

**High Court Of Madhya Pradesh
Bench at Gwalior**

**DB:- Hon'ble Shri Justice G.S. Ahluwalia &
Hon'ble Shri Justice Rajeev Kumar Shrivastava**

CRA No.132 of 2011

Komal Tiwari

Vs.

State of Madhya Pradesh

Shri S.S.Kushwah, learned counsel for appellant.
Shri C.P. Singh, learned counsel for respondent/ State.

Reserved on : 04-04-2022
Whether approved for reporting : Yes/.....

J U D G M E N T

(Delivered on 13/04/2022)

Per Rajeev Kumar Shrivastava, J:-

This is an appeal u/S 374(2) of CrPC against the judgment dated 03/11/2010 passed by First Additional Sessions Judge, Datia (MP) in Sessions Trial No.33 of 2007 whereby the appellant has been convicted u/S 302 of IPC and sentenced to undergo Life Imprisonment with fine of Rs.10,000/-, u/S 376 of IPC sentenced to undergo Ten Years' Rigorous Imprisonment with fine of Rs.5,000/- and u/S 201 of IPC, sentenced to undergo seven years' Rigorous Imprisonment with fine of Rs.5,000/- with default stipulations.

(2) In brief, the prosecution case is that on 19-07-2006, at about 11:00 in the night at Police Station Chirula, District Datia, a *merg* intimation (Ex.P28) was recorded mentioning

therein that on 19-07-2006 at about 08:00 in the night the prosecutrix (x) daughter of the appellant accused had gone for attending the call of nature and after half an hour, the appellant accused saw that his daughter (x) is lying dead and thereafter, he informed about the incident to the locality and on the basis of said *merg* intimation, police conducted an enquiry. PW12 Janved Singh Rathor reduced in writing the aforesaid *merg* intimation report (Ex.P28) on the basis of which *Safina* Form (Ex.P11) for preparation of memo of corpse of deceased was issued. Memo of corpse (Ex.P12) was prepared by M.S. Saxena, Crime Details (Spot Map) Ex.P.29 was prepared, postmortem of the deceased was conducted at District Hospital Datia on 20-07-2006 at about 11:00 am by Dr.G.L.Verma (PW8) vide Ex.P16, seizure memo of the seized articles was prepared vide Ex.P13, the accused-appellant was arrested on 29-11-2006 by Sunil Sharma (PW9) vide arrest memo Ex.P1. Shri Saxena, who had conducted inquest of the deceased- prosecutrix (X) died during investigation in respect of whom, the statement of Janved Singh Rathor (PW12) was also recorded. In furtherance of investigation, after recording of statements of witnesses and other formalities, police filed a charge sheet u/S 302 of IPC before the Court.

(3) It is needless to emphasize that the statement of

appellant- accused was recorded u/S 313 of CrPC. The appellant- accused abjured his guilt and in his defence, he did not choose to examine any witness. In order to prove charges, Prosecution examined as many as 13 witnesses. The Trial Court, after evaluating the evidence on record, has convicted and sentenced the appellant accused for the aforesaid offences, as indicated in Para 1 of this judgment.

(4) It is contended by the learned counsel for the appellant that on going through the evidence led by the prosecution, it cannot be said that any offence is proved against the appellant. There is no eye-witness to the incident and the case is based upon the circumstantial evidence; and case is lacking complete chain of circumstances and there is no direct evidence of connectivity of appellant- accused in the alleged crime and the chain of circumstances is also not complete. If the evidence is scanned in its entirety, one can say that no offence is proved against the appellant. The Trial Court has committed an error in passing the impugned judgment without analyzing evidence properly. Hence, it is prayed that the impugned judgment deserves to be set aside.

(5) Refuting the aforesaid contentions raised by learned counsel for the appellant, learned State Counsel submitted that considering the nature and gravity of offence as well as the material available on record, the Trial Court has rightly

assigned cogent reasons in order to hold the appellant guilty and, therefore, no interference is required and the appeal deserves to be dismissed.

(6) Following questions are necessary for determination of present appeal:-

(1) Whether on or before 19-07-2006, accused-appellant Komal Tiwari has committed rape with murder of his own daughter, aged around 14 years?

