# High Court of Madhya Pradesh, Jabalpur
# Bench at Indore

**BEFORE**
**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR &**
**HON'BLE SHRI JUSTICE SATYENDRA KUMAR SINGH**

**ON THE 24TH OF AUGUST, 2022**

## Criminal Appeal No.963/2012

Between: -

**Habu @ Sunil S/o Motia @ Motilal Bheel,**
Age- 24 years, Occupation- Service,
R/o Baruth Faliya, Kukshi, District **Dhar** (MP)

…..APPELLANT

(By Shri Anurag Vyas, Advocate)

**AND**

**The State of Madhya Pradesh**
Through Police Station **Kukshi**,
District **Dhar** (MP)

…..RESPONDENT

(By Shri Amit Singh Sisodia, Government Advocate)

……

**Reserved on: - 28.07.2022**
**Delivered on: - 24.08.2022**

……

This CRIMINAL APPEAL coming on for hearing / judgment this day, **Hon'ble Shri Justice Subodh Abhyankar**, passed the following:

**JUDGMENT**

This appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (herein after referred to as the Code) has been filed by the appellant being aggrieved of the impugned judgment dated 03.08.2012, passed by the learned Additional Judge to the Court of

2nd Additional Sessions Judge (Fast Track), Kukshi, District Dhar (MP) in Sessions Trial No.230/2011, whereby the learned Judge of the trail court while finding the appellant guilty under Section 376 and 302 of IPC has convicted and sentenced him, as mentioned herein below: -

| Accused | Conviction | Sentence | Fine Amount | Sentence in default of payment of fine |
|---|---|---|---|---|
| **Habu @ Sunil s/o Motia @ Motilal Bheel** | 376 of IPC | 10 years Rigorous Imprisonment | Rs.1,000/- | 2 Years RI |
| | 302 of IPC | Life Imprisonment | Rs.1,000/- | 2 Years RI |

**2.** In brief, the facts giving rise to the present appeal are that on 17.01.2011, at around 10.15 AM, the complainant PW-1 Mahendra lodged a report that he is a resident of Gram Susari and is an agriculturist and in his field, in the morning at around 09:00 O'clock, he has found a dead body of an identified woman lying in his field. He has also found that the deceased (herein after referred to as R) had also suffered certain injuries on various parts of her body. Thus, a Marg Intimation at Number 08/2011 was registered under Section 174 of the Code and the investigation ensued.

**3.** From the place of occurrence, certain broken bangles and a blood stained stone was also found. It was also found that the deceased R was undressed and her blouse was above her breasts and her petticoat was above her waist. Her underwear was also lying on her body and her head was smashed with a stone. In her vagina, certain white liquid matter was also visible.

**4.** During the course of investigation, it came to light that the appellant who happens to be the stepson of the deceased had committed the aforesaid offence. After the charge sheet was filed, it was committed to the Court of Sessions, the appellant was tried by the trial Court and has been convicted, as aforesaid.

**5.** Counsel for the appellant has submitted that the appellant has been falsely implicated in the case, despite the fact that it was a case of circumstantial evidence, the prosecution has not been able to prove its case beyond reasonable doubt and to connect the chain of circumstances so complete, so as to lead to the only hypothesis in consonance with the guilt of the appellant.

**6.** It is submitted that there is no forensic evidence available on record to connect the appellant with the offence, despite the fact that the deceased was found to have certain hairs in her hand and it appears that the hairs were of the assailant's only, despite this, the prosecution has not produced any DNA Report connecting the said hairs to the appellant and the FSL Report which is available in respect of those hairs is not conclusive, which is apparent from the report itself proved as Ex.P/30, whereas the hairs have been seized vide Ex.P/29.

**7.** It is also submitted that there are material omissions and contradictions in the testimonies of the material prosecution witnesses most of whom have also not supported the case of the prosecution. Counsel for the appellant has relied upon a decision of the Supreme Court in the case of **Anjan Kumar Sarma v. State of**

**Assam**, reported in **(2017) 14 SCC 359**. Hence, it is submitted that the appellant be acquitted.

**8.** Counsel for the respondent / State, on the other hand, has opposed the prayer.

**9.** Heard counsel for the parties and perused the record.

**10.** From the record, it is found that as per Ex.P/1 which is the marg intimation, the dead body of the deceased R was found at around 09:00 AM in the morning by the complainant PW-1 Mahendra S/o Nageshwar Purohit from whose agriculture land, the dead body was recovered.

