

High Court of Madhya Pradesh
Bench at Gwalior

**DIVISION BENCH : Hon.Shri Justice Sanjay Yadav &
Hon.Shri Justice Vivek Agarwal**

Criminal Reference No.06/2019 (Death Reference)

In reference

[Received from Second
Additional Sessions Judge, Bhind
(M.P.).

Ankur @ Nitesh Dixit Vs.Respondent/Accused
with

Criminal Appeal No.3539/2019

Ankur @ Nitesh DixitAppellant

Vs.

State of M.P. through Police
Station, City Kotwali, Bhind ...Respondent

Shri Rakesh Kumar Sharma, learned Senior Counsel as Amicus
Curiae for the accused with Shri Padam Singh & V. K. Agrawal,
learned counsel.

Shri Ankur Mody, learned Additional Advocate General and Shri
F.A.Shah, learned Govt. Advocate for the respondent/State.

Shri V.D.Sharma, learned counsel for the complainant.

Whether approved for Reporting :

J U D G M E N T
(Delivered on this 9th day of September, 2019)

Per Justice Vivek Agarwal :

This Criminal Reference and appeal arise from the judgment
dated 19.3.2019 passed in Sessions Case No.1500179/2016 by the

2 Cri. Reference No.06/2019 (Death Reference) & Cri.A.3539/2019

Court of 2nd Additional Sessions Judge, Bhind. Learned 2nd Additional Sessions Judge has held appellant to be guilty of charges under Section 302 of IPC on five counts and Section 201 of IPC and sentenced him to be hanged till death on confirmation of such sentence by the High Court under Section 302 of IPC and further sentenced him to undergo 7 years RI with fine of Rs.10,000/- and in case of default in payment of fine, six months additional imprisonment.

2. Criminal Reference has been made under the provisions of Section 366 of Cr.P.C., whereas Criminal Appeal against the said judgment has been filed under the provisions of Section 374 of Cr.P.C.

3. As per prosecution story, incident took place in the intervening night of 13.5.2016 and 14.5.2016. Allegation is that appellant was giving tuition to the family members of one Smt. Reena resident of Bhind and while imparting such tuition he had developed relationship with Reena who was a widow and was residing in the house of her father-in-law Rambabu Shukla (PW-1). Alongwith Reena there were four other persons residing in the said house namely Ku. Mahima aged about 16 years daughter of Vedprakash Shukla, Ku. Chavi aged about 10 years daughter of Shashikant Shukla & Reena Shukla, Ku. Ambika aged about 16 years daughter of Brijmohan Bhardwaj and niece of Reena and Golu @ Avnish Sharma aged about 13 years son of Ramkumar Sharma, who was distantly related Devar (brother-in-law) of deceased Reena.

4. It is an admitted position that there is no direct evidence. There is no evidence of last seen. It is a case of circumstantial evidence wherein except for a knife recovered from a mud pool, no incriminating article was recovered. There was no blood stain on the knife as per the FSL report and no motive could be gathered except drawn from the memorandum given by the appellant under Section 27 of the Evidence Act. Dehati Nalishi (Ex.P/1) was lodged by Rambabu Shukla (PW-1) at about 10 am on 14.5.16 and was recorded by the T.I. and I.O. of the case Mirja Asif Beg (PW-28). Apart from knife recovered vide seizure memo Ex.P/12, having total length of 8” out of which length of handle is 4”, recovery of a soiled glass allegedly containing finger prints of the accused besides other Articles was made vide Ex.P/8. During postmortem of Reena vide Ex.P/24A her vaginal swab and slides were prepared and handed over to the police Constable which were subjected to DNA examination, report of which is Ex.P/43 and certificate of expertise of fingerprint specialist as Ex.P/46 has been corroborated with call details of the appellant and deceased Reena. These call details are Ex.P-16 to Ex.P-20 and on the basis of such DNA report obtained after matching of vaginal swab and sample of blood collected from the appellant vide Ex.P/43, so also on the basis of call details and finger print report, appellant has been convicted on the charge of committing murder of five innocent persons.

5. Learned amicus curiae submits that there are several loopholes in the prosecution story and appellant has been falsely

implicated on account of his relations with deceased Reena. It is submitted that as per prosecution story in the morning of 14th May, 2016 Neelesh Sharma (PW-16) son of Sandeep Bhardwaj and grand-son of Shriram Sharma was asked by his grand-father Shriram Sharma to visit house of his Bua (aunt), namely Reena, to look for his sister Ambika, then he visited house of Reena situated at a distance of 3-4 house from the house of Shriram Sharma i.e. father of Reena and when he pressed the call bell, there was no response. There was lock on both the gates and in the meanwhile his grand-father Shriram Sharma also reached to the house of Reena and asked Neelesh Sharma @ Betu to climb the terrace of the neighbourer and look inside the house of his aunt. He accordingly climbed the terrace and opened the Kundi (chainlet) of the door, which he opened with the help of an iron rod and entered in the house of Reena and saw that Reena, sister Ambika, Mahima, Chhavi and Golu were lying in a blood pool. He returned back from there using same passage and informed this fact to his grand-father Shriram Sharma.

6. It is further submitted that it is very unnatural conduct of Shriram Sharma that instead of reporting such matter to the police immediately, he as per the version of Rambabu Shukla (PW-1), Samdhi of Shriram Sharma and father-in-law of Reena, called him over his phone and asked as to whether Reena alongwith children are visiting him at the village as her house is locked. It is submitted that this version of Rambabu Shukla (PW-1) is doubtful, and therefore, lodging of Dehati Nalishi (Ex.P/1) by

Rambabu Shukla causes sufficient doubt as to the story of prosecution.

7. It is submitted that there is no explanation to the fact that keys of the house and mobile of Reena were not recovered from the same dirt pool from where knife was allegedly recovered vide Ex.P/12. It is pointed out that there is no explanation for finding a broken lock inasmuch as an eight lever broken lock of Rainbow Navtal was recovered, but exact place of such recovery has not been shown as has been corroborated by Roli Bhadauria (PW-2) but no cognizance of these facts has been taken by the learned trial Court. It is submitted that in absence of any eye-witness, in a case based on circumstantial evidence, chain is to be complete, but such chain is not complete. Whole investigation has been carried out on presumptions drawn on the basis of memorandum under Section 27 of the Evidence Act. Prosecution has not bothered to examine even Shriram Sharma, father of Reena, who was living in close proximity of the place of incident and also the neighbour of Reena inasmuch as Neelesh Sharma @ Betu (PW-16) had climbed the roof of a neighbour touching the boundaries of the house of Reena and entered in the house of Reena on the instructions of Shriram Sharma, thus these neighbours were important witnesses who could have thrown light so to discover the truth. Therefore, by merely examining the close relatives, police has tried to conclude the investigation in a predetermined manner so to falsely implicate present appellant.

8. It is further submitted that as per prosecution story appellant

had attended the funeral and involvement of the appellant could not be proved by deploying sniffer dog inasmuch as it is an admitted position that clothes of the appellant were sniffed by the so called sniffer dog and prosecution even could not prove the theory of deployment of sniffer dog. It is further submitted that Rambabu Shukla (PW-1) has admitted in para 42 of cross-examination that accused had visited the scene of crime and when he heard about deployment of dog squad, then he ran away. He also admitted that dog squad had reached the place of incident at 12 noon. He further admitted that in his case diary statement (Ex.D/6) he had not mentioned this fact that accused had visited scene of crime on 14.5.16 and had run away after hearing talk of summoning of dog squad and he is intimating said fact in the Court for the first time. He had also not mentioned about presence of the accused in the last rite ceremony in his case diary statement (Ex.D/6).

9. It is submitted that other witnesses have admitted that accused had not only visited the scene of crime, but was present in the District Hospital, Bhind, at the time of postmortem and had also attended last rites of the deceased, and therefore, when this statement of Rambabu (PW-1) that accused had run away after hearing talks of summoning of dog squad is corroborated with the statement that dog squad reached at 12 noon, the story of dog squad coming to the scene of crime and appellant running away loses its sheen inasmuch as if a person would have run away after hearing talks of summoning of dog squad, which according to

Rambabu Shukla (PW-1) was in fact summoned at 12 pm, then appellant accused would not have shown guts to visit place of postmortem at District Hospital, Bhind, and last rites of the deceased. This is an important and major missing link in the chain of circumstances which has not been explained by the prosecution.

10. It is submitted that as per the postmortem reports, the way five deaths have taken place and the position in which the bodies were found, it was not a handy work of a single person. Prosecution has not found any blood stains on the clothes of the accused and the knife recovered at the instance of the accused. No finger prints were found on either broken lock or other utensils found in the house. Both Roli Bhadauria (PW-2), tenant in the house where incident took place, and Manjesh Parmar (PW-21) who had lifted the finger prints, admitted that house hold goods were found in a scattered position, and therefore, motive of loot by some unknown persons could not have been ruled out.

11. It is submitted that in fact accused was arrested on 14.5.2016, but his arrest was shown on 15.5.2016 and he was beaten brutally to extract memorandum under Section 27 of the Evidence Act. It is also submitted that as per Dehati Nalishi, Merg, so also Dehati Nalishi (Ex.P/1), date and time of information is mentioned as 14.5.16 at 9.25 am and 9.30 am respectively, whereas Rambabu Sharma has deposed that police had already broken lock of the house prior to his arrival at about 9.30 am. It is further submitted that Dehati Nalishi Merg Ex.D/11, so also Dehati Nalishi were recorded against unknown persons. It is also

submitted that there was no motive and in absence of any proved motive, a case of circumstantial evidence could not have been said to be proved. It is also submitted that trial Court erred in recording a finding on the basis of a fact that no explanation was given by the accused in his 313 Cr.P.C. statement inasmuch as prosecution was required to prove its case and prosecution has failed to prove its case beyond reasonable doubt. It is submitted that accused cannot be convicted for either taking a weak defence or failing to explain circumstances against him. Suspicion, however strong may be, it cannot take place of proof.

12. It is also submitted that Dr.J.S.Yadav (PW-24) had conducted postmortem alongwith team of other doctors while he was posted as Medical Officer at District Hospital, Bhind. PW-24 conducted autopsy of Mahima Shukla at 1.30 pm and found a contusion on her upper lip on which there were marks of four teeth measuring 3 cm x 1 cm. Similarly injury No.2 was a contusion on the lower lip having marks of 6 teeth measuring 2.5 cm x 1 cm. There were four incised wounds and two abrasions, in all eight injuries, on the body of deceased Mahima. However, no FSL report was produced in relation to teeth mark on her upper and lower lip. Trachea was full of froth and both the lungs were congested. Stomach and intestine had some semi-digested food and gases. Though swab and slides were prepared in relation to deceased Mahima also, but they did not match with the sample of the accused. As per the doctor, cause of death of Mahima was asphyxia caused by smothering and death was homicidal as per

report Ex.P/21A.

13. Dr. J.S.Yadav (PW-24) also conducted autopsy on the body of deceased Chhavi, daughter of Reena and Shashikant, aged about 10 years and found metallic rings in both the ears and in the left hand ring finger. There was a ligature mark measuring 32 cm x 1.5 cm around the neck in a transverse manner. On dissection, margins were found congested with hard and leathery base. There was congestion in the neck and trachea which was full of froth. Both the lungs were congested. Hymen was intact and her vaginal swab and slide were sent for FSL. Even slide and swab of deceased Chhavi could not match with the blood sample obtained from the accused for DNA examination. Doctor opined that as per the postmortem report Ex.P/22A cause of death was asphyxia due to strangulation within 6 to 24 hours. It is pointed out that no finger prints were lifted from the face of deceased Mahima who was smothered to death, so also from the material used to cause ligature mark on the body of deceased Chhavi resulting in strangulation.

14. Dr. J.S.Yadav (PW-24) also conducted autopsy of Reena and gave autopsy report Ex.P/24A and found an incised wound on the frontal side of the neck which was transversely placed measuring 11 cm x 3 cm reaching to trachea. Trachea was severed. Blood was found deposited on the neck as well as trachea. Second injury was an abrasion below injury No.1 measuring 2 cm x 8 cm skin deep. Third injury was a contusion on right side of neck measuring 7 cm x 3 cm. Number of such

**10 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

contusions were 7. There was another contusion on the upper lip measuring 1 cm x .05 cm. Vaginal swab and slides were prepared and preserved. According to the doctor, cause of death was excessive blood loss resulting in shock due to injury caused to the neck.

15. Reading opinion of Dr. J.S.Yadav (PW-24) it is pointed out that SHO, City Kotwali, Bhind, vide Ex.P/54 had forwarded a knife to Dr. J.S.Yadav (PW-24) for his opinion as to whether such injuries could have been sustained with that knife or not and he opined that injuries caused to the neck of the deceased can be caused by a knife which has teeth. Reading such opinion of Dr. J.S.Yadav (PW-24) it is submitted that there is absence of categorical opinion as to whether such injuries as were found on the dead-body of the deceased/victim could have been caused by the seized knife or not, and thus this indirect opinion goes in favour of the defence and prosecution cannot take any advantage of such indirect opinion.

16. Referring to para 29 of cross-examination of Dr. J.S.Yadav (PW-24) it is pointed out that when Dr. Yadav was asked that he has mentioned in his postmortem report that injuries No.3 to 6 sustained by deceased Mahima had clear margins, then why he has mentioned that such injuries can be caused by a knife with teeth, he replied that on 16.7.2016 SHO Kotwali Distt. Bhind alongwith Ex.P/54 had brought a knife with him which had light teeth over it and asked as to whether such injuries as mentioned in postmortem report can be caused by this knife, the he had opined that injuries

caused could have been caused by a knife which has teeth.

17. Reading such evidence, it is pointed out that in para 30 of his cross-examination Dr. Yadav (PW-24) has deposed that Article 25, knife, was almost a new knife and he cannot opine whether such knife was used or not. It is also submitted that Dr. Yadav has admitted that after giving his opinion he had not sealed the knife, therefore, change of knife or misuse of knife cannot be ruled out. There is no explanation that how the knife produced before Dr. Yadav was cleaned of mud inasmuch as FSL report Ex.P/60 makes a mention of this fact in note No.3 that knife was full of mud, therefore no DNA profile could be obtained from such knife. It is pointed out that FSL report Ex.P/60 is dated 27.6.16. Such Articles were received in FSL Laboratory on 18.5.16, whereas opinion of Dr. Yadav was obtained on 16.7.16, therefore, it was for the prosecution to explain as to how dirt on the knife was cleaned, by whom and how, thereby suggesting that knife which was produced before the doctor was not the same as was produced before the forensic science laboratory.

18. It is pointed out that this doctor (PW-24) in para 37 has admitted that deceased Reena would have sustained so much of loss of blood from three injuries that it was sufficient to wet mattress as well as bed-sheet, however, Rambabu Shukla (PW-1) has admitted that no blood soaked mattress was seized. This doctor has further admitted in para 38 that none of the bodies were received in a sealed condition and on 20.5.16 accused was produced before him and he conducted MLC and found injuries on

his body.

19. It is further submitted that vide Ex.P/55, it is apparent that accused was arrested on 15.5.16 at 14.00 hours, whereas Rambabu Shukla (PW-1) has mentioned that on 15.5.16 he gathered information at about 12-12.30 noon that a person by name of Ankur Dixit was caught in the case, then he came to Bhind from his village Ghada and informed his relative, Rajkishore, then visited police Station, Kotwali, at 2 pm alongwith said Rajkishore when Ankur was called by the police and interrogated in front of Rambabu Shukla. He accepted, committing of such murder and also admitted that after putting lock from the outside he had thrown mobile of Reena, one knife and keys of the lock in a mud pool and washed his blood stained clothes. It is submitted that in fact Ankur Dixit was arrested on 14.5.16 itself, but his formal arrest was shown on 15.5.16 and he has been implicated on the ground that he was imparting tuition to the children in the house of deceased Reena and Roli Bhadauria (PW-2) and was having relations with Reena. Thus, he was an easy target to be roped in the crime without putting much of the effort.

20. It is submitted that Ex.D/1, Ex.D/2, Ex.D/3 and Ex.D/4 are the photographs of the spot. Ex.D/1 reveals that certain glasses were lying on the platform of kitchen and few utensils in the form of plates and bowls with one Kalchhi were lying in the sink of kitchen. Ex.D/2 is a picture showing three different bodies lying in one room. Ex.D/3 is a photo of a person whose hands are tied behind his back, so also his legs are tied with a piece of cloth.

**13 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

Ex.D/3 and Ex.D/4 are pictures of body of deceased Golu which was found in a separate room. It is submitted that FSL team has not produced photographs of the room of deceased Reena from where allegedly a steel tumbler was seized allegedly containing finger prints of accused Ankur Dixit as can be seen from the photographs available on record from Ex.P/32 to Ex.P/39 and Ex.D/1 and Ex.D/4. According to Manjesh Parmar (PW-21), SI finger print specialist, she had reached the scene of crime situated in Ward No.6, Virendra Nagar, Bhind on getting intimation from police control room on 14.5.16 and examined the scene of crime in front of Superintendent of Police. She has deposed in para 3 that after inspecting the kitchen, she found some glasses lying with water on them. She proceeded further to the room where bodies of the deceased Reena and three girls were lying and saw a steel glass on the bedside. On examination, she found certain finger prints on them which she obtained by putting black powder on them and prepared Panchnama Ex.P/9. This Panchnama was signed by witnesses Ramkumar Sharma on 'E' to 'E' part, Rajkishore on 'F' to 'F' part, whereas Rambabu Shukla had signed on it from 'A' to 'A' part and it contains Tin number from 'G' to 'G' part. She had taken Ex.P/9 to the office for examination of finger prints. She found that out of two finger prints lifted by her, one finger print was non-readable, whereas other finger prints could not be identified from the available finger prints in the system, then on 18.5.16 through Constable Sonu Dubey finger prints of accused were received vide Ex.P/45A, Ex.P/45B and Ex.P/45C. On examination, she found

**14 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

that right hand middle finger marks were matched with the marks lifted by her from the glass. It is pointed out that prosecution has not examined either Ramkumar Sharma or Rajkishore who had affixed their signatures on Ex.P/9 and who are independent witnesses of taking of finger prints vide Ex.P/9. Rambabu Shukla (PW-1) is not a witness of such lifting of marks but his signatures have been obtained as a complainant. There is no proper seizure of sealed glass vide Ex.P/8 which was prepared on 14.5.16 at about 14.30 hours, whereas there is no mention of any time on Ex.P/9, therefore in absence of examination of two witnesses of lifting of chance finger prints much reliance cannot be placed on Ex.P/9 that it was lifted and prepared on 14.5.16 itself. It is also pointed out that Ex.P/45 vide which finger prints were taken by Constable No. 717 Sonu Dubey on 18.5.16 did not make any mention or contain any signatures of the Magistrate/Gazetted Officer in verification of the fact that impression above were taken before him and they were impressions of the convict named on the reverse. There are no signatures of the convict on such sheet Ex.P/45 nor there is mention of number of copies made, to be sent, which causes sufficient doubt as to the authenticity of lifting of such finger prints.