(2) Whether accused- appellant Komal Tiwari on the date of incident i.e. 19-07-2006 at around 08:00 pm in his own house of Village Chirula has throttled the neck of his daughter and set her on ablaze ?

(3) Whether on 19-07-2006, accused-appellant Komal Tiwari after committing murder of his daughter and setting her on ablaze, destroyed the evidence in order to save himself ?

(7) We have heard the learned counsel for the parties and perused the evidence available on record.

(8) To answer the above-mentioned questions, it is essential to analyze the evidence of material witnesses.

(9) PW9 Sunil Sharma is the person, who in his evidence, deposed that on 29-11-2006 he was posted as SHO at Police Station Chirula. He arrested appellant- accused Komal Tiwari on 29-11-2006 vide arrest memo Ex.P1 and on the basis of memorandum (Ex.P2) of appellant- accused under

Section 27 of the Evidence Act, he seized the incriminating articles vide seizure Ex.P3 in the presence of witnesses. On 19-02-2007 another accused Vishal Shrivastava was arrested vide arrest memo Ex.P19 on the basis of information given by the appellant- accused that there is a suspicion of illicit relationship of his daughter with another accused Vishal Shrivastava.

(10) PW8 Dr. G.L Verma, in his evidence, deposed that on 20-07-2006 he was posted as Assistant Surgeon in District Hospital Datia. On the said date, constable Rambihari Khare of Police Station Chirula brought the prosecutrix deceased for conduction of autopsy and he sought an opinion regarding the cause of death of deceased- prosecutrix from Police Station Chirula vide Ex.P18. This witness, in para 5 of his cross-examination, has stated that the cause of death of prosecutrix deceased was not simple and in para 6 of his cross-examination, this witness also deposed that the cause of death of the prosecutrix was before 6-48 hours of postmortem examination. He conducted postmortem of the deceased at about 11:00 am and requisition form for conduction of postmortem is Ex.P15 and post postmortem report is Ex. P16. According to Dr.Verma, the death of deceased was occurred on 20-07-2006 and 95% of burn injuries were found on the body of the prosecutrix and a definite opinion can be given

after Viscera Chemical Test.

(11) Constable Shivgovind (PW7) in his evidence deposed that on 20-07-2006 he was posted as Constable in Police Station Chirula. He reached the spot and recovered burnt clothes, vagina slides of prosecutrix and other incriminating articles and handed over the same to Head Constable Janved Singh by which a seizure memo was prepared vide Ex.P14 and thereafter, the same were sent to FSL.

(12) PW13 Dr.A.K.Gupta in his evidence deposed that he received blood sample of both appellant and accused Vishal Shrivastava for DNA profile purpose and the same was later on sent to FSL Sagar through concerned police.

(13) PW9 Sunil Sharma who was posted as SHO in police station Chirula on 29-11-2006 in his evidence, deposed that on 23/02/2007 he had collected blood sample of accused Vishal Shrivastava as well as of appellant-accused Komal Tiwari and thereafter, sent the same through police for examination. Blood sample, undergarments & semen of accused Vishal Shrivastava etc. were prepared vide Ex.P10 & Ex.P9 and thereafter, vide draft Ex.P20, seized articles were sent to FSL through SP, Datia as well as vide draft Ex.P21 sent to Forensic Legal Institution (Medical) College, Bhopal.

(14) Apart from the above, the DNA report Ex.P25 and Ex.P26 were received from the State Forensic Science

Laboratory, Sagar, according to which, appellant-accused Komal Tiwari is found to be biological father of deceased in fetus whereas, another accused Vishal Shrivastava was not found so. The aforesaid finding is based on the following portions of law relating to DNA profiling:-

-:DNA Profiling :-

14.1 In the year 1984, first time DNA profiling was proposed by Sir Alec Jeffreys. He found that individual could be differentiated by others on the basis of detectable differences in their DNA. DNA profiling was first used in a criminal case during investigation in the United Kingdom in the year 1983 and 1986 in the case of rapes and murders of Lynda Mann and Dawn Ashworth. In this case, the accused Richard Buckland was acquitted on the basis of DNA analysis and Colin Pitchfork was convicted. For the development and refinement of DNA technologies, various inventions have been done. Now-a-days, considering the advancement of DNA analysis, the DNA profiling is one of the most reliable technologies to identify the culprit. Now, it has to be considered what is DNA.

