



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA
&
HON'BLE SMT. JUSTICE ANURADHA SHUKLA**

CRIMINAL REFERENCE CAPITAL No. 5 of 2026

CNR No.: MPHC030208312026

IN THE REFERENCE OF STATE OF MP

Versus

CHHATRAPAL RAWAT

Appearance:

Shri C. P. Singh, Govt. Advocate for State.

Shri R.K.Sharma, Senior Advocate with Shri Gaurav Samadhiya,
and Shri Abhijeet Singh Tomar, Advocate for respondent.

CRIMINAL APPEAL No. 7346 of 2026

CNR No.: MPHC030227372026

CHATRAPAL RAWAT

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri R.K.Sharma, Senior Advocate with Shri Gaurav Samadhiya,
and Shri Abhijeet Singh Tomar, Advocate for appellant.

Shri C.P.Singh, Govt. Advocate for State.



Reserved on : 7/10/2026

Pronounced on : 28 /10 /2026

JUDGMENT

Per: Justice Gurpal Singh Ahluwalia

1. By this common judgement, Criminal Reference Capital No. 5/2026 forwarded by the trial Court, under Section 366 of Cr.P.C/407 of BNSS, and Criminal Appeal No. 7346/2026 shall be decided.
2. Both the cases arise out of judgement and sentence dated 21/7/2026 passed by Special Judge (under the POCSO Act, 2012), Datia in S.C. No. 15/2022, by which the accused has been convicted and sentenced for the following offences:-

Section	Imprisonment	Fine	Default Stipulation
363 of IPC	Three years R.I.	Rs. 1000/-	One month's R.I.
366 of IPC	Seven years R.I.	Rs. 2000/-	Six months' R.I.
376A of IPC	Death Sentence	Rs. 5000/-	Six months' R.I.
376AB of IPC	No Separate Sentence		
302 of IPC	Death Sentence	Rs. 5000/-	Six months' R.I.
5(m)/6 of POCSO Act	Death Sentence	Rs. 5000/-	Six months' R.I.



3. It is not out of place to mention here that earlier by judgement and sentence dated 5/12/2022, Special Judge (POCSO Act, 2012)/Second Additional Sessions Judge, Datia in the Special Sessions Trial No. 15/2022 had convicted the appellant and had awarded death sentence. Against the said judgement and sentence, Criminal Reference No. 10/2022 was forwarded by the trial Court whereas Criminal Appeal No. 12641/22 was filed by the accused/appellant. By judgement dated 19th of June 2026, both the cases were decided and in view of the fact that the Investigating Officer namely Kamal Kishore Goyal (PW-20) was examined and cross-examined in absence of the accused and in the light of the provisions of Section 273 of Cr.P.C as well as in the light of judgement passed by Supreme Court in the case of **Atma Ram and Others Vs. State of Rajasthan** reported in (2019)20 SCC 481, the judgement and sentence passed by the trial Court was set aside and the matter was remanded back to the trial Court for re-recording of evidence of Kamal Kishore Goyal (PW-20) in presence of appellant. Accordingly, the trial Court re-recorded the evidence of Kamal Kishore Goyal (PW-20) in the presence of appellant and after re-recording the statement of appellant under Section 313 of Cr.P.C in the light of evidence of Kamal Kishore Goyal (PW-20), once again convicted the accused/appellant as aforementioned and has awarded death sentence. Accordingly, Criminal Reference No. 5 of 2026 has been received under Section 366 of Cr.P.C for confirmation.