21. It is also submitted that Rambabu (PW-1) has accepted in para 2 of his examination-in-chief that on 14.5.16 he had received a phone call from Shriram Sharma, father of Reena, asking him as to whether Reena and daughter are visiting him in the village because house at Virendra Nagar is locked. He informed that

**15 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

ladies had not come to the village and he is coming. Thereafter, he visited Bhind on a motorcycle from his village Ghada between 9-9.15 am. It is further mentioned that when he reached Virendra Nagar, he found that police had already broken the lock of the house and entered inside.

22. There is no Panchnama of breaking of lock by the police and opening of the gate of the house of deceased Reena and this is another major lapse in the prosecution story. It is submitted that when Nilesh Sharma (PW-16) had already informed Shriram Sharma about death of five persons in the morning itself between 7-7.30 am, then there was no occasion for Shriram Sharma to call Rambabu between 8-8.30 am asking him about the whereabouts of the ladies. This is a major lacuna in the prosecution story. It is also stated by Rambabu Shukla (PW-1) that material in the kitchen of deceased Reena was scattered and disturbed and he had seen dead-bodies in one room. Mahima, Ambika and Chhavi had slit throat and froth was coming from their mouth, whereas dead-body of Reena was lying on the bed. Thereafter, he had seen kitchen of tenant Roli Bhadauria where he saw dead-body of Golu who is son of Rambabu's brother-in-law. His both the hands and legs were tied and a cloth was stuffed in his mouth. It is pointed out that Rajkishore, who is a neighbourer, had also visited the scene of crime, so also Ramkumar, father of Golu. It is submitted that Rambabu Sharma is not a witness of document Ex.P/9 but his name is mentioned only as a complainant and he had signed from 'A' to 'A' part, whereas Ramkumar Sharma and Rajkishore have

**16 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

not been examined. Rambabu had not deposed that any black powder was rubbed on the glass and finger prints were lifted from such glass as is apparent from his deposition in paragraph 6 of the examination-in-chief which is contrary to the statement given by Manjesh Parmar (PW-21).

23. It is further submitted that as per Rambabu Shukla (PW-1) last rites were performed on 14.5.16 between 6 and 7 pm, whereas he had received information between 12-12.30 on 15.5.16 that somebody by name of Ankur Dixit has been arrested when he had again left for Bhind from his village Ghada and visited police Station City Kotwali at 2 pm. It is pointed out that Ankur Dixit was arrested vide arrest memo Ex.P/55 and his memorandum was obtained vide Ex.P/10, whereas as per Rambabu Shukla he had already received intimation at 12 noon about arrest of Ankur which shows that police had already taken Ankur Dixit in custody and they wrongly showed his arrest at 14.00 hours. It is also submitted that witnesses of arrest, namely Moni @ Hariom and Ramprakash have not been examined by the prosecution to prove arrest.

24. Reading evidence of Ankit Sharma (PW-4) it is pointed out that police had visited his house No.97, R.Block, Shatabdipuram, Gwalior, on 14.5.16. They were carrying a slip of a phone number and asked him about details of said phone number. Police had also interrogated his mother Sugandha Sharma when Ankit Sharma (PW-4) informed that such number is in the name of his mother Sugandha but is being used by his brother Ankur when police

**17 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

asked him to visit Bhind. Then PW-4 called Rinku, son of his Tau and was first brought to Malanpur and then in another vehicle to Bhind. He has deposed that he reached Bhind Kotwali at about 10.00 hours and then Bhind police asked about the address of Ankur. When he gave address of Ankur, police took him to the house of Ankur. Thereafter he knocked the doors of Ankur's house when his Bua responded and on asking she informed that Ankur was sleeping, then Ankur was woken up and was asked to wear his clothes and bring his mobile and purse. He gave his mobile and purse to the police personnel and then police personnel brought Ankur to Bhind Kotwali where not only interrogated him but also beat him. Police also brought clothes of Ankur which contains one white blue and yellow stripped t-shirt and black colour pant. Police had consigned Ankit Sharma (PW-4) in a lock up. The clothes which the police had brought from the house of Ankur were wet and this witness testified that he can identify such clothes. In para 6 of cross-examination, this witness has clearly deposed that police had freed him from their custody on the next date i.e. on 15.5.16 at about 6 pm. Reading such testimony of Ankit Sharma (PW-4) it is submitted that Ankur was arrested on 14th May, 2016 itself. Secondly wet clothes were recovered which is not unusual inasmuch as, as per prosecution appellant attended funeral and as per Hindu customs not only a person attending a funeral takes bath but also washes his clothes. Thirdly since clothes were wet and funeral had taken place on 14.5.16 between 6 and 7 pm and the time given by Ankit Sharma (PW-4) is 10

**18 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

though am or pm is missing, there is nothing unusual for his clothes being wet and further there is no suggestion to this prosecution witness that such clothes contain any blood stains. All these things when taken up and considered cumulatively points out to one fact that arrest memo Ex.P/55 is concocted and has been prepared after arrest of the appellant. It is also submitted that Public Prosecutor was allowed to ask only one leading question from Ankit Sharma in regard to number of the phone and he has not been declared hostile, therefore, his evidence cannot be discarded lightly.

25. It is also submitted that as per Ex.P/10 memorandum given by Ankur under Section 27 of the Evidence Act, in presence of Rambabu Shukla, Ankur had given a missed call to Reena which is contrary to the call details. It was in fact Reena who had given a missed call at 23.13.55 hours from her telephone number 7047745138 to the number of the accused 9111515765 as is evident from Ex.P/17, and therefore, memorandum Ex.P/10 contains, contents contrary to the electronic evidence produced by the prosecution in the form of Ex.P/17.

26. It is also submitted that Rambabu Shukla (PW-1) has admitted in para 34 of his cross-examination that on the bed where dead-body of Reena was lying, there was no other material. It is submitted that Manjesh Parmar (PW-21) has deposed that she had seen a steel glass on one side of the bed and obtained finger prints from such glass. This is contrary to the evidence of Rambabu Shukal (PW-1), and therefore, seizure of glass and lifting of finger

prints also becomes doubtful.

27. It is also submitted that there is another omission and contradiction in the prosecution story inasmuch as Rambabu Shukla (PW-1) has stated that he had only seen hands and legs of Golu tied as has been deposed by him in his examination-in-chief para 2, whereas in cross-examination he has admitted that even hands of Chhavi were tied with a torn piece of cloth. He also admitted that hands and legs of Golu were tied with a piece of Dhoti worn by woman which was white and yellow in colour and then admitted that in Ex.D/3 and Ex.D/4 hands and legs of Golu are being shown to have been tied with a red colour cloth and not with white and yellow cloth. This witness has also admitted in para 36 that police had not prepared any seizure memo in regard to the clothes which were used to tie the dead-bodies lying in the house.

28. Another important fact mentioned pointing towards the loopholes in the prosecution story apart from Shriram Sharma not informing the police and not informing Rambabu Shukla about murder of the women and children in the house, is that house of Shriram Sharma is about 100 meters away from the house of deceased Reena and Shriram Sharma stays in same Virendra Nagar. Shriram Sharma accompanied Rambabu Shukla from the morning till evening, but he did not participate in the last rites. It is submitted that omission of prosecution to examine Shriram Sharma is an important omission in the chain of circumstances as he was the first adult member of the family of deceased Reena

**20 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

besides being father of Reena who has not been examined though he got information in early morning between 7-7.30 am through Nilesh Sharma (PW-16) about death of five members of his family. It is also submitted that this witness (PW-1) in para 38 has admitted that police had lifted finger prints from 8 glasses which were lying in the kitchen sink, but there is no mention of such fact by Manjesh Parmar (PW-21), the finger print expert, who also visited the scene of crime. It is also admitted that in Ex.D/5 it is not mentioned that from which room glass from which finger prints were lifted was seized. Specific part of the house from where such glass was recovered is also not mentioned, then he deposed that such glass was recovered from place E marked in the spot map (Ex.D/5) but he admits that there is no such mention in Ex.D/5 that glass was recovered from E place. It is also submitted that Rajkishore is also related to him besides Ramkumar i.e. both the witnesses of Ex.P/9 are related witnesses and are not independent witnesses. None of the neighbourers were examined by the prosecution and no independent witness has been examined which is also sufficient to disprove the theory of circumstantial evidence.

29. It is submitted that as per Ankit Sharma (PW-4) when Ankur was picked up from his house in his presence at about 10 on 14.5.16, then only police had seized clothes and asked Ankit to wring out the clothes and dry them in the police Station, therefore, showing Rambabu Shukla as a witness of seizure of such clothes on 15.5.2016 (Ex.P/11) is indicative of only one fact that seizure

**21 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

memo has been manipulated. This witness (PW-1) has admitted that neither signatures of mother of the accused nor any of the neighbourers were obtained on Ex.P/11, seizure memo. He also could not point out that on which part of the clothes, blood stains were visible. It is also submitted that police had not seized call records of the members of the family of Rambabu Shukla to corroborate the call details. It is also submitted that there is a direct suggestion to this witness that Reena was a widow, she was preparing for D.Ed. examination so to obtain eligibility for compassionate appointment and further house of this witness at Virendra Nagar is single storied, whereas on west of this house is the house of Mr.Goswami with a common wall and in the north is the house of Mr. Ramlal Sharma with a common wall. Anybody can approach house of Rambabu Shukla from the house of Ramlal Sharma and Ramlal Sharma has a pet, big white dog. Thereafter this witness has stated that since he is not staying permanently at Virendra Nagar, he has not seen such dog of Ramlal Sharma. This witness has also admitted in para 21 that there is no relationship with the family of Ramlal because there is a Chabutara in front of his house as a result of which house of Ramlal Shrama has gone in the background. He has denied the suggestion that there was a dispute between Reena and children of Ramlal Sharma.

30. It is submitted that Rambabu Shukla (PW-1) in para 14 has admitted that apart from Chhavi who was elder daughter of his son Shashikant and Reena, there is one younger daughter named Anshika, but neither this Anshika has been examined nor her

whereabouts have been shown as to where she was staying at the time and date of occurrence of such incident. This is a major omission in the prosecution story.

31. It is also pointed out that there is an indirect suggestion that the plot at Virendra Nagar over which house was constructed and Reena was staying has an angle of family dispute inasmuch as Rambabu Shukla (PW-1) has admitted that he had purchased said plot in the year 2007 in the name of his wife Rajni Shukla from one Pappu who had mortgaged such plot with one Kailash Narayan and since Pappu could not clear his debt, Rambabu had paid the amount for such plot and got it registered in the name of his wife. It is admitted that Shashikant, husband of Reena, was a party to such discussion in regard to purchase of said plot though this witness has denied the suggestion that money for plot was paid by Shashikant. PW-1 has admitted in para 18 of cross-examination that on 8.5.2016 he had a talk on mobile number of Reena, namely 917697148002, but this witness has deposed that on this number he had a talk with Mahima and not with Reena. In para 19 though this witness has denied but there is a suggestion that Reena was asking for her share in the house at Bhind and in the agricultural land at village Ghada. This witness has also admitted that when he had gone to Ujjain to participate in Kumbh, at that time Anshika was at village Ghada. In para 22, Rambabu Shukla has admitted that at Bhind his neighbourer is one Mr. Bhadauria who is also running a general merchandise goods shop from his house. House of Mr. Bhadauria was constructed prior to

his house and height of his house is higher than that of Bhadauria's house, as a result of which there is water logging on the way. He has admitted that because of such water logging, there was a dispute between Reena and Mr. Bhadauria. This witness has though deposed that he is not remembering whether her tenant Roli Bhadauria participated in this dispute or not but admitted that he has no information that Mr. Bhadauria and his family members had threatened Reena and her children with dire consequences. There is another admission that there is one boy by the name of Chhotu Karhaiya, resident of Virendra Nagar, permanent resident of village Chiloga, related to him (Rambabu Shukla) who is unmarried and was visiting house of Reena. Though this witness has denied the suggestion that this Chhotu was arrested on 30.5.16 for violation of provisions of Sections 25, 27 of the Arms Act and has also denied that he was visiting Reena's house after consuming alcohol, but learned counsel submits that Reena had enmity with neighbourers, namely Mr. Bhadauria and Ramlal Sharma and Chhotu (not a person of good character), who was a frequent visitor to her house, and therefore, possibility of some other person taking revenge from Reena and family members cannot be ruled out.

32. It is further submitted that there is another missing link in the prosecution story inasmuch as Rambabu Shukla (PW-1) has admitted that deceased Golu has another brother, namely Sachin who was staying in the same house in which Reena was staying since July, 2015. It is pointed out that this Sachin is another

missing link in the story of circumstances and prosecution has not explained presence or absence of Sachin on the fateful day. It is submitted that in fact it appears to be a case of honour killing inasmuch as it is evident from case diary statement (Ex.D/6) of Rambabu Shukla that he had deposed that Neetesh @ Ankur was taking tuition of children of Roli Bhadauria. His daughter-in-law used to offer tea to him some time. His intentions were not good, and therefore, for last two months this witness (PW-1) had stopped his visits to his house. Ankur is not his relative but he had reached hospital at the time of postmortem and also at the time of cremation. This witness has expressed suspicion on Ankur @ Nitesh and has clearly mentioned that there may be other persons apart from Ankur which needs investigation thoroughly.

33. Reading such statement of Rambabu, it is pointed out that even Rambabu has deposed that there are more than one person, yet prosecution has not taken steps to rule out possibility of more than one persons being involved inasmuch as a single person could not have tied hands and legs of Golu who was admittedly not administered any tranquilizer. It is also pointed out that if Rambabu Shukla (PW-1) had grave suspicion on Ankur Dixit as to his role in commission of such murder, then there was no occasion for recording a FIR as contained in Ex.D/7 against unknown persons. Admittedly, this FIR was lodged at 18.17 hours on 14.5.16 and there is no mention of the fact that Rambabu had any suspicion on Ankur.

34. In para 26 of cross-examination, Rambabu Shukla (PW-1)

**25 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

has admitted that if anybody would have been visiting his residence at Virendra Nagar in night or early morning, then he has no such intimation, but on his own stated that Mahima and Chhavi were grown up children and if there would have been anything like this, they would have definitely informed him. Reading para 29 of cross-examination, it is submitted that Rambabu has admitted that Reena was a woman of good character. She was taking care of her own children, daughter of her brother-in-law (Jeth) and daughter of her brother. She could not have got these children murdered. This witness has also admitted that he was not aware who visited his Virendra Nagar house in the intervening night of 13th and 14th May, 16 to suggest that there is no evidence of last seen.

35. It is also submitted that this witness has admitted that when he had reached his house at Virendra Nagar, at that time Superintendent of Police, Bhind, Additional S.P. Mr. Meena and SHO City Kotwali and other police personnel were inside his house. Police had called for a dog squad and dog was of black colour. He had not seen as to in which direction dog had gone. Reading such statement, it is pointed out that there is material omission in the prosecution story inasmuch as when dog squad was called, then it was necessary for the prosecution to have proved as to what was the finding of such investigation and in which direction dog had gone after visiting the scene of crime. It is also submitted that this witness found that three dead-bodies were lying in a room adjacent to the wall of house of Ramlal Sharma

**26 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

stacked one over the another and there was lot of blood in the room which had not flown outside and had intermingled with each other. Police had not taken blood sample from the floor and also admitted that there was no material lying over the bed where dead-body of Reena was lying. No burglary was committed from the house of Reena.

36. Police had not seized mattress soaked with blood and had only seized bed-sheet. The suggestion that in said room certain bundles of *Beedi*, pouches of Gutka and bottles of beer and alcohol were lying has been though denied, but there is further suggestion that brother of Reena, namely Brajmohan, his son Vedprakash Shukla, father of deceased Golu, namely, Ramkumar, and his uncle Satish asked the police to seize such material. In para 39 this witness has admitted that there is no mention of the fact in Ex.D/5 as to from which place glass from which finger prints were taken was recovered. Connecting such evidence, it is submitted that as per statement given by Ankur Dixit before the Additional Sessions Judge, Bhind (plea of the accused), he was arrested from his house on 14.5.16 at about 10-11 am and police had beaten him and obtained his signatures on blank papers. Police had also obtained his semen at the police Station itself which was not sealed and at that very time his finger prints were taken. This gets corroboration from the fact that neither dog squad has been disclosed by the prosecution nor there is any mention of this fact in case diary statement (Ex.D/6) of Rambabu Shukla (PW-1). Participation of Ankur in the last rites of the deceased or

his visit to the postmortem room is also not mentioned in Ex.D/6 and this witness has admitted in para 42 that he is narrating such facts for the first time before the Court.

37. Another point which has been raised by the learned Amicus Curiae is that all the witnesses of seizure, memorandum etc. are close relatives of Rambabu Shukla. He has admitted that Rajkishore is his relative and is son of maternal uncle of Reena. This witness has also admitted that before entering house of accused, neither police personnel had given their search nor he himself or another witness Rajkishore. According to them, clothes were lifted by the accused which were lying in the room and this witness had not gone inside the room from where such clothes were brought. This witness has admitted that he is not aware as to whether such clothes were brought by the SHO in his hand or through someone, bringing the seizure memo (Ex.P/11) under serious cloud. This witness has admitted that clothes were kept in a light brown colour paper and this seizure memo did not contain signatures of either mother of the accused or accused or any other person belonging to neighbourhood of the accused. It is also submitted that though this witness has earlier stated that there was only one mobile in his family being used by all the members of the family, but later on, in para 46 he has admitted that such other mobile numbers may belong to other members of his family. Rambabu Shukla in para 31 has admitted that when he reached house at Virendra Nagar, at that time portion of Roli Bhadauria except for kitchen was locked. This is contrary to the statement

given by Roli Bhadauria that lock was broken. It is pointed out then there should have been recovery of two locks rather one.