14.2 DNA is the abbreviation of "Deoxyribonucleic Acid" which is found in abundance in each cell of each living organism and each other characteristic of living organism is designed and shaped by DNA profiling of that particular living organism. The interpretation of a DNA profile from a single individual's sample is straightforward and can provide powerful trustworthy scientific evidence either to include or to exclude any one individual from his involvement in commission or non-commission of offence. Various Softwares have been evolved for calculating and presenting the match possibility and the results of such soft-wares disclose the truth of the case. As the DNA itself is a very stable substance, herefore, DNA profiling is and will be in future the most dependable advanced science for investigating the offence. It is the demand of time that State should start DNA

testing labs as many as possible.

14.3 DNA is a complex of four chemical constituents (labeled A, T, C and G), known as bases, attached to a sugar backbone which form a strand millions of bases long. There are two strands in DNA which run in opposite direction. The bases pair up to form a twisted ladder. Each base pairs have the chemical constituents A to T and other G to C. That means, each strands can act as a template to produce the other precisely wherein the linear sequence of bases can act a code, providing the instructions for many biological functions. Each DNA contains paired strands which are naturally twisted into a double helix structure. As per various reports of scientific invention, the human body contains 6,500,000,000 pairs of bases and the full complement, 3 meters, in length is termed as genome. In human being, it is packaged into 23 different pairs of chromosomes. This number always differs from one living organism to another living organism rather we can say that one can presume about the creature by counting the pairs of chromosomes in its cell. During the process of formation of sperms or eggs, the chromosome pairs are separated with one member of each pair randomly allocated to each sperm or egg. When an egg and sperm fuse during fertilization, in human being, the full set of 23 pairs is re-established. That means, 50% of child's DNA comes from the mother and 50% comes from the father.

14.4 Forensic DNA analysis is focused on examining specific sections of DNA that are known to be particularly variable between individuals in order to create a DNA profile. The part of the DNA that is examined is called a locus or loci as per the condition of the case which is always a unique site along-with the DNA of a chromosome characterized by a specific sequence of bases. As discussed above, the genome is normally 3 meter in length and is having numerous DNAs. Presently, in ordinary course entire genome is not analyzed to create a DNA profile. Therefore, the statistical analysis of forensic DNA data focuses on establishing the weight of evidence that shall be attracted to the similarity between the DNA profile of a person

involved and DNA taken from a scene of crime.

14.5 Only small sections of an individual's DNA are analyzed for forensic evidence. The parts analyzed are called Short Tandem Parts (STRs). Mutations that affect the number of repeats are relatively common so within a population there are several different versions of the DNA at an STR locus with different repeat lengths. Such various versions are called as alleles. The frequency of occurrence of special allele (i.e. a specific number of repeating units) at the specific locus in a specific population has to be counted and calculated. This information is essential for calculating match probabilities. If only one STR were analyzed, there would be many people with the same allele, purely by chance. It is, therefore, necessary to analyze a number of different STR loci to ensure that the chance of two unrelated persons having matching DNA profiles is very less.

14.6 While considering the male DNA profiling, the role of Y-chromosome is very important. Y-chromosome in DNA is inherited by sons from their father with little change between the generations. As a result, the profiles generated from Y-chromosome DNA are very similar between males shared directly from ancestor. Analysis of Y-chromosome, STRs is helpful where there is a mixture of DNA from male and female contributors, for example, in a sexual assault case.

14.7 It is always disputed that the hair shaved from pubic area does not contain DNA. This thought is baseless as if we go through the structure of hair, we will find that hair follicle is having numerous DNAs and the upper shaft of hair contains comparatively less DNAs but one cannot say that the hair shaft contains no DNA. Shaft of hair is made up of cutin that is a hard substance along-with old dead cells and if cell is there then definitely there will be DNA and the life of DNA has established scientifically is more than one thousand year, therefore, the defence taken that the DNA profiling done by extracting DNA from the shaft of pubic hair is baseless. As in hair shaft the number of DNA is comparatively less, therefore, there is specific test required to be conducted for such DNA profiling that is called

“mitochondrial DNA testing”. Each cell contains mitochondria that is the powerhouse of a cell. The DNA is found inside of a cell nucleus. The mitochondrial genome consists of only 16,500 bases, arranged in a circle, there are thousands of copies of mitochondrial DNA in the same cell. Both males and females have mitochondrial DNA, but it is exclusively inherited from the mother. This analysis method is useful when there is minute amount of DNA present or when the DNA sample is very old and has broken down. STR profiling and mitochondrial DNA/ Y-chromosome analysis are totally different."

