely turned his side and said that he will not open the door. That takes us to the consideration of what we consider to be the most important link in the chain of circumstances implicating the appellant. The focal point of the case is that the appellant was present in his house while the dead body of Sunita was lying in the bath-room. A part of circumstance (4) and the 5th circumstance relate to the question as to whether the appellant was sleeping on a cot in the court-yard of his house whilst the dead body of Sunita was lying in the bath- room.

There are several reasons which make it impossible to believe that the appellant was in the house when Shrinarayan Sharma and the three ladies found the dead body of Sunita after entering the house. It is incredible that if Shrinarayan Sharma and the ladies saw the appellant in the house, they would not exchange a single word with him. The dead body was lying close-by in a bath-room and any normal human being would have instinctively inquired of the appellant as to how it was that the dead body was lying in his house. None of the four persons who entered the appellant's house made any attempt whatsoever to elicit any information from him as to how Sunita came to be lying dead in the bath-room. It is alleged that everyone saw the appellant sleeping on a cot in the court-yard, but it is strange that none talked to him at all.

One can understand the ladies not having the courage to talk to the appellant. But it is difficult to believe that Shrinarayan Sharma, a forty-five-year old school teacher, could also not dare so much

as to ask the appellant, without making any accusation against him, as to how the dead body of the girl came to be in the bath-room. Shrinarayan Sharma has made a categorical admission in his evidence that he had no talk with the appellant at all. In fact, as stated earlier, the claim of Shrinarayan Sharma that he called out to the appellant and that the appellant said that he would not open the door, seems to us a clear improvement over what he narrated to the police immediately after the incident. He did not tell the police anything of the kind. When his attention was drawn to this significant omission, his explanation was that he could not say why the police did not record that part of his statement. We have no doubt that Shrinarayan Sharma did not tell the police during the course of his statement, which was recorded immediately after the incident, that he called out for the appellant and that the appellant stated that he would not open the door. This was far too important a happening which the witness would have failed to disclose to the police.

Another reason for rejecting the case of the prosecution that the appellant was present in the house when the dead body of Sunita was discovered is that when Ramrao Wagh, the father of Sunita, returned to his house from the bazzar at about 12.30 p.m., he was neither informed by his wife Renukabai nor by any other person that the appellant was present in the house when Renukabai brought back the dead body of Sunita from the appellant's house. The admitted sequence of events in this behalf has an important bearing on this central theme of the case. Ramrao Wagh went to his house from the bazzar and in pursuance of a disclosure made to him by his wife Renukabai, he straightaway went to the police station. The only statement which he made at the police station was that his daughter Sunita had died a mysterious death. Nothing at all was said by him regarding the presence of the appellant in the house at the time when the dead body of Sunita was discovered. The statement made by Ramrao Wagh to the police was evidently not reduced to writing, but it is clear that Ramrao went back to the house along with the police officers. He went again to the police station, when the First Information Report, Exhibit 11, was recorded. It is surprising that even in the FIR, Ramrao Wagh did not say that the appellant was present in the house when Renukabai and the other persons entered the house and when the dead body of Sunita was discovered. All that Ramrao stated in the FIR was that the appellant had killed his daughter in order that she should not cry while she was being raped. Surely, the FIR was recorded after Ramrao had learnt of the incident from his wife and a few others including Shrinarayan Sharma, Shilabai and Shobhabai. The disclosure made by Ramrao to the police in his complaint leaves no manner of doubt that the appellant was not present in his house at the time when Sunita's dead body was discovered.

The FIR contains a statement that Renukabai had told Ramrao that the appellant had killed Sunita. Ramrao admitted in his cross-examination that Renukabai did not tell him anything of the sort and that the particular portion of the FIR in which it is stated that Renukabai had told him that Sunita was killed by Shankarlal was not correctly recorded. The up-shot of the matter is that when the FIR was recorded, no one thought that the appellant was responsible for the violence which was done to Sunita.

The course of contemporaneous and subsequent events strengthens the inference that the appellant was not in the house when the dead body of Sunita was discovered. Ramrao went to the police station not once but twice, and it is reasonable to expect that if the appellant's complicity in the crime was stated or suspected, attempts would have been made immediately to arrest him. When

PSI Katke went to the appellant's house for making the panchanama of the scene of offence, the appellant was evidently not in the house. According to PSI Katke, instructions were given by him for the arrest of the appellant. But surprisingly, there is not one word on the record to show as to who arrested the appellant and from where. All that the Investigating Officer has stated in his evidence is that during the course of the day the appellant was produced before him. This passive- voice statement does not inspire confidence.

The up-shot of the matter is that Shrinarayan Sharma did not tell the police that he called out the appellant or that the appellant replied that he will not open the door. Secondly, Renukabai did not tell her husband Ramrao that when she entered the house of the appellant and found the dead body of Sunita in the bath-room, the appellant was present in the house. Thirdly, none of the large group of persons who were present in the house of Ramrao disclosed, what was certainly the most significant circumstance, that the appellant was sleeping in the court-yard while the dead body was lying in the bath-room of his house. Finally, no attempt was made immediately after the FIR was lodged to have the appellant arrested and there is no evidence on the point as to who arrested him, from where, and in what circumstances.

As we have stated earlier, the crucial link in the chain of circumstances is the presence of the appellant in his house at the time when the dead body of Sunita was discovered. Once that link snaps, the entire case would have to rest on slender tit-bits here and there. This discussion disposes of the second part of the 4th circumstance part of the 5th circumstance and circumstances (6) and (7).