**11.** So far as the death of the deceased R is concerned, it was undoubtedly homicidal in nature which is proved by PW-8 Dr. Vishal Shrivastava, who had performed the autopsy of the deceased and proved it vide Ex.P/17. In the postmortem Dr. Shrivastava found the following injuries on the person of the deceased: -

(1) Lacerated Wound ½ X ½ Inch on the right ear.
(2) Lacerated Wound 3 X ½ Inch on right ear.
Both these injuries were bone deep.
(3) Lacerated Wound 1 X 4 Inch again on the right ear.
(4) Contusion 2 X 2 Inch on the left side of her head.
(5) Lacerated Wound ½ Inch X ½ Cm on lower lip and the deceased's lower mandible was also fractured having 2 teethes missing from it.

**12.** From the internal examination, it is found that the deceased's right temporal bone was fractured and had a severe damage to her brain. It was also found that she had no injury on her vagina. However, PW-10 Dr. Raj Kumari Devra, the lady doctor who had

examined the deceased to find out if she was subjected to rape, as per her report Ex.P/17, she has stated that no definite opinion can be given regarding the rape. Although deceased's vaginal slide was also taken.

**13.** So far as the witnesses are concerned, PW-6 is the person who had gone on the spot, after hearing the news that the body of a woman has been found in the field and is a witness to the seizure memo Ex.P/3 and Ex.P/4, wherein he has stated that the body of the deceased was in a naked condition and her underwear was kept on her stomach. Some blood stained stones were also lying there along with the broken bangles. He also found that the deceased had in her palm, certain broken hairs which were seized by the Police from the spot. These articles have been seized by the Police vide Ex.P/1 to Ex.P/7.

**14.** PW-9 Dr. K.K. Soni had examined the appellant on 18.01.2011, and had found that he had no smegma present around his corona glandis indicating that he had sexual intercourse within last twenty four hours.

**15.** The only evidence which is available on record regarding the theory of "last seen together" is PW-12 Rekhabai @ Kali Chidi W/o Kekariya, who has stated that the appellant Habu happens to be step son of the deceased R and she had seen the deceased at around 08:00 O'clock in the night, as the deceased R was at her (Rekha bai's) home and Habu had come on a motorcycle and took the deceased R from there; and thereafter, R never came back and on

the next day, she came to know that R' body has been found in a field.

In her cross-examination, she had admitted that her Habu has already been married and she does not know if he has any children. She has also admitted that R's husband Moti Singh is lodged in jail and that is why, R was in the habit of sleeping anywhere.

**16.** PW-13 Kekadiya S/o Nan Singh, the husband of PW-12 Rekhabai has also stated that he had seen the deceased with the appellant at around 08:00 O'clock in the light, one day prior to her body was found, but in his cross-examination, he has also stated that a policeman had threatened him and had told him to give statement as he is directed in this regard and he has also stated that in fact, he does not know anything about the incident. Thus, this witness cannot be relied upon in any manner.

**17.** PW-4 Mohanlal happens to be the person on whose motorcycle, it is alleged that the appellant had taken the deceased from the house of Rekhabai. PW-4 has stated that around 5 – 6 months ago, Habu had borrowed his motorcycle to go to his home to have dinner and thereafter, he came back at around 09:00 – 10:00 PM on the motorcycle and had parked the motorcycle outside his house.

**18.** So far as the forensic evidence is concerned, it is found that the hair which were recovered from the hands of the deceased and the hairs of the present appellant were sent to the forensic examination vide **Ex.P/27** and its report is proved as **Ex.P/29**,

which reads, as under: -

> "**Opinion**:
> 1. Hairs of articles Q and R are of Human head origin.
> 2. Hairs of article Q and R are similar in their morphological and microscopical characteristics, However, **no definite opinion can be given about their origin from one and the same position**.
> **Note – Hair article Q and R may be referred to DNA unit for individualization**."
>
> (Emphasis supplied)

Hair Article 'Q' is the small bunch of hair seized from the spot found on the right hand palm of the deceased and Article 'R' is a small bunch of hairs seized as sample head hairs of the accused Habu and marked as Article 'R'.

**19.** It is surprising that despite this specific chemical examiner's report that the hair Article 'Q' and 'R' may be referred to DNA Unit for individualization, the prosecution has not proceeded with the aforesaid report for their DNA Testing.