38. Roli Bhadauria (PW-2) has deposed that she reached the scene of crime at about 2 O'clock on 14.5.16 after getting intimation of such incident at about 10 am. She had seen that locks of her house were broken and goods in the kitchen were scattered. Lot of blood was lying in the drawing room. When she looked for knives at the instance of the police she found that knife from her kitchen as well as kitchen of Reena were missing. She also described that there were two knives in the kitchen of Reena, one of black colour and another of yellow colour and both were missing. This witness has clearly admitted that except for giving tuition, Ankur was not visiting house of Reena and she had stopped taking tuition for her children. This witness has admitted that there was an altercation between Reena and Ramlal Sharma because dog of Ramlal Sharma had defecated in front of house of Reena. She has also admitted that roofs of Ramlal Sharma and Reena are adjoining, but has denied suggestion that somebody can enter in the house of Reena from the roof of Ramlal Sharma, but this fact is corroborated from the evidence of Neelesh @ Betu (PW-16) that he had entered in the house of Reena from the terrace of her neighbourer's house. This witness has also admitted that there was no distinctive mark on her knife and such knives are easily available in the market.

39. Sanjeev Kumar son of Shriram Sharma and brother of deceased Reena (PW-3) has deposed that with the help of JCB

**29 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

machine a knife was recovered from a vacant plot consisting of swamp and thereafter its seizure memo (Ex.P/12) was prepared but admitted that it was mud stacked and there was no blood stain on it and he had seen it from a distance of 5 ft., then improvised it to 2 ft. and further admitted that key and mobile were not recovered from such swamp. He admitted that police personnel were standing on the plot and if they would have kept a knife before his arrival, then he cannot say anything. There is material contradiction in his examination-in-chief and cross-examination inasmuch as in his examination-in-chief he has deposed that after such knife was recovered, then it was cleaned and was informed to the police personnel that such knife has been recovered, whereas in his cross-examination he has admitted that knife was full of mud. This is contrary to FSL report (Ex.P/60) in which it is mentioned that they received a knife full of mud, therefore, if knife was already cleaned as has been deposed by this witness (PW-3) and given to the police by a municipal employee, then there was no occasion for it to be full of mud when received by the FSL team. This creates doubt not only as to the recovery of knife, but also genuineness of seizure memo.

40. Ankit Sharma (PW-4) is a witness who is related to the accused and on whose instance not only appellant Ankur was arrested but SIM used by him was identified by him to be belonging to Sugandha Sharma, mother of Ankit Sharma. Statement of this witness clearly reveals that on 14.5.16 police had reached his house at Shatabdipuram, Gwalior and after beating

took him to the house of Ankur Dixit where Ankur was lifted at 10.00 hours. This witness also deposed that when Ankur was picked up by the police in front of him, then police had collected his wet clothes, therefore, evidence of Rambabu Shukla (PW-1) that clothes were recovered before him on 15.5.2016 and his relative Rajkishore renders such seizure memo doubtful. This witness has not been declared hostile though he has not supported prosecution case in *toto*. This witness has also deposed that he was released from police custody on 15.5.16 at about 6 pm which reflects that prosecution had already framed the appellant and then after formally arresting him only tried to complete the chain of circumstances as per their convenience. This statement of Ankit Sharma (PW-4) also corroborates the plea of the accused that he was arrested, tortured and his semen was taken prior to sealing of swab etc. on 15.5.16. It also corroborates that his finger prints were obtained in the police Station itself.

41. Narendra Tiwari (PW-5), who claims himself to be an acquaintance of the appellant, has admitted that even Rambabu Shukla is known to him and he had a talk with Ankur on his mobile number ending 5765 from his own mobile number ending 2323 when Ankur asked him to visit his house to collect hoarding required by PW-5 for his coaching class and then he visited Bhand from Gormi where he came to know that five murders were committed at Virendra Nagar. He visited Virendra Nagar alongwith Ankur Dixit. Dead-bodies were being lifted to be taken to hospital and thereafter they had visited hospital where a

journalist was making video recording and Ankur had a talk with such journalist also. It is submitted that Ankur had asked him whether such crime can be detected and at that time his face was down and he was upset. This witness has admitted that in Ex.D/9 he had informed the police about such fact. It is pointed out that there is a material contradiction in the testimony of this witness (PW-5). In his case diary statement (Ex.D/9) he has admitted that he had a talk with Neetesh @ Ankur on 14.5.16 at about 2.30 pm. Thereafter, they visited Virendra Nagar where murder had taken place. After staying there for five minutes, they visited hospital where postmortem was taking place and then after staying in the hospital for 1 ½ -2 hours, they visited Gada on the Scooty of Ankur to participate in the last rites. However, in his examination-in-chief he has mentioned that when they reached house of deceased at Virendra Nagar, dead-bodies were being lifted for being taken to the hospital. This statement in para 2 of his examination-in-chief is contrary to Ex.D/9, so also postmortem reports Ex.P/21A to Ex.P/25A inasmuch as time of receipt of dead-bodies in the hospital is mentioned as 1.30 pm (Ex.P/21A & Ex.P/22A, 1.00 pm (Ex.P/23A), 2.00 pm (Ex.P/24A) and 1.30 pm (Ex.P/25A). So if they had reached Virendra Nagar after 2.30 pm, then dead-bodies were not there at Virendra Nagar house but were already in the postmortem house and postmortem was performed on them at 2.30 pm, therefore, testimony of this witness Narendra Tiwari becomes doubtful and cannot be relied on.

42. Imran Ali Khan (PW-6) has mentioned that he is bureau

chief of D.B.C. 24 News Channel. This witness has deposed in cross-examination that he had only informed police in his case diary statement Ex.D/10 that Ankur had informed him that since he was taking tuition in their house, therefore, police may not take cognizance of him. But fact of the matter is that such thing is not mentioned in Ex.D/10 and this clearly reveals that this witness has given statement contrary to his case diary statement. It is not clear as to how police took his statement and examined him as a prosecution witness. There is no explanation to this aspect, and therefore, even evidence of this witness becomes doubtful and is not reliable to record any adverse finding against the appellant.

43. Neeru @ Neetu (PW-7) is a cleaning employee of Municipal Council, Bhind. He had segregated knife from the mud and clearly deposed that he is not in a position to give description of such knife as was recovered by him. This witness also admitted in cross-examination that what happened with such knife is not known to him. He further admitted that recovery was made from an open plot and 3-4 plots were open which were frequently visited and people were dumping their waste. Reading such evidence of PW-7, it is submitted that recovery from an open place of which no seizure was made immediately, as is evident from the statement of Neeru @ Neetu (PW-7) is of no consequence.

44. Dharmendra Singh (PW-8) is a JCB driver who had taken out waste from a swamp from which a knife was segregated. According to this witness, knife was recovered by Gaurav, another municipal employee, and police had kept it in a polythene bag

(Panni). After seeing article A-25 this witness deposed that it is the same knife but then said that it was soiled with mud at that point of time. This witness in cross-examination admitted that accused was brought to the spot and he was standing there for 10-15 minutes and then further admitted that he had seen him on the date of cleaning and then in the Court today. Thereafter on his own accepted that he had seen the accused on his mobile on several occasions. This testimony of Dharmenra Singh (PW-8) is contrary to that of Neeru @ Neetu (PW-7) inasmuch as PW-7 has deposed that accused was sitting in a police vehicle and had not come outside, whereas this witness (PW-8) has deposed that accused was standing there at the scene of cleaning.

45. Gaurav (PW-9) is another person who had discovered knife from the swamp. He is a witness of seizure memo (Ex.P/12) and the envelope (Ex.P/13). This witness has clearly deposed that at the time of cleaning of swamp to look for certain articles accused/appellant was not present. This is contrary to the evidence given by Neeru @ Neetu (PW-7) and Dharmenra Singh (PW-8). He has also deposed that police had taken such knife in a *Panni* and no documentation had taken place at that point of time. This prosecution witness Gaurav has been not declared hostile, therefore, it is submitted that it cannot be said that recovery was made at the instance of appellant/accused, but was made from an open place and such recovery from an open place has its own limitations as has been held in the case of **Kora Ghasi Vs. State of Orissa** as reported in **AIR 1983 SC 360** wherein it has been

held that much importance cannot be attached to recovery as it was from an open place accessible to all.

46. Pradeesh (PW-10) has deposed that he is working as a Principal at Patiram Shivhare Group of Institute, a Nursing College, where accused had taken admission in G.N.M. course in the year 2013-14. Course was for a duration of 3 years including six months internship. In the first year, anatomy and physiology are taught, whereas in the second year medicine pharmacology and surgery while in third year midwifery and child health are the subjects which are taught. This witness has been examined to corroborate prosecution story that appellant/accused was having exhaustive knowledge that 'alprazolam' can be used as a sedative. It is pointed out that in cross-examination this witness (PW-10) has admitted that alprazolam is not a sedative.

47. Anand Dixit (PW-11) is a person who had collected call details. In para 15, this witness has admitted that Subhash Chauraha, Indira Gandhi Chauraha and Lahar Chungi, S.P. Office are different tower locations. He has admitted that from the concerned cellular company information regarding exact tower location could have been obtained, but specific tower location was not obtained. When a question was put to him that why he had not obtained call details of phone number 9165731870, he replied that since it was in the name of Rambabu, a member of the family of the deceased, therefore, such call details were not obtained. In para 17, this witness has admitted that he had not obtained tower location in regard to call which was made from the number ending

with 5138 to number ending with 5765 digits in the night of 13th May, 2016 at about 23.13.55 hours.

48. Dr. K.K.Dixit (PW-12), Medical Specialist, has also deposed that alprazolam is not a tranquilizing medicine. It is not used as a sleeping pill but to relieve mental tension. He admitted that such medicine is available in the store of District Hospital, Bhind, and is issued to staff nurse in-charge of ward which she administers to the patients on the advice of doctor. If some common man uses it, then he may fall asleep. He has stated that he has no knowledge as to whether any dissoluble alprazolam is prepared by any company or not. He also admitted that alprazolam tablets are used in case of high blood pressure. Reading such statement, it is submitted that contention of prosecution that alprazolam tablets were dissolved in water and dispensed to Mahima, Chavi and Ambika is not made out because tablets are not dissoluble. Secondly, as per the characteristics of alprazolam tablets, it is not soluble in water and does not cause such smell as has been mentioned by prosecution witnesses necessitating them to apply a test for alprazolam. It is submitted that in fact there is no occasion for the FSL team to have applied alprazolam test to the viscera of the deceased persons as has been applied by the prosecution vide Ex.P/58 and has reported that in the viscera samples of Chhavi, Mahima and Ambika alprazolam was found. Reading such expert evidence, it is submitted that allegation is that accused had given tablets of alprazolam but alprazolam is not a sedative but a tranquilizer.

49. Sonendra Singh (PW-13) is a witness who had collected various articles from the District Hospital including swab etc. of deceased Reena vide Ex.P/24 and this witness has admitted in cross-examination that he had handed over all such articles to Head Constable Kamal Singh in the police Station who had kept them in the Malkhana and he is not aware as to what happened to such samples as he had not seen them again. How they were deposited and given an identification number could not be deposed by this witness.

50. Kamal Singh (PW-14) has stated that he had seized underwear, pubic hair, semen slides of accused vide seizure memo Ex.P/31, but has admitted that he is not aware as to which doctor had sealed such items. Sunil Girwal (PW-15), Constable No.750, is a witness of videography and photography and he reached the spot alongwith In-charge of FSL unit. This witness in cross-examination has admitted presence of In-charge of FSL unit Dr. Soni and also presence of fingerprint expert and dog squad. According to this witness, he had reached the place of incident at 6.30- 7 am. He further mentioned that date is not in his memory. He also admitted that FSL In-charge had also prepared a video and such video CD is not available. He also admitted that such camera which was used for videography and photography and memory card have not been produced in the Court. He admitted that a bottle of fruity, some pouches of Namkeen and one spoon were lying close to the sink. This fact is not evident from Ex.D/1 in which neither any bottle of fruity is visible nor any pouch of

Namkeen is visible. It is pointed out that this witness (PW-15) has mentioned that he reached the place of incident at 6.30-7 am, therefore, prosecution story that they got intimation about such murder at about 9 am and then they came into action is not made out. It is also contrary to the statement of Manjesh Parmar (PW-21) who was also a member of FSL team and had reached at the scene of crime between 10-10.30 am. In trial Court, DVD bearing article No.26 was played for 4 minutes 38 seconds though total duration was shown as 5 minutes 55 seconds on which this witness explained that there may be problem either in the drive of laptop or in the DVD. Court in a note observed that accused was in a yellow colour T-shirt in police custody and is narrating about rooms of the house and the way incident was given effect to. He was limping. There is another note that accused expressed before the Court that police had threatened him before preparing DVD and asked him if he will not follow their instructions, then they will kill his mother and sister and out of such fear he had narrated what has been mentioned in the DVD. We have already discussed that Neelesh Sharma (PW-16) is the person who had opened door at the instance of his grand-father Shriram Sharma and testified presence of Shriram Sharma.

51. Rakhi Chaudhary (PW-17) is a staff nurse at District Hospital, Bhind. She has deposed that Bhind Kotwali police had seized a box of alprazolam from her as was kept in the drug store on 19.5.16. It was containing alprazolam tablets probably of 0.5 mg. Police had reached hospital alongwith accused Ankur and

**38 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

Ankur had informed that earlier he used to take away alprazolam tablets. It is submitted that this witness has admitted that before any seizure from the District Hospital, permission of Civil Surgeon is necessary and then stated that police had taken such permission from the Civil Surgeon, then improvised that such permission was taken on mobile phone. It is submitted that this witness has admitted that she had not signed on seizure chit, and therefore, in absence of there being any written permission of Civil Surgeon, any identification of signatures of this witness on the seizure chit, seizure becomes doubtful.

52. In paragraph 52 Mirza Asif Beg, IO of the case (PW-28) has admitted that he had not taken any permission from the Civil Surgeon or CMO to seize alprazolam from the hospital premises. Even in Ex.P/10, memorandum under Section 27 of the Evidence Act, accused did not disclose that he had obtained such tablets from the hospital, and therefore, it is ridiculous that seizure has been made from the hospital. It is also submitted that evidence of this witness (PW-17) is in the shape of conjectures and surmises inasmuch as this witness has admitted that she is not in a position to depose as to when such drug was taken away by the accused. It is also submitted that taste of alprazolam is bitter, and therefore, this theory of dissolving it in water and administering without being noted by the administree (means person who had consumed such drug) as has been developed by the police is contrary to the fact that a bitter pill cannot be administered in plain water. Further alprazolam leaves a residue which is visible to naked eyes,

therefore, that is another omission that four children being administered liquid containing alprazolam and none of them noticed its texture, colour and bitter taste.

53. It is further submitted that in a hospital, stock register is maintained showing issue and consumption of each of the drugs, and therefore, just saying that drug was taken away by the accused without giving details of specific issue and consumption i.e. stock register, such seizure is of no relevance. This witness (PW-17) has admitted that nobody had signed on such seizure memo in front of her which completely renders such seizure inadmissible in evidence. Even date of manufacture & date of expiry is also not mentioned in the seizure memo.

54. Janved Singh (PW-18) had taken sample for DNA examination to FSL Sagar. He had taken all the samples to Sagar on 19.5.2016. Malkhan Singh (PW-19) is a witness who had taken Ankur from Kotwali Bhind to District Hospital, Bhind, for medical examination where Dr. Rajoriya had obtained his blood sample for DNA examination. Sonu Dubey (PW-20) is a witness who had deposed that he had obtained fingerprints of accused on 18.5.2016 in the police custody in three copies. However, it is pointed out that such taking of fingerprints is not admissible in evidence inasmuch as this witness has admitted in para 5 of his cross-examination that when such fingerprints were obtained on Ex.P/45A, Ex.P/45B and Ex.P/45C, then no person of public was present in the police Station. It is pointed out that his statements are contrary to the statement of the IO inasmuch as he has

admitted in para 5 of his cross-examination that such fingerprints were obtained by Mirja Asif Beg, IO of the case, and not by him and Mirja Asif Beg has denied that he had obtained any fingerprints of the accused.

55. Narveer Singh (PW-23) is a person who allegedly had taken appellant Ankur to District Hospital, Bhind, for his medical examination and obtained his clothes like underwear, pubic hair, semen slides and bottle of semen sampling vide Ex.P/31. It is pointed out that this witness has admitted that he had not mentioned such fact of taking accused to District Hospital, Bhind, in Rojnamacha, then he has improvised by saying that such authorization is with H.C.M. There is no mention as to which doctor was contacted who had taken such sample of semen. This witness has admitted that he has no information as to whether any permission from the Court was taken or not to obtain semen sample of the accused.

56. Reading evidence of Dr. Himanshu Bansal (PW-25), who was a member of team of doctors which conducted postmortem, it is submitted that deceased Avnish Sharma was brought in a condition where his both the hands were tied behind, both the legs were tied with a bed-sheet at ankle joint and one piece of bed-sheet was stuffed inside his mouth. He had sealed such clothes and given them for investigation. It is submitted that such clothes were never produced and it is a major lapse on the part of the prosecution.

57. Dr. R.N.Rajoria (PW-26) was also one of the doctors from

the team of doctors who had conducted postmortem and besides this, on 19.5.16 when he was posted as Medical Officer and In-charge blood bank officer, then accused was brought to him for collection of blood sample for DNA testing. Dr. Ranjana Chaudhary (PW-27) was another member of team of doctors who had conducted postmortem and she had collected vaginal slides and swabs from the bodies of four ladies. It is pointed out that none of the four doctors examined by the prosecution have deposed that they had collected semen sample of accused on 16.5.16, therefore, there is no corroboration to the statement of Narveer Singh (PW-23) that he had obtained packet of underwear, pubic hair, semen slide and a bottle containing semen sample vide Ex.P/31 from a doctor and semen sample of accused was obtained in front of the doctor. This fact is also corroborated from the evidence of Mirja Asif Beg (PW-28), IO of the case, who has admitted in para 54 that he had not obtained semen sample of the accused but it must have been obtained by a doctor. This statement in para 54 of the IO itself casts doubt inasmuch as to taking of blood sample of the accused, he submits that he had obtained permission from the Court, but for semen sample he does not talk about obtaining such permission.

58. However, in paragraph 56, I.O. has admitted that semen sample of accused was taken because there were four women out of 5 deceased persons and keeping in mind possibility of rape, semen sample was obtained. He further admits that if semen would not have been obtained and rape would have been verified, then

there would have been difficulties in proceeding against the accused. It is submitted that this act of the IO and the officers of the police clearly corroborates the theory of the defence that firstly semen sample was obtained from the accused before sending any of the articles to FSL laboratory and then all the samples were tampered with such semen so to falsely implicate the appellant. It is also submitted that there was no occasion for obtaining semen sample of Ankur as there was no finding of the doctors that any rape was committed on Reena, therefore, when semen was sent on 19.5.16, police had ample opportunity to mix semen of Ankur with various samples so to obtain their desired results. It is also pointed out that no DNA profile of the accused has been obtained from any other material like clothes etc. which were used to tie legs and hands of Golu or to stuff his mouth or to tie body parts of Chhavi.

