

---

*Before R.C. Kathuria, J*

STATE OF HARYANA—*Prosecutor*

*versus*

REWA SINGH—*Respondent/Accused*

*Murder Reference No. 3 of 2001 & Criminal  
Appeal No. 316/DB of 2001*

The 11th October, 2002

*Indian Penal Code, 1860—Ss. 201, 302 & 376—Allegation against a father of murder of his own daughter aged about 6 years after committing rape on her—Trial Court convicting and sentencing to death—Murder reference for confirmation—Difference of opinion between two Judges of the High Court in respect of reliability and acceptability of the account rendered by the witnesses and appreciation of medical evidence—Reference to third Judge—Prosecution case based on circumstantial evidence alone—Prosecution evidence failing to fulfil the requirement of law—No accused can be convicted without legal evidence—Prosecution failing to establish the charges against the accused beyond any reasonable doubt—Appeal of the accused allowed while setting aside the judgment of the trial Court.*

Held, that there being no direct evidence of the crime, the prosecution case rests on circumstantial evidence. The so-called extra-judicial confession stated to have been made by the accused before Sarpanch Raj Singh and Basant Lal is the result of manipulation and creation of the Investigating Officer to fix the criminal liability upon the accused. The circumstances warrant that no reliance should be placed on the evidence of extra-judicial confession produced from the side of the prosecution.

(Paras 28, 44 & 45)

Further Held, that no doubt the accused had taken the stand of complete denial but the fact remains that evidence led by the prosecution has not been able to dislodge the first version got recorded by him in Ex. PF lodged with the Investigating Officer. Even otherwise the evidence led by the prosecution has miserably failed to link the accused with the commission of the crime. The prosecution has not been able to bring home the charge against the applicant-accused

---

beyond any reasonable doubt. Accordingly, I allow the appeal and set aside the judgment of conviction and sentence passed against the accused-appellant by the trial Judge and order his acquittal.

(Para 48 & 55)

Sanjeev Shcokand, *Assistant Advocate General,  
Haryana for the State.*

Ms. Anju Arora, *Amicus Curiae for Rewa Singh, Accused-  
Convict.*

*R.C. KATHURIA, J.*

(1) Rewa Singh, appellant-accused was convicted and sentenced by the Court of Additional Sessions Judge, Rohtak as per judgment, dated 19th May, 2001/22nd May, 2001 as under:—

**Section 376 I.P.C. :** To undergo rigorous imprisonment for life and also to pay a fine of Rs. 2,000 and in default thereof to undergo further rigorous imprisonment for one year.

**Section 302 I.P.C. :** Death sentence.

**Section 201 I.P.C. :** To undergo rigorous imprisonment for five years and also to pay a fine of Rs. 1,000 and in default of payment of fine, to undergo further rigorous imprisonment for six months.

(2) All the substantive sentences of imprisonment shall run concurrently.

(3) Aggrieved by the said judgment, Rewa Singh preferred Criminal Appeal No. 316-DB of 2001. The Additional Sessions Judge, Rohtak sought confirmation of death sentence awarded as required under Section 366(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) which was registered in this Court as Murder Reference No. 3 of 2001.

(4) The above murder reference and criminal appeal came up for consideration before the Division Bench consisting of Hon'ble Mr. Justice R.L.Anand and Hon'ble Mr. Justice Hemant Gupta. Hon'ble

---

Mr. Justice R.L. Anand as per judgment dated 26th July, 2002 has set aside conviction and order of sentence and ordered the acquittal of the accused in the appeal filed by the appellant and thereby rejected the murder reference aforesaid. Hon'ble Mr. Justice Hemant Gutpa,— *vide* separate Judgment dated 26th July, 2002 has dismissed the criminal appeal filed by the appellant and confirmed the death sentence awarded to him, meaning thereby the murder reference has been confirmed. There being difference of opinion between the Hon'ble Judges constituting the Division Bench, the case has been referred to this Bench.

(5) Criminal law was set into motion on the basis of written complaint made by Rewa Singh, appellant-accused to Sub-Inspector Ishwar Singh, S.H.O., Police Station, Sadar, Rohtak, who was present at Bus Stand of Village Sunderpur in connection with patrolling. He is a resident of Village Titoli. Being employed in Indian Army he was posted at Kargil. He had come on leave to his village. He had three children out of which his elder daughter Pooja was aged six years and two months followed by son aged five years and youngest being another daughter aged three years. On 19th April, 2000, his wife Santosh along with their son had gone to her parental home, in connection with the first monthly death-day of her father, leaving behind their two daughters with him. On 19th April, 2000 at about 9.00 p.m., he went to the Court yard of his house where his daughters Pooja and *Gudia* were sleeping in order to enquire from Pooja as if she would like to drink water and for that reason lifted the *Khes* from the cot. He found that Pooja was not there. Then he searched for her amongst his other members of the family in the village but they expressed their ignorance with regard to her whereabouts. He continued to search for her with the help of his nephew, Bijender son of Ravi Dutt. Thereafter, his relations also joined him in search of his daughter but they could not find any trace of her. On the next morning, he went to the pits located across the road side in front of the house of Kartar Singh. He found dead body of his daughter, Pooja, lying there. Her *Jumpher* was found torn. At that time, her body was not wearing salwar. He noticed blood coming out of her genital part. There were ligature marks on her neck. It appeared to him that somebody had committed rape on his daughter, Pooja and then killed her. The villagers had collected at the spot on knowing about this incident. Leaving his nephew Bijender and other villagers to guard

the dead body, he had proceeded to the police station in order to lodge the report. He met Sub Inspector Ishwar Singh (PW-16). After this report was presented to Sub Inspector Ishwar Singh, at 8.00 a.m. he made his endorsement Ex. PT/1 under his signatures on the written complaint made to him and transmitted the same to Police Station, Sadar, Rohtak on the basis of which First Information Report for offence under sections 302, 376 I.P.C. Ex. PT/2 was registered by ASI Satya Ram in Police Station, Sardar, Rohtak at 8.50 a.m. Constable Raghunandan (PW-3) was deputed by ASI Satya Ram to deliver the special report of the case to the Illaga Magistrate and other Senior Police Officers on 20th April, 2002 and the same was delivered to the Illaga Magistrate at 11.15 a.m. on the same day.