**20.** Similarly, the FSL Report **Ex.P/30** contains that the Article 'L' is a slide of the deceased, Article 'N' which is the slide of the appellant Habu and Article 'P' which is the underwear of the appellant had human spermatozoa on them, but despite this report, they were not sent for any DNA Testing.

**21.** The other FSL Report **Ex.P/32**, which also refers to the chemical examination, reveals that the articles seized form the appellant i.e. a stone, shirt, pant and *Baniyan* (vest) had blood spots on them, however, no efforts were made to get the DNA testing of

the aforesaid samples, and as the blood was already disintegrated, its grouping was also not possible and this FSL Report itself shows that its results were inconclusive.

**22.** At this juncture, it would be apt to refer to a decision rendered by the Supreme Court in the case of **Tomaso Bruno and another** v. **State of Uttar Pradesh** reported in **(2015) 7 SCC 178**; the relevant paras 24 to 28 of the same read, as under: -

> "**24.** With the advancement of information technology, scientific temper in the individual and at the institutional level is to pervade the methods of investigation. With the increasing impact of technology in everyday life and as a result, the production of electronic evidence in cases has become relevant to establish the guilt of the accused or the liability of the defendant. Electronic documents *strictu sensu* are admitted as material evidence. With the amendment to the Indian Evidence Act in 2000 Sections 65A and 65B were introduced into Chapter V relating to documentary evidence. Section 65A provides that contents of electronic records may be admitted as evidence if the criteria provided in Section 65B is complied with. The computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by Section 65B of the Evidence Act. Sub-section (1) of Section 65B makes admissible as a document, paper print out of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfillment of the conditions specified in sub-section (2) of Section 65B. Secondary evidence of contents of document can also be led under Section 65 of the Evidence Act. PW-13 stated that he saw the full video recording of the fateful night in the CCTV camera, but he has not recorded the same in the case diary as nothing substantial to be adduced as evidence was present in it.
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> **25.** Production of *scientific* and electronic evidence in court as contemplated under Section 65B of the Evidence Act is of great help to the investigating agency and also to the prosecution. The relevance of electronic evidence is also evident in the light of **Mohd. Ajmal Mohammad Amir**

**Kasab** v. **State of Mahashtra**, **(2012) 9 SCC 1**, wherein production of transcripts of internet transactions helped the prosecution case a great deal in proving the guilt of the accused. Similarly, in the case of **State (NCT of Delhi)** v. **Navjot Sandhu @ Afsan Guru**, **(2005) 11 SCC 600**, the links between the slain terrorists and the masterminds of the attack were established only through phone call transcripts obtained from the mobile service providers.

**26.** The trial court in its judgment held that non-collection of CCTV footage, incomplete site plan, non-inclusion of all records and sim details of mobile phones seized from the accused are instances of faulty investigation and the same would not affect the prosecution case. Non- production of CCTV footage, non-collection of call records (details) and sim details of mobile phones seized from the accused cannot be said to be mere instances of faulty investigation but amount to withholding of best evidence. It is not the case of the prosecution that CCTV footage could not be lifted or a CD copy could not be made.

**27.** As per Section 114 (g) of the Evidence Act, if a party in possession of best evidence which will throw light in controversy withholds it, the court can draw an adverse inference against him notwithstanding that the onus of proving does not lie on him. The presumption under Section 114 (g) of the Evidence Act is only a permissible inference and not a necessary inference. Unlike presumption under Section 139 of Negotiable Instruments Act, where the court has no option but to draw statutory presumption under Section 114 of the Evidence Act. Under Section 114 of the Evidence Act, the Court has the option; the court may or may not raise presumption on the proof of certain facts. Drawing of presumption under Section 114 (g) of Evidence Act depends upon the nature of fact required to be proved and its importance in the controversy, the usual mode of proving it; the nature, quality and cogency of the evidence which has not been produced and its accessibility to the party concerned, all of which have to be taken into account. It is only when all these matters are duly considered that an adverse inference can be drawn against the party.

**28.** The High Court held that even though the appellants alleged that the footage of CCTV is being concealed by the prosecution for the reasons best known to the prosecution, the accused did not invoke Section 233 Cr.P.C. and they did

> not make any application for production of CCTV camera footage. The High Court further observed that the accused were not able to discredit the testimony of PW-1, PW-12 and PW-13 qua there being no relevant material in the CCTV camera footage. Notwithstanding the fact that the burden lies upon the accused to establish the defence plea of alibi in the facts and circumstances of the case, in our view, prosecution in possession of the best evidence-CCTV footage ought to have produced the same. In our considered view, it is a fit case to draw an adverse inference against the prosecution under Section 114 (g) of the Evidence Act that the prosecution withheld the same as it would be unfavourable to them had it been produced."
>
> (Emphasis supplied)

A bare perusal of the aforesaid decision of the Supreme Court clearly reveals that in a case where the prosecution has the best evidence available with them, but deliberately withholds the same and does not produce, its benefit has to be given to the accused.