59. In para 59, IO has admitted that semen of the accused was procured prior to obtaining postmortem report because there was possibility of rape being committed on the women. This is another glaring discrepancy. IO has admitted that Imran Ali (PW-6) had not disclosed in his case diary statement Ex.D/10 that accused had expressed his apprehension of being taken into cognizance as he was giving tuition to some of the deceased.

60. It is submitted that IO Mirja Asif Beg (PW-28) has admitted that when he reached the place of incident, then several people were standing outside and when he went inside the house, there was nobody inside the house. He made his police force to stand near the gate and secured the place of incident. It is submitted that

**43 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

there is no mention of opening of lock of gate of the house, inasmuch as, as per the memorandum of the accused, he had locked the house and thrown the keys in a swamp, then there should have been a Panchnama of breaking of the lock, but there is no such Panchnama. It is unnatural that when the house was opened and relatives of the deceased and the persons from public had already gained knowledge about five murders, that too in the close vicinity of the house of father of deceased Reena and relatives of other deceased persons, then contention of the IO that nobody was inside the house is factually incorrect. This statement of the IO has not been corroborated by any independent witness who was present on the scene of incident prior to arrival of the police force.

61. In para 38, IO has admitted that when he had reached the place of incident, then lock was already broken. He states that it must have been broken by dial 100 personnel. He further stated that he is not in a position to say whether any person had entered in the said house after breaking of the lock and before his reaching to such place of incident. This is another major omission on the part of the prosecution, to point out that there was tampering with the scene of crime before police and FSL team reached there.

62. It is submitted that IO has admitted in para 4 that fingerprint specialist, dog squad, photographer, FSL team and senior officers had reached the scene of crime. He had recorded Dehati Nalishi Ex.P/1 as per the instructions of Rambabu Shukla (PW-1) and thereafter he had prepared spot map (Ex.D/5).

63. In para 7, IO has mentioned that when he inspected the spot, then he found steel glasses lying in the kitchen sink of Reena and when he smelled it, then he found that there was a distinct smell and some water was lying in a steel tumbler containing some intoxicating substance and on the basis of it, water in the tumbler was collected in a plastic bottle and 7 glasses and such tumbler were seized from the sink. ASI Manjesh Parmar (PW-21) was with him and she had seen some fingerprints on steel glass which she lifted and asked him to seize such glass which was seized by him. Reading such testimony, it is pointed out that water from the tumbler was allegedly collected in a Fruity bottle. It was not collected in a sterilized jar. Similarly, there is no mention of the place from where fingerprints were lifted from the steel glass and all these facts create doubt on prosecution story.

64. Reading Ex.P/8, seizure memo, it is submitted that at serial No.5 there is a mention of one steel glass depicting some fingerprints, but place where such glass was kept has not been shown, but in Ex.P/9 it is mentioned that such steel glass was recovered close to the bed. Rambabu Shukla (PW-1) has deposed that no glass was seen by him on or close to the bed. Therefore, story of lifting of fingerprints, specially when its witnesses Ramkumar Sharma and Rajkishore were not examined in the Court, becomes doubtful.

65. Another glaring omission is that IO had recorded statements of Rambabu Shukla, Roli Bhadauria, Rajkishore Sharma on 15.5.2016 and asked cyber cell to trace details of missing mobile

**45 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

phone of Reena, but before getting such intimation which naturally was proceeded on 15.5.16 as is mentioned in para 10, accused was picked up from his house on 14.5.16 itself, as has been deposed by prosecution witness Ankit Sharma (PW-4).

66. It is submitted that in para 12, IO has deposed that accused had given him a memorandum, that after locking the house, he had thrown mobile, keys and knife in a swamp nearby and washed his clothes on returning home, but it is submitted that seizure of clothes vide Ex.P/11 has been shown to be made on 15.5.16 at 15.20 hours, whereas as per Ankit Sharma (PW-4) these clothes were recovered when Ankur was picked up from his home on 14.5.2016 itself. Besides this, it is pointed out that IO has admitted in para 49 that there was another mobile in possession of deceased Reena which was used by her and which was not found during investigation. He had neither obtained documents in regard to such other mobile, nor made any attempt to recover it. It is pointed out that this is a major lapse in the story of prosecution inasmuch as when IO admits that there were two mobiles used by Reena, then even if statement of the accused in the memorandum is that he had thrown one mobile in the swamp, recovery of another mobile is important to complete chain of circumstances.

67. In para 38, I.O. has admitted that probably he had received intimation regarding four seconds call in the late night. This is contrary to the statement of Ankit Sharma (PW-4) that Ankur was arrested during day time of 14.5.16 itself. That takes date of information to I.O. in the night of 13.5.16.

68. There is another contradiction in para 9 where IO has deposed that during search, family members of deceased Reena had informed that knife from both the kitchens and mobile of Reena were missing, on the contrary Roli Bhadauria (PW-2) has deposed in para 1 of her examination-in-chief that when police asked her to look for knives, then she had informed that knives were not present either in her kitchen or in the kitchen of Reena.

69. In para 18, I.O. admits that he had taken permission from the Court on 19.5.16 for obtaining DNA sample of the accused, but it is submitted that there is no deposition as to the permission taken by him for obtaining semen sample. There is no mention of the fact that small containers in which froth from the mouth and neck of the deceased was collected were sterilized or authorized for such collection. Another glaring irregularity is that though four women were found dead in the house, but no female constable was taken. This witness has admitted overwriting in Merg Intimation (Ex.D/11).

70. Reading testimony of Mirza Asif Beg (PW-28), it is submitted that there is a categorical admission that if somebody would have entered in the house after breaking of lock, then IO was not aware. This is a material omission which has not been explained by the prosecution. It is also submitted that it is apparent from the photographs contained in Ex.P/32, Ex.P/34, Ex.P/35 and Ex.P/36 that scene of crime was not secured properly as there are several persons seen standing with their shoes on and that could not have been done if they wanted to obtain proper results on

**47 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

deployment of a sniffer dog. In para 41, this witness has admitted that he is not aware as to who had gone to bring Ankit Sharma (PW-4), then he stated that after such incident SIT was constituted. No order constituting Special Investigation Team is on record. It is not revealed that who all were members of SIT, when was it constituted. But no name has been given as to who brought Ankit Sharma from Gwalior. It is pointed out that there is an indirect corroboration of story given by Ankit Sharma that he had reached police Station on 14.5.16 at about 10 inasmuch as IO has admitted that he was not at police Station. It is also admitted that Ankit Sharma (PW-4) is a minor and no consent of his parents was obtained before summoning him and there is no search warrant on record to show that any search warrant was issued to summon Ankit Sharma. There is also ambiguity in timings when dead-bodies were sent for postmortem. IO says that he had sent dead-body of Ambika for postmortem at 1.20 pm but if doctor has mentioned about receipt of dead-body at 1 pm, then only doctor can explain as to how he has mentioned time of 1 pm.

71. Though I.O. PW-28 has denied that he had taken accused Ankur in custody on 14.5.16, but could not give any explanation for the statement given by Rambabu Shukla (PW-1) in para 44 that SHO had asked Ankur in front of him to narrate what he had narrated to him in the night “(स्वतः कहा कि थाना प्रभारी ने केवल इतना कहा था कि जो तुमने हमें रात में बताया है वह इन्हें भी बता दो) “.

72. It is submitted that IO has admitted that spot map was prepared on 14.10 hours on 14.5.16 in presence of Rambabu

**48 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

Shukla (PW-1), whereas as per the postmortem report Rambabu Shukla was present in the hospital where postmortem was going on at 2 pm onwards as is apparent from Ex.P/24-A, therefore, his presence within a gap of 10 minutes at two places simultaneously casts doubt as to the authenticity of spot map (Ex.D/5). IO has failed to explain such ambiguity in para 62 of his cross-examination. IO has also admitted that he had not taken statement of Suganda Sharma during investigation in whose name SIM ending with 5765 digits was allotted. He further admits in para 66 that he is unable to give potency and name of the company which is making seized alprazolam tablets.

73. It is submitted that in Ex.D/11, which is examination of accused, Ankur Dixit, available at page 164 of the paper-book, no date has been given by Dr. J.S.Yadav (PW-24) and no injury has been shown, but when on 22.5.2016 he was examined as per requisition at 12.35 pm vide Ex.D/12 following injuries were found on the body of the accused caused by hard and blunt object:-

- “1.bruises over the buttocks (both), reddish brown in colour, umbrella shaped 5 x 1 cm in both the buttocks.
2. Complaining of ear pain (right), pus drainage complaint. No fresh pus seen.
3. Abrasion .5 cm x .5 cm over the left ear lower back.
4. Small abrasion .5 x .5 over left knee joint.
5. Superficial cut 0.2 cm over the penis, hesitate cuts.”

He was referred to ENT specialist, but there is no report of ENT specialist on record. There is no explanation for such injuries sustained by Ankur while he was in police custody and when

**49 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

medical Ex.D/11 was conducted prior to lodging him inside the jail. It is also pointed out that IO has admitted that there is no criminal track record of the accused. He is an educated person and is not a habitual offender.

74. Dr. K.K.Gupta (DW-2) has admitted that he was posted in District Hospital, Bhind, as emergency medical officer when Ankur was brought to him on 22nd May, 16. He had bruises on his both the buttocks which were red brown in colour and were in umbrella shape. There was a hesitate cut on the penis which were caused within 2-3 days. Admittedly Ankur was in custody 2-3 days prior to such medical examination, but there is no explanation by the IO that how such injuries were sustained by the accused while he was in police custody.

75. In the alternative, it is submitted by learned amicus curiae that there is no direct evidence. There is no pre- planning to give effect to such crime nor the accused had allegedly taken any weapon with him. He is neither a habitual nor a hardened criminal. He is an educated person with degrees of B.Sc., B.Ed., P.G.D.C.A. and has a mother who is a school teacher and an unmarried sister. Trial Court has not noted the fact that there are good chances of reform and even if it is presumed that appellant was present at the scene of crime though hypothetically, there are brilliant chances of not only reform, but also it is a case of sudden loss of balance, capital punishment is not warranted. Accused is facing agony for last three years. His socio- economic condition is not taken into consideration and there is no history of any previous enmity.

Further the trial Court has failed to apply itself, as sentence, was pronounced on the same day after recording conviction without affording an opportunity to adduce evidence, and therefore, such kind of judgment is perverse and needs to be set aside. It is also submitted that trial Court has failed to balance mitigating circumstances vis-a-vis aggravating circumstances and that has caused prejudice in awarding appropriate sentence.

76. Learned amicus curiae has placed reliance on the judgment of the Supreme Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra** as reported in **AIR 1984 SC 1622** to point out that in a case of circumstantial evidence Supreme Court has held as under :-

“152.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 and Anr. vs. State of Maharashtra*, (1973) 2 SCC 793 where the following observations were made:

"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 other hypothesis except that the accused is guilty,

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

**51 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

(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.

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

None of these circumstances are available in the present case.

77. Reliance has also been placed on the judgment of the Supreme Court in the case of **Kuna @ Sanjaya Behera v. State of Odisha** as reported in **(2018) 1 SCC 296** wherein in para 20 aspect of motive has been discussed and it is submitted that no motive is made out for committing murder of five persons. Reliance has also been placed on the judgment of the Division Bench of this High Court in the case of **Hem Singh v. State of M.P.** as reported in **2019(2) JLJ 39** wherein again in para 23 and 25 aspect of motive has been discussed and it has been held that in absence of motive prosecution cannot take advantage of weakness of defence. Reliance has further been placed on the judgment of the Supreme Court in the case of **Kansa Behera v. State of Orissa** as reported in **AIR 1987 SC 1507** wherein it has been held that if no blood is found on the weapon and Serologist has neither given the blood group nor indicated dimensions of blood stains on clothes, then evidence of blood group cannot be taken into consideration as a circumstance against the accused.

78. Reliance has also been placed to the judgment of the

Supreme Court in the case of **State of M.P. v. Chhayaram** as reported in **1993 JLJ 744 (SC)** para 8, that no human blood was found on weapon and clothes, and therefore, circumstances are not proved beyond doubt against the appellant. Similar is the ratio in the case of **Arjun Singh v. State of M.P.** as reported in **1998 (2) JLJ 350** para 13. Reliance has further been placed to the judgment of the Supreme Court in the case of **Nesar Ahmed and another vs. State of Bihar** as reported in **2002 SCC (Cri) 1100** wherein in para 4 and 6 principles have been reiterated as to when conviction can be recorded in a case of circumstantial evidence. It has been held that if the presence of the appellants at the crucial time has not been explained in the house, all other circumstances would not complete the chain of circumstantial evidence to lead to any irresistible conclusion only with the hypothesis of guilt of the appellants and inconsistent with their innocence. Reliance has also been placed to the judgment rendered in case of **Lakhanlal v. State of M.P.** as reported in **2008(2) J.L.J. 19** and **Uma Verma vs. State of M.P.** as reported in **2010(1) M.P.WN 2** in regard to presence of accused in the house of the deceased.

79. Reliance has been placed on the judgment of the Supreme Court in the case of **Raj Kumar Singh alias Raju alias Batya v. State of Rajasthan** as reported in **AIR 2013 SC 3150** to point out that suspicion however strong may be cannot take place of proof. There is difference between must be true and may be true. Similar is the ratio in the case of **Sujit Biswas vs. State of Assam** as reported in **(2013) 12 SCC 406** and in the case of **Jose alias**

Pappachan v. Sub-Inspector of Police, Koyilandy and another as reported in **AIR 2016 SC 4581**.

80. Reliance has also been placed to the judgment of the Supreme Court in case of **Vijay Pal v. State (GNCT) of Delhi** as reported in **2015 Cri.L.J. 2041** wherein in para 13 it has been held that expert evidence is not conclusive in nature where eye-witness account is found credible and trustworthy. In this regard, reliance has also been placed to the judgment of the Supreme Court in the case of **Debapriya Pal vs. State of West Bengal** as reported in **AIR 2017 SC 1246**.

81. Learned amicus curiae submits that on the basis of presumption a person cannot be roped in a crime. Placing reliance on the judgment of the Supreme Court in case of **Nagaraj vs. State represented by Inspector of Police Salem Town, Tamil Nadu** as reported in **(2015) 4 SCC 739** it is submitted that even fault of defence cannot be considered against the accused. In the instant case, High Court erred in drawing an inference against the appellant/accused and convicted him under Section 302 of IPC of what he stated or what he failed to state in his examination under Section 313 of Cr.P.C. when the remaining evidence did not inspire confidence. Appellant was held to be entitled to benefit of doubt and acquitted. Same is the ratio in the case of **Digamber Vaishnav and another v. State of Chhattisgarh** as reported in **AIR 2019 SC 1367** wherein it has been held that onus of prosecution cannot be discharged by referring to existence of highly suspicious factors to inculcate accused nor falsity of

defence could take place of proof required to be established by prosecution to succeed. Similarly, reliance has been placed to the decision in the case of **Ankush Maruti Shinde and others v. State of Maharashtra** as reported in **AIR 2019 SC 1457** wherein in paragraph 14, Supreme Court observed that where there is no fair investigation and fair trial and the fundamental rights of the accused guaranteed under Articles 20 and 21, of the Constitution of India, have been infringed and where the accused remained under constant stress and in the perpetual fear of death as they were facing death penalty, they have lost their valuable years of life in jail and family members have also suffered; in exercise of its powers under Article 142 of the Constitution of India, Supreme Court, directed the State of Maharashtra to make payment of sum of Rs. five lacs to each of the accused by way of compensation.

82. Reliance has also been placed on the judgment of the Supreme Court in case of **State of Uttar Pradesh vs. Wasif Haider and others** as reported in **(2019) 2 SCC 303** wherein it has been held that in case of defective or illegal investigation benefit of doubt arising out of faulty investigation accrues in favour of the accused. Reliance has also been placed on the judgment of the Supreme Court in case of **Mahavir Singh vs. State of Madhya Pradesh** as reported in **(2016) 10 SCC 220** wherein again the ratio is that benefit of faulty investigation should go in favour of the accused. In para 26, Supreme Court has laid down the duties of the investigating officer dealing with a murder case and has held that investigating officer dealing with a

murder case, is expected to be diligent, truthful and fair in his approach and his performance should always be in conformity with the police manual and a default or breach of duty may prove fatal to the prosecution case. Supreme Court noted that investigation was carried out with unconcerned and uninspiring performance. There was no firm and sincere effort with the needed zeal and spirit to bring home the guilt of the accused. Reliance has also been placed on the judgment of the Supreme Court in the case of **Kumar vs. State represented by Inspector of police** as reported in **(2018) 7 SCC 536** wherein in para 27 and 28 it has been held that if there is irregularity and illegality of arrest, it by itself would not affect culpability of offence, if the same is otherwise proved by cogent evidence. However, in a murder trial such irregularity should be shown deference, as investigating authorities are responsible for suppression of facts.

83. In regard to alternative submission, learned amicus curiae has placed reliance on the judgment of the Supreme Court in the case of **Chhannu Lal Verma v. State of Chhattisgarh** as reported in **AIR 2019 SC 243** wherein recording a fact that accused has no previous criminal record apart from acquittal in rape case and he is in jail since pendency of appeal before the Supreme Court for past four years and had displayed good behaviour in prison showing he is not beyond reform, it is held that case is not fulfilling test of “rarest of rare case” and death sentence being not only option, hence commuted death sentence to life imprisonment.

84. Similarly, reliance has been placed on the judgment of the Supreme Court in case of **M.A. Antony alias Antappan v. State of Kerala** as reported in **AIR 2019 SC 194** wherein it has been held that Court should take into consideration probability of reform or rehabilitation and social integration of the accused into society reducing death sentence to life imprisonment. Reliance has also been placed on the judgment of the Supreme Court in case of **Rajendra Pralhadrao Wasnik v. State of Maharashtra** as reported in **AIR 2019 SC 1**, wherein, it has been held that previous bad character of the accused showing pendency of two similar cases cannot be considered for awarding death sentence. Past adverse conduct of convict ought not be taken into consideration for the purposes of determining quantum of sentence except in specified circumstances. Similarly, in case of **Vijay Kumar v. State of Jammu & Kashmir** as reported in **AIR 2019 SC 298** taking into consideration motive and circumstances of the case that accused was guilty of committing murder of three minor children and causing serious injuries to other minor child, but he being neither a previous convict or a professional killer and committed offence with motive to eliminate family of co-brother out of family dispute, death sentence was altered to life imprisonment till death without remission. Learned amicus curiae has also placed reliance on the judgment of the Supreme Court in case of **Sonvir alias Somvir vs. State (NCT of Delhi)** as reported in **(2018) 8 SCC 24** wherein in paragraph 26.5 it has been held that :

**57 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

“26.5 Forensic report regarding matching finger impressions

26.5.1. The prosecution relied upon the report tendered by the Senior Fingerprint Expert of the Fingerprint Bureau, RN Rawat (PW-35), to state that the finger impressions obtained from Sonvir @ Somvir matched with the chance prints obtained from the scene of crime.