(6) Sub Inspector Ishwar Singh in the company of other police officials proceeded to Village Titoli along with accused Rewa Singh. On reaching there, he found dead body of Pooja in the pits located near the house of Kartar Singh. He summoned dog squad and photographer at the spot. Naresh (PW-11) took photographs of the place of recovery of dead body including the photographs of the deceased. The dog squad was made to smell the victim and was let free. The dog squad then moved around the *Ghair* of Kartar Singh and on reaching near the door of *Ghair* went inside. Chunni having a border knitted with white thread and *Salwar* having embroidered design belonging to Pooja were found lying there which were identified by Rewa Singh as belonging to her. After sealing the same these were taken into possession,—*vide* recovery memo Ex. PA attested by Sarpanch Raj Singh (PW-2) and Basant Lal (PW-8). The Investigating Officer prepared the rough plan (Ex.PU) of the place from where dead body of Pooja was taken into possession. Then he prepared the inquest report (Ex.PO) in the presence of Rewa Singh and Basnat Lal, whose statements were recorded in the inquest proceedings. The dead body of Pooja along with inquest papers was handed over to constable Surender Singh (PW-5) for sending the same for conducting post-mortem examination. Rewa Singh accompanied Constable Surender Singh with the dead body.

(7) Dr. Vimal Sharma (PW-14) and Dr. Kanta Goyal, who were members of the Medical Board performed autopsy on the body of Pooja on 20th April, 2000 at 1.05 p.m. On the basis of findings arrived at the Medical Officer opined that the cause of death was due to throttling

---

and injuries noticed on the body over the genitalia were fresh and were consistent with rape. The injuries were found to be ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. After post-mortem examination, the belonging of the deceased, stitched body, copy of the post-mortem report dated 20th April, 2000, police papers seven in numbers, a sealed packet bearing three seals containing vaginal swab and smear slides of the deceased, a sealed packet containing clothes of the deceased including her ear rings, dried blood taken from perinum of deceased and three sample seals were handed over by the Medical Officer to Constable Surender Singh.

(8) In the meantime, Sub Inspector Ishwar Singh reached the General Hospital, Rohtak. Constable Surender Singh produced the articles and other papers handed over to him by the team of Medical Board and the same were taken into possession by him,—*vide* memo Ex. PD attested by ASI Om Parkash and Constable Surender Singh. Dead body of Pooja was cremated in the village at about 4.00 p.m. in the presence of the accused. Thereafter Sub Inspector Ishwar Singh came to the spot of recovery of dead body in village Titoli and recorded the statements of Randhir Singh, Krishan Kumar and Siri Bhagwan. It transpired that on the night of 19th April, 2000 at 9.00 p.m. or 9.30 p.m. Randhir Singh (PW-1) had seen Rewa Singh alongwith his daughter Pooja in the street and had enquired from him as to where he was going at that time of the night, upon which he was informed by the accused that his daughter Pooja was suffering from fever and for that reason he was taking her to the hospital at Rohtak. On 19th April, 2000 at about 9.00 or 9.30 p.m. Siri Bhagwan (PW-9) and Krishan were returning from their fields and when they passed by the house of Rewa Singh, they heard the cries of the daughter of the accused. They found the door of the house bolted from inside. They asked Rewa Singh as to why his daughter was weeping, upon which Rewa Singh informed them that Pooja was weeping as she was suffering from fever and also because her mother had gone to her parental house. After hearing this reply, they proceeded ahead towards their houses. It was on the next day above named persons came to know that dead body of Pooja was found lying on the road side and she had been murdered. The statement of the aforesaid witnesses led to the suspicion regarding involvement of Rewa Singh in the commission of the crime.

(9) Soon after Sub-Inspector Ishwar Singh searched for Rewa Singh in the village but could not locate him. While he was present at Titoli turning point, Raj Singh, Sarpanch and Basant Lal came there and produced Rewa Singh before him. Sub-Inspector Ishwar Singh was informed by them that on 20th April, 2000 while Raj Singh was present in his *Baithak* with Basant Lal, Rewa Singh came there and admitted before them that on previous night at about 9.00 p.m. under the influence of liquor in the absence of his wife, who had gone to the house of her parents, he had lifted his daughter, Pooja, while she was sleeping on the cot and laid her down on the ground of the court yard. Thereafter he had removed her *Salwar* and committed rape on her as a result of which she started weeping. Then he had gagged her with one hand. During this period his neighbourer Krishan and Siri Bhagwan happened to pass by the side of his house. As the door was bolted from inside they enquired from him as to why his daughter was weeping, upon which he told them that she was suffering from fever and that her mother had gone to the house of her parents. He further told them both of them then left that place and at this stage it came to his mind that when his wife would return on the next day, his daughter would disclose everything to her which will bring disgrace for him and thereafter he strangled her to death and threw her dead body in the pit on the road side. He also stated before them that he had thrown her *Chunni* and *Salwar* in the *Ghair* fo Kartar Singh and put up a false story with regard to the disappearance of his daughter. He made a request to them to hand him over to the Police as Police Officers were known to them. Thereafter, Sub-Inspector Ishwar Singh interrogated the accused and recorded his statement Ex.PB containing the facts detailed by him before Sarpanch Raj Singh and Basant Lal as to the manner in which he had committed the crime. This, statement was signed by Rewa Singh, Raj Singh and Basant Lal.

(10) Accused Rewa Singh was taken into custody and was sent to General Hospital, Rohtak for his medical examination with a request to get the opinion whether he was capable of performing intercourse and also whether he had suffered any injury or swelling etc. on his genitals and also whether semen had been discharged or not after intercourse. Dr. D.K. Pasrija, Medical Officer, who was posted as Medical Officer, General Hospital, Rohtak examined accused Rewa Singh on 20th April, 2000 and,—*vide* his report Ex.PH opined that

---

there was nothing abnormal to suggest his incapability to perform as act of sexual intercourse. With regard to the actual act of intercourse having been performed in the past, he stated that opinion can be given after receipt of the report of Forensic Science Laboratory. After the report of Forensic Science Laboratory was received, he further opined that possibility of accused having performed sexual intercourse in the recent past could not be ruled out.

(11) On 21st April, 2000, Sub-Inspector took Rewa Singh to Medical Officer, General Hospital, Rohtak and produced application Ex.PQ containing request for DNA analysis. Dr. Vimal Sharma took 5 cc. blood and after sealing the same in glass vial handed over the same to him and made his endorsement Ex.PR on the application.

(12) On 31st May, 2000, constable Summit Kumar, who was posted as Draftsman in the office of Superintendent of Police, Rohtak, had visited the place of occurrence in Village Titoli and at the instance of Basant Lal prepared the site plan of the place of recovery of dead body, *Chunni* and *Salwar*, which is Ex.PC. On receipt of the reports of Forensic Science Laboratory (Exs.PF and PF/1), Madhuban, Karnal and completion of investigation by Sub-Inspector Jag Pal Singh (PW-6), accused was sent for trial under section 376 and 302 I.P.C.

(13) On these allegations charges under Sections 302, 376 and 201 I.P.C. were framed against the accused by the Additional Sessions Judge, Rohtak to which he pleaded not guilty and claimed trial.