4. The facts necessary for disposal of present criminal reference as well as criminal appeal, in short, are that on 09.05.2022, an information



was received by Police Station Goraghat from Control Room, Datia that a dead body of a nine-year-old girl is lying in a field situated in village Tilaitha. Accordingly, SHO - Kamal Goyal as well as Sub-Inspector - Vandana Shakya went to village Tilaitha, where they came to know that dead body of the deceased girl has been taken away from the field to her village by her parents. Accordingly, the police party went to the house of the deceased, where dead body of the deceased was lying under a *neem* tree situated in front of the house of the deceased. On the information given by father of deceased, Vandana Shakya recorded the merger intimation. A *dehati nalis* was also lodged by father of deceased (PW-2) that on 08.05.2022, he had come to village Tilaitha to attend marriage of one Reetendra. When the marriage rituals were going on, then at about 01:30 a.m. in the night, his wife informed him that the deceased is not traceable. Thereafter, father of deceased and his wife inquired about the deceased from their relatives, but they could not get any information about her. Thereafter, father of the deceased (PW-2) called his brother (PW-4) to village Tilaitha, and after he came to village Tilaitha, he gave the entire information to him. Thereafter he, his wife, and his brother started searching for the deceased in the fields. At about 11:00 a.m., they found the dead body of deceased in a naked condition, and her body was drenched with blood. They checked the pulse of the deceased and found that she had already expired. Thereafter, they brought the dead body of the deceased to their village. Thus, it was alleged that some unknown person has committed murder of the deceased after committing rape on her. The inquest report was prepared after filling up the *Safina* form.



Postmortem of the dead body of the deceased was got done. Merg No. 16/2022 (Exhibit P-41) was registered, and on 09.05.2022 itself, FIR (Exhibit P-42) was registered. Statement of cousin sister of the deceased 'A' (PW-1) was recorded, who informed that at about 12:00 in the night, she and the deceased were sleeping on a cot. The music was being played on the DJ. Appellant, who is a maternal uncle by relation, came to them and took them inside the room where a cot was already lying. Appellant instructed the witness that she has to sleep on the cot, but she did not sleep and rushed towards her mother from the door situated on the back side of the room. When again she came nearer to the cot where she was sleeping, then she found that the deceased was being taken away by appellant. When dead body of the deceased was recovered, then she narrated the entire incident to her mother and mother of the deceased. The clothes, nail clippings of both hands, vaginal smear, vaginal slide, anal swab, hyoid bone, and viscera were preserved and were handed over to the police for chemical and forensic examination. Cause of death of the deceased was found to be asphyxia due to strangulation. Death of the deceased was found to be homicidal in nature, and all the injuries sustained by the deceased were caused within a period of 24 hours. The possibility of sexual assault and rape was also found. On 10.05.2022, the spot map was prepared. The scientific officer also came to the spot. The blood-stained leaves and woods, plain woods and leaves, and Aadhaar card of the accused were also seized from the spot vide seizure memo Exhibit P-9. Appellant was arrested, and his disclosure statement (Exhibit P-10) was recorded. On the basis of disclosure made by the appellant, shirt of the



appellant, as well as jeans of the deceased and pink-coloured handkerchief, which was stained with blood, were seized vide seizure memo Exhibit P-11. Statements of the cousin sister of the deceased, 'A' (PW-1), complainant (PW-2), and mother of the deceased (PW-5) were got recorded under Section 164 of the CrPC. The deceased was medically examined. The blood sample of the deceased was collected for the DNA test. The incriminating articles were sent to Forensic Science Laboratory, Bhopal vide Draft Ex. P-31 and P-34. The hyoid bone preserved in formalin was sent to the Forensic Medico-Legal Institution, Gandhi Medical College, Bhopal vide draft Exhibit P-39. The school records of the deceased were recovered. The police, after completing the investigation, filed a charge sheet against the appellant under Sections 376AB, 302, 376A, 354A of the IPC and under Sections 5/6 of the POCSO Act, 2012.

5. The Trial Court, by order dated 17.06.2022, framed charges under Sections 363, 366, 376AB, 376A, 302 of the IPC and under Sections 5(m)/6 of the POCSO Act.