26.5.2 The Trial Court and the High Court considered the six chance prints lifted from the first floor of the house by SI Naresh Kumar Sharma (PW-8), In-charge of the Fingerprints Bureau, Crime Branch. Chance prints Q1 to Q3 were lifted from the iron box on the first floor, Q4 from the showcase glass, and Q5 and Q6 from the iron safe. The Senior Fingerprints Expert of the Fingerprint Bureau, RN Rawat (PW-35), vide his reports (Ex. PW-35/A and Ext. PW-35/B), opined that the chance print marked Q1 was identical to the specimen right palm impression of Sultan @ Rajesh (Accused 1), while chance print marked Q5 was identical to the specimen left palm impression of Sonvir @ Somvir (Appellant-Accused 2).

26.5.3. The specimen chance prints of both these accused viz. Rajesh @ Sultan (Accused 1) and Sonvir @ Somvir (Appellant-Accused 2) were taken by the I.O. - SI Amrit Raj (PW-32A), without obtaining any order of a Magistrate whilst the accused were in police custody.

26.5.4 This leads to the issue as to whether the report of the Forensic Expert is admissible in evidence, in light of the provisions of the Identification of Prisoners Act, 1920 (“the Act”) since no rules have been framed prescribed by the Government of NCT of Delhi. This issue is being dealt with in the separate Judgment by Justice Ashok Bhushan.”

In a concurring judgment Hon'ble Justice Ashok Bhushan has dealt with the issue of validity of fingerprint samples obtained without there being any order of Magistrate existing under Section 5 of the Identification of Prisoners Act, 1920 and has held that absence of rules under Section 8 does not mean that Magistrate's permission is mandatory. In this judgment, Supreme Court has referred to the judgment of the Supreme Court in case of **Mahmood v. State of U.P. (1976) 1 SCC 542**. In the given facts and circumstances, it is observed that the perusal of the judgment of this Court in **Mahmood case (supra)** indicates that there was complaint by the accused that his fingerprints were forcibly taken by the Police on some round object which has been noticed in para

**58 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

10 of the judgment. This Court noticed that specimen fingerprints of the appellant were not taken before or under the order of the Magistrate which was held suspicious feature on the conduct of the investigation. It is held that even if it is assumed that only a gandasa bore fingerprints of the appellant then also it would not inexorably and unmistakably lead to the conclusion that the appellant and none else was the murderer. Paragraphs 16, 18 and 19 read as under :

“16. Furthermore, the specimen fingerprints of the appellant were not taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. This is another suspicious feature of the conduct of investigation. It has not been explained why this Magistrate was kept out of the picture.

18. Secondly, even if it is assumed that the handle of this gandasa bore the fingerprints of the appellant, then also it would not inexorably and unmistakably lead to the conclusion that the appellant, and none else was the murderer of Dwarka, unless it was firmly proved further that the fatal injury to the deceased was caused with this weapon. Definite proof of this link was lacking in this case. The missing link could be best supplied by showing that there was blood on this gandasa, and that blood was of human origin. But this was not done.

19. Lastly, it may be observed that Inspector Daryao Singh, PW 15, has not given any reasons in support of his opinion. Nor has it been shown that he has acquired special skill, knowledge and experience in the science of identification of fingerprints. It would be highly unsafe to convict one on a capital charge without any independent corroboration, solely on the bald and dogmatic opinion of such a person, even if such opinion is assumed to be admissible under Section 45 of the Evidence Act.”

In the above background Supreme Court held that the solitary piece of circumstantial evidence on which prosecution have staked their claim is too shaky, suspicious and fragile to furnish a sound foundation for conviction and held in paragraph 20 as under:

“20. In the light of the above discussion, we are of the view that the solitary piece of circumstantial evidence on which the prosecution have staked their case, is too shaky, suspicious and fragile to furnish a sound foundation for conviction.”

85. Thus, placing reliance on these judgments, it is submitted by learned amicus curiae that even the evidence of fingerprint being not wholly reliable and adequate to complete the chain of circumstances pointing guilt of the accused and of accused alone, it is a fit case for acquittal as there was no identification mark on the steel glass from which allegedly fingerprints were lifted. Therefore, it cannot be said that they were properly lifted and are in relation to the scene of crime only as Rambabu Shukla has deposed that there was no glass on the bedside, in the room of Reena.

86. Learned Additional Advocate General in his turn submits that there is recovery of a knife. In statement under Section 313 of Cr.P.C. accused admits his presence in a police van by side of a muddy plot where said knife was recovered. There is no challenge to the procedure adhered to for obtaining blood sample for DNA examination. Sonendra Singh (PW-13) has clearly deposed that he collected viscera etc. of the deceased persons on 15.5.16 corroborating the statement of Dr. J.S.Yadav (PW-24). D.N.A report Ex.P/60 corroborates presence of the accused and thus presence of fingerprint on a steel glass, matching of DNA in the vaginal swab of deceased Reena with blood sample of the accused are sufficient circumstance to maintain conviction of the appellant.

87. Reliance has been placed on the judgment of the Supreme

Court in case of **State of A.P. v. S.Rayappa and others** as reported in **AIR 2006 SC 3709** wherein it has been held that evidence of eye-witnesses when corroborated by medical evidence, then same cannot be discarded on the ground of interestedness. Reliance has also been placed on the judgment of the Supreme Court in case of **Raju Manjhi v. State of Bihar** as reported in **AIR 2018 SC 3592** wherein it has been held that recovery of used polythene pouches of wine, money, clothes, jewellery based on disclosure by accused and corroborating with his confessional statement and guilt, is admissible in evidence. Reliance is also placed to the judgment of the Supreme Court in the case of **Asar Mohammad and others v. State of U.P.** as reported in **AIR 2018 SC 5264** wherein it has been held that in a case of circumstantial evidence, word fact used in Section 27 is not limited to actual physical material object. Placing reliance on these judgments, learned Additional Advocate General prays for maintaining conviction and sentence and submits that minor omissions in investigation or testimony of prosecution witnesses are not sufficient to gloss over such a ghastly crime. It is submitted that lust of the accused was so deep that he could not accept any interference and has committed murder of five innocent persons single handedly, and therefore, his conviction under Section 302 on five counts is fully justified.

88. Learned trial Court has decided the first issue namely whether Smt. Reena, her daughter Chhavi, her niece Ambika & Mahima, so also her relative (brother-in-law) Golu @ Avnish died

**61 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

because of homicidal death. This finding that such deaths were homicidal have not been challenged or questioned by learned amicus curiae, therefore, this issue needs no elaborate examination. As per the opinion of Dr. J.S.Yadav (PW-24), Dr. Himanshu Bansal (PW-25) and Dr. R.N.Rajoria (PW-26) the deaths of the deceased were homicidal.

89. It is also an admitted fact that this is not a case of direct evidence or eye-witness account but is based on circumstantial evidence, and therefore, Court has considered various circumstances to connect various evidence so to complete the chain of circumstances. The circumstances which have been taken into consideration are namely :-

- (i) Availability of mobile call details showing calling details (Ex.P-17 to Ex.P-20) of calls made by accused to deceased Reena or vice versa.
- (ii) DNA report (Ex.P/60).
- (iii) Fingerprint obtained from the steel glass.
- (iv) Admittedly accused used to give tuition to the children in relation to which he was visiting house of Reena, and therefore, they were known to each other.
- (v) Reena giving a call from her number ending with 5138 to the mobile of the accused ending with 5765 on 13.5.16.
- (vi) Recovery of knife (Ex.P/12) at the instance of the appellant and thereafter memorandum (Ex.P/10) under Section 27 of the evidence Act prepared at the instance

**62 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

of the accused.

(vii) Presence of alprazolam in the viscera of Mahima, Chhavi and Ambika.

(viii) Recovery of alprazolam from the drug store of District Hospital, Bhind, where accused had taken training for GNM course.

(ix) Recovery of blood stained clothes from the house of the accused.

90. In these chain of events, learned counsel for the appellant has not disputed that appellant Ankur was giving tuition to the children in the house of Reena, and therefore, they were known to each other.

91. Learned trial Court has found that there is plethora of evidence supported by Anand Dixit (PW-11) who had issued a certificate under Section 65 b of the Evidence Act vide Ex.P/16 and call detail record (Ex.P/17) that on 13th May, 2016 at 23.13.55 hours a four second call was made from the mobile number of Reena to the mobile number of the accused. Call details reveal that accused and Reena were frequently talking at different hours of the day. This aspect too has not been disputed by the learned counsel for the appellant that they both were young and possibility of their having relations cannot be ruled out. However, learned trial Court has dealt with the issue of fingerprint on the steel glass, presence of alprazolam in the viscera of three persons, namely Mahima, Ambika and Chhavi, DNA report received from FSL, Sagar, and has treated them to be the conclusive proof of presence

of the accused at the time of such murder, and therefore, has attributed motive to the accused and has held him guilty of murder on five counts.

92. Learned trial Court has overlooked certain vital facts which goes into the root of the case, namely Mirza Asif Beg, IO (PW-28) could not explain breaking of lock. He could not explain that who had broken the lock and entered into the house at Virendra Nagar where dead-bodies were lying, when police had reached the scene of crime.

93. There is no explanation to the fact that when Shriram Sharma, father of Reena, who was staying 4-5 houses away from the house of Reena, had asked his grand-son Neelesh Sharma (PW-16) to look for Ambika and as per the deposition of Neelesh Sharma since both the doors of the house of deceased Reena were locked, he climbed the roof of a neighbourer touching the boundaries of the house of Reena and entered into the house of Reena and this he had done in presence of Shriram Sharma, then non-examination of Shriram Sharma is another important missing link in the chain of circumstances.

94. There is no explanation as to why Shriram Sharma did not attend funeral of his daughter and other relatives as has been admitted by Rambabu Shukla (PW-1).

95. Another important element missing in the chain of circumstances is non-examination of any of the neighbourers of Reena though Rambabu Shukla has admitted that there were two immediate neighbourers, namely Ramlal Sharma and Mr.

Goswami who share common wall with the house of Reena/Rambabu Shukla on north and west respectively.

96. Another missing link is that IO has failed to explain the lead given by sniffer dog which was deployed at the scene of crime as has been deposed by Rambabu Shukla (PW-1) and admitted by IO Mirza Asif Beg (PW-28).

97. Another missing link in the story of prosecution which has not been considered by learned trial Court is that Rambabu Shukla (PW-1) has admitted in para 31 that when he had reached the place of incident, at that time, portion of Roli Bhadauria was locked, but contrary to this, Roli Bhadauria (PW-2) has deposed that lock of her house was broken when she reached the place of incident at about 2 pm on 14.5.16. Prosecution has also not been able to explain that when Shriram Sharma had already come to know about death of five of his relatives through Neelesh Sharma (PW-16) at about 7.30 am, then why he called Rambabu Shukla at about 8.30 am asking him that house of Reena is locked and whether children are in the village. This is an important aspect which has been glossed over by the learned trial Court inasmuch as there was no occasion for Shriram Sharma to have waited for Rambabu Shukla without lodging any report to the police and without making any attempt to enter in the house of Reena.

98. Neither Rambabu Shukla nor the IO could explain this discrepancy that when death of five persons was already known to Shriram Sharma, then why he informed Rambabu Shukla that children are not available at home.

99. There is also no explanation to the suggestions given to Rambabu Shukla that Reena was preparing for D.Ed. so to seek compassionate appointment in place of her husband and also she was claiming share in the house inasmuch as there is a clear suggestion to Rambabu that said plot was purchased from one Pappu which was negotiated by his son Shashikant i.e. husband of Reena and it was in fact Shashikant who had paid for the plot and not Rambabu though such plot was registered in the name of wife of Rambabu, namely Smt. Rajni Shukla. Further there is no explanation that Reena was claiming share in the ancestral property at village Ghada where Rambabu was staying.

100. Rambabu Shukla (PW-1) has admitted in para 34 of his deposition that there was no other material in the room in which four dead-bodies were found and bed was soaked with blood except for books lying in a almirah which contained four bags of children. This witness has also admitted that there was no material on the bed in or around the dead-body of Reena. It is also admitted that none of the valuables, cash or jewellery were stolen from the house at Virendra Nagar. This part of evidence is very crucial because in seizure memo (Ex.P/8) at serial No.5 it is mentioned that a steel glass was seized on which some fingerprints were visible but it is not mentioned as to from which place in the house such glass was seized. In fact, Rambabu Shukla (PW-1) has admitted that such glasses were recovered from the kitchen and police had taken out these glasses from the kitchen and shown them to him. He has admitted that there is no mention in Ex.D/5 as

to from which room such glass was recovered from which fingerprints have been obtained, even on Ex.P/9, there is only mention of the fact that steel glass was picked up near the bed, but from which room is not mentioned in Ex.P/9 also. When this is corroborated with the evidence of Rambabu Shukla, who stated that there was no material on the bed, then seizure of steel glass from which fingerprints have been allegedly obtained becomes doubtful and this is another important circumstance against the prosecution which prosecution has failed to connect.

101. Another important and glaring omission is that one of the witness to Ex.P/8, seizure memo, Rajkishore is close relative of deceased Reena and he has not been examined by the prosecution though Rajkishore and Ramkumar Sharma have been shown to be witnesses to various seizure and other memos prepared by prosecution. On Ex.P/9, signatures of Rambabu Shukla were obtained as a complainant and not as a witness. Since Ramkumar Sharma and Rajkishore have not been examined, therefore, lifting of fingerprint in absence of any independent witness from the steel glass is not proved. Rambabu Shukla could not have been examined as a witness of lifting of such fingerprint from the steel glass as he is not a witness to such act.

102. Prosecution has not made any attempt to lift fingerprints from two broken locks in the house of Reena.

103. Another unnatural circumstance in the case is that the room in which steel glass was allegedly kept has been marked as place E in Ex.D/5 and there is no mention of availability of steel glass at

place E in Ex.D/5. Another circumstance is, as per, Rambabu Shukla (PW-1) when dog squad reached Virendra Nagar, then accused ran away. Same Rambabu, then deposed, that he had seen accused in the postmortem room, so also at the place of cremation. If accused had run away after presence of dog squad at the place of incident, then there was no occasion for him to have visited postmortem house or place of cremation.

104. Narendra Tiwari (PW-5) has deposed that he had given a call to the accused and accused asked him to come and pick hoarding and then he reached Bhind. He visited Reena's house alongwith the accused on his Activa scooter after 2.30 pm as in cross-examination he has admitted that he had called Ankur for hoarding at 2.30 pm. This is another glaring contradiction in the prosecution story inasmuch as if Rambabu Shukla is to be believed to be a truthful witness, then Ankur had run away after arrival of dog squad at about 12.00, then there was no occasion for Ankur to have visited their house after 2.30 pm. Also Rambabu had when observed that Ankur had run away after witnessing dog squad, then why this fact was not mentioned to the IO or in the FIR.

105. As has been discussed above, there is contradiction in the testimony of Narendra Tiwari (PW-5) inasmuch as as per the postmortem reports (Ex.P/21A to Ex.P/25A), postmortem was conducted between 1 pm to 3 pm, therefore, contention of Narendra Tiwari that when they had reached Virendra Nagar, at that time, dead-bodies were lifted for being sent to the hospital is factually incorrect from the documents available on record and

there is no suggestion by the prosecution to the doctors that they had ante-timed the postmortem reports for some ulterior motive. He appears to be a planted witness. His call details have not been corroborated besides other statements. Even his presence has not been corroborated by Imran Ali (PW-6), though Narendra Tiwari (PW-5) claims to have visited dead house with Ankur on 14.5.16. Thus, evidence of Narendra Tiwari does not inspire confidence and needs to be rejected and is rejected.

106. In this continuation, evidence of Imran Ali Khan (PW-6) also does not inspire confidence. There is a material contradiction in his evidence i.e. in his case diary statement (Ex.D/10) he never informed the police that Ankur had expressed any apprehension of police taking cognizance about him as he was giving tuition in the house of Reena, and therefore, statement of Imran Ali Khan is nothing but exaggeration which is not corroborated with any other documentary evidence. In fact, Imran Ali Khan is a photo journalist and he could have easily picked a photo if Ankur had visited dead house in the hospital and could have produced the same in support of his contention that Ankur had visited District Hospital and had a chat with him where he had expressed his apprehension.

107. Another missing link is that in the FIR (Ex.D/7) time mentioned for getting such information regarding such crime is mentioned as 17.50 on 14.5.2016. Dehati Nalishi (Ex.P/1) was recorded at 10 am and in the Dehati Nalishi as well as FIR (Ex.D/7), name of the accused is mentioned as -unknown one.

This is contrary to the statement of Rambabu Shukla (PW-1) who categorically deposed that he had an apprehension that there were more than one person involved in the incident, but this is contradicted with FIR as well as Dehati Nalishi.

108. Statement of Ankit Sharma (PW-4), relative of Ankur, has remained unrebutted. He has clearly deposed that he is son of Suganda Sharma who had obtained a Sim ending with digits 5765 and same was given to Ankur Dixit. Police had visited him at his house at Shatabdipuram, Gwalior, on 14.5.2016 and took him to Bhind via Malanpur where he had gone with his cousin Rinku. He has admitted that he had reached Bhind at about 10. He was beaten and then police asked address of Ankur where he had taken the police. When gate of Ankur was knocked, it was opened by mother of Ankur and it was informed that Ankur was sleeping. Ankur was woken up and was asked to bring his mobile and purse. This witness has clearly deposed that on the next day i.e. 15th evening he was released at about 6 pm. When this statement is examined in the light of statement of Rambabu Shukla that he had received intimation about arrest of Ankur in the morning hours of 15th, then he had visited police station at about 2 pm alongwith his relative Rajkishore when police had interrogated Ankur in front of him and obtained his memorandum under Section 27 of the Evidence Act, goes to prove that arrest of Ankur at 2 pm vide Ex.P/55 (arrest memo), becomes doubtful. It reveals that Ankur was arrested on 14.5.16 and his formal arrest was shown by the police subsequently. This fact is corroborated from the evidence of

Rambabu Shukla (PW-1) when he deposed that IO had asked Ankur to narrate those facts which he had narrated to him on the previous night (for reference please see paragraph 44 of PW-1). Therefore, arrest of Ankur on 14.5.16 itself, as can be safely deduced from the statement of star witness of prosecution, Rambabu Shukla and Ankit Sharma (PW-4), casts suspicion as to the story developed by the prosecution. This aspect has been overlooked by learned trial Court. If Ankur was arrested on 14.5.16 and while entering in his house, as has been admitted by Rambabu Shukla, none of the witnesses had given their search, then any material could have been planted or lifted from the house of accused Ankur. No blood stains have been found on the clothes of the accused. Ankit Sharma (PW-4) has admitted that he was asked to pick such wet clothes and he wrung out and dried them in the police station.