(14) The prosecution secured the help of witnesses, Randhir Singh (PW-1), Raj Singh (PW-2), Constable Raghunandan (PW-3), Summit Kumar (PW-4), Constable Surender Singh (PW-5), S.I. Jag Pal Singh (PW-6), ASI Om Parkash (PW-7), Basant Lal (PW-8), Siri Bhagwan (PW-9), Dr. D.K. Pasrija (PW-10), Naresh (PW-11), Rajbir Singh (PW-12), H.C. Sat Pal (PW-13), Dr.Vimal Sharma (PW-14), C. Jagga Singh (PW-15), and S.I. Ishwar Singh (PW-16), in order to establish the connection of the accused with the crime. In addition, prosecution tendered in evidence Forensic Science Laboratory report Ex.PF and PF/1.

(15) The accused when examined under Section 313 of the Code abjured his guilt and denied the commission of alleged crime. He pleaded innocence and his false implication.

---

(16) He also examined Dr. M.K. Dishnoi (DW-1) in his defence, who on the basis of summoned record consisting of duty roster (Ex. D-1), daily attendance register (Ex. D.2) and daily register out patients in the dispensary (Ex. D.3) testified that on 20th April, 2000 Dr. D.K. Pasrija had attended casualty duty from 8.00 a.m. to 2.00 p.m.

(17) The trial Judge on consideration of the evidence led by the prosecution as well as from the side of the accused and the respective stands taken by them came to a finding that there was no factual dispute with regard to the rape having been committed upon Pooja and thereafter she was done to death. On the basis of circumstantial and other evidence, as disclosed in the statements of Krishan, Siri Bhagwan and Randhir Singh; extra judicial confession made by the appellant before Sarpanch Raj Singh (PW-2) and Basant Lal (PW-8) coupled with the statement (Ex. PB) in writing recorded by the Investigating Officer, and failure of the accused to furnish explanation for the presence of semen stain found on his shirt on analysis by the Forensic Science Laboratory, Karnal, came to the conclusion that Rewa Singh had committed the rape on his own daughter and after satisfying his lust had killed her and thereafter in order to save himself from legal punishment dumped the dead body in the pists located on the road side and threw her Chunni and Salwar in the Ghair of Kartar Singh surrounded by the boundary wall. The defence version with regard to discrepancy in the time of examination of accused by Dr. D.K. Pasrija at 1.35 p.m. on 20th April, 2000 and the version of the prosecution, that accused was arrested in the evening of 20th April, 2000 was termed as inconsequential because even the accused had taken up the defence that he was not arrested before the cremation of Pooja. On these considerations, the trial Judge accepted the prosecution version and convicted and sentenced the appellant-accused as noticed above. Under these circumstances, the appeal and reference came to be considered by the Division Bench of this Court.

(18) I heard Anju Arora, *amicus curiae* representing the appellant-accused and Sanjeev Sheokand, State Counsel representing the State at length.

(19) Before discussing and evaluating the evidence led on the file by the prosecution and on behalf of the accused threadbare, it is essential to notice the points of difference of opinion and agreement



---

in the separate judgments of the Hon'ble Judges constituting the Division Bench.

(20) The reasons which prevailed with R.L. Anand, J. to order the acquittal of the appellant-accused and decline the murder reference are that though as per prosecution case rape was committed between 8.00 p.m. and 9.00 p.m. on 19th April, 2000 in the house of the accused still the Investigating Officer never visited his house and elementary care was not taken to find out any trace of blood lying on the floor and to recover the liquor bottle from the house. The testimony of Siri Bhagwan claiming to have identified crying voice of Pooja while passing by the side of his house was not acceptable because he did not go inside the house to find out the cause of crying. Further he had no occasion to pass by the side of the house of the accused as his house is located 200 or 250 metres away. He has introduced the version of returning from the fields which is an improvement upon his police statement. He had no occasion to know Pooja by her voice. The presence of Randhir Singh at the stated time and his questioning the accused as to where he was taking his daughter being a chance meeting does not deserve acceptance. The so-called extra-judicial confession merited rejection because Rewa Singh, accused had identified the dead body of his daughter in the General Hospital, Rohtak at the time of post-mortem examination on 20th April, 2000 at 12.05/1.05 p.m. Further Dr. D.K. Pasrija had conducted the medical examination of the accused in the hospital at Rohtak at 1.35 p.m. on 20th April, 2000 while in custody. While he was stated to be present at the cremation of Pooja at 3.00 p.m. or 4.00 p.m. as stated by Raj Singh, Sarpanch. The extra-judicial confession stated to have been made by the accused before Sarpanch Raj Singh in the presence of Basant Lal in his *Baithak* is a fabricated evidence. The written confession Ex. PB recorded by the Investigation Officer after 5.00 p.m. on 20th April, 2000 is hit by the provisions of Sections 25 and 26 of the Indian Evidence Act and for that reason could not be taken into consideration.

(21) Hemant Gupta, J. while upholding the order of sentence ordered by the trial Judge concluded that the extra-judicial confession made by the accused before Raj Singh and Basant Lal known acquaintances of the accused was worthy of reliance as both these witnesses had no animus to depose against him and also because both

---

these witnesses are independent witnesses belonging to the same locality where the accused was residing. The contradictions as to the time of the medical examination of the accused was taken to be not only minor in nature but duly explained having no bearing to the ultimate conclusion of accused having committed the crime. The corroborating statement of Randhir Singh of last seen had not been shattered during his cross-examination. Merely because Siri Bhagwan did not go inside the house of the accused to enquire about the cause of crying of the daughter of the accused at the point time and the reply given by the accused being satisfactory as perceived by the witnesses needs to be taken as a natural conduct on the part of this witness. The omission on the part of the Investigating Officer to inspect the house of the accused was construed not a material omission having bearing on the merits of the investigation . The finding of the human semen on the shirt of the accused as stated in the report of the Forensic Science Laboratory was taken as a corroborating link to the evidence of extra-judicial confession. At the same time, statement Ex. PB of the accused recorded by the Investigating Officer was held to be inadmissible in evidence.

(22) It is manifest that there is a commonality in the opinion of both the Judges constituting the Division Bench to the effect that Pooja was initially raped and then murdered by strangulation which fact is supported by the medical evidence and that the statement of accused Ex. PB recorded by the Investigating Officer was inadmissible evidence being embraced by the provisions of Section 25 of the Indian Evidence Act. With regard to other aspects of the case there is a difference of opinion between them in respect of reliability and acceptability of the account rendered by the witnesses and appreciation of evidence of Forensic Science Laboratory as noticed above.

(23) After scanning the factual position stated above, the evidence led by the prosecution and the stand taken by the accused in his defence have to be examined minutely and independently of the findings recorded by the Hon'ble Judges of the Division Bench as laid down in *Sajjan Singh* versus *State of Madhya Pradesh*, (1).