**23.** It would also be germane to refer to the decision relied upon by the counsel for the appellant in the case of ***Anjan Kumar Sarma and others (supra)***, the relevant paras of the same read, as under:-

> "**14.** Admittedly, this is a case of circumstantial evidence. Factors to be taken into account in adjudication of cases of circumstantial evidence laid down by this Court are:
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
> (3) the circumstances should be of a conclusive nature and tendency;
> (4) they should exclude every possible hypothesis except the one to be proved; and
> (5) there must be a chain of evidence so complete as not

> to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

(See *Sharad Birdhichand Sarda* v. *State of Maharashtra*, SCC p. 185, para 153; *M.G. Agarwal* v. *State of Maharashtra*, AIR SC para 18.)

**15.** Mr R. Venkataramani, learned Senior Counsel appearing for the State of Assam, supported the judgment of the High Court. He submitted that the deceased was seen along with the accused till 9.00 p.m. on 27-12-1992 and no explanation was given by them as to what happened thereafter. On the next day, Akhil Bordoloi (Appellant 3) misled the family members of the deceased by initially stating that the deceased was with Jit Kakati and will return soon and changing his version in the afternoon by saying that the deceased was not with Jit Kakati. Mr R. Venkataramani submitted that the incident occurred in a tea estate which is sparsely populated with no access to general public. The railway track is adjacent to the tea estate and there was no possibility of anybody else having committed the crime. He argued that total denial on the part of the accused in their examination under Section 313 CrPC is a strong circumstance against the accused.

**16.** It is no more res integra that suspicion cannot take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and the legal proof. At times it can be a case of "may be true". But there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions.
(See *Jaharlal Das* v. *State of Orissa*, SCC p. 37, para 11.)

**17.** It is settled law that inferences drawn by the court have to be on the basis of established facts and not on conjectures. (See *Sujit Biswas* v. *State of Assam*, SCC paras 13-18.) The inference that was drawn by the High Court that the death was caused on 28-12-1992 within the time of 48 hours as mentioned in the post-mortem report is not correct. The post-mortem examination was conducted on 30-12-1992 at 12.00 noon and it was opined by PW 11 that the death occurred 24

to 48 hours prior to the time of post-mortem examination. Even if the time is stretched to the maximum of 48 hours, the death was after 12.00 noon on 28-12-1992. The deceased was in the company of the accused till 9.00 p.m. on 27-12-1992. The inference drawn by the High Court that the accused had killed the deceased on 28-12-1992 in the night-time and thrown the body on the railway track is not on the basis of any proved facts. The trial court is right in holding that there is no evidence on record to show that the deceased was with the accused after 12.00 noon on 28-12-1992.

**18.** The prosecution relied upon nine circumstances to prove the charges against all the accused. PW 11 who conducted the autopsy opined that the death of the victim was due to the ante-mortem incised wound found on the skull which could have been caused by material Ext. 3 (khukri). We are in agreement with the trial court that the recovery of the khukri was not supported by any independent witnesses. The prosecution has also failed to prove that there were bloodstains on the said khukri. The bloodstains found in the bathroom of Bungalow No. 17 were sent for examination which resulted in a negative report. The above circumstances not being proved would leave only two circumstances against the accused which are that the accused were last seen together with the deceased and the absence of any explanation forthcoming by the accused.

**19.** The circumstance of last seen together cannot by itself form the basis of holding the accused guilty of the offence. In *Kanhaiya Lal* v. *State of Rajasthan*, this Court held that: (SCC p. 719, paras 12 & 15)

> "*12*. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.
> * * *
> *15*. The theory of last seen—the appellant having gone with the deceased in the manner noticed herein-before, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be

maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh* v. *State of Rajasthan*."

**20.** In *Arjun Marik* v. *State of Bihar*, this Court held that: (SCC p. 385, para 31)

"*31*. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

**21.** This Court in *Bharat* v. *State of M.P.* held that the failure of the accused to offer any explanation in his statement under Section 313 CrPC alone was not sufficient to establish the charge against the accused. In the facts of the present case, the High Court committed an error in holding that in the absence of any satisfactory explanation by the accused the presumption of guilt of the accused stood unrebutted and thus the appellants were liable to be convicted.