The discovery of Sunita's under-pant, which is the 8th circumstance, is also enveloped in suspicion. At the time when the under pant was discovered, the appellant was not in the house. PSI Katke has not stated in his evidence as to whether the appellant's house was open or locked when he and the panchas entered it. It is also difficult to believe that the appellant would keep the under-pant under his pillow while making good his escape from the house after the dead body of Sunita was taken away. We are inclined to the view that Sunita's under-pant was placed under the pillow as a part of the scheme to involve the appellant, first by fixing that he was sleeping on the cot at the crucial time and then by showing that the under-pant of the girl was found under the very pillow which was lying on the cot on which the appellant was sleeping.

The discovery of a blood stain of the 'B' Group measuring 0.5 cm. in diameter on the appellant's pant and of a dried stain of semen on his under-pant are circumstances far too feeble to establish that the appellant raped or murdered Sunita. 'B' Group is not an uncommon group of blood and no effort was made to exclude the possibility that the blood of the appellant belonged to the same group. As regards the dried stain of semen on the appellant's under- pant, he was a grown up man of 30 years and no compelling inference can arise that the stain was caused during the course of the sexual assault committed by him on the girl.

It is then said that there was no smegma around the appellant's corona glandis. That cannot by itself prove that he had sexual intercourse. The presence of smegma may perhaps exclude the possibility of recent sexual intercourse but its absence will not necessarily establish that the person has had a

recent intercourse. A small abrasion over the base of the glans-penis and its bluish discolouration are also inconclusive circumstances. Nor indeed can the bruises on the appellant's thigh establish his involvement in the crime. If the girl was raped, she was raped without resistance. She was five years of age.

The last circumstance relied on by the prosecution is that the total ignorance of the incident pleaded by the appellant is false, and would itself furnish a link in the chain of causation. We have come to the conclusion that the appellant was not present in the house at the time when Sunita's dead body was discovered. That makes it impossible to hold that the appellant's plea is false. Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused.

It causes us some surprise that the learned Additional Sessions Judge, Akola, who tried the case, has not shown any awareness of the fundamental principle which governs cases dependent solely on circumstantial evidence. Nowhere in his judgment has the learned Judge alluded, directly or indirectly, to the principle that in a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. It is not to be expected that in every case depending on circumstantial evidence the whole of the law governing cases of circumstantial evidence should be set out in the judgment. Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment. The simple expectation is that the judgment must show that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.

The High Court, it must be said, has referred to the recent decisions of this Court in Mahmood v. State of Uttar Pradesh and Chandmal v. State of Rajasthan in which the rule governing cases of circumstantial evidence is reiterated. But, while formulating its own view the High Court, with respect, fell into an error in stating the true legal position by saying that what the Court has to consider is whether the cumulative effect of the circumstances establishes the guilt of the accused beyond the "shadow of doubt". In the first place, 'shadow of doubt', even in cases which depend on direct evidence is shadow of "reasonable" doubt. Secondly, in its practical application, the test which requires the exclusion of other alternative hypothesis is far more rigorous than the test of proof beyond reasonable doubt.

Our judgment will raise a legitimate query: If the appellant was not present in his house at the material time, why then did so many people conspire to involve him falsely ? The answer to such questions is not always easy to give in criminal cases. Different motives operate on the minds of different persons in the making of unfounded accusations. Besides, human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions. In the instant case. the dead body of a tender girl, raped and throttled, was found in the appellant's house and, instinctively, everyone drew the inference that the appellant must have committed the crime. No one would pause to consider why the appellant would throw the dead body in his own house, why would he continue to sleep a few feet away from it and whether his house was not easily accessible to all and sundry, as

shown by the resourceful Shrinarayan Sharma. No one would even care to consider why the appellant's name was not mentioned to the police until quite late. These are questions for the Court to consider.

The folks of Karanja had a grouse against the appellant. He had made a nuisance of himself to his family and friends, neighbours and tenants. The small world of Karanja was up in arms against him. He had assaulted his mother and brother a few days before the incident. He had a quarrel with Shilabai, his tenant, on the very day of the incident. He was an idler and had no means of livelihood. The description of his clothes at the time of his arrest is an eloquent commentary on the way of his life. He was wearing two full pants, one on top of another, not because he had one too many to wear but because, one of the two pants was torn at awkward places and he had to hide his shame. It was torn on both the hips as well as the centre. The left leg of the pant was torn over two feet and the right leg over half a foot. The shirt on his person was torn all over. The right arm of the shirt was hanging precariously by the rest of the torn portion of his shirt. The Karanja community must have heaved a sigh of relief that a person who was so good-for-nothing was ultimately in the hands of law. Such people have no partisans. But that does not mean that justice can be denied to them.

We may mention in passing, though in the view which we are taking it is not relevant, that while confirming the sentence of death imposed on the appellant by the Sessions Court, the High Court even took into consideration the appellant's relations with the members of his family. After mentioning that he had beaten his mother and brother and that his wife was living separately from him, the High Court concluded:

> "In our opinion, such a person could neither be an asset to his wife and children nor entitled to live in the society."

Unfaithful husbands, unchaste wives and unruly children are not for that reason to be sentenced to death if they commit murders uncon-

nected with the state of their equation with their family and friends. The passing of the sentence of death must elicit the greatest concern and solicitude of the Judge because, that is one sentence which cannot be recalled.

For reasons aforesaid, we allow the appeal and set aside the judgments of the High Court and the Sessions Court. The sentence of death as also the sentence of seven years' imprisonment imposed upon the appellant is set aside. We acquit the appellant and direct that he shall be released.

P.B.R. Appeal allowed.