(24) Undoubtedly, this is a case where rape and murder are alleged to have been the integral part of the same transaction. There

---

can be no doubt nor it was disputed by the counsel representing the accused that deceased Pooja met with homicidal death. Dr. Vimal Sharma and Dr. Kanta Goyal, who constituted the members of the Board, had conducted the autopsy on the dead body of Pooja, daughter of Rewa Singh, accused, aged about six years on 20th April, 2000 at 12.05/1.05 p.m. and had opined,—*vide* report Ex. PM that death was due to throttling and injuries described in the post-mortem report over the genitalia were fresh and were consistent with rape. These injuries were ante-mortem in nature and sufficient to cause death in normal course of nature. The injuries found and described by Dr. Vimal Sharma (PW-14) on the body of Pooja are as under :—

“INJURIES” :

1. There was a defused reddish contusion of the size 3 cm X 2.5 cm present on the left side of neck, 3 cm below the left angle of mandible. On-dissection : underlying neck structures were echymosed.
2. There were multiple reddish contusion of the size varying from 1 cm X 0.5 cm to 2 cm X 1 cm, crescentic in shape situated on the right side of neck below right mastoid over an area 5 X 4 cm. On-dissection : Underlying neck structures were echymosed including larynx and trachea. Hyoid bone was intact. All other organs were normal, except genitalia—There was defused reddish contusion present on both major and minor and the vaginal canal over an area 6 cm x 5 cm. The hymen was ruptured at 2-3 and 6-7 O'clock—The margins of the tear were reddish, irregular and contused. The hymenal tear extending upto the perinum (Deep upto vaginal canal) On-dissection: The vaginal canal and genitalia structure were echymosed. The hymenal opening admitted middle finger easily. Clotted blood was present around and over the external genitalia.

The cause of death in our opinion, was due to throttling and the injuries described above, over the genitalia which were fresh and were consistent with rape. Injuries were ante-mortem in nature and sufficient to cause death in normal cause of nature.”

---

(25) The general observations and other result of autopsy performed had been recorded in the post-mortem report by the members of the Medical Board. The time, according to Dr. Vimal Sharma, between the injuries and death was few minutes and time between death and post-mortem examination was between 6 to 24 hours. He had also identified brownish powder described as perinum of the deceased taken out (Ex. P.10), browning cotton swab sticks (Ex. P.11) and (Ex. P.12), two glass vials (Ex. P.13 and Ex. P.14), four mirosopic glass slides (Ex. P.15 to Ex. P.18) on the basis of which Forensic Science Laboratory had opined that Pooja was raped as human semen was detected on the Vaginal swab taken from vaginal fornix and corresponding injuries on the vaginal parts of the deceased. He further proved the police request for post-mortem examination on the dead body of Pooja (Ex. PN), inquest report (Ex. PO), which is running into seven pages having put his initials on each page. He further stated that on 21st April, 2000, S.H.O. Sadar, Rohtak produced application (Ex. PQ) for DNA analysis of accused Rewa Singh. Thereafter, he had taken 5 cc blood from the body of Rewa Singh and put in a glass vial (Ex. P.20) and after sealing the same was handed over to the Police. He proved his endorsement Ex. PR in this regard. He also proved the glass vial containing the blood of Rewa Singh (Ex. P.20) during the course of his statement. At the same time, he admitted that DNA test report has not been received though Forensic Science Laboratory, Madhuban had analysed the articles sent for analysis and submitted report (Ex. PF and Ex. PF/1). He could not say with regard to time between act of committing of rape and strangulation of the victim though he was certain with regard to the fact that victim was killed after committing rape.

(26) The above statement of Dr. Vimal Sharma supported by other evidence on record leaves no manner of doubt that Pooja was subjected to sexual intercourse and her death had resulted on account of throttling and injuries stated above.

(27) Learned counsel for the appellant-accused has prefaced her arguments by asserting that the case of the prosecution was primarily based on circumstantial evidence and the evidence produced by the prosecution taken on its face value fail to fulfil the requirement of law that the chain of circumstances must be complete and must clearly point to the guilt of the accused and for that reason case of

---

the prosecution deserves rejection outrightly. This submission has been countered and refuted from the side of the prosecution. Therefore, I will notice the legal requirement and analyse the evidence in the light of the settled principles in this regard.

(28) As already noticed there being no direct evidence of the crime, the prosecution case rests on circumstantial evidence. The Hon'ble Supreme Court in *Sharad Birdhichand Sarda versus State of Maharashtra (2)*, noticed five golden principles which constitute the proof of a case based on circumstantial evidence. The relevant observations are recorded in paras No. 147 to 150 at pages 302 to 304 of the judgment, which are as under :—

“Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court in *Hanumant versus The State of Madhy Pradesh*, 1952 S.C.R. 1091. This case has been uniformly followed and applied by this Court in a large number of later decisions upto date, for instance, the cases of *Tanfail (Alias) Simmi versus State of Uttat Pradesh* (1969) 3 SCC 198 and *Ramgopal versus State of Maharashtra*, AIR 1972 S.C. 656. It may be useful to extract what Mahajan, J. has laid down in Hanumat's case (Supra) :

“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 in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again the circumstances whould 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.”

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 & Anr. versus State of Maharashtra*, (1973) 2 S.C.C. 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.
- (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.

---

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

(29) Reference in this regard may be made to the observations made in *Joseph s/o Kooveli Poulo* versus *State of Kerala* (3), which are as under :—

“It is often said that though witnesses may lie, circumstances will not, but at the same time it must cautiously be scrutinised to see that the incriminating circumstances are such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. There can also be no hard and fast rule as to the appreciation of evidence in a case and being always an exercise pertaining to arriving at a finding of fact the same has to be in the manner necessitated or warranted by the peculiar facts and circumstances of each case. The whole effort and endeavour in the case should be to find out where the crime was committed by the accused and the circumstances proved from themselves into a complete chain unerringly pointing to the guilt of the accused.”

(30) The principle governing the circumstantial evidence has also been taken notice of in *Molai and another* versus *State of M.P.*, (4) of *Himachal Pradesh* versus *Madan Lal*, (5) *Gura Singh* versus *State of Rajasthan* (6), *Subhash Chand* versus *State of Rajasthan*, (7) and *Sudama Pandey* versus *State of Bihar*, (8).

(31) The circumstantial evidence on which the prosecution had placed reliance to bring home the charge to the accused can broadly be categorised as under :—

- (1) Pre-crime conduct of accused as detailed by Siri Bhagwan (PW-9).