**22.** Mr R. Venkataramani relied upon *Deonandan Mishra* v. *State of Bihar*, SCR at p. 582 to buttress his submission that the circumstance of last seen together coupled with lack of any satisfactory explanation by the accused is a very strong circumstance on the basis of which the accused can be convicted. It was held by this Court in the above judgment as follows: (AIR pp. 806-07, para 9)

"*9*. It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where

> the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence."

**23.** It is clear from the above that in a case where the other links have been satisfactorily made out and the circumstances point to the guilt of the accused, the circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction. The other judgments on this point that are cited by Mr Venkataramani do not take a different view and, thus, need not be adverted to. He also relied upon the judgment of this Court in *State of Goa* v. *Sanjay Thakran* in support of his submission that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before the commission of crime in the intervening period. It was held in the above judgment as under: (SCC p. 776, para 34)

> "*34*. From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the

> accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration. There can be no fixed or straitjacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case."

**24.** As we have held that the other circumstances relied upon by the prosecution are not proved and that the circumstances of last seen together along with the absence of satisfactory explanation are not sufficient for convicting the accused. Therefore the findings recorded in the above judgment are not applicable to the facts of this case.

**25.** Due to the lack of chain of circumstances which lead to the only hypothesis of guilt against the accused, we set aside the judgment of the High Court and acquit the appellants of the charges of Sections 302, 201 read with Section 34 IPC. The appellants are directed to be set at liberty forthwith, if not required in any other case."

(emphasis supplied)

**24.** So far as the facts of the present case are concerned, we have already discussed that the prosecution has relied upon the last seen together evidence, despite having one of the best evidences which could be made available in these modern times to a prosecution agency i.e. the hairs in the hands of the deceased, which could have been very well matched with the hairs of the appellant through DNA profiling. But for reasons best known to the prosecutions, it has not proceeded with this crucial DNA Testing of the hairs. It is also found that the slides of the deceased's vagina also had human spermatozoa, but again, for the reasons best known to the prosecution agencies, they have not tried to match the DNA of the aforesaid spermatozoa with that of the appellant. In such circumstances, we are at pains to observe that if this is the procedure adopted by the investigating agencies, then there is simply no point in prosecuting any person at all and the whole trial appears to be a farce.

**25.** In the considered opinion of this Court, in the absence of any other material, connecting the appellant with the crime, which could have been made available by the prosecution agencies, their reliance on the 'last seen together' theory was not good enough to draw a conclusion that the chain of event is so complete leading to the only conclusion of guilt of the appellant, especially when the deceased was last seen with the appellant at around 8 O' Clock in the night and her body was recovered in the morning at 9 am, thus

there was a huge time gap of 13 hours which the prosecution has not been able to explain.

**26.** Thus, the appeal deserves to be allowed.

**27.** As a parting note, we would be failing in our duties if we do not express our utter displeasure towards the manner in which the investigating agency has proceeded. It appears that after arresting the appellant and completing the formalities of collecting the evidence, the investigating officer has literally slept over the forensic reports. It is inconceivable that after recovering hairs of an accused from the hands of the deceased, and despite a specific observation by the Scientific officer that DNA is necessary for the confirmation of the matching the hairs seized and that of the appellant, no efforts were made by the investigating officer to get the DNA profiling done which has led to sheer injustice, not only to the appellant but also to the deceased whose culprit has never been caught or has walked free today by the order of this court. To add insult to the injury, the investigating officer has also failed to get the DNA profiling of the slides of the deceased which had human spermatozoa as per the FSL report which would have made a water tight prosecution case but it was also not done, may be purposefully or negligently. Be that as it may, such negligent approach of an investigating officer is not acceptable to us. Thus, we direct the State to initiate an inquiry into the matter and proceed against the responsible officers who are guilty of dereliction of their duties, in accordance with law, after affording an opportunity of hearing to

such officer/s.

**28.** Consequently, the impugned judgment of conviction is set aside and the Criminal Appeal No.963/2012 stands **allowed. The appellant who is lodged in jail since last more than 10 years be released forthwith, if not required in any other case.**

**With the aforesaid directions, the appeal stands allowed disposed of**.

**(Subodh Abhyankar)**
**Judge**

**(Satyendra Kumar Singh)**
**Judge**

Pithawe RC