6. Appellant abjured his guilt and pleaded not guilty.

7. Prosecution examined cousin sister of the deceased, 'A' (PW-1), father of deceased 'B' (PW-2), *Mausi* of deceased 'C' (PW-3), *Tau* of the deceased 'D' (PW-4), mother of deceased 'E' (PW-5), *Mausa* of deceased 'F' (PW-6), Dr. Anil Mangeshkar (PW-7), Dr. Daya Shankar Sharma (PW-8), Dr. Jaibharat (PW-9), Ramkhilawan Jatav (PW-10), Sanjay Singh Rawat (PW-11), Dr. Satish Kumar Man (PW-12), Vandana Shakya (PW-13), Indal Singh Senger (PW-14), Priyanka Bhadoriya (PW-15), Lal



Singh (PW-16), Bhupendra Singh Jatt (PW-17), Dheeraj Kaushal (PW-18), Vikram Shivhare (PW-19), and Kamal Kishore Goyal (PW-20).

8. Appellant did not examine any witness in his defence.

9. The Trial Court, by impugned judgment and sentence dated 21/7/2026 passed in S.C.No. 15/2022, convicted the appellant and sentenced him for the offences mentioned above.

10. Challenging the judgment and sentence passed by the trial Court, it is submitted by counsel for appellant that cousin sister of deceased, 'A' (PW-1), is not a reliable witness. In fact, she is a created and concocted witness. It is further submitted that evidence of a child witness has to be considered with a pinch of salt because they are prone to tutoring. The father of prosecutrix, 'B' (PW-2), who had lodged the Dehati Nalishi, has not stated that after the dead body of deceased was recovered, cousin sister of the victim/deceased 'A' (PW-1), had ever informed him about the conduct of appellant in taking away the victim with him. On similar grounds, the evidence of *Masi* of the victim/deceased 'C' (PW-3), the evidence of *Tau* of the victim/deceased 'D' (PW-4), and the mother of the victim/deceased 'E' (PW-5), has been challenged. It is further submitted that since the guidelines for DNA examination of incriminating articles were not followed, and the samples were not kept at a temperature of minus four degree, therefore, there was every possibility of destruction of DNA profile. Even the recovery of clothes of deceased from the possession of appellant was challenged as not reliable. It is submitted that the chain of circumstance has not been proved by the prosecution as required in the light of judgment passed in the case of **Sharad**



Birdhichand Sarda v. State of Maharashtra reported in **AIR 1984 SC 1622**. In the alternative, it is submitted that it is clear from the report submitted by the State in the light of judgment passed by Supreme Court in the case of **Aman Singh and another Vs. State of Bihar** decided on **27/4/2026** in **Criminal Appeal No. 002351-002352 / 2026 (SLP(Cri.) No. 008408 - 008409 / 2026)**, that appellant cannot be said to be a threat to the society and the four criminal cases which were registered against appellant were trivial in nature and therefore, the capital sentence awarded by trial Court is unwarranted and the case in hand does not fall within the category of rarest of rare cases. In support of his contention, learned counsel has placed reliance on the decisions in the cases of **Rajendra Pralhadrao Wasnik v. State of Maharashtra** reported in **AIR 2019 SC 1**, **Raju Jagdish Paswan v. State of Maharashtra** reported in **AIR 2019 SC 897**, **Sachin Kumar Singhraha v. State of M.P.** reported in **AIR 2019 SC 1416**, **Sebastian v. State of Kerala** reported in **(2010) 1 SCC 58**, **Viran Gyanlal Rajput v. State of Maharashtra** reported in **(2019) 2 SCC 311**, **Rajkumar v. State of M.P.** reported in **(2014) 5 SCC 353** and **In Reference (Suo Motu) v. Yogesh Nath** reported in **ILR 2022 MP 722 11**. *Per contra*, counsel for the State has supported the findings of guilt recorded by the trial Court and on the basis of appreciation report, it is submitted that appellant/accused is of criminal nature and it is true that on previous occasions four offences of trivial nature were registered against him, but that shows the conduct and the thought process of the accused. It is submitted that since the accused is a threat to the society and the case is of committing rape and murder of a minor girl aged about nine years,



therefore, the death sentence awarded by the trial Court should not be interfered with.

12. Heard the learned counsel for the parties.

13. The first question for consideration is as to whether the victim/deceased 'X' was subjected to rape and whether her death was homicidal in nature or not?