109. There is another contradiction in the prosecution story. Roli Bhadauria (PW-2) has deposed that when she had reached Virendra Nagar at about 2 pm, she was asked to look for the knives in her kitchen and in the kitchen of Reena and then she informed that two knives from the kitchen of Reena and one from her kitchen are missing. This witness has admitted that police had broken locks of her house, but neither any Panchnama was prepared nor any broken lock has been seized from the spot. This witness has also admitted that except for giving tuition accused was not visiting Reena. She has also admitted that there was some animosity between Ramlal Sharma and Reena Shukla. Another

angle is that when three knives were reported to be missing, then either there were three persons who were the assailants or else three knives should have been mentioned in the memorandum under Section 27 of the Evidence Act of Ankur. There is no explanation to demonstrate that any attempts were made either to trace two other knives or correlate their use.

110. Sanjeev Kumar (PW-3) has deposed that at the instance of Ankur one knife was recovered from the swamp. He has admitted that when he reached near the plot, police party was already standing there and plot was being cleaned, therefore, he cannot say if police party had kept such knife as such knife is easily available in the market, therefore, this prosecution witness could not prove much about the recovery of knife.

111. Neeru @ Neetu (PW-7) is a cleaning employee and his services were taken to search for the items allegedly thrown in the swamp. This witness clearly deposed that knife was full of mud, and therefore, he cannot give its description. This is contrary to the evidence of Sanjeev Kumar (PW-3). Dharmendra Singh (PW-8) was driver of JCB and since he was busy in operating the JCB, he admitted that he had not seen the knife closely but had seen it from a distance while sitting in the JCB machine itself. This witness has deposed that police had kept this knife in a polythene bag but no polythene bag has been produced by the prosecution.

112. Another glaring omission in the testimony of this witness is that he admits that he (PW-8) had seen the accused on his mobile on several occasions which shows that he was a tutored witness to

whom accused was exposed on several occasions. Though Sanjeev Kumar (PW-3) and Dharmendra Singh (PW-8) have shown presence of accused when knife was recovered and have attributed such recovery at the instance of the appellant, but prosecution witness Gaurav (PW-9), clearly accepts in cross-examination that at the time of clearing of the swamp accused was not present. This witness has not been declared hostile, and therefore, statement of prosecution that knife was recovered at the instance of accused is belied by an independent witness Gaurav, who is also a cleaning employee of the municipality. This witness (PW-9) contradicts the testimony of Sanjeev Kumar (PW-3) and Dharmendra Singh (PW-8).

113. Pradeesh (PW-10) claims himself to be Principal of Patiram Shivhare Nursing College, Bhind. His evidence is to the effect that appellant had taken admission in GNM course in his college in the year 2013-14 and such course is of 3 years duration including 6 months internship. Accused took admission in the first and second year course, but did not attend classes for the third year. He has been examined to show that accused had knowledge of medicine and pharmacology as these are the subjects taught in the second year. This witness has also deposed that accused had taken training at District Hospital, Bhind, and during such training he also learned how to administer injectables and medicines. Information about surgery is also imparted.

114. In cross-examination, this witness has admitted that alprazolam is not a sedative. He has also admitted that anti allergic

drugs cause higher sedation with higher doses as compared to alprazolam. This witness has also admitted that attendance sheet enclosed by him as Annexure P/14 does not contain name of the college. Rakhi Chaudhary (PW-17) working as staff nurse in the District Hospital, Bhind, has been examined in support of seizure of box of alprazolam from her which was obtained by police from the drug store in the duty room in which alprazolam tablets were kept. She has admitted that accused had visited her alongwith team of police officials at the time of such recovery and Ankur had informed at that time that earlier he used to steal alprazolam tablets from the hospital. This witness has admitted that the chit of seizure memo does not contain her signatures. This witness has also admitted that there is no entry of the tablets (given in seizure to the police) in the register of the drug store. This witness has also admitted that accused had not stolen any of alprazolam tablets in front of her and she cannot give any time frame if such tablets were taken away earlier. She also admitted that except for her, police had not obtained signatures of anybody else on the seizure memo and she had not obtained any written consent of the Civil Surgeon before giving such tablets in seizure.

115. When evidence of Pradeesh (PW-10) and Rakhi Chaudhary (PW-17) are read in conjunction, then it is apparent from Ex.P/14 that admittedly accused had taken admission in the year 2013-14 in GNM course and attendance sheets demonstrate that he did not attend third year course as has been clearly deposed by Pradeesh. But in the attendance sheet (Ex.P/4) name of the accused has been

shown as a student of GNM third year showing his presence for some time and then recording his continuous absence. This name is mentioned at serial No.32, which causes doubt about the authenticity of the attendance record, inasmuch as on previous sheet, giving attendance for GNM third year course, name of the appellant has been shown at serial No.33 and all these attendance sheets are for the third year which accused had admittedly not attended. Thus, manipulation in such documents cannot be ruled out, rather it is writ large on the face of it.

116. Dr. K.K.Dixit (PW-12), Medical Specialist, has deposed that he was working as In-charge, Civil Surgeon, for about three and half years prior to 7.5.17. He admitted that students of Patiram Shivhare Nursing College, Bhind, visit him for training and they are being deployed turn by turn in all the wards of the hospitals. Such students are given training in the field of nursing care. Hospital maintains records of such training and they are also taught about the medicines which are to be administered. This witness has admitted that alprazolam is a tranquilizing medicine and is used in patient suffering from insomnia or mental tension. Such medicines can be used only when prescribed by a doctor and is available in the store of the District Hospital and is provided to staff nurse, in-charge of the ward and staff nurse administers such medicine on the advice of the doctor. This witness has admitted in cross-examination that he had seen the accused only once when police had brought him to hospital in some case. He also admitted that if any medicine is to be seized from the District Hospital, then

permission of Civil Surgeon or CMHO is must. He further admits that no permission was obtained from him or CMHO before seizure of such medicine.

117. Rakhi Chaudhary (PW-17) or any other prosecution witness has not given batch number, manufacturing date and expiry date of alprazolam which was allegedly taken away by the accused showing that such medicines had not expired when they were allegedly administered to some of the deceased. Thirdly, there is no mention of exact potency of the tablets inasmuch as Rakhi Chauchary has deposed that probably they were 0.5 mg. When tablets were given in seizure by the staff nurse from the drug store of the duty room, then she was required to specify that what was the exact potency of the drug. In fact, in Ex.P/41 there is no mention of potency besides other specifications because potency will have a direct bearing on the tranquilizing effect. Fourthly, there is no mention of the fact that how many tablets were found missing from the stock to corroborate the statement of the accused that he had taken away alprazolam tablets from the store of the hospital.

118. It is also not clarified by prosecution witnesses Rakhi Chaudhary (PW-17) that when they are maintaining stock register of issue of tablets, then if anybody, may it be the accused, had taken away some tablets at some point of time, then why such discrepancy in the stock was not brought to the notice of the higher authorities. In absence of any such documentation being made available to the IO and in absence of it being proved by the

IO, theory of accused stealing some alprazolam tablets and then passing it to Reena to administer them to the deceased (minors) is not made out. Thus, through these two witnesses Pradeesh (PW-10) and Rakhi Chaudhary (PW-17) prosecution has miserably failed to prove their theory of stealing of alprazolam by the accused and passing it to Reena for administration to children.

119. In fact, when evidence of Roli Bhadauria (PW-2) is revisited, then this prosecution witness has clearly deposed that except for giving tuition, accused was not visiting house of Reena. Even if hypothetically, it is assumed that he was visiting house of Reena, then in the same vein, it can be presumed that since all the children were school going, he had sufficient time for privacy, rather than sneaking in the house of Reena with so much of planning and design, that too at the odd hour of the night.

120. Anand Dixit (PW-11) is a Constable posted in cyber cell branch in the office of Superintendent of Police, Bhind. This witness had obtained call details for mobile numbers 7697148002, 7047745138, 9111515765 and 8269486770 from the concerned cellular company through e-mail. He stated that from mobile number ending with 5138 used by deceased Reena a four second call was made to the number ending with 5765 digits allegedly used by the accused on 13.5.16 at 23.13.55 hours. This witness has admitted that call details of mobile No.9165731870 was not obtained because it was of some Rambabu, a family member of the deceased. This witness has also admitted that he cannot give tower location in regard to the call made from number ending with 5138

to number ending with 5765 digits in the night of 13th May, 2016. He also admitted that he is not in a position to give any documentary evidence to show that mobile No.7047745138 was being used by Reena. Thus, through the call details in absence of tower location nothing specific could be proved by the prosecution. Possibility of 4 second call being a panic call can also not be ruled out, but there is no investigation in this direction.

121. Sonendra Singh (PW-13) Constable No.715 has admitted that he had taken the dead-bodies alongwith the requisition letter to the District Hospital for postmortem which he had given to the concerned doctor in the District Hospital. On 15.5.16 doctor had given him two sealed boxes pertaining to deceased Mahima, one sealed bottle, two sealed *Potalis* and one sample of seal and he had given acknowledgment on Ex.P/21. Similarly, he has collected such material for deceased Chhavi, Ambika, Reena. In relation to Reena, he had also collected vaginal slide. In relation to Golu also, he had obtained such material from the District Hospital. He admits that he had handed over all these material to Head Constable Kamal Singh who had prepared seizure memo. Kamal Singh (PW-14) had also recorded FIR (Ex.D/7) and admits receiving material handed over to him by Sonendra Singh (PW-13). He also deposed that police Constable Narveer Singh had given him a sealed *Potali* containing underwear, pubic hair, semen slide of the accused vide Ex.P/31. Kamal Singh has admitted that he is not in a position to give name of the doctor from whom such sealed packets were received. Narveer Singh (PW-23) from whom

such semen slides of the accused were allegedly received has deposed that he had taken accused to District Hospital for examination on 16.5.16. After medical examination, doctor had handed over a *Potali* containing underwear, pubic hair, two semen slides and semen sampling bottle in a sealed condition alongwith sample of seal of the hospital which he had handed over on 16.5.16 to the Head Constable Kamal Singh and it contains his signatures from 'B' to 'B' part. He had taken all these material for FSL examination to FSL, Gwalior, on 20.5.16 and had deposited such material vide draft statement Ex.P/52 and Ex.P/53 to the Forensic Science Laboratory, Gwalior. This witness has admitted that he has no knowledge whether permission was obtained from the Court or not for collection of semen. He also admits that he had not marked his departure in the Rojnamacha when he had taken Ankur for medical examination. He also admits that he is not in a position to depose as to who had accepted such draft and material packets from him at FSL, Gwalior. However, there is no requisition of the doctor showing collection of semen from the accused unlike a requisition for collection of blood sample from the accused which was obtained by the doctor vide Ex.P/43. On Ex.P/43 in the raw mentioning; description of sample, there is only one tick over blood; semen stain/bones/hair are blank.

122. A perusal of the order-sheets dated 16.5.16 from the Court of JMFC, Bhind reveals that in crime No.232/16 since Presiding Officer was on leave, matter was presented before the JMFC who had given police remand of the accused upto 20.5.16 for recovery

of *Ala a Zar* (tool of offence) and keys etc., also for obtaining fingerprints. From the order-sheet dated 16.5.16, it appears that there was no counsel with the accused, and therefore, Court had appointed a counsel from Legal Aid for the accused. Thereafter, on 19.5.16 again accused was presented before the Court and since CJM was on leave, same Court permitted drawal of blood sample for DNA profiling. On 20.5.16 he was taken into police custody and his jail warrant was prepared and he was sent to judicial custody. Thus, permission given by the competent Court was for drawing a blood sample & not for drawing semen sample.

123. It is true that as per Section 53(1) Cr.P.C. examination of accused can be made by a medical practitioner at the request of police officer and registered medical practitioner as per the provisions contained in Section 53(2)(b) means a medical practitioner who possess any medical qualification as defined in clause (b) of section 2 of the Indian Medical Council Act, 1956, but in absence of report from the registered medical practitioner that he is a registered medical practitioner within the meaning of Section 53(2)(b) and he on the instructions of an officer not below the rank of Sub-Inspector had examined the accused and had obtained samples of semen and prepared such semen slide, such seizure of semen becomes doubtful. Prosecution has not produced any letter of requisition of police official not below the rank of Sub-Inspector asking the registered medical practitioner to obtain such sample from the accused and moreover, there is no request for such sampling and no certification from the concerned doctor

about such sampling, leaves a sufficient gap in the prosecution story which should have been mandatorily proved specifically in a case of circumstantial evidence. This lacuna attains graver dimensions, as there is evidence on record to show that there was non-compliance of Section 57 of Cr.P.C. inasmuch as accused was detained in police custody for more than 24 hours as he was taken in custody on 14.5.16 itself as is corroborated by Ankit Sharma (PW-4) and indirectly by Rambabu Shukla (PW-1) and was admittedly produced before the Court on 16.5.16 as is apparent from the order-sheets from the Court of JMFC, Bhind.

124. Sunil Girwal (PW-15) is a Constable who had carried out videography and photography of the spot as a part of FSL team under the leadership of the then in-charge of the team Dr. Ajay Soni. This witness has not produced any videography or photography to show recovery of glass which was recovered vide Ex.P/9 allegedly containing fingerprints of the accused. When evidence of this witness (PW-15) is read with the case history produced by the prosecution before the CJM alongwith the charge-sheet, then according to the prosecution story, Reena had given a missed call to Ankur which was received and after talking to Reena, Ankur reached house of Reena. She opened the gate. Thereafter they established physical relationship and were talking in the hall of the house when brother-in-law of Reena, namely Golu, who had come to Bhind on the same day and was staying in the house of the complainant, saw Reena and Ankur talking, expressed his annoyance. When they tried to explain to Golu, he

refused to accept anything and started raising din, then both Reena and Ankur acting in tandem took Golu to the kitchen adjacent to the hall and tied his hands and legs and then stuffed a cloth in his mouth and then Ankur slit the neck of Golu from a knife lying in the kitchen. In the meanwhile, girls sleeping in the room of Reena, namely Chhavi, Mahima and Ambika got up and started running towards the gate when Reena and Ankur tried to pacify them, but when they could not be pacified, then Reena caught hold of Chhavi and Mahima and Ankur threw Ambika on the floor and slit her neck. When Mahima and Chhavi shouted, then Ankur pressed mouth of Mahima and attacked her throat with a knife and then killed Chhavi also. When Reena got annoyed seeing dead-bodies of the girls and started quarreling with Ankur, then Ankur with an object to destroy evidence threw her on the bed and smothered her with a pillow and slit her throat and thereafter locked the house from outside and left the scene of crime.

125. This chronology as has been put forth by the prosecution in their first version before the CJM, if is taken as it is, then all the dead-bodies of three girls and Reena could not have been recovered from the same room i.e. the room of Reena. Secondly, physical relationship was not established between Reena and accused in the room of Reena from where allegedly glass was recovered because as per prosecution's own version, these girls were sleeping in the room of Reena, therefore, principle of prudence will show that physical relationship would not have been established between Reena and Ankur in the bedroom of Reena

where girls were sleeping. Thirdly, if these girls had woken up on hearing the cries of Golu who was admittedly murdered, when he had seen Reena and Ankur talking to each other in the hall and he was taken to the kitchen adjacent to the hall which is incidentally kitchen of Roli Bhadauria (PW-2), then girls started running to escape from the house, then their dead-bodies should have been found in the hall and not in the bedroom of Reena from where they have been actually recovered. Further, there was no occasion for the accused to have taken Reena back to the same room from the hall and then smother her and kill her. These aspects have been totally overlooked by learned trial Judge and no pains were undertaken to reconstruct the scene of crime with the help of spot map (Ex.D/5).

126. Another glaring fact which has come in the cross-examination of Sunil Girwal (PW-15) is that he admits in paragraph 4 that on the place of incident, FSL team constituting of he himself as a photographer, Dr. Soni as In-charge of FSL team, fingerprint expert and dog squad, was present. According to PW-15, he had reached the place of incident between 6.30 and 7 am. He had collected photographs etc. on 14.5.16 itself though he has pleaded ignorance as to the date of incident. This is an important break in the chain of circumstances inasmuch as when photographer of the FSL team had reached at the place of incident between 6.30 and 7 am, then what was the occasion for Shriram Sharma, father of Reena to have asked Neelesh Sharma (PW-16) at about 7 O'clock to look for his sister Ambika in the house of his

Bua. This date 14.5.16 gets corroborated from the evidence of Rambabu Shukla (PW-1) who has accepted presence of dog squad on the spot on 14.5.16, so also from the evidence of IO Mirza Asif Beg (PW-28) who has also admitted presence of fingerprint expert and dog squad, photographer and FSL team on the spot when he reached there. Thus, there is ample material on record to show that this case of circumstantial evidence has many uneven contours which have not been explained by the prosecution and which has been overlooked by the Additional Sessions Judge for the reasons best know to him. Evidence of this witness (PW-15) further reveals that he had seen a bottle of fruity, pouches of *Namkeen*, but there is no seizure of such bottle of fruity and pouches of *Namkeen* vide seizure memo Ex.P/8. He did not obtain any photograph of an isolated steel glass allegedly recovered from the room of Reena on which fingerprints were found by Manjesh Parmar (PW-21), a fingerprint specialist. Therefore, when Manjesh Parmar (PW-21), Sunil Girwal (PW-15), Dr. Soni In-charge of the FSL team and dog squad were part of the same team and prosecution has not examined Dr. Soni, then there should have been some coordination in methodology and production of evidence which is totally absent in the present case. PW-15 has admitted that DVD, Article 26 was prepared when FSL team was taking fingerprints.