In the case of **Ravi S/o Ashok Ghumare Vs. State of Maharashtra [(2019) 9 SCC 622]**, Hon'ble Apex Court has held as under:-

“33. Shrikant Hanamant Lade (PW 11) Assistant Director in Forensic Science Laboratory, Mumbai, who got training in CDFD Institute, Hyderabad also, has authored about 30 papers on DNA, besides a well known book Forensic Biology. He has testified that they conducted the DNA test as per the guidelines issued by the Director of Forensic Science, Ministry of Home Affairs, New Delhi. Their office received the sealed muddemal from Kadim, Jalna Police Station sent vide letter dated 11.03.2012 as also the blood sample of the appellant sent vide letter dated 13.03.2012 (Exbt. P-52). The blood sample of the victim was received on 12.03.2012 along with samples of oral swabs and other articles. P.W.11 analysed the oral swabs and other articles of the victim, nasal swabs, superficial vaginal swab, deep vaginal smear on slide, superficial vaginal smear on slide, anus swab, skin scraping of blood on thigh and abdomen, nails as also other blood samples. P.W.11 has further deposed that;

“I have extracted DNA from blood sample of Accused Ravi Ghumare, Superficial vaginal swab on Exhibit No.3, deep vaginal swab Exhibit No.4, Deep vaginal swab on slide Exhibit No.5 superficial vaginal swab on slide Exhibit

No.6, anal swab Exhibit No.7, skin scapping of blood on thigh and abdomen Exhibit No.8, blood & semen detected on Exhibit No.3 Jeans pant. This DNA was amplified by using Y-chromosome specific marker, Y-chromosome short tandem repeat polymorphism [YSTR] and by using Polymerase Change Reaction [for short PCR] amplification technique. DNA profile was generated. I analyzed all these DNA profiles. My interpretation is male haplotypes of semen detected on Exhibit No.3 Superficial vaginal swab Exhibit No.4 deep vaginal sway Exhibit No.3 Superfinal vaginal swab Exhibit No.4 deep vaginal sway Exhibit No.5 deep vaginal smear on slide, Exhibit No.6 superficial vaginal smear on slide, Exhibit No.7 anal swab, Exhibit No.8 skin scrapings of blood on thigh and abdomen and blood and semen detected on Exhibit No.3, jeans pant of F.S X. ML Case No.DNA 951/12 matched with the male haplotypes of blood sample of Exhibit No.1, Ravi Ashok Ghumare of F.S.L. ML Case No.DNA-209/12.

My opinion is DNA profile of semen detected on Exhibit No.3 superficial vaginal swab, Exhibit 4 deep vaginal swab, Exhibit No.5 deep vaginal smear on slid Exhibit No.6 superficial vaginal smear on slide, Exhibit No.7 anal swab, Exhibit No.8, skin scrapings of blood on thigh and abdomen, blood and semen detected on Exhibit No.3 jeans pant of F.S.L ML Case No.DNA- 951/112 and blood sample of Exhibit No.1 Ravi Ashok Ghumare of F.S.LML Case No.DNA-209/12 is from the same paternal progeny.

Accordingly, I prepared examination report filed with list Exhibit No.71 bear my signature, Contents are correct. It is at Exhibit No.75. Analysis of all above DNA profiles is shorn in table in the same report. Blue jeans pant and shirt of Accused Exhibit No.3 & 4 were referred by biological section of our office. I extracted DNA from blood and semen detected

Exhibit No.3, full jeans pant, blood detected on Exhibit No.4 full bush shirt, and sample of Ravi Ghumare. Then this DNA was amplified by using 15 STR Loci using PCR amplification technique. My interpretation is DNA profile of blood and semen detected on Exhibit No.3 full jeans pant, blood detected on Exhibit No.4 full bush shirt [torn] of F.S.I. ML. Case No.DNA-951/12 and blood sample of Ravi Ashok Ghumare is identical and from one and same source of male origin. DNA profiles match with the maternal and paternal alleles in the source of blood.”