14. Dr. Anil Mangeshkar (PW-7), was one of the members of the team constituted by Civil Surgeon Dr. K.C. Rathore, District Hospital, Datia, for conducting the postmortem. In the post mortem report, the team noted as under:-

Received dead body of a average built female measuring 131 cm in length of average nourishment

Clothes worn by the deceaed

1. Whit gamcha with orange colour lines design on edges
2. Blue colour top made of Jeans like material with white fills design
3. Red colour gamcha over the body
4. Metal bangle like Kada over the right wrist.

Dried blood stains present over the clothes at places.

External examination

Body lying in supine position on PM table, Rigor mortis present, PM staining present over the back and is fixed. Face appears congested. Eyes partially open. Mouth partially open, Cornea clear, sub conjunctival hemorrhage present. Petechial haemorrhage present all over the face, neck and upper chest. Tongue clenched in



between the teeth, vomitus oozing from the mouth. Bluish discoloration of finger tips and nails of both hands present. Dried blood stains present on the face, neck, both hands. Dried blood stains present over the pelvic region and upper thigh (-illeg- aspect). Fecal matter oozing out of the anal opening, mud stains present over the back and hair.

External injuries:-

- (1) Abrasion present over the right side of face, vertically placed 2.5 cm below the outer aspect of right eye measuring 2.7 cm × 1.2 cm, red in colour.
- (2) Multiple small red colour abrasions of various size and shape present over the lower and inner part of the right eye
- (3) Multiple small abrasions of red colour, present over the lower, inner aspect of left eye
- (4) Red colour abrasion present over the left side of nose measuring 2.3 cm × 0.5 cm.
- (5) Red colour abrasion over the lower aspect of right nostril measuring 0.5 cm × 0.5 cm.
- (6) Multiple small abrasions of various size and shape present over the chin and both sides of mouth over an area measuring 8 cm × 4.5 cms, largest abrasion measuring 1.5 cm × 0.75 cm and smallest measuring 0.5 cm × 0.25 cm, all appear red in colour.
- (7) Multiple abrasions over the inner aspect of upper lip and outer lip of red in colour, of various size and shape, extravasation of blood present.



(8) Neck: Multiple small red colour abrasions of various size and shape present over the anterior aspect of neck, extending on both the sides of the midline, over an area measuring 11 cms in length and 2.2 cms in maximum breadth. It is in form of a irregular patch which is situated 3 cms below the right ear, 5 cms below the chin and 4.5 cms below the left ear. The area around this mark has multiple scattered abrasions and contusions of various size and shape in which the largest measure 0.9 cms $\times$ 0.4 cms and the smallest measure 0.3 cm $\times$ 0.2 cm. On reflection of the skin over the neck the area under the marks has extravasation of blood in the subcutaneous tissue, strap muscles of the neck. The hyoid bone is fractured with extravasation of blood at the fracture site. Trachea and oesophagus are intact.

(9) Multiple red colour abrasions of various size and shape present over the back over an area measuring 12 cm $\times$ 9.5 cms., the smallest measure 0.5 cm $\times$ 0.5 cm and the largest measure 1.7 cm $\times$ 0.9 cm.

(10) Two red colour parallelly placed abrasions present over the thenar eminence, outer aspect of right hand measuring 2.2 cms $\times$ 0.2 cms and 2.1 cms $\times$ 0.1 cms, placed 3.1 cm apart. It appear to be a bite mark.

(11) External genitalia: Dried blood stains present over and around the external genitalia extending upto the inner aspects of both thigh labia majora and minora appears contused and oedematous, vaginal opening enlarged. The anterior aspect of the vaginal walls are



contused appearing red in colour. The hymen shows fresh tears at multiple locations with extravasation of blood at the tear site. The urethral opening has a laceration with contused margins measuring 1.2 cm × 0.7 cm × superficial depth, margins are irregular and red, there is extravasation of blood in surrounding tissue. The vaginal cavity has a laceration of size 2.8 cm × 1.0 cm × superficial depth in its right lateral wall, the laceration has irregular margins and is red in colour with extravasation of blood, another deep seated laceration present over the right lateral wall of vagina measuring 2.2 cm × 1.2 cm × superficial depth, it extends upto the posterior fornix, margins are irregular and red, extravasation of blood present. Triangular shape laceration with apex pointing upwards and inwards present over the posterior vaginal wall measuring 2.2 cm × 1.2 cm × superficial depth, margins are irregular and red, extravasation of blood present. Uterus and ovaries appear normal. (12) Tear over the inferior pole of anus, horizontally placed measuring 0.9 cms × 0.2 cms, margins irregular and red, anal opening has multiple small contusions of various size and shape in entire circumference, red in colour.