127. There is a note by the Court of Additional Sessions Judge showing that Article 26, DVD, was when played with the computer system installed on the Dias, then DVD did not play

properly in regard to which system officer informed that the format in which DVD has been prepared cannot be played on the computer system installed on the Dias of the learned ADJ or secondly DVD is corrupt, then prosecution was directed to arrange for suitable equipment to run the DVD when Special Public Prosecutor, Praveen Dixit expressed that on the same day laptop can be called from the office of Superintendent of Police from the possession of concerned employee of cyber cell so to play such DVD. Such permission was granted.

128. After adjourning statement of PW-15 for some time, oath was administered to him and DVD, Article 26, was played on the laptop brought by Constable 281 Anand Dixit from the cyber cell. Duration of DVD was shown 5 minutes 55 seconds which stopped at 4 minutes 38 seconds in regard to which Constable of cyber cell expressed that either there is problem in the drive of the laptop or in the DVD. Thereafter Court has mentioned in its note that while DVD was played, accused was seen in a yellow colour T-shirt explaining in detail about the rooms of the house and the goods placed in such house, so also the methodology adopted by him in executing the crime. Court observed limping in the movement of the accused and thereafter took out Article 26, DVD, and attached it with the case file. After witnessing such DVD, accused expressed before the Court that before preparing such DVD police had threatened him if he will not narrate the things as per their instructions, then they will take away his mother and sister and kill them, therefore, out of fear he had narrated what is shown in the

DVD.

129. There is a phenomenal lacuna in the testimony of Sunil Girwar (PW-15). He has deposed in his examination-in-chief that he had prepared a DVD in presence of fingerprint expert, dog squad, in-charge of FSL team Dr. Soni and on the same day when DVD article 26 was prepared FSL team had obtained fingerprints (para 6 of PW-15). Ex.P/9 reveals that fingerprints were obtained on 14.5.16, therefore, as a natural corollary, DVD, Article 26, was prepared on 14.5.16, but as per prosecution, accused Ankur was arrested on 15.5.16 vide arrest memo (Ex.P/55) at 14.00 hours, therefore, Article 26 in which Court has observed accused in a yellow T-shirt limping is not the DVD which was prepared by this witness (PW-15) on 14.5.16, and therefore, prosecution owes an explanation as to where such DVD has been kept & why it was not produced before the trial Court. In fact, it is a direct evidence of manipulation of prosecution evidence which not only hampers the prosecution case, but also creates sufficient doubt about the impartiality, neutrality and fairness of the prosecution.

130. Neelesh Sharma @ Betu (PW-16) is a witness who had first seen the dead-bodies at the instance of his grand-father Shriram Sharma. He has testified that when he reached house of his Bua Reena, he found locks on both the doors. Thereafter, he pressed the call bell and was waiting for the response, at that juncture, his grand-father Shriram Sharma reached there and asked him to climb the roof of the neighbourer and look inside the house of his Bua. He reached the roof of neighbourer and opened the gate with

the help of a rod and entered inside the house where he saw five dead-bodies. He returned back through the same way and informed this fact to his grand-father Shriram Sharma. When both the gates were locked, then how Neelesh Sharma could get access inside the house by opening the lock with the help of a rod is an issue which has not been explained by the prosecution. There is no recovery of such rod with the help of which Neelesh Sharma had opened the latch of Reena's house and entered inside the house. Thereafter, there was no occasion for Shriram Sharma to have made a call to Rambabu Shukla (PW-1) asking him about the whereabouts of ladies at about 8.30 am when at about 7 am Neelesh Sharma had already seen five dead-bodies in the house of Reena. When this evidence is cross-checked from the evidence of Sunil Girwal, who admits that he had reached the place of incident for videography and photography between 6.30 and 7 am, then the natural question which arises is that who had informed the FSL team so to facilitate their presence at the spot between 6.30 and 7 am. Therefore, tower location of the call allegedly made from the mobile of Reena at 23.13.55 on 13.5.16 attains importance which has not been proved by prosecution witness Anand Dixit (PW-11). Nilesh Sharma (PW-16) has also deposed that once he had informed his grand-father about such incident, his grand-father asked him to go back to home, and therefore, he came back to his home and is not aware what his grand-father did. He had not seen which goods were lying close to the dead-bodies. When police had come, he was in his home. This witness has also accepted in cross-

examination that police had interrogated him and he had answered such interrogation. However, there are no case diary statement of this witness in the file. This evidence of PW-16 creates a suspicion as to the role of Shriram Sharma. Another aspect which remains unanswered is that when gate was opened by Nilesh Sharma (PW-16), then where was the occasion for the police to break open the lock of the house. Even story of appellant locking the house and leaving the house appears to be unnatural and these gaps in the case of circumstantial evidence are vital which have not been reasonably explained by the prosecution.

131. Janved Singh (PW-18) is a witness of collection of blood sample obtained from the hospital and transmission of the same to FSL Sagar. He was authorized by Superintendent of Police to carry such sample.

132. Manjesh Parmar (PW-21) has shown recovery of a glass allegedly containing fingerprints of the accused, however, Rambabu Shukla (PW-1) has deposed that accused was arrested from his home and at that time before entering in his home neither he nor the officer who had arrested him or other witnesses had given their search. There is discrepancy in the prosecution case as to the time of arrest of the accused inasmuch as, as per the version of Ankit Sharma (PW-4) arrest of accused was effected on 14.5.16 in the morning itself. There is no photograph of such seizure as per Sunil Girwal (PW-15), photographer and videographer who was part of the FSL team of which Manjesh Parmar was also a member. Seizure memo (Ex.P/8) does not reflect as to from where

such steel glass was lifted on which fingerprints have been shown. Prosecution has failed to explain the place & time of lifting of such glass inasmuch as independent witness of seizure memo, namely Rajkishore has not been examined, whereas Rambabu Shukla (PW-1) has admitted that there was no object lying on or around the bed of Reena. As has been discussed above when reconstruction of scene of crime is appreciated, physical relationship was not established between accused and Reena in her bed room where allegedly such glass was seized as per Manjesh Parmar (PW-21), as three girls were sleeping in that room as per prosecution's own story. Therefore, in absence of specific place of seizure of such glass, contradiction in the evidence of Rambabu Shukla (PW-1) and Manjesh Parmar (PW-21), coupled with the fact that there is no photograph of this vital prosecution evidence by Sunil Girwal (PW-15), seizure of steel glass and consequent verification of fingerprints becomes doubtful. Though in the case of **Malkiat Singh vs. State of Punjab** as reported in **2004(3) R.C.R. (Criminal) 55** where fingerprints of accused were found on glass of liquor, it was held by the Supreme Court that fingerprint impression is a pointer towards guilt of accused and science of identifying thumb impression is an exact science and does not admit of any mistake or doubt and it further observed that there is no reason to disbelieve the opinion of the Director, Fingerprint Bureau and similarly, in the case of **M.A.Antony vs. State of Kerala** as reported in **2009 AIR (SCW) 4448** where presence of the accused in the house of deceased established by

presence of his fingerprints and presence of his hair on the body of the deceased, the Supreme Court held the conviction proper as in this case the fingerprint was tallied with the report, but it is also true that specimen fingerprint ought to have been taken before the Judicial Magistrate as per identification of Prisoners Act and this procedure having not been followed, no reliance can be placed on these circumstances as has been held in the case of **Mohd. Aman & Anr. Vs. State of Rajasthan** as reported in (1997) 10 SCC 44.

It is true that expert evidence must be viewed not as a piece of substantive evidence, but as a piece of corroborative (tending to confirm) evidence to other evidence in the case. It is also true that Court is not bound to accept the opinion of the expert automatically, but the ground on which he gives his opinion would carry value to the evidence. In the present case, it is an admitted fact that specimen fingerprints were obtained vide Ex.P/45 on 18.5.16 at City Kotwali and the same was verified by Mirza Asif Beg (PW-28) TI, but not in presence of the Magistrate and secondly when seizure of the article from which fingerprints were taken for sample and matching with the specimen fingerprint is doubtful, then prosecution cannot take advantage of the law laid down in the case of **Malkiat Singh** or in the case of **M.A.Antony (supra)**

133. Niranjana Singh Rajput (PW-22) is a witness to Ex.P/43 whereby blood sample was obtained from the accused by Dr. Rajoriya (PW-26) who was also a part of the team which conducted postmortem of five deceased persons. It will not be out

of place to mention that for taking blood sample permission was obtained, but for taking semen sample no such permission was taken. Further there is no evidence to show as to which doctor had obtained semen sample, and therefore, sampling of semen becomes doubtful.

134. Dr. J.S.Yadav (PW-24), who had conducted postmortem on Mahima, Chhavi and Reena, has admitted that knife was brought to him alongwith Ex.P/54 to seek his opinion as to whether injuries which were found on the body of the deceased could have been caused by such knife, then he had given an opinion that injuries found on the neck of the deceased could have been caused by such knife in which there are teeth. Postmortem reveals that there was no sharp weapon injury on the body of Chhavi, on the contrary a ligature mark was found measuring 32 cm x 1.5 cm, black in colour surrounding the neck transversely and on dissection of such ligature mark margins were congested and base was hard and leathery. There is no seizure of such ligature and other material with which Chhavi was allegedly smothered & strangulated. Dr. Yadav, who had performed postmortem on the body of Mahima, Chhavi and Reena, found presence of rigor mortis on the whole body of these three persons and similarly Dr. Rajoriya (PW-26) had also found rigor mortis on the body of Golu. Cadaveric Rigidity or Rigor Mortis which is also known as death stiffening, comes on immediately after the muscles have lost the power of contractility, and is due to the irreversible changes in the muscles of the body both voluntary and involuntary. As per

Textbook of Medical Jurisprudence and Toxicology by Modi, 24th Edition Reprint 2012 time of onset varies greatly in different cases, but the average period of its onset may be regarded as three to six hours after death in temperate climates, and it may take two to three hours to develop. In India, it usually commences in one to two hours after death. In temperate regions, rigor mortis usually lasts for two to three days. In northern India, the usual duration of rigor mortis is 24 to 48 hours in winter and 18 to 26 hours in summer. When this report is read with the report of Dr. R.N.Rajoriya (PW-26) who has admitted that rigor mortis takes 24 hours to complete and start receding in the same order and was present in full in all the dead-bodies, then time of death attains importance as to whether rigor mortis could have been set in totality within 13-14 hours when postmortem was conducted inasmuch as call from Reena to the mobile of the accused is at about 11.13 pm.

135. Dr. J.S.Yadav (PW-24) has admitted injuries caused to Reena were sufficient to cause so much of blood loss that bed-sheet, mattress would have been soaked in blood, but prosecution has not seized mattress. This when corroborated with the scene of crime, shows that four members of the female folk were murdered at different places and then their bodies were dumped in one room. This finding finds support from the prosecution case that girls were running for their life and were trying to escape from the room, therefore, their bodies could not have been found trampled one over another from one single room where they had allegedly

seen accused and Reena.

136. Another ambiguity which is apparent from the cross-examination of Dr. Yadav (PW-24) is that none of the bodies were received in a sealed condition. Other ambiguity is that he admits to have conducted medical examination of Ankur on 20.5.2016 and did not find any injury on the body of Ankur, whereas as per Article 26, Court had seen Ankur limping when trial run was carried out on 19.5.16.

137. Dr. Himanshu Bansal (PW-25) has admitted that he was part of the team which conducted postmortem and he had conducted postmortem on the body of Ambika and given his report Ex.P/23-A. He also conducted postmortem on deceased Avnish @ Golu and gave report Ex.P/25A. In cross-examination, this witness has admitted that hands of Golu were tied behind and his ankle joint was also tied. A bed-sheet was stuffed inside his mouth. These clothes have not been seized by the police. When read in conjunction with the testimony of Rambabu Shukla (PW-1), then there is ambiguity in the colour of these clothes as were first seen by Rambabu and when bodies were sent for postmortem. This could not be explained by the prosecution. Himanshu Bansal (PW-25) has admitted that incised wound is smooth and no weapon was produced at the time of postmortem. Deceased Ambika must have consumed some food two hours prior to her death. Since carotid vessel was ruptured which supplies blood directly to the heart, there must have been excessive blood loss. There was hematoma present over head of Avnish which could have been caused due to

fall on a hard surface.

138. Dr. R.N.Rajoriya (PW-26) has admitted that he had taken blood sample of accused for DNA sampling and preserved it and sent it in a ice box and complete rigor mortis was present on the dead-bodies.

139. Dr. Ranjana Chaudhary (PW-27) admitted that she had prepared vaginal swabs and slides of Mahima, Chhavi, Ambika and Reena separately. She admits in cross-examination that such slides were sealed by Dr. J.S.Yadav. This witness has admitted that hands and legs of Golu were bluish in colour i.e. postmortem staining was present as has been concurred by Dr. Himanshu Bansal (PW-25).

140. Mirza Asif Beg (PW-28) is IO of the case. He has deposed that on 14.5.16 when he was posted as SHO, City Kotwali, Bhind, he received an intimation that five bodies are lying in a house at Virendra Nagar, then he informed his superior officers and visited Virendra Nagar alongwith his team. On the spot, he saw that several people were standing outside the house and inside nobody was there. He secured the campus and found that in one room four dead-bodies of four ladies were lying, one on a Takhat and other three on floor. Cloth was stuffed in the mouth of Chhavi and her hands were tied. In the kitchen of tenant, dead-body of Golu was found whose hands were tied behind and a cloth was stuffed inside his mouth and all five bodies had cut marks on throat. This is contrary to the postmortem report of Chhavi (Ex.P/22A) in which it is mentioned that only a ligature mark was present around the

neck, blackish in colour measuring 32 cm x 1.5 cm. This witness has admitted that he had recorded Dehati Nalish as per the instructions of Rambabu Shukla (PW-1), father-in-law of Reena. This witness has also deposed that when he had inspected the spot, then he found steel glasses lying in the sink of kitchen of Reena which were stinking and some water having dissolved substance was kept in a steel bowl which was seized on suspicion of it containing some sedative substance in a plastic bottle alongwith 7 glasses and one bowl.

141. SI Manjesh Parmar (PW-21) saw fingerprints on a glass which were lifted by her and she seized such glass. There is no mention of seizure of any glass separately other than seven glasses which is contradictory to the evidence of Manjesh Parmar (PW-21) who deposed that the glass from which she had lifted fingerprint was seized from the room in which dead-body of Reena and other girls were lying. This witness has deposed that during search, relatives of Reena had informed that both the knives from the kitchen and mobile of Reena are missing. When he had a discussion with persons who had assembled, then he was informed about visits of Ankur Dixit to the house of Reena and about illicit relationship of Ankur with deceased Reena. This witness admits that such persons had not given any statement to him. Thus, when such fact of a suspected accused was already known to the IO, then there was no reason for non-mentioning of such vital fact either in Naksha Panchayatnama or in the FIR which all have been recorded against unknown person. This is

another glaring omission in the testimony of this prosecution witness.

142. Another fact and contradiction is that Roli Bhadauria (PW-2) has deposed that she had reached her house at 2 pm, then she was asked to search for missing knives and then she looked inside the kitchen of Reena and her own kitchen and found three knives missing which is contrary to the statement of the IO.

143. IO has deposed that during investigation when he had not found mobile of Reena, then he asked cyber cell to trace it, on which cyber cell informed that Reena at most of the times talked on mobile number ending with 6770 digits and on investigation this mobile was found to be of Ankur Dixit. Cyber cell had also given him information about Ankur Dixit using another mobile ending with 5765 and then on the basis of suspicion, he called the accused who accepted his guilt, and therefore, arrest memo (Ex.P/55) was prepared. This testimony of IO is contrary to the testimony of Rambabu Shukla (PW-1) and Ankit Sharma (PW-4) inasmuch as when during investigation IO had come to know about name of Ankur Dixit as a suspect, then there was no reason for him to have waited for the call details. Neither the IO nor the witness of collection of cyber details Anand Dixit (PW-11) has given any date or time of collection of information from the cyber cell, even on the computer printouts (Ex.P/17 to Ex.P/20) there is no mention of date as to when such printout was taken from the computer. There is no material on record to show as to when Anand Dixit (PW-11) had taken concurrence of service provider

for obtaining such details. Ankit Sharma (PW-4) has deposed that he was picked up from his house on 14.5.16 itself in the morning and Ankur Dixit was picked up from his house at about 10 am on 14.5.16 itself. In this regard, reference to plea of Ankur will not be out of place where he has admitted that he was arrested on 14.5.16 between 10-11 am and was brutally beaten and his signatures were obtained on blank papers and his semen was also obtained against his will in the police Station and that was also not sealed. During obtaining such semen sample, his finger prints were also obtained. Rambabu (PW-1) has admitted that when Ankur was interrogated in the afternoon of 15.5.16 in his presence, IO (PW-28) had asked Ankur to reveal those facts which he had given to him on previous night. This witness has also admitted that he had come to know of arrest of Ankur in the early hours of 15.5.16, and therefore, he left his village to come to Bhind where he informed Rajkishore in this regard and then they reached police station at 2 pm. This shows that Ankur was already in illegal custody of police from 14.5.16, and therefore, to this extent, testimony of Mirza Asif Beg (PW-28) is not reliable. Preparation of memo (Ex.P/10) under Section 27 of the Evidence Act at the instance of Ankur on 15.5.16 also becomes doubtful because he was already in custody from the previous day and to that extent testimony of Rambabu Shukla (PW-1) showing him to be a witness of arrest memo (Ex.P/55) is contradictory and remains unexplained. None of the witnesses of arrest, namely Moni @ Hariom and Ramprakash have been examined by the prosecution.

144. Ankit Sharma (PW-4) has deposed that he had picked up wet clothes of Ankur on 14.5.16 and after wringing out the same, put them for drying in the police station, therefore, even seizure memo of clothes of Ankur Dixit vide Ex.P/11 in presence of Rambabu Shukla becomes doubtful. As has been discussed above, recovery of a knife from a swamp in the presence of the accused has become doubtful in the light of evidence of Gaurav (PW-9) who has clearly mentioned in his cross-examination that when he had taken out knife, at that time or during time of cleaning of the swamp, accused was not present. This witness has not been declared hostile, and therefore, in the light of the law laid down in the case of **Raja Ram Vs. State of Rajasthan** as reported in **(2005) 5 SCC 272** defence is entitled to take advantage of such lapse of the prosecution.

145. Sealing of knife is doubtful inasmuch as, as per the prosecution witness Niru (PW-7) it was kept in a polythene bag but no polythene bag has been produced and such knife was found to be mud studded when examined at forensic lab whereas it was found to be like a new one when sent for opinion of Dr. J.S.Yadav (PW-24).