34. Shrikant Lade (P.W.11) accordingly prepared the DNA report which is duly attested by the Assistant Chemical Analyser also. On seeing the contents of his report, P.W.11 has pertinently deposed that *“I can opine on going through the reports Exbts. 75-76 that there were sexual intercourse and unnatural intercourse on the victim by the accused Ravi.” [emphasis supplied]*

35. The unshakable scientific evidence which nails the appellant from all sides, is sought to be impeached on the premise that the method of DNA analysis “Y-STR” followed in the instant case is unreliable. It is suggested that the said method does not accurately identify the accused as the perpetrator; and unlike other methods say autosomal-STR analysis, it cannot distinguish between male members in the same lineage.

36. We are, however, not swayed by the submission. The globally acknowledged medical literature coupled with the statement of P.W.11 – Assistant Director, Forensic Science Laboratory leaves nothing mootable that in cases of sexual assault, DNA of the victim and the perpetrator are often mixed. Traditional DNA analysis techniques like “autosomal- STR” are not possible in such cases. Y-STR method provides a unique way of isolating only the male DNA by comparing the Ychromosome which is found only in males. It is no longer a matter of scientific debate that Y-STR screening is manifestly useful for corroboration in sexual assault cases and it can be well used as exculpatory evidence and is extensively relied

upon in various jurisdictions throughout the world. Science and Researches have emphatically established that chances of degradation of the “Loci” in samples are lesser by this method and it can be more effective than other traditional methods of DNA analysis. Although Y-STR does not distinguish between the males of same lineage, it can, nevertheless, may be used as a strong circumstantial evidence to support the prosecution case. Y-STR techniques of DNA analysis are both regularly used in various jurisdictions for identification of offender in cases of sexual assault and also as a method to identify suspects in unsolved cases. Considering the perfect match of the samples and there being nothing to discredit the DNA analysis process, the probative value of the forensic report as well as the statement of P.W.11 are very high. Still further, it is not the case of the appellant that crime was committed by some other close relative of him. Importantly, no other person was found present in the house except the appellant.”

(15) In the light of above discussions, it is apparent that the DNA profile of appellant Komal Singh is matching with the fetus of the deceased. Therefore, it appears that the alleged crime was committed by appellant- accused Komal Tiwari.

(16) It is argued by learned Counsel for the appellant that the appellant is the father of the prosecutrix, hence, the matching of DNA profile with the prosecutrix deceased cannot implicate the appellant. But this argument has no force as the DNA of fetus found in the uterus of the prosecutrix-deceased is the same as of appellant- accused Komal Singh and its matching can only be the result of sexual intercourse done by accused- appellant Komal Singh with the deceased-prosecutrix.

(17) PW9 Sunil Sharma, SHO, Police Station Chirula, in his evidence, further deposed that during investigation, he had recorded statements of witnesses, namely, Balli, Sarnam, Khyaliram, Chandrapraksh, Bhanu Tiwari, Rajjan Tiwari and thereafter, he submitted challan papers before the Court of Judicial Magistrate wherefrom the case was committed to the Court of Session for trial.

(18) In the present matter, the material fact is that the IO, namely, S.S. Saxena, who earlier conducted inquest of deceased as well as registered impugned FIR (Ex.P30), has died. In the meantime, investigation was handed over to his sub-ordinate officer Janved Singh Rathor, therefore, a doubt has been created by defence that the investigation conducted by police is faulty calling for interference of this Court and the accused is entitled to be acquitted.

(19) Only on this ground, the case of the prosecution cannot be decided, but other relevant factors are germane to arrive at a conclusion.

(20) It is true that the father who is the custodian of child, could not take care of his own child, how would he save the society. In the present matter, the appellant- accused, who is the father of minor girl, aged around 14 years, has committed rape with her and in furtherance of commission of rape, disappeared the evidence by throttling her neck and

thereafter, setting her on ablaze. It is true that the entire evidence of prosecution hinges upon the circumstantial evidence as there is no direct evidence to hold the appellant guilty of aforesaid offences, but the theory of circumstantial evidence is to be tested on the anvil of evidence brought on record which proves the guilty of accused.