On examination, the doctor also found deep seated contusion over the left side of temporal region of scalp measuring 7.5 cm x 5.5 cm. On reflection of skin over the chest, he noticed multiple contusions and extravasation of blood in layers of the chest wall. Pericardium showed multiple petechial haemorrhages.



Ante mortem injuries over the neck, external genitalia and at places over the body.

- (1) Clothes preserved, sealed and handed over to the concerned police.
- (2) Finger nail clippings of both hands preserved separately on white paper
- (3) Vaginal smear on cotton swab and two vaginal slides.
- (4) Anal swab
- (5) Hyoid bone and trachea preserved in Formalin solution
- (6) Sample solution of formalin
- (7) Viscera preserved for chemical analysis
 - (a) Stomach and part of small intestine in supersaturated salt solution
 - (b) Part of liver, part of spleen and half of each kidney in supersaturated salt solution
 - (c) Supersaturated salt solution as control sample

In the opinion of doctor

- (1) Death was due to ante mortem compression of neck causing asphyxia. Mode of compression to be investigated
- (2) Injuries over the body were ante mortem in nature
- (3) Time since death; within one day.

The post mortem report is (Ex.P/18 and P/20).

15. According to the postmortem report, the cause of death was compression of neck causing asphyxia and all the injuries over the body



were *ante mortem* in nature. Injury No.11 is with regard to the condition of external genitals. The injury found on the private part of the deceased clearly indicates that she was subjected to rape. Dr. Mangeshkar (PW-7) was cross-examined in short. In cross-examination, he stated that he is a specialist in forensic examination, whereas Dr. S.S. Tomar was from the Gynecology department. The postmortem was done and a unanimous opinion was given. He further stated that “mode of compression to be investigated”, which was mentioned in the cause of death in the postmortem report (Ex. P/20), was made only for the police to investigate. He admitted that there is nothing in the postmortem report to show that how and by what means the neck was pressed. He admitted that the postmortem report (Ex. P/20), is in his handwriting. He admitted that the opinion is in his handwriting. He denied that without any participation by the other member of the postmortem team, he had signed the postmortem report. He admitted that Article A-2, which is a DVD of postmortem, was not sealed, but it was kept in a polythene with a stapler. He admitted that Article A-2, which is a DVD, does not contain the date and time, but it was submitted that in the postmortem report it was specifically mentioned that the videography and photography of the postmortem was got done. He denied that the postmortem report (Ex. P/20), was prepared by him out of his own whims and wishes.

16. Thus, it is clear that not only the cause of death of the deceased was compression of neck resulting in asphyxia, but she was also subjected to rape.



17. Now, the next question for consideration is as to whether the appellant is the person who had committed rape and murder of the deceased 'X' or not.

18. The prosecution case is based on circumstantial evidence which can be summarized as under:

1. Last seen together.
2. The recovery of dead body.
3. The recovery of the clothes of the deceased from the possession of the appellant.
4. On a comparison by the DNA expert, the autosomal STR DNA profile which was extracted from the viscera of the deceased was found on the shirt belonging to the appellant, which was recovered on his disclosure.
5. The handkerchief of the deceased, which was recovered on a disclosure made by the appellant, was found to be containing the mixed autosomal STR DNA profile, and the DNA extracted from the viscera of the deceased was also found in the handkerchief of the deceased 'X', which was recovered from the possession of the appellant.
6. Mixed autosomal STR DNA profile was recovered from the underwear of the appellant, and the autosomal STR DNA profile which was recovered from the viscera of the deceased was found in the underwear of the appellant.