- 
- (3) 2000 SCC (CrL) 926
  - (4) 2000 SCC (CrL) 438
  - (5) 2000 (1) RCR (CrL) 450
  - (6) 2001 (1) RCR (CrL) 122
  - (7) 2001 (4) RCR (CrL) 496
  - (8) 2002 (1) RCR (CrL) 130

- 
- (2) Post-crime conduct of the accused and evidence of last seen detailed in the statement of Randhir Singh (PW-1).
  - (3) Recovery of dead body in the pits located in front of house of Kartar Singh and Chunni and Salwar from the Ghair of Kartar Singh which is situated at a distance of 200 yards from the house of the accused.
  - (4) Medical evidence in relation to accused.
  - (5) Extra-judicial confession made by the accused before Sarpanch Raj Singh and Basant Lal, who is a near relation of the accused.
  - (6) Confession of crime in the statement (Ex. PB) made by the accused to the Investigating Officer.
  - (7) Recovery of semen on the shirt of the accused by the Forensic Science Laboratory.
  - (8) False plea taken by the accused in the First Information Report lodged and in the statement of the accused under Section 313 of the Code.

(32) It is the case of the prosecution that the crime was committed in the house of the accused. Accused along with his two daughters Pooja and Gudia was present in his house on 19th April, 2000 between 8.00 p.m. to 9.00 p.m. Siri Bhagwan had fixed the identity of crying voice of Pooja which had attracted him and his brother Krishan to the house of accused while they were passing from that side after returning from their fields: Siri Bhagwan claims in his statement that Pooja was known to him by her voice and face. Krishan brother of Siri Bhagwan, whose house is stated to be located near the house of the accused had not been examined by the prosecution. It has been admitted that door of the house of Rewa Singh was bolted from inside and, therefore, he had no occasion to see the face of daughter of the accused, who was crying. Thus, it is not his case that he had heard any conversation between Pooja and accused before she started crying. As far as crying voice of daughter of accused is concerned, it can also be of Gudia aged three years or that of Pooja. Therefore, the conclusion drawn by Siri Bhagwan that the crying voice was that of Pooja alone cannot be taken at its face value because the evidence



---

about the identification of Pooja by the timbre of her voice depended upon subtle variation with overtone when Siri Bhagwan had not physically seen the face of Pooja crying. Therefore, straightway linking the crying voice to Pooja as such is not worthy of acceptance. After drawing presumptive conclusion that cries coming from the house of Rewa Singh were of Pooja, he is seemed to have asked the accused as to why she was crying, to which Rewa Singh had informed him that she was suffering from fever and also because her mother had gone to her parental home. This part of the statement clearly shows that he had tried to overcome his difficulty to identify the voice of Pooja and for that reason he had attributed the name of Pooja to the accused in reply given to him. If he was really concerned about Pooja, he should have asked the accused to open the door and have a talk with him but he did not react in this manner and contend himself by the reply given and proceeded towards his house. His presence at that point of time near the house of the accused as such cannot be accepted for another reason as well. It is not the case that he had heard the shrieks of daughter of the accused. There is a clear distinction between cries and shrieks. It cannot be ignored that the prosecution has tried to connect the crying voice of Pooja to the stage where she was subjected to rape by the accused in the courtyard of his house on the basis of extra-judicial confession made by him, the reliability and acceptability of the judicial confession made by accused would be discussed in detail at the later stage. The fact remains that the prosecution had not brought on record the exact distance of the place from where Siri Bhagwan had heard the crying voice of Pooja and the courtyard of the accused where the alleged rape is stated to have been committed by him. Even no site plan of the place of the crime had been prepared by the Investigating Officer. Therefore, it is not possible to fathom as to whether a passer-by like Siri Bhagwan could be in a position to hear the cries of the daughter of the accused when in the disclosure statement on which reliance had been placed by the prosecution, the accused is stated to have gagged the mouth of Pooja as soon as she started crying.

(33) Another important circumstance which has come on record is that Siri Bhagwan in his statement had admitted that his house is located at a distance of 200 to 250 metres away from the house of the accused. It is also on record that his house is about 50 metres from the house of Krishan. He had also admitted that he had reached the

---

place where dead body of Pooja was lying at 7.00 a.m. on 20th April, 2000. He had also admitted that the Police had reached there after half an hour of his arrival. This part of his statement clearly shows that he was available to the Investigating Officer Sub Inspector Ishwar Singh on 20th April, 2000, when he had reached the spot where dead body was lying, soon after the report was lodged with him by accused Rewa Singh at the Bus Stand of Sunderpur at 8.00 a.m. but the version stated by him was not disclosed to Sub-Inspector Ishwar Singh up to the time he left for dead house at about noon time on 20th April, 2000. Thus circumstances brought on record warrant a conclusion that no reliance can be placed on his statement with regard to the circumstances narrated by him.

(34) Coming to the testimony of Randhir Singh (PW-1) it cannot be ignored that his chance meeting with accused between 9.00 to 9.30 p.m. on 19th April, 2000 while he was going back to the village on his tractor trolley after selling his wheat and had seen the accused with his daughter near Ghair of Arjun resident of village Titoli had made him inquisitive as to where he was going. On his enquiry, the accused is stated to have informed him that his daughter was suffering from fever and for that reason he was taking her to the hospital. Thereafter, he proceeded towards his residence. It has been stated by him that on next morning he came to know that daughter of Rewa Singh had been murdered and her dead body was lying in a pit near Bitora and Kikkar trees located adjacent to the road. It is clear from his deposition that name of the daughter of the accused, who was seen with the accused at the time when he met him was not known to him. Understandably, he had not specifically stated that it was Pooja, who was with the accused at that time. Even otherwise his conduct appeared to be unnatural because he had not shown any anxiety or tried to render any help to the accused even after knowing that daughter of the accused was sick and at that odd hour of the night he was going to the hospital on foot. Instead he continued driving the tractor and proceeded towards his house. It deserves notice that there is nothing in his statement that there was any street light on the road where the accused along with his daughter had met him near the Ghair of Arjun. he had not even testified in his statement that the lights of the tractor was on and under that light he was able to see daughter of the accused with him. On the basis of this evidence, it cannot be said that accused was going with Pooja at the time when the witness

---

had met Rewa Singh as sought to be inferred by the prosecution from his statement. Another surprising feature in his statement is that he had nowhere stated that he had gone to the spot where dead body of Pooja was lying though he claims that on the next morning at about 5.00 a.m. he came to know about the murder of the daughter of the accused while he was going to his fields. In view of this circumstance, no reliance can be placed on the statement of Randhir Singh to accept the version of his chance meeting with the accused.