(21) Apart from the above, PW3 Bhanu Prakash and PW4 Rajjan alias Rajendra, who are real brothers of appellant accused Komal Tiwari, in their evidence, deposed that the wife of the appellant died 10-12 years before the incident. Except the deceased and the appellant, there is no other member in their house. They further deposed that they are residing separately from the appellant. In the statement recorded under Section 161 of CrPC (Ex.P6), Bhanu Prakash deposed that on 19-07-2006 in the evening appellant Komal Tiwari had beaten the deceased and brought her back to his house. On enquiry, it was disclosed by him that today, he (accused) will finish the life of his daughter in which this witness pacified the matter. Thereafter, it is alleged by this witness that when he went to the house of the appellant, he saw the appellant throttling the neck of prosecutrix and, thereafter, set her on ablaze. Due to fear, the appellant fled away from the place of occurrence. Same is the evidence of PW4 Rajjan alias Rajendra and in his evidence Ex.P7, he also

stated that the appellant is the person, who committed murder of his own daughter and the manner as narrated by PW3. Both witnesses denied illicit relationship of deceased with another accused Vishal Shrivastava.

(22) So far as the contention of the appellant that the case is based on the circumstantial evidence and there is no direct evidence to connect him in the alleged crime and the chain of circumstances is also not complete is concerned, it would be in the interest of justice to consider law-governing case based on circumstantial evidence.

(23) In the case of **Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116**, Hon'ble Apex Court has laid down five golden principles as under which constitute the "panchsheel" in respect of a case based on circumstantial evidence.

“(1) the circumstances from which the conclusion of guilt is to be drawn or should be and not merely "may be " fully established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the

accused".

(24) The Hon'ble Apex Court in the case of **Padala Veera Reddy Vs. State of A.P. 1989 Supp (2) SCC 706** has held as under:-

“10. (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

(25) The Hon'ble Apex Court in the matter of **Ramreddy Rajesh Khanna Reddy v. State of A.P. (2006) 10 SCC 172** has held as under :-

"26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. "

(25) The Supreme Court in the case of **Balwinder Singh v.**

State of Punjab, 1995 Supp (4) SCC 259 has held as under:-

“4. ... the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence, the court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, howsoever strong they may be, to take the place of proof.”

(26) The Hon'ble Apex Court in the matter of **Sunil Clifford**

Daniel Vs. State of Punjab reported in **(2012) 11 SCC 205**

has held as under: -

"29. In *Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116]* it was held by this Court that the onus is on the prosecution to prove that the chain is complete and that falsity or untenability of the defence set up by the accused cannot be made the basis for ignoring any serious infirmity or lacuna in the case of the prosecution. The Court then proceeded to indicate the conditions which must be fully established before a conviction can be made on the basis of circumstantial evidence. These are: (SCC p. 185, para 153)

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established..... the circumstances concerned ‘must’ or ‘should’ and not ‘may be’ established....

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

Thus, in a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance, by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which, no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion however grave it may be, can never be treated as a substitute for proof. While dealing with a case of circumstantial evidence, the court must take utmost precaution whilst finding an accused guilty, solely on the basis of the circumstances proved before it."

(27) Circumstantial evidence of following character needs to be fully established as laid down by the Hon'ble Supreme Court in the case of **Satish Nirankari Vs. State of Rajasthan (2017) 8 SCC 497** under:-

"(i) Circumstances should be fully proved.

(ii) Circumstances should be conclusive in nature.

(iii) All the facts established should be consistent only with the hypothesis of guilt.

(iv) The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused."

(28) In the light of above law laid down by Hon'ble Apex Court, it is needless to mention here that the prosecution has rightly established the appellant guilty beyond reasonable

doubt on the basis of clear and cogent evidence, therefore, he is not entitled as of right to be acquitted.