146. There is no explanation for collecting semen sample of the accused Ankur on 16.5.16 vide Ex.P/31 and even it has not been explained as to which doctor had collected such sample at District Hospital, Bhind, therefore, absence of evidence of such doctor and statement of Ankur that his semen sample was collected in the police station after coercing him, creates a bonafide doubt as to

whether prosecution had manipulated the samples in connivance of Dr. J.S.Yadav (PW-24) after collecting semen sample of Ankur Dixit. Another unexplained aspect is that semen sample and blood sample were taken on two different dates, namely 15.5.16 and 19.5.16, whereas permission was sought to collect blood sample on 19.5.16, but no such permission was obtained for collection of semen sample. Further IO has admitted that on 15.5.16 viscera, kidney, lungs, slides etc. were brought by the Constable from hospital and were handed over to Kamal Singh. Dr. J.S.Yadav (PW-24) has deposed that such samples were handed over to the Constable on 14.5.16 itself. Thus, there is another ambiguity in the prosecution story that when such sample of swab, slide, viscera were handed to the Constable on 14.5.16 itself, then why they were deposited by him on 15.5.16, after collection of semen sample of the accused.

147. IO has admitted in paragraph 15 that on 17.5.16 he had received postmortem report of the deceased and cyber cell report. If cyber cell report was received on 17.5.16, then there was no occasion for the IO to have arrested accused Ankur Dixit as per his own admission on 15.5.16 and this is another gap in the prosecution story. Another glaring omission is that in paragraph 21, IO, has admitted that he had recorded case diary statement of Neelesh @ Betu and that of Shriram Sharma and Sachin Sharma, but such statements have not been filed alongwith the charge-sheet. They are even not available in the file of the trial Court. Similarly, statements of Satyaveer Singh and Krishnakumar,

recorded on 23.5.16 are also not on record, even the date of recording of statement of Ankit Sharma (PW-4) on 27.5.16 appears to be doubtful and does not match with the testimony of Ankit Sharma (PW-4). In paragraph 27 of his examination-in-chief, IO has admitted that on 16.7.16, Ankur Dixit washed knife used in the incident, so also the blood stains on his pant and shirt and destroyed the evidence of mobile and keys, thus Section 201 of IPC was added. The fact of the matter is that recovery of knife is dated 17.5.16, therefore, there was no occasion for the accused to have washed blood stains from the knife as it was admittedly thrown in the swamp, and therefore, there is contradiction in the prosecution story as to removal of blood stains from the knife.

148. This IO (PW-28) has admitted that on 18.7.16 accused in front of senior officials had given a narration of the whole incident. Therefore, there was no occasion for him to be limping in the video which was prepared vide Article 26 as was observed by the Court. There is ambiguity in the statement of the IO inasmuch as he has attributed Article 26, to have been prepared on 18.7.16, whereas Sunil Girwal (PW-15) photographer has deposed that he had carried out videography and photography on 14.5.2016. Therefore, prosecution has failed to explain as to why they have not produced such videography as was carried out by Sunil Girwal (for reference please see paragraph 2 of PW-15) and what happened to such videography and such DVD of videography and photography prepared by him with the help of computer kept in FSL Bhind. This witness has not deposed anything about

preparation of a DVD on 18.7.16, and therefore, this is a material contradiction in the evidence of IO and it is apparent that IO is trying to bridge the gaps in the testimony of prosecution witnesses, and therefore, he cannot be considered to be a trustworthy witness specially in regard to DVD prepared by Sunil Girwal (PW-15). In view of such discussion without there being any occasion, IO had obtained semen sample of the accused and that too without justifying its requirement. No doctor has testified that he/they obtained such semen sample, therefore, possibility of contamination of other sample with that of the semen procured from the accused at the police Station cannot be ruled out.

149. Prosecution was duty bound to produce all such documents on record because its responsibility is not to punish somebody but to assist in fair trial.

150. Another ambiguity in the evidence of Mirja Asif Beg (PW-28) is his inability to explain as to who had broken the lock of the said house of Reena. His evasive reply that it must have been broken by people of Dial 100 is not satisfactory and nobody from Dial 100 has been examined to specify this aspect of prosecution evidence.

151. Contention of the IO that when he reached the spot there was a crowd outside the house and still nobody was inside the house, specially when Rambabu Shukla (PW-1) had arrived as per prosecution's own version, Shriram Sharma had seen the dead-bodies in the morning, so also Nilesh Sharma (PW-16), appears to be unnatural that scene of crime was found intact by the IO and it

was not crumpled upon if not tampered by the crowd. This is another missing link in the chain of circumstances. IO has admitted that there were no women police force in his troop. When he had received intimation about five dead-bodies lying in a house out of which four were of women, not taking any woman constable alongwith the investigation team creates doubt about knowledge of investigation of the IO.

152. In para 39, IO has contradicted Sunil Girwal (PW-15) and denied having any information as to whether any videography was conducted on 14.5.16 or not. This is in contradiction to the statement of Sunil Girwal (PW-15) who has not been declared hostile, therefore, it is apparent that IO is trying to cover up the lapses of non-production of such videography as was carried out on 14.5.16 as that would have given correct information as to recovery of glass and the position of dead-bodies vis-a-vis scene of crime to give some estimate as to how much blood was lying on the floor when four deaths occurred due to slit of throat. In paragraph 41, this witness has admitted that he is not in a position to say as to who had gone to take Ankit Sharma (PW-4) and then said that SIT was constituted and somebody from such SIT had gone to take him, but there is no document on record to show constitution of such SIT and to that extent statement of the IO is contradictory and false. It is also contradictory to the statement of Ankit Sharma (PW-4) who has admitted that he was picked up on 14.5.16 in the morning and this witness has not been declared hostile.

153. In paragraph 44, IO has admitted that he is not in a position to say as to how much blood was lying on the floor, but has admitted that in Ex.P/32, photograph, only some blood was seen on the floor. In fact, these photographs, Ex.P/32, Ex.P/34, Ex.P/35 and Ex.P/36 show flow of blood only from neck of one girl shown in yellow top (upper apparel). Even Ex.P/37, which appears to be a photo of dead-body of Reena, reveals froth on the throat of Reena but the quantity of blood on the bed is not commensurate to the statement of Dr. J.S.Yadav (PW-24) who had carried out postmortem on the body of deceased Reena and admitted in para 25 that the flow of blood will be of very high volume if the vein is small and then in paragraph 34 has admitted that lot of blood loss must have taken place which must have spread around but the photographs are not supporting such medical evidence, and therefore, there is a mismatch in the ocular and medical evidence. In paragraph 45, a question was put to the IO that why Rambabu in his Court statement has stated "दिनांक 15.5.2016 को मेमोरण्डम के समय थाना प्रभारी द्वारा आरोपी से कहा गया कि जो तुमने रात्रि में बताया है वह इन्हें भी बता दो" then IO has replied that he is not in a position to say as to why such statement has been given by Rambabu. This is another contradiction which hampers completion of chain of circumstances.

154. Failure of the prosecution to make any attempt to recover another mobile of Reena and even not making any attempt to recover the same and not collecting any details of SIM of such mobile of Reena are other lapses on the part of the IO. There is

admission of the IO that he had not sought permission of the Civil Surgeon or CMHO before seizure of alprazolam. In paragraph 54, he denies that he had asked accused to give semen sample on 16.5.16, but admitted that such sample must have been taken by the doctor, but no doctor has been examined as has been discussed above. In paragraph 59, IO has admitted that he had obtained semen sample before receiving postmortem report only on the basis of probability of rape being committed on deceased ladies. The explanation which has been given for obtaining semen sample in paragraph 56 is also hypothetical that if they would not have taken semen sample of the accused and later on if rape would have been verified, then it would have been difficult for prosecution to have obtained semen sample. This statement is contrary to the medico-legal evidence inasmuch as there was no need for obtaining semen sample to verify the factum of rape inasmuch as such semen on vaginal swab or vaginal slide or any of the clothes could have been verified with the DNA profile of the accused by simply obtaining blood sample of the accused, therefore, justification given by the IO for obtaining semen sample appears not only bogus, but concocted and cannot be expected in such a sensitive case of five murders where more sensitivity and professionalism was expected from the IO.

155. Another contradiction is though presence of Rambabu Shukla (PW-1) has been shown in the hospital from 1 pm to 2 pm as he had identified all the dead-bodies as per the evidence of Dr. J.S.Yadav (PW-24), Dr. Himanshu Bansal (PW-25) and Dr.

R.N.Rajoriya (PW-26) in the hospital, whereas spot map (Ex.D/5) has been prepared at 14.10 hours at the instance of Rambabu Shukla which clearly indicates that all the documentation of the IO was manipulated and he put timings on his own on such documentation as per his convenience. We say so because neither the doctors were recalled nor it is the case of the prosecution that doctors had any malafide intention of putting timings on postmortem as per their own convenience, therefore, in absence of any such allegation on prosecution witnesses; Dr. J.S.Yadav (PW-24), Dr. Himanshu Bansal (PW-25), Dr. R.N.Rajoriya (PW-26) and Dr. Ranjana Chaudhary (PW-27), it is apparent that spot map was concocted and prepared by the IO as per his convenience. This is another missing link in completion of chain of circumstances. He has admitted that he is not in a position to say that alprazolam seized by him was of which potency and company and how seizure of alprazolam could connect the accused when there is no reporting of shortage or pilferage which makes its seizure doubtful. At least, these details, as has been mentioned above, should have been mentioned. Above this, testimony of Sunil Girwal (PW-15) that he had reached the scene of crime in between 6.30 and 7 am on 14.5.2016 remained unexplained by the IO, and therefore, IO has failed to complete the chain of circumstances, rather he has added to lacunas in the prosecution story.

156. Therefore, the only vital piece of evidence which is to be considered to assess the presence or absence of the accused is

DNA report (Ex.P/60) which shows that DNA of the accused marked as Article N obtained from the blood sample of the accused matched with DNA of deceased Reena obtained from Article H namely vaginal slide swab and Article I, clothes of the deceased Reena.

157. As per the report Ex.P/60 though DNA profiling of Reena and that of the accused has matched, but it was not for the accused to explain factum of timing of intercourse with Reena inasmuch as the medical literature available in this regard points out that sperm can be collected from the vagina or more particularly from the cervix if a woman undergoes an intercourse within nine days of collection of such sample either on a swab or a slide. As per third edition of book 'Review of Forensic Medicine and Toxicology, including Clinical & Pathological Aspects by Gauram Biswas, time of assault can be assessed (i) through the wounds; age of abrasions and contusions should corroborate with the alleged time of assault (ii) seminal fluid; survival time of sperm in vagina of living individual is invariable. Normally sperm remains motile in vagina for about 6-8 hours and occasionally upto 12 hours and very rarely upto 24 hours. In the later case, it is probable that specimen was obtained from cervical mucus.

158. Non-motile forms are detectable upto 24 hours with occasional reports of 48-72 hours. If motile sperms are seen in wet semen on a slide, it would mean that intercourse took place within about 12 hours. If the sperms are not motile, it is not possible to say exactly when intercourse took place, expect that it may be over

12 hours and within 24-48 hours and occasionally upto 72 hours.

159. In microscopic examination detection of spermatozoa on microscopy is the confirmatory test for semen. When wet specimens are used for sperm motility, then it is found that motile sperms -(i) in vaginal samples are found up to 24 hours [100% are motile up to 3 hours; 50% are motile by 8 hours; 10% are motile by 24 hours]. (ii) In endocervix up to 6 days. (b) Non motile sperm heads are detected in the living (i) up to 7 days in the vaginal cavity, (ii) 2-3 days in the anus and rectum, and (iii) 24 hours in the mouth.

160. In the book, titled as the 'Essentials of Forensic Medicine & Toxicology, 29th Edition- 2010 by Dr. K.S.Narayan Reddy, M.D., D.C.P., PhD., F.A.M.S., F.I.M.S.A., F.A.F.Sc., F.I.A.M.S., F.A.F.M., Honorary Professor of Forensic Medicine, S.V.S. Medical College, Mahabubnagar and retired Principal of Osmania Medical College, Hyderabad, has noted that sperms have been identified in the vagina of dead 1-2 weeks after death. In view of such factum of books of medico-legal evidence, despite having proper tools to observe motility of sperm so to correlate the timing of intercourse with Reena, such basic tool has not been used by the prosecution though they had an aid of expert from the FSL team. If this tool would have been used, then prosecution could have pinpointed presence of the accused in the intervening night of 13-14th May, but having failed to put such motility test which as discussed (supra) could pinpoint whether intercourse was within 24 hours or beyond 24 hours, thus another important aspect to

pinpoint a person on the basis of circumstantial evidence has been missed.

161. This issue of conclusiveness of DNA test came to be discussed by Supreme Court in case of **Smt. Kamti Devi & another vs. Poshi Ram** as reported in **AIR 2001 SC 2226** wherein in paragraphs 11, 12 and 13 the Supreme Court held as under :-

11. We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancements with Deoxy Nucleic Acid (DNA) as well as Ribonucleic Acid (RNA) tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Section 112 of the Act, e.g. if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain un rebuttable. This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastardized if his mother and her spouse were living together during the time of conception. Hence the question regarding the degree of proof of non-access for rebutting the conclusiveness must be answered in the light of what is meant by access or non-access as delineated above.

12. Whether the burden on the husband is as hard as the prosecution to prove the guilt of the accused in a trial deserves consideration in the above background. The standard of proof of prosecution to prove the guilt beyond any reasonable doubt belongs to criminal jurisprudence whereas the test of preponderance of probabilities belongs to civil cases. The reason for insisting on proof beyond reasonable doubt in criminal cases is to guard against innocent being convicted and sent to jail if not to extreme penalty of death. It would be too hard if that standard is imported in a civil case for a husband to prove non-access as the very concept of non-access is negative in nature. But at the same time the test of

preponderance of probability is too light as that might expose many children to the peril of being illegitimatised. If a court declares that the husband is not the father of his wife's child, without tracing out its real father the fall out on the child is ruinous apart from all the ignominy visiting his mother. The bastardized child, when grows up would be socially ostracised and can easily fall into wayward life. Hence, by way of abundant caution and as a matter of public policy, law cannot afford to allow such consequence befalling an innocent child on the strength of a mere tilting of probability. Its corollary is that the burden of the plaintiff-husband should be higher than the standard of preponderance of probabilities. The standard of proof in such cases must at least be of a degree in between the two as to ensure that there was no possibility of the child being conceived through the plaintiff-husband.

13 In *Goutam Kundu vs. State of West Bengal*{1993(3) SCC 418} this Court after considering an early three-Judge Bench decision in *Smt. Dukhtar Jahan Vs. Mohammed Farooq*{1987(1) SCC 624} held that “this presumption can only be displaced by a strong preponderance of evidence, and not by a mere balance of probabilities.”

162. Similarly, Supreme Court in case of **Hemudan Nanbha Gadhvi vs. State of Gujarat** as reported in **2018 SCC OnLine SC 1688** has considered the aspect of criminal trial being a quest for truth and has held that the nature of inquiry and evidence will depend on the facts of each case. The presumption of innocence will have to be balanced with the rights of the victim and above all the societal interest for preservation of the rule of law.

163. This is a case of circumstantial evidence and it is to be viewed from the perspective of two circumstances; one of intercourse and another of murder. As has been discussed earlier DNA report only corroborates circumstance of intercourse between the accused and deceased Reena.

164. Trial Court did not consider the aspect of motive as there

was no satisfactory motive to commit murder of five persons. The witness of first scene i.e. the witness who had reached the place of incident for the first time i.e. Shriram Sharma has not been examined and why Shriram Sharma had not lodged any report after coming to know of such gruesome murder through Neelesh @ Betu (PW-16) has not been explained. Prosecution has failed to prove who had broken the locks of the house, how goods were lying scattered and in disorderly manner as has been admitted by Roli Bhadauria (PW-2) and the IO when as per Rambabu Shukla (PW-1) no burglary was committed in the house and above all no attempt was made to recover fingerprints from the lock which was found broken at the place of incident. As has been discussed above, only one lock has been found, whereas as per Roli Bhadauria, even lock of her portion of the house was broken, then prosecution was required to show as to what happened to that lock and who had broken such lock. Even Neelesh @ Betu (PW-16) has not deposed that whether the house was locked from inside or outside when he climbed to look for members of the family of Reena in the said house. Non-examination of Reena's younger daughter so also brother of deceased Golu who was allegedly staying in the same house alongwith Golu are important and telling circumstances. In case of **Nagendra Pal Singh v. State of U.P.** as reported in **AIR 1993 SC 950** it has been held that the Courts are to advert to all important and telling circumstances of the case and to proceed against the accused only on the ground that one of the persons of the prosecution party was dead is

incorrect approach. Prosecution has not been able to explain its own story that when five persons were present at the place of incident, all young and able bodied and full of youth and vigour, then under what circumstances none of them could escape the rigour of the accused. Tying of hands and legs of deceased Golu and deceased Chhavi clearly points out that it was not a work of one individual, specially when as per the viscera report no alprazolam or any other sedative was found in the viscera of Golu. Thus, reliance on the judgment in case of **Sharad Birdhichand Sarda (supra)** is applicable that Court should examine evidence of interested witnesses with great care and caution and in a case of circumstantial evidence conditions precedents mentioned above should be fulfilled and a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction (paragraph 156). Similarly, it is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt.

165. Similarly, law laid down in the case of **Hem Singh (supra)** is applicable that when no motive could be proved by the prosecution, then prosecution cannot be permitted to take advantage of weakness of defence. In view where of, since there are major contradictions and omissions in the evidence led by the prosecution resulting in non-completion of chain of circumstances indicating and establishing the guilt of the accused, the accused

**111 Cri. Reference No.06/2019 (Death Reference) &
Cri.A.3539/2019**

cannot be sent to the gallows on the basis of such evidences.

166. In view whereof, we have no hesitation in holding that the prosecution having failed to establish the charges levelled against the accused person beyond reasonable doubt, the reference deserves to be answered and is answered against the prosecution and in favour of the accused. Accordingly, we set aside the conviction and sentence as proposed by the trial Court and sent for affirmation of this Court. Consequently, the appeal preferred by the accused is allowed. The accused be released forthwith if not wanted in any other case.

We place on record our appreciation for the able assistance rendered by respective counsel; more particularly learned senior counsel who at the request of the Court and despite his professional preoccupation readily agreed to render legal aid. As a token of his service for advancement of cause of effective legal aid, we direct the State Legal Service Authority to pay Rs.10,000/- (Rs. Ten Thousand Only) as an honorarium to him.

Office is further directed to send a copy of the judgment forthwith to the jail authorities for taking appropriate action in accordance with law.

(Sanjay Yadav)
Judge

(Vivek Agarwal)
Judge

ms/-