(35) Reverting to other evidence, it has come in the statement of the Investigating Officer Ishwar Singh that he had summoned the dog squad at the place where dead body of Pooja was found. According to him the dog squad was made to smell the dead body of the victim and thereafter it led the Police to the Ghair of Kartar Singh and then went inside and reached the place where Chunni and Salwar of the victim were lying. The Ghair of Kartar Singh is located in front of the pits from where the dead body of Pooja was recovered but separated by a metalled road in between. The dog squad had not sniffed the accused though he was present with the Investigating Officer at that time. The dog squad did not even led the police to the house of the accused. No doubt writing with regard to recovery of Chunni and Salwar of Pooja made from the Ghair of Kartar Singh had been prepared by the Investigating Officer but no mention had been made therein that dog squad had led the Police to that place. It has to be kept in mind that evidence with regard to the dog squad leading to the identity of the person or place involves risk of error. However, recovery of Chunni and Salwar of the deceased from the Ghair of Kartar Singh, had provided a piece of evidence to the Investigating Officer to probe into the matter to find out as to under what circumstances Chunni and Salwar of the deceased came to be left at the Ghair of Kartar Singh. He should have interrogated Kartar Singh or his family members to investigate the possibility of the involvement of a person in the commission of the crime as at that stage he was at the threshold of the investigation. In the site plan (Ex. PU) prepared by the Investigating Officer, the place from where Chunni and Salwar had been recovered is shown as house of Kartar Singh and the disatance between the place from where dead body was recovered and the place from where Chunni and Salwar had been recovered had been shown as 100 yards marked by letters 'A' and 'C'.

---

(36) At this stage, statement of Dr. D.K. Pasrija, Medical Officer, who had conducted medico-legal examination of Rewa Singh on 20th April, 2000 at 1.35 p.m. has to be noticed because of the divergence between his testimony and that of the Investigating Officer as to the time when the accused was produced before him in the hospital at Rohtak and this circumstance equally has a bearing on the reliability of the extra-judicial confession stated to have been made by the appellant-accused admitting his involvement in the commission of the crime. Dr. Pasrija during his deposition has stated that accused Rewa Singh, aged 35 years was examined by him on the police request contained in the application (Ex. PG) and had found the following :—

“Patient was a fully grown male adult with moderate built, vitals within normal limits, higher functions normal, muscle power in all limbs grade v. having secondary sexual characters normally developed genitalia well developed, pubic-hair shaved, 0.1—0.2 on hairs stumps present, glans naked prepuce folded back clean without any smegma, glans bluish red, without any mark of injury no mark of fresh injury on the penis or surrounding area.”

(37) On the basis of above finding, he rendered an opinion contained in report Ex. PH to the effect that there was nothing abnormal to suggest the incapability of the accused to perform an act of sexual intercourse. He also stated that opinion with regard to actual act of intercourse having been performed in the recent past would depend upon the report of Forensic Science Laboratory, Karnal. He had also taken into possession underwear of royal blue colour with red and deep violet-blue coloured stripes on the limbs, containing the faint white stain encircled and signed by him and sealed in a cloth packed for bio-chemical examination affixing five seals on it along with an envelope bearing three seals and handed over the same to the police for sending the same to Forensic Science Laboratory, Karnal for analysis. During the course of his testimony, report of Forensic Science Laboratory (Ex. PF) was shown to him and thereafter he stated that possibility of accused having had sexual intercourse in the recent past could not be ruled out. He has also stated that injuries on the genitalia penis can be caused by an act of intercourse with a female child of six years but cases were reported where no injuries were caused.

---

(38) On the basis of the evidence of Dr. D.K. Pasrija it was sought to be urged by the counsel representing the appellant-accused that as no injury on the genitalia penis of the accused was noticed, the prosecution version with regard to the rape committed by him on his daughter stands belied. While making this criticism the statement made by him in cross-examination that in some cases it has been noticed that no injury is caused on genitalia penis of a grown up person even where rape is committed by him on a female child of six years has been ignored.

(39) From the side of the prosecution reference had been made to the observations made in *State of Himachal Pradesh versus Gian Chand, (9)*. In para 15 of the judgment in this case notice had been taken of the opinion of Modi recorded in his book "Medical Jurisprudence" at page 509 "that even in the case of a child victim being ravished by a grown up person it is not necessary that there should always be marks of injuries on the penis in such cases." Thus, non-presence of injuries on the genitalia penis of the accused *per se* is no ground to draw a conclusion that he could not have committed rape. But in the present case no help can be sought from this circumstance by the prosecution because as would be noticed hereafter the prosecution has failed to establish the charges against the appellant-accused.

(40) The main stay of the prosecution in this case is the extra-judicial confession stated to have been made by the accused before Sarpanch Raj Singh and Basant Lal on 20th April, 2000 admitting his involvement in the commission of the crime.

(41) Before noticing the evidence led by the prosecution in this regard the legal position with regard to acceptability of the extra-judicial confession needs to be noticed. It was observed in *Gura Singh versus State of Rajasthan (supra)* as under :—

"It is settled position of law that extra-judicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom

---

it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in *Rao Shiv Bahadur Singh versus State of Vindhya Pradesh*, 1954 SCR 1098, this Court again in *Maghar Singh versus State of Punjab*, AIR 1975 SC 1320 held that the evidence in the form of extra-judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In *Narayan Singh versus State of M.P.*, AIR 1985 SC 1678 this court cautioned that it is not open to the Court trying the criminal case to start with presumption that extra judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The retraction of extra-judicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession. In *Kishore Chand versus State of H.P.*, AIR 1990 SC 2140 this court held that an unambiguous extra judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The Court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time

---

and place of making it, the circumstances in which it was made have to be scrutinised. To the same effect is the judgment in **Baldev Raj** versus **State of Haryana**, AIR 1994 (1) RCR (Crl.) 42 (P&H) : AIR 1991 SC 37. After referring to the judgment in **Piara Singh** versus **State of Punjab**, AIR 1977 SC 2274 this Court in **Madan Gopal Kakkad** versus **Naval Dubey and another**, JT 1992 (3) SC 270 held that the extra judicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration.”

(42) Sarpanch Raj Singh (PW-2) and Basant Lal (PW-8) had maintained in their deposition that after cremation of dead body of Pooja, Basant Lal was sitting with Raj Singh in his *Baithak*. While they were talking about the incident, accused Rewa Singh they were talking about the incident, accused Rewa Singh came there and told them that during the previous night under the influence of liquor he had committed rape upon his daughter and thereafter killed her fearing the disclosure of the incident by her to her mother. He further made request to Basant Lal being his uncle and also to Raj Singh being Sarpanch of the village to hand him over to the Police Officers, who were known to them. He also stated before them that the Police had suspected him for the commission of this crime and wanted to arrest him. Thereafter both of them along with him proceeded towards the police station. They met Sub-Inspector Ishwar Singh at the turning of Bus Stand, Titoli on 20th April, 2000 at 5.00 p.m. and handed over the accused to him. According to them the accused then narrated the incident to the Sub-Inspector in detail that on 19th April, 2000 in the absence of his wife, he had consumed liquor and thereafter committed rape on his daughter in the court-yard of his house. He had also referred to the enquiry made by Siri Bhagwan and Krishan about the crying of his daughter and also of his meeting with Randhir Singh near the *Ghair* of Arjun while *he* was taking his daughter with him. The confessional statement made by the accused before the Investigating Officer was reduced into writing as Ex. PB and that writing has been termed as his disclosure statement on which attestation of Rewa Singh and the witnesses, Raj Singh and Basant Lal, had been obtained by the Investigating Officer.