(29) On examination of evidence of aforesaid prosecution witnesses, it is crystal clear that at the behest of sole appellant- accused the incriminating articles were seized and further, looking to the fact that the medical evidence is silent totally about the cause of death by one as there is a specific finding in regard to time gap between the death of deceased because of throttling and burning of her body. It is brought on record that the appellant was living separately with his younger daughter and there is no other person found with their company and the place of incident is the home of the appellant. The wife of appellant died 10-12 years prior to the alleged incident. The elder daughter of the appellant was living in the house of her maternal uncle at Village Khelar. Although it is alleged by the defence that there is an illicit relationship between another accused Vishal Shrivastava and the prosecutrix, but in absence of cogent and reliable evidence available on record, the Trial Court has found plea of defence based on unfounded material by proving the evidence of prosecution witnesses. Though blood sample was collected of another accused Vishal Shrivastava and sent the same to FSL for DNA examination, but the report does not found matching with DNA profile of fetus of deceased and,

thus, on the basis of solid evidence and DNA report, another accused Vishal Shrivastava was acquitted by the trial Court. The evidence further suggests that both the appellant and deceased prosecutrix were last seen residing before the commission of crime. The accused appellant was the person, who committed rape with his own daughter due to which she became pregnant of 6-7 weeks and thereafter, in order to disappear the offence of rape, he terminated her life. During the postmortem examination, burn injuries were found to be 95%.

(30) In the matter of **Ramreddy Rajeshkhanna Reddy** {(2006) 10 SCC 172}, placing reliance on the judgment in the case of **Anil Kumar Singh v. State of Bihar (2003) 9 SCC 67 and Reddy Sampath Kumar v. State of A.P. (2005) 7 SCC 603**, Hon'ble Supreme Court has also considered the "last seen theory" and held as under:-

“The last seen theory, furthermore, comes into play, where the time-gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case Courts should look for some corroboration. [**Held in the case of State of U.P. v. Satish (2005) 3 SCC 1141.**]”

(31) The Hon'ble Apex Court in case of **Hatti Singh vs. State of Haryana**, reported in **2007(2) CCSC 802 (SC)**,

relying on the earlier decision of **Ramreddy Rajesh Khanna Reddy vs. State of A.P.**, reported in **{(2006) 10 SCC 172}**, has held as under:-

“27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last-seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case Courts should look for some corroboration.”

(32) Similarly, in another decision of **State of U.P. v. Satish**, reported in **{(2005) 3 SCC 114}**, again the Hon'ble Apex Court has held as under:-

“22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together. It would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses P.Ws. 3 and 5.”

(33) It is true that a person may lie, but the circumstances never lie. In case the present one, the veracity of the witnesses has been tested on the basis of circumstances and

marshalling the prosecution evidence keeping in mind the aforesaid circumstances. The entire prosecution story reflects that the present matter is a serious as well as heinous in nature, where the deceased prosecutrix was living with her father appellant and the appellant committed rape with her by which the prosecutrix became pregnant and thereafter, the appellant committed murder by throttling the neck of prosecutrix and in order to disappear the offence of commission of rape and murder, immediately, after the incident of setting her on ablaze, he rushed towards the police station where a report was lodged.

(34) As a consequence thereof, the prosecution has successfully proved the appellant guilty and chain of circumstances is also complete pointing out towards the guilty of the accused and none else. The trial Court has not committed any error in convicting and sentencing the appellant for commission of aforesaid offences and, therefore, this Court does not find any substance to take a different view that one taken by the Trial Court while assessing the evidence on record. The acquittal recorded of another accused Vishal Shrivastava is fully based on cogent and convincing material which warrants no interference.

(35) Having regard to the facts and circumstances of crime and considering the relevant facts, as the prosecutrix aged

around 14 years, was subjected to rape and murder at the hands of her own father, therefore, sentence of LI imposed on the appellant appears to be adequate punishment.

(36) In the result, the appeal preferred by appellant being devoid of merits, is hereby **dismissed**. Hence, the judgment dated 03/11/2010 passed by First Additional Sessions Judge, Datia (MP) in Sessions Trial No.33/2007 is hereby **affirmed**.

(37) If the appellant is on bail, his bail bond and surety bond shall stand cancelled and he shall surrender immediately before the Trial Court to serve the remaining jail sentence.

A copy of this judgment be sent to the Jail concerned as well as copy of this judgment along with record be sent to Trial Court concerned for information and compliance.

(G. S. Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge