
(2013) 08 DEL CK 0123

In the Delhi High Court

Case No : Criminal L.P. 264 of 2013 and Criminal M.A. No. 8145 of 2013

State NCT of Delhi

APPELLANT

Vs

Manoj @ Sanoj @ Bhondo

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Constitution of India, 1950 — Article 134(1)(a), 134(1)(b)
Criminal Procedure Code, 1973 (CrPC) — Section 313, 378, 379
Penal Code, 1860 (IPC) — Section 302, 304, 34, 376, 377

Citation : (2013) 08 DEL CK 0123

Hon'ble Judges : G.S. Sistani, J;G.P. Mittal, J

Bench : Division Bench

Advocate : Rajesh Mahajan, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Sistani, J.

Crl. M.A. No. 8145/2013

1. This is an application for condonation of 355 days delay in filing the present leave to appeal. For the reasons stated in the application, the application is allowed. Delay in filing leave to appeal is condoned. Application stands disposed of.

2. By the present petition, State seeks leave to appeal against the judgment dated 20.01.2012 passed by the learned Additional Sessions Judge. The respondent was charged for the offences punishable under Sections 302/376/377 IPC and an FIR was registered for the above sections on the allegation of rape and murder of one 5 year old girl. The prosecution examined 31 witnesses, the statement of the accused was recorded u/s 313 of the Code of Criminal Procedure. The trial court has acquitted the accused, as the prosecution had failed to bring home the guilt of the accused beyond reasonable doubt.

3. As per DD No. 28A, police was informed that daughter of the informer had

fallen in the tank; the information was assigned to ASI Vijender for making a preliminary inquiry; ASI along with constable Sat Narnia reached at the spot, where he found blood lying on the floor of the roof adjacent to the empty water tank. He also found 2 pairs of sealed chappal inside the tank, one small brown colour Pyjama and one blue colour sleeveless upper wear, one orange colour type hair clip was found. No eye witness was found at the spot. ASI learnt that the child was taken to the hospital by her mother. As per the MLC, the 5 year old child was brought dead to the hospital. He found black colour bruises on both ears and right side of the throat and on the chest. Statement of mother of the child was recorded; and the dead body was sent to the mortuary. As per the statement of the mother, she was residing at the first floor of E-34, near Mata Chowk, Mahipal Pur, New Delhi on rent along with her mother and daughter; her husband had gone to Nagaland two months ago. She was on duty at Indian Spinal Injury Hospital, Vasant Kunj, New Delhi from 2:00 p.m. to 8:00 p.m., where she was working as a staff nurse. At about 4:45 p.m. she had left the house for duty leaving her mother and daughter at home. She received a call at 2:30 p.m. from her neighbour, Vinod, who asked her to speak to her mother. Her mother informed that her daughter was missing. On reaching home, she tried to trace her daughter at the terrace; when she was searching for her daughter, she found Manoj Thapa standing there; she asked him if he had seen her daughter, upon which he told the mother of the deceased that he was also searching for her. She was then informed by her Aunty that her daughter was in the Sintex tank. She searched 2 tanks but did not find her daughter. The Aunty told her to go to the roof of the other house, where she found her daughter. In the meanwhile, Manoj had run away from there.

4. Learned APP for the State submits that the judgment of the learned Sessions Court is contrary to law and the facts established on record. The Sessions Court has failed to appreciate the evidence on record and wrongly acquitted the respondent. It is contended by Mr. Mahajan, learned counsel for the State that there is sufficient evidence and material proved on record to bring home the offences charged against the respondent. It is also the case of the State that the Sessions court has failed to appreciate that there was sufficient circumstantial evidence proved on record to convict the respondent for the offences charged. It is contended that the chain of circumstances was complete and the evidence led on record was sufficient to bring home the guilt of the accused beyond reasonable doubt. It is further contended that the testimonies of the prosecution witnesses corroborate the story of the prosecution, wherein the chain of events formed and unerringly point towards the guilt of the accused and rule out his innocence.

5. It is next contended that the medical evidence duly supports the version of the prosecution. Counsel has also contended that the trial court has failed to appreciate the evidence of PW-4, Seema Chauhan, who has deposed that some days before the incident the accused had taken her son on the pretext of eating Bhandara without her permission; and her son was found subsequently in a

petrified state at Sabji Mandi with stool in his underwear. The next day her son had informed that the respondent had taken him in the jungle, shut his mouth and pressed his neck and a ligature mark could be seen on his neck. The deposition of PW-4 was corroborated by the evidence of her husband, PW-5 and PW-2. It is next contended that human semen was found on the underwear of the respondent and semen was also detected in the vaginal smears slides and perennal swabs of the deceased, which would also establish the guilt of the respondent.

6. We have heard learned counsel for the petitioner and carefully examined the evidence and the submission so made. In the case of Sarwan Singh Vs. The State of Punjab, , it was held that in criminal cases mere suspicion, however, strong, cannot take place of proof.

7. Law with regard to the conviction on the basis of circumstantial evidence has been discussed in detail by the Supreme Court in the case of Harishchandra Ladaku Thange Vs. State of Maharashtra, It would be useful to reproduce the relevant paras:-

8. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh Vs. State of Rajasthan,) Eradu and Others Vs. State of Hyderabad,), Earabhadrapa Vs. State of Karnataka, State of U.P. Vs. Sukhvasi and Others, Balwinder Singh alias Dalbir Singh Vs. State of Punjab, and Ashok Kumar Chatterjee Vs. State of M.P., The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram Vs. State of Punjab,) it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

9. We may also make a reference to a decision of this Court in C. Chenga Reddy and Others Vs. State of Andhra Pradesh, wherein it has been observed thus:-

21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

10. In Padala Veera Reddy Vs. State of Andhra Pradesh and others, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

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

11. In State of U.P. Vs. Ashok Kumar Srivastava, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

12. Sir Alfred Wills in his admirable book "Wills" Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

13. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

14. In Hanumant Vs. The State of Madhya Pradesh, it was observed thus:-

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the fact so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of

the accused and it must be such as to show that within all human probability the act must have been done by the accused.

15. A reference may be made to a later decision in *Sharad Birdhichand Sarda Vs. State of Maharashtra*, Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They 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.

8. While deciding the present leave to appeal, the aforestated principles culled out by the Apex Court are to be kept in view.

9. Learned APP for the State has heavily relied upon the evidence of PW-4, PW-5, PW-6 and PW-17. We deem it appropriate to reproduce the same:-

PW 4 Seema Chauhan, w/o-Anil Chauhan, r/o-E/34, Mata Chowk, Mahipal Pur, New Delhi.

ON SA

I am illiterate. I do not remember the date, month and year but it is more than 7-8 months. One day at about 1 pm I took my children from the school. I slept in the house and after some time, the exact time I do not remember, 3-4 ladies came from the side building and knocked my door, one bhainswali aunty also with them and they all were searching a girl. The said girl was the daughter of a lady living in the side building but I do not remember the name of the girl and her parents.

I also joined the aforesaid ladies in searching the girl. While I was going on the first floor in the search of the girl then accused Bhondhu @ Manoj met me, as he was residing in the same building, when he was coming down Bhainswali aunty

said that Bhondu we searched the girl. I climbed the stairs on the first floor in search of the girl and accused Bhondu went down. Bhondu said to Bhainswali aunty that he do not know about the girl and he asked the aunty to see on the upper floor.

2/3 other ladies went on the top of floor. I came down on the ground floor as my son started weeping. The 2/3 ladies who went on the top of the floor cried as they found the girl in a water tank on the top of the building. The girl was found in dead position.

When all cried and shouted on finding of the dead body of the girl the accused Bhondu ran away.

Before about one or two months of the above incident i.e. during the Navratra one day my son Jai age about 7 years was playing on the upper floor then accused Bhondu taken my son Jai on the pretext of eating Bhandara and he taken my son without my permission. I made the search of my son but he could not found. During the search I asked one Ms. Kala about my son, she told me that accused Bhondu had taken my son for Prashad. Thereafter when accused Bhondu returned to house then I asked him about my son but he refused for having the knowledge of my son.

I was in search of my son and reached in the area of sabzi mandi in the area of Rangpuri where my son Jai was found. He was looking very afraid and there was stool in his underwear. I asked my son about the incident, if any, but he was so afraid that he could not tell anything. On the next day my son Jai told that Bhondu Uncle (accused) taken him in the jungle and he shot (sic shut) his mouth with the hand and pressed the neck. I saw the ligature marks of the fingers on the neck of my son. I complained about this fact to the mother of accused Bhondu. Then the mother of accused beaten him. I did not reported this incident to the police. Police recorded my statement in this case. Accused Bhondu @ Manoj is present in the court today (correctly identifies by the witness).

XXX BY Sh. Pramjeet Singh, amicus curiae for the accused.

I am 26 years old. I am residing at ground floor of the building, E-34, Mata Chowk. This building is having three storeys including ground floor. Accused Manoj was residing at the first floor of the building alongwith his father, mother and two brothers. I have three children and one of them is school going. My husband left the house for his duty between 7.00 to 8.00 am. His off time is not fixed. My husband reaches back from his duty around 8.00 pm to 9.00 pm. On the day of incident, my husband returned home between 9.00 pm to 10.00 pm. When my husband returned, all the proceedings had already been conducted by the police. Police finished their proceedings by 6.00 pm to 7.00 pm.

My statement was recorded by police at about 7/8.00 pm. It is correct that my husband had not come to the house till my statement was recorded. I had not seen the person who had killed the deceased. Manoj was present when I came to

know about missing of child. We had talked to Manoj whether he knew about the where about of deceased, he replied, look at the roof. When police had come at the spot there were seven ladies of the building there. Police had taken all the seven ladies of the building to the PS and inquired from us there. I had not lodged any complaint regarding the kidnapping of my child one month before nor my husband did so. It is correct that no medical examination of my child was conducted. I had suspicion on the accused of the crime because the accused ran away from the spot coupled with the suspect that one month before he kidnapped my child. It is wrong to suggest that we all suspected the accused of the crime, accused due to this fear of beating he ran away. It is wrong to suggest that due to sympathy being the neighbour of deceased I am deposing falsely.

PW 5 Anil Kumar s/o Sh. Jungjeet Singh r/o E-34, Mata Chowk, Mahipal Pur, New Delhi

ON SA

I am living in the house of Sunita, w/o-Mukesh since last 7-8 years. The building in which I am residing having two floors apart from the ground floor. There are 12 rooms in the building out of them about 10 are always remain on rent. The accused Bhondu @ Manoj is residing in the first room on the first floor. I do not remember the date but it is about 1 and 1/2 years ago. One day when I was on my duty of driving and at about 4 pm while I was plying DCM, four wheeler in the area of Patparganj then I received the information from my landlord again said from the brother in law (jeth) of my landlord that a murder of a girl has been committed in the building and who was found in the tank of the water on the top of the building. I do not know the name of the deceased girl. The deceased girl was living on the top floor with her family in our building before the incident but at the time of the incident she was living in the building adjacent to our building.

Before the aforesaid incident during the Navratras my son Jai might have himself went along with the accused Bhondu or the accused may have taken my son Jai in some bhandara. My son did not return then I was informed by my wife on telephone that despite the search Master Jai could not be found. Thereafter I along with 15-20 persons made the search of my son Jai including my wife. We were making the search in groups. One of the searching group found my son Jai in the sabzi mandi of Rangpuri and one shopkeeper has found kept in his shop and one woman in searching group identified my son and took him to the house.

My son was in perplex condition. On inquiry my son told me that accused Bhondu taken him in a bhandara and left him there. On the next day I saw the ligature marks on the neck of my son Jai. I asked my son Jai about the said marks. Then my son Jai told that he was taken by the accused in the jungle where the accused Bhondu had pressed his neck with his hand. On this I called the accused Bhondu. The accused came along with his parents. I made the inquiry from accused Bhondu and complained to his parents. The accused had admitted that

he had taken my son Jai. The parents of accused had beaten him. I did not take any action against the accused in this regard. I can identify the accused present in the court today (correctly identified by the witness). The police recorded my statement during the investigation of this case.

XXX By Sh. Paramjeet Singh, amicus curiae for the accused.

I am truck driver. I drive the truck of Surender Singh, who also lives in Mahipalpur village. On the day of incident, I was at Patparganj and I came to know about the incident on my phone by my wife between 2.00/3.00 pm. I came back to my house at 4.30 pm and by that time the dead body of girl was already taken to the hospital as the girl was having some breathe. When I reached my home there were several public persons and police officials. I do not recollect the names of the police officials but one of them was Mr. Shashi. My statement was recorded 2-3 times but I was called several times by police. I had informed the police that on the day of incident, I was at Patparganj and I had only came to know about the incident from my wife. It is wrong to suggest that I am only deposing against the accused as he had also taken my son once. It is correct that I and my wife had not lodged any complaint with the police for taking away my son. Vol. My son was returned back after 4-5 hours as to why I had not lodged any police complaint. It is correct that I did not get my son medically examined also. It is correct that I had no personal knowledge of the murder of the girl nor I had seen the accused doing murder of the girl. It is wrong to suggest that only because of the incident of my son, I am deposing falsely against the accused. Police had recorded the statement of my wife after I arrived my house and in my presence. It is wrong to suggest that I have deposed falsely.

PW 6 Smt. Suresh, W/o Sh. Om Prakash, Aged about 50 years, H. No. 236, Village Mahipalpur, Delhi on SA.

I having a buffalo in my house. I do not remember the date but the incident is about 2 years old. On that day, one girl of one my neighbour aged about 7 years had gone missing. At about 1.00 p.m., I was standing in the street when the said lady neighbour inquired about her daughter if I had seen her but I denied of seeing her daughter. The said neighbour was residing in the building of Brahm Dutt. I told her to look upstairs in the building. I remained downstairs due to my injury. The said neighbour alongwith two other ladies went upstairs to search the girl. Accused Manoj was also residing in the same building as a tenant on second floor. I asked Manoj to search for the girl. Manoj said that he did not know about her. I asked that ladies to look into the room of the accused Manoj and other rooms. In the room of Manoj, his father was sleeping there. Accused also came out from his room and he ran away from there. I immediately suspected accused Manoj being responsible for missing of the girl. I asked those ladies to look on the roof of the building. Those ladies came back crying and informed that the dead body of the said girl in naked condition was lying in the water tank. I had suspected the accused as he ran away from his room.

Police had come there and checked the roof of the building. Accused Manoj had not come back there. Police had also inquired from me about the incident and I narrated all the facts to them and told police that accused was responsible.

XXX by Sh. Paramjeet Singh, amicus curiae for the accused.

My house number is not E-35 but my house is situated at Mata Chowk. It is correct that some other person had given my house number as E-35. It is correct that my correct address where I keep my buffalos in house no. 236, Village Mahipalpur. The house of Brahm Dutt where the incident is after two house from my house. My house is of about 120 sq. Yards. consisting of ground floor and first floor. There are three jhugis inside my house to keep the buffalos. I had not been inquired by the police nor my statement was ever recorded by police. I cannot say who had recorded my statement. Vol. I had stated all the facts to the police. It is correct that I had not seen the girl being beaten by the accused or she was present at the roof with the accused. It is wrong to suggest that I had wrongly suspected the accused responsible for killing of the girl. I suspected the accused for the alleged crime as he ran away from the spot. It is wrong to suggest that accused was not present at the time of incident and did not run away from the scene of crime.

PW 17 Smt. Poujianliu @ Annuna W/o. Martin, R/o. Village Khoupum, Distt. Tamenglong, Sub Division Nungba, Manipure.

On S.A.

My daughter Gaipuili (now deceased) was residing with me along with my mother at E-34 near Mata Chowk, Mahipal Pur, Delhi in the year, 2009. My husband used to do business in Manipur and Nagaland. I was doing nursing job at Indian Spinal Injuries Centre in Vasant Kunj. The incident occurred on 17.04.09. At the time of incident, I was on duty in the hospital at Vasant Kunj. On that day it was evening shift and I was on duty from 2:00 to 8.00 p.m. My daughter Gaipuili (now deceased) and my mother Gailinliu were present at my residence at Mata Chowk.

I do not remember the exact time but it was 3.00 p.m. or 2.30 p.m. My neighbour called up me and informed me that my daughter is not there in the home and that my mother is crying. I informed my nursing incharge and after taking permission I went to my home. On reaching home, I found all my neighbours assembled on the ground floor. I asked my mother about my daughter. My mother told me that my daughter went upstairs on the terrace to dry the cloths. My mother further told me that after some time she went upstairs on the terrace but did not found my daughter on the terrace. In these circumstances, I again went on the terrace and searched my daughter. On reaching the terrace of my building, I found no one, however, on the terrace of the adjoining building, the accused present before the Court was standing near water tank (the witness pointed out towards the accused Manoj @ Sanoj. I inquired from the accused if he had seen my daughter. The accused stated that

he is also searching my daughter. I came down stairs on the ground. At that time one of my neighbour told me that my daughter is lying in water tank in the next building. I went on the terrace of that next building where the accused was standing when I had seen him from the terrace of my building. I opened the water tank of that building and saw my daughter lying naked in prone position. Her firok was lying inside the tank. I lifted my daughter from inside the tank and called for help. On hearing my call for help, my mother came over there and my daughter was removed from the water tank. I noticed bruises on her neck. I rang the police. Police came with Ambulance. Police shifted my daughter to hospital and I also accompanied the police alongwith my nursing incharge Ms. Revika who happened to come at my home making inquiries about my daughter. A doctor declared my daughter as dead and also stated that it is case of rape. I gave my complaint to the police which is Ex. PW-17/A bears my signature at point A.

When I visited the terrace of the next building, the accused was not there. I can identify the cloths of my daughter if shown to me.

At this stage, a sealed parcel no. 3 sealed with seal of N.K. FSL Delhi is produced by MHCM which is opened and a transparent jar is taken out and from inside it one firok, one pyjama and one hair clip are taken out and shown to the witness. The witness identifies all the three articles as that of her daughter.

In the process of taking out my daughter from the tank, I left my chappal outside the water tank. I have seen the photograph mark PW-17/A in which my chappal is shown at point A.

(MHCM has not produced the chappal today).

XXX by Sh. Paramjit Singh, counsel for the accused.

The accused was not resident of the building E-34 near Mata Chowk Mahipal Pur. Again said building no. E-34 comprises of several wings. The accused was a resident of one of several wings of E-34. The accused was a tenant in that wing of E-34. Around 3:00 p.m. I came back to my home from my hospital after receiving the information. Approximately 10 to 15 persons had assembled when I reached home after getting the information. At that time no police officer was present. I reported the matter to the police. I cannot tell the exact time when the police reached my building, however, it may be 3.45 pm. or thereafter. My mother was present in the home when I came to my home from hospital. I cannot tell the names of the neighbour except the name of one Ayush.

No one accompanied me to the terrace. The name of the police officer who came to me is Mr. Puniya, so far as I remember. He also accompanied me to the hospital. My statement was recorded by the police in the hospital. My mother statement was recorded at home. I do not remember the exact time. I do not know when her statement was recorded. My mother do not know Hindi. I know little Hindi but I cannot read Hindi. PW-17/A was written in the hospital and it bears my signature at point A. Police explained the contents of Ex.-PW-17/A

that's why I have written above point A that "I heard all about statement and understood completely and this portion is between X-1 to X-1 in my complaint Ex. PW-17/A". It is correct that my name has been appearing in the capital letters at point A in Ex. PW-17/A. It is correct that my alias name Aluna is in brackets. The date 17.04.09 is written below portion X1 to X1. I do not remember how many papers I had signed in the hospital or in my home. I signed some paper in hospital one time and one time in home. Again said I had not signed any paper at my home. Doni is my uncle. At the time of recording of my statement and statement of my mother, Mr. Doni was there. I alongwith Mr. Doni took the dead body of my daughter from the hospital after post-mortem from Safdarjung Hospital. I had signed one paper in the Safdarjung Hospital at the time of receiving the dead body. When I visited to the terrace my mother's clothes were there on the wire. At the time of incident, my daughter was not studying in any school in Delhi. It is correct that I have not seen any one who had committed the offence of murder. I do not know any lady named Seema Chauhan living at E-34 Mata Chowk. I do not know Anil Chauhan, Sweety, Vinod, Ranjna, Neelam, Seeta by name. It is wrong to suggest that police had narrated my statement and I had signed. Vol. Whatsoever, I had stated the police, police had recorded my statement in Hindi and I had signed.

10. It has been strongly urged before this court that the respondent was last seen with the victim, however, on careful analysis of the above testimonies would show that there is no evidence to show that the deceased was last seen with the victim.

11. Learned counsel has placed strong reliance on the evidence of PW-4 and 5, to show the past conduct of the respondent. No doubt both respondents no. 4 and 5, who are husband and wife have stated that a month or two before the incident their 7 year old son was taken away by the respondent on the pretext of sharing Bhandara without their permission. The son was found in the area of Sabji Mandi. He was looking very afraid and there was stool in his underwear and on the next date the son informed his parents that the respondent had taken him to the jungle and he had shut his mouth with his hand and pressed his neck. The ligature marks of the fingers were found on the neck of the son.

12. Admittedly, when the child was found at Subzi Mandi the parents did not note the ligature marks on the neck of the child. Moreover, the 7 year old son of PW-4 and PW-5 was not medically examined and thus ligature marks on the neck of the child were not proved. This incident by itself and in the absence of any other evidence cannot point the finger of guilt on the respondent. Reliance is placed on the evidence of PW-6, to show that PW-6 had suspected Manoj, but there are no reasons to support the basis of suspecting the respondent by PW-6. As per PW-6, a lady who is his neighbour enquired about her daughter from her. She had told her to look upstairs in the building and thereafter the said neighbour along with the two other ladies went upstairs to look for the girl and she had asked the respondent who was also residing in the same building to go and look for the girl,

however, respondent, Manoj had stated that he did not know about her whereabouts. According to this witness she had also asked the ladies to look into the room of Manoj and other rooms as well; in the room of Manoj his father was sleeping. The respondent came out from the room and ran away from there and thus, she suspected respondent being responsible for the missing girl. We find the evidence of this witness is not sufficient to prove the guilt of the respondent. Although PW-17 has testified that one neighbour had told her to look upstairs, PW-17 has deposed that her mother had informed her that her daughter had gone upstairs on the terrace to dry clothes and upon this information she went upstairs on the terrace, but did not find her daughter. However she had seen the respondent standing near the water tank of the adjoining building and she had asked the respondent if he had seen her daughter to which he had replied that he was also looking for her. The testimony of PW-6 can not be relied upon as according to her, she had asked the respondent to search for the girl, thus, Manoj the respondent could not have been at two places at the same time. Simply because according to PW-6, Manoj ran away, this by itself cannot be a ground to convict him.

13. Even in the evidence of PW-17, there is nothing which would point the finger of suspicion or establish the guilt of the respondent. We are conscious of the fact that the body of the 5 year old child had been brutalized before putting her to death and such a barbaric crime has shocked the conscience of the court. But before holding the respondent guilty, the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. The circumstances which point towards the guilt of the accused when taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probabilities the crime was committed by the accused and none else. There is no evidence on record to show that the respondent was last seen with the deceased, nor is there any evidence to show that the respondent was seen committing the crime. The witnesses have deposed that either they had seen the accused standing near the water tank or that he had gone away. This by itself cannot be a circumstance which would point towards the guilt of the respondent. In fact when the respondent was asked about the missing girl, he had also stated that he was looking for her. The trial court has rightly observed that it would be difficult to imagine that a person, who commits such a horrific act would remain present at his house. We also agree with the trial court that finding of semen on the underwear of the respondent does not conclude that he had committed the rape. Neither has the prosecution tried to extract the DNA from the semen strains nor were they matched with the exhibits taken from the body of the deceased, so as to ascertain the identity of the culprit. Even grouping of the blood had not been given by the FSL from the semen stains found on the underwear i.e. Ex. 11. FSL report Ex. PW-31/F had given no reaction to the semen stains found on the underwear alleged to have been recovered from the room of the accused at the instance of the accused, when examined serologically by Naresh Kumar, Senior Scientific Assistant,

Biological. T-shirt, pant and belt allegedly recovered at the instance of the accused were not found to have any semen stain when examined in the FSL. It is a matter of fact that the clothes were recovered after four days while the room in question was available to the police since the date of commission of the crime. However, the police had not seized the same on that very day.

14. In a recent decision of the Apex Court in *Govindaraju @ Govinda Vs. State by Sriramapuram P.S. and Another*, has discussed in detail the scope and power of the appellate court and reiterated that the presumption of innocence of an accused is reinforced by the order of acquittal. Relevant portion of the judgment reads as under:

11. Besides the rules regarding appreciation of evidence, the Court has to keep in mind certain significant principles of law under the Indian Criminal Jurisprudence, i.e. right to fair trial and presumption of innocence, which are the twin essentials of administration of criminal justice. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefits of such presumption which could be interfered with by the courts only for compelling reasons and not merely because another view was possible on appreciation of evidence. The element of perversity should be traceable in the findings recorded by the Court, either of law or of appreciation of evidence.

12. The Legislature in its wisdom, unlike an appeal by an accused in the case of conviction, introduced the concept of leave to appeal in terms of Section 378 Cr.P.C. This is an indication that appeal from acquittal is placed at a somewhat different footing than a normal appeal. But once leave is granted, then there is hardly any difference between a normal appeal and an appeal against acquittal. The concept of leave to appeal u/s 378 Cr.P.C. has been introduced as an additional stage between the order of acquittal and consideration of the judgment by the appellate Court on merits as in the case of a regular appeal. Sub-section (3) of Section 378 clearly provides that no appeal to the High Court under sub-sections (1) or (2) shall be entertained except with the leave of the High Court. This legislative intent of attaching a definite value to the judgment of acquittal cannot be ignored by the Courts.

13. Under the scheme of the Cr.P.C., acquittal confers rights on an accused that of a free citizen. A benefit that has accrued to an accused by the judgment of acquittal can be taken away and he can be convicted on appeal, only when the judgment of the trial court is perverse on facts or law. Upon examination of the evidence before it, the Appellate Court should be fully convinced that the findings returned by the trial court are really erroneous and contrary to the settled principles of criminal law.

14. In *State of Rajasthan Vs. Shera Ram @ Vishnu Dutta*, a Bench of this Court, of which one of us (Swatanter Kumar, J.) was a member, took the view that there may be no grave distinction between an appeal against acquittal and an appeal

against conviction but the Court has to keep in mind the value of the presumption of innocence in favour of the accused duly endorsed by order of the Court, while the Court exercises its appellate jurisdiction. In this very case, the Court also examined various judgments of this Court dealing with the principles which may guide the exercise of jurisdiction by the Appellate Court in an appeal against a judgment of acquittal.

15. We may usefully refer to the following paragraphs of that judgment:

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.

9. We may refer to a recent judgment of this Court in the case of State of Rajasthan th. Secy. Home Dept. Vs. Abdul Mannan, , wherein this Court discussed the limitation upon the powers of the appellate court to interfere with the judgment of acquittal and reverse the same. This Court referred to its various judgments and held as under:-

12. As is evident from the above recorded findings, the judgment of conviction was converted to a judgment of acquittal by the High Court. Thus, the first and foremost question that we need to consider is, in what circumstances this Court should interfere with the judgment of acquittal. Against an order of acquittal, an appeal by the State is maintainable to this Court only with the leave of the Court. On the contrary, if the judgment of acquittal passed by the trial court is set aside by the High Court, and the accused is sentenced to death, or life imprisonment or imprisonment for more than 10 years, then the right of appeal of the accused is treated as an absolute right subject to the provisions of Articles 134(1)(a) and 134(1)(b) of the Constitution of India and Section 379 of the Code of Criminal Procedure, 1973. In light of this, it is obvious that an appeal against acquittal is considered on slightly different parameters compared to an ordinary appeal preferred to this Court.

13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond

reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence.

15. We may now refer to some judgments of this Court on this issue. In *State of M.P. v. Bacchudas*, the Court was concerned with a case where the accused had been found guilty of an offence punishable u/s 304 Part II read with Section 34 IPC by the trial court; but had been acquitted by the High Court of Madhya Pradesh. The appeal was dismissed by this Court, stating that the Supreme Court's interference was called for only when there were substantial and compelling reasons for doing so. After referring to earlier judgments, this Court held as under: (SCC pp. 138-39, paras 9-10)

9. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See *Bhagwan Singh v. State of M.P.*) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*, *Ramesh Babulal Doshi v. State of*

Gujarat, Jaswant Singh v. State of Haryana, Raj Kishore Jha v. State of Bihar, State of Punjab v. Karnail Singh, State of Punjab v. Phola Singh, Suchand Pal v. Phani Pal and Sachchey Lal Tiwari v. State of U.P.

10. When the conclusions of the High Court in the background of the evidence on record are tested on the touchstone of the principles set out above, the inevitable conclusion is that the High Court's judgment does not suffer from any infirmity to warrant interference.

16. In a very recent judgment, a Bench of this Court in *State of Kerala v. C.P. Rao* decided on 16-5-2011, discussed the scope of interference by this Court in an order of acquittal and while reiterating the view of a three-Judge Bench of this Court in *Sanwat Singh v. State of Rajasthan*, the Court held as under:

13. In coming to this conclusion, we are reminded of the well-settled principle that when the court has to exercise its discretion in an appeal arising against an order of acquittal, the court must remember that the innocence of the accused is further re-established by the judgment of acquittal rendered by the High Court. Against such decision of the High Court, the scope of interference by this Court in an order of acquittal has been very succinctly laid down by a three-Judge Bench of this Court in *Sanwat Singh and Others Vs. State of Rajasthan*, Subba Rao, J. (as His Lordship then was) culled out the principles as follows:

9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in *Sheo Swarup* case afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons", are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.

17. Reference can also be usefully made to the judgment of this Court in *Suman Sood v. State of Rajasthan*, where this Court reiterated with approval the principles stated by the Court in earlier cases, particularly, *Chandrappa v. State of Karnataka*. Emphasising that expressions like "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal, the Court stated that such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with the acquittal. Thus, where it is possible to take only one view i.e. the prosecution evidence

points to the guilt of the accused and the judgment is on the face of it perverse, then the Court may interfere with an order of acquittal.

10. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.

11. Also, this Court had the occasion to state the principles which may be taken into consideration by the appellate court while dealing with an appeal against acquittal. There is no absolute restriction in law to review and re-look the entire evidence on which the order of acquittal is founded. If, upon scrutiny, the appellate court finds that the lower court's decision is based on erroneous views and against the settled position of law then the said order of acquittal should be set aside. {See State (Delhi Administration) Vs. Laxman Kumar and Others, Raj Kishore Jha Vs. State of Bihar and Others, , Inspector of Police, Tamil Nadu Vs. John David,

12. To put it appropriately, we have to examine, with reference to the present case whether the impugned judgment of acquittal recorded by the High Court suffers from any legal infirmity or is based upon erroneous appreciation of evidence.

13. In our considered view, the impugned judgment does not suffer from any legal infirmity and, therefore, does not call for any interference. In the normal course of events, we are required not to interfere with a judgment of acquittal.

16. The Court also took the view that the Appellate Court cannot lose sight of the fact that it must express its reason in the judgment, which led it to hold that acquittal is not justified. It was also held by this Court that the Appellate Court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the Appellate Court should not disturb the findings of the trial court. [See C. Antony Vs. K.G. Raghavan Nair,]; and Bhim Singh Rup Singh Vs. State of Maharashtra,

17. If we analyze the above principle somewhat concisely, it is obvious that the golden thread which runs through the web of administration of justice in criminal

cases is that if two views are possible on the evidence adduced in a case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted.

18. There are no jurisdictional limitations on the power of the Appellate Court but it is to be exercised with some circumspection. The paramount consideration of the Court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than that from the conviction of an innocent. If there is miscarriage of justice from the acquittal, the higher Court would examine the matter as a Court of fact and appeal while correcting the errors of law and in appreciation of evidence as well. Then the Appellate Court may even proceed to record the judgment of guilt to meet the ends of justice, if it is really called for.

21. The judgment of the High Court, though to some extent, reappreciates the evidence but has not brought out as to how the trial court's judgment was perverse in law or in appreciation of evidence or whether the trial court's judgment suffered from certain erroneous approach and was based on conjectures and surmises in contradistinction to facts proved by evidence on record.

22. A very vital distinction which the Court has to keep in mind while dealing with such appeals against the order of acquittal is that interference by the Court is justifiable only when a clear distinction is kept between perversity in appreciation of evidence and merely the possibility of another view. It may not be quite appropriate for the High Court to merely record that the judgment of the trial court was perverse without specifically dealing with the facets of perversity relating to the issues of law and/or appreciation of evidence, as otherwise such observations of the High Court may not be sustainable in law.

68. In the present case, on a cumulative reading and appreciation of the entire evidence on record, we are of the considered view that the learned trial Court had not fallen in error of law or appreciation of evidence in accordance with law. The High Court appears to have interfered with the judgment of acquittal only on the basis that "there was a possibility of another view". The prosecution must prove its case beyond any reasonable doubt. Such is not the burden on the accused. The High Court has acted on certain legal and factual presumptions which cannot be sustained on the basis of the record before us and the principle of laws afore-noticed. The case of the prosecution, thus, suffers from proven improbabilities, infirmities, contradictions and the statement of the sole witness, the Police Officer, PW1, is not reliable and worthy of credence.

15. Upon applying the settled position of law to the facts of the present case, only one view is possible on the basis of evidence placed on record, i.e. there exists no circumstantial evidence to prove the guilt of the accused beyond reasonable doubt. We have no reason to disagree from the view of the trial court. There is no perversity in the appreciation of evidence. We also find that by

the acquittal of the respondent there has been no miscarriage of justice. For the above reasons, we dismiss the leave to appeal.