---

(43) The testimony of the Investigating Officer has to be noticed extensively in conjunction to the statements of Raj Singh and Basant Lal and in the light of other evidence on record. It is the stand of the Investigating Officer that after completing the investigation in Village Titoli at 12.00 noon on 20th April, 2000, he went to General Hospital, Rohtak and took into possession the belongings of deceased Pooja and other articles handed over to him by Constable Surender Singh. He claimed that thereafter he returned to village Titoli and joined Randhir Singh, Krishan and Siri Bhagwan. During the course of investigation after he had recorded their statements, a doubt regarding the involvement of Rewa Singh was created in his mind and then he tried to locate Rewa Singh, accused but he was not traceable. Thereafter, he was present at the Bus Stand, Titoli when Sarpanch Raj Singh and Basant Lal produced Rewa Singh, accused before him. It is at this stage, according to Sub Inspector Ishwar Singh, he interrogated Rewa Singh and arrested him and further recorded the statements of Raj Singh and Basant Lal. His further version is that he had taken the accused to General Hospital, Rohtak for medical examination at 9.00 p.m. on 20th April, 2000 and remained there up to 10.20 p.m. After obtaining medico-legal report Ex. PH of the accused and belongings of the accused, he returned to the Police Station at 11.00 p.m.

(44) The so-called extra-judicial confession stated to have been made by the accused before Sarpanch Raj Singh and Basant Lal is the result of manipulation and creation of the Investigating Officer to fix the criminal liability upon the accused. The reasons for the above conclusion are as under :—

- (i) Accused Rewa Singh, from the time he had lodged the report with Sub-Inspector Ishwar Singh on 20th April, 2000 at Bus Stand, Sunderpur at 8.00 a.m. till the dead body of Pooja was sent to General Hospital, Rohtak in the custody of Constable Surender Singh remained with the Investigating Officer. Thereafter, he accompanied the dead body of his daughter to the hospital and his presence is recorded in the post-mortem report prepared where he and Basant Lal are stated to have identified the dead body at 12.05 p.m. on 20th



---

April, 2000. The Investigating Officer drafted two applications (Ex. PG) addressed to the Medical Officer, General Hospital, Rohtak, containing his request for medical examination of Rewa Singh, accused.

- (ii) Accused was medically examined by Dr. D.K. Pasrija at 1.35 p.m. on 20th April, 2000 in General Hospital and at that time the Investigating Officer had accompanied him as had been recorded in medico-legal report of Rewa Singh (Ex. PH).

(iii) It appears from the record that after Investigating Officer Ishwar Singh had returned to village Titoli from the General Hospital, Rohtak, where he had taken into possession the *post-mortem* report, he conceived a plan to create extra-judicial confession of the accused with the help of Sarpanch Raj Singh and Basant Lal. His assertion that interrogation of Randhir Singh and Siri Bhagwan had created a circumstance leading to suspicion regarding the involvement of the appellant-accused and then he searched for him is falsified from the record because the presence of Rewa Singh with the police at the cremation of his daughter at 4.00 p.m. on 20th April, 2000, is testified by Siri Bhagwan. The deposition of Siri Bhagwan had totally dislodged the edifice of the case propounded by the Investigating Officer because he had stated in unequivocal terms that accused was arrested by the Police on 20th April, 2000, in his presence even before the cremation of dead body of Pooja. The prosecution did not even try to challenge this part of the statement of Siri Bhagwan in his cross-examination during the course of his statement. Even Raj Singh, witness had admitted that the dead body of Pooja was cremated between 3.00 and 4.00 p.m. on 20th April, 2000 and the accused was present at the time of her cremation.

- (iv) The version rendered by Raj Singh and Basant Lal that accused came to the Baithak of Raj Singh after the cremation of dead body of Pooja totally falls flat and

---

splits into pieces for the simple reason that accused was medico-legally examined while in custody by Dr. D.K. Pasrija on 20th April, 2000 at 1.35 p.m. in General Hospital, Rohtak.

- (v) The circumstances on record do indicate that after *post-mortem* had been performed on the dead body of Pooja, her dead body was allowed to be taken to village Titoli and that explains that accused was also taken in custody to village Titoli where he performed the cremation of his daughter between 3.00 to 4.00 p.m. This fact had even been suppressed by the Investigating Officer because he went to the extent of saying that medical examination of the accused was performed when he had taken the accused to General Hospital, Rohtak, at 9.00 p.m. This stand of the Investigating Officer has further been nullified by Dr. N.K. Bishnoi (DW-1), who had categorically stated on the basis of attendance register and other related record brought by him that Dr. D.K. Pasrija was on duty in the Casualty from 8.00 a.m. to 2.00 p.m. No attempt was made to assail the statement of Dr. N.K. Bishnoi in this regard. That being so the question of his conducting the examination of the accused at 9.00 p.m. on 20th April, 2000, as maintained by the Investigating Officer does not arise at all.
- (vi) Another surprising aspect of the case is that the Investigating Officer had completely blinded his vision when he went to the extent of recording the disclosure statement of the accused Ex. PB. This disclosure statement had not led to any discovery of fact relating to the crime. It was recorded in violation of the provisions of Sections 25 and 26 of the Indian Evidence Act and has to be excluded from consideration.
- (vii) The reading of written confession statement Ex. PB not only indicates the reasons why accused committed the crime but also graphic account of his interlude with Siri Bhagwan and Randhir Singh and other details before and after the incident. This cannot be construed as a

---

natural conduct of an accused voluntarily making confession.

(45) The above noted circumstances warrant that no reliance should be placed on the evidence of extra-judicial confession produced from the side of the prosecution.