7. The DNA profile of the appellant was found in the pant of the deceased which was recovered on the disclosure made by the appellant.
 8. The DNA profile of the appellant was found in the shirt and the nail clippings of the deceased.
19. Considered the above-mentioned evidences which were relied upon by the prosecution.
20. Before considering the ocular evidence, the Court would like to refer to the law governing the field of circumstantial evidence as well as the manner of appreciation of the evidence of child witness as well as other witnesses.
21. The Supreme Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra** reported in **(1984) 4 SCC 116** has held as under:-
152. 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 is *Hanumant v. State of Madhya Pradesh*. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh* and *Ramgopal v. State of Maharashtra*. It may be useful to extract what Mahajan, J. has laid down in *Hanumant* case:
- “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 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.”

153. 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 v. State of Maharashtra* where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“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.



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

155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in *King v. Horry* thus:

“Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for.”

156. Lord Goddard slightly modified the expression “morally certain” by “such circumstances as render the commission of the crime certain”.

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. *Horry case* was approved by this Court in *Anant Chintaman Lagu v. State of Bombay*. *Lagu case* as also the principles enunciated by this Court in *Hanumant case* have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — *Tufail case*, *Ramgopal case*, *Chandrakant Nyalchand Seth v. State of Bombay*, *Dharambir Singh v. State of Punjab*. There are a number of other cases where although *Hanumant case* has not been expressly noticed but the same principles have been expounded and reiterated, as in *Naseem Ahmed v. Delhi Administration*, *Mohan Lal Pangasa v. State of U.P.*, *Shankarlal Gyarasilal Dixit v. State of Maharashtra* and *M.G. Agarwal v. State of Maharashtra* — a five-Judge Bench decision.



22. The Supreme Court in that case of **State of M.P. v. Balveer Singh**, reported in **(2025) 8 SCC 545** has held as under:-

“43. From the above exposition of law, it is clear that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness as long as the child is found to be competent to testify. The only precaution which the court should take while assessing the evidence of a child witness is that such witness must be a reliable one due to the susceptibility of children by their falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outrightly at the slightest of discrepancy, rather what is required is that the same is evaluated with great circumspection. While appreciating the testimony of a child witness the courts are required to assess whether the evidence of such witness is its voluntary expression and not borne out of the influence of others and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration to the testimony of a child witness before any reliance is placed on it. The insistence of corroboration is only a measure of caution and prudence that the courts may exercise if deemed necessary in the peculiar facts and circumstances of the case.”

44. In *Ratansinh Dalsukhbhai Nayak* [Ratansinh Dalsukhbhai Nayak v. State of Gujarat, (2004) 1 SCC 64 : 2004 SCC (Cri) 7] this Court observed that merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. It added that a child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by



itself affect the credibility of such child witness. The relevant observation reads as under: (SCC p. 68, para 8)

“8. The learned trial Judge has elaborately analysed the evidence of the eyewitness. There is no reason as to why she would falsely implicate the accused. Nothing has been brought on record to show that she or her father had any animosity so far as the accused is concerned. The prosecution has been able to bring home its accusations beyond the shadow of a doubt. Further, the trial court on careful examination was satisfied about the child's capacity to understand and to give rational answers. That being the position, it cannot be said that the witness (PW 11) had no maturity to understand the import of the questions put or to give rational answers. *This witness was cross-examined at length and in spite thereof she had described in detail the scenario implicating the accused to be the author of the crime. The answers given by the child witness would go to show that it was only repeating what somebody else asked her to say. The mere fact that the child was asked to say about the occurrence and as to what she saw, is no reason to jump to a conclusion that it amounted to tutoring and that she was deposing only as per tutoring what was not otherwise what she actually saw. The learned counsel for the appellant-accused has taken pains to point out certain discrepancies which are of very minor and trifle nature and in no way affect the credibility of the prosecution version.*”

(emphasis supplied)

45. Similarly in *State of M.P. v. Ramesh* [*State of M.P. v. Ramesh*, (2011) 4 SCC 786 : (2011) 2 SCC (Cri) 493] it