(46) During the course of arguments, counsel representing the appellant-accused had made pointed reference to the partisan nature of investigation conducted by the Investigating Officer with the sole aim of implicating the appellant-accused in this record are as under :—

- (i) It has been the consistent stand of the accused in the record lodged that after he had found his daughter missing from the cot on which she had slept in his house, he with the help of Bijender and other relations searched for her during the night time on 19th April, 2000 but found no trace of her. Still the Investigating Officer did not examine Bijender or any of his relations nor cite any of them as witness to indicate that false story had been put up by the accused in this regard.
- (ii) After the Investigating Officer had formed suspicion regarding the involvement of the accused in the commission of the crime, he did not take the elementary care to inspect the house of the accused where the offence is alleged to have been committed to collect any incriminating circumstance and articles. This was not done even after it had come in his investigation that the accused after lying his daughter on the ground of the court-yard had committed rape on her. Photographs Exs. P.1 to P.3 and negatives Exs. P.4 to P.6 proved by photographer Naresh (PW-11) revealed that vaginal parts were found bleeding even at that point of time. Even the Members of the Medical Board who had conducted the post-mortem examination of the deceased had found clotted blood on the external genitalia. It is commonly said that every crime leaves behind some imprints or clues of crime howsoever hard the criminal may try to hide. The Investigating Officer had not visited the house of the accused, which explains the

---

reasons why site plan of the place where rape had been committed was not prepared by the Investigating Officer. Preparation of the site plan by the investigating officer is an important step in the investigation because his spot inspection depicting the scene of crime help the Court to appreciate the statements of the witnesses.

- (iii) In the inquest report, there is no mention with regard to the recovery of *Chunni* and *Salwar* of the deceased. The place from where *Chunni* and *Salwar* of the deceased was recovered had not been indicated in the site plan prepared in the inquest report.
- (iv) It is clear from the site plan Ex. PU prepared by the Investigating Officer that he had pointed out the place of recovery of *Chunni* and *Salwar* as point 'C' falling in a part of *Ghair* of the house of Kartar Singh. The house of Kartar Singh is surrounded by four walls. From the site plan prepared by Summit Kumar, Draftsman (Ex. PC), it is apparent, that open plot of Laxmi Narain is located on eastern side and that of Dalbir Singh on western side. On the northern side house of Kartar Singh had been mentioned. The Investigating Officer had not cared to interrogate Kartar Singh or any of his relations to find out their involvement in any manner in the commission of the crime and to seek explanation from them with regard to the recovery of *Chunni* and *Salwar* from their *Ghair*. Even Laxmi Narain and Dalbir Singh had not been cited by him.
- (v) It has been the stand of Sub Inspector Ishwar Singh in his deposition on 21st April, 2001 that he had taken the accused to the hospital for taking the sample of blood for DNA analysis and had moved an application Ex. PO in this regard. On his application Dr. Vimal Sharma had taken the blood sample of the accused and also made endorsement Ex. PR. Dr. Vimal Sharma had admitted in his deposition that DNA report had not been produced before him. No explanation has come on

---

record as to why report of DNA had been withheld from the Court.

(47) These circumstances do support the stand taken by the counsel representing the appellant-accused that it would be utterly unsafe to place any reliance on the evidence collected during the course of investigation.

(48) Coming to the last submission made, no doubt the accused had taken the stand of complete denial but the fact remains that evidence led by the prosecution has not been able to dislodge the first version got recorded by him in Ex. PF lodged with the Investigating Officer. Even otherwise the evidence led by the prosecution has miserably failed to link the accused with the commission of the crime.

(49) At this stage it would be appropriate to record the observations made by the Apex Court in *Datar Singh* versus *The State of Punjab (10)*. In para 3 of the judgment it was stated as under :—

“It is often difficult for Courts of law to arrive at the real truth in criminal cases. The judicial process can only operate on the firm foundations of actual and credible evidence on record. Mere suspicion or suspicious circumstances cannot relieve the prosecution of its primary duty of proving its case against an accused person beyond reasonable doubt. Courts of justice cannot be swayed by sentiment or prejudice against a person accused of the very reprehensible crime of patricide. They cannot even act on some conviction that an accused person has committed a crime unless his offence is proved by satisfactory evidence of it on record. If the pieces of evidence on which the prosecution chooses to rest its case are so brittle that they crumble when subjected to close and critical examination so that the whole superstructure built on such insecure foundations collapses, proof of some incriminating circumstances,

---

which might have given support to merely defective evidence cannot avert a failure of the prosecution case.”

(50) In *Padala Veera Reddy versus State of Andhra Pradesh and others (11)*, it was observed that murder is diabolical in conception and cruel in execution but the real and pivotal issue is whether the totality of the circumstances have unerringly established that all the accused or any of them are the real culprits.

(51) In *Subhash Chander versus State of Rajasthan (supra)*, in para 24 of the judgment in conclusion it was stated “thus, none of the pieces of evidence relied on as incriminating, by the trial Court and the High Court, can be treated as incriminating pieces of circumstantial evidence against the accused. Though the offence is gruesome and revolts the human conscience but an accused can be convicted only on legal evidence and if only a chain of circumstantial evidence has been so forged as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the accused.”

(52) In *Shankarlal Gyarsilal Dixit versus State of Maharashtra (12)*, the Apex Court cautioned that “human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions”. This Court has held time and again that between may be true and must be true there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned a convict.

(53) It was further observed in para 26 of the judgment in *Subhash Chand's case (supra)*, as under :—

“Before parting with the case we would like to place on record, an observation of courts, touching an aspect of the case. There are clueless crimes committed. The factum of a cognizable crime having been committed is known but neither the identity of the accused is disclosed nor is there any indication available of the

---

(11) 1990 (1) All India Criminal Law Reporter 62

(12) AIR 1981 SC 765

---

witnesses who would be able to furnish useful and relevant evidence. Such offences put to test the wits of an Investigating Officer. A vigilant investigating officer, well-versed with the techniques of the job, is in a position to collect the threads of evidence finding out the path which leads to the culprit. The ends, which the administration of criminal justice serves, are not achieved merely by catching hold of the culprit. The accusation has to be proved to hilt in a Court of law. The evidence of investigating officer given in the court should have a rhythm explaining step by step how the investigation proceeded leading to detection of the offender and collection of evidence against him. This is necessary to exclude the likelihood of any innocent having been picked up and branded as culprit and then the gravity of the offence arousing human sympathy persuading the mind to be carried away by doubtful or dubious circumstances treating them as of beyond doubt evidentiary value.”

(54) The observations made in the above mentioned case fully apply to the facts of the present case.

(55) For the aforesaid reasons, the prosecution has not been able to bring home the charge against the appellant-accused beyond any reasonable doubt. Accordingly, I allow Criminal Appeal No. 316-DB of 2001 filed by Rewa Singh, appellant-accused and set aside the judgment of conviction and sentence passed against him by the trial Judge and order his acquittal. Rewa Singh, appellant shall be set at liberty forthwith, if not required by the State in any other criminal case. Murder Reference No. 3 of 2001 made by the trial Judge is hereby declined.

---

**R.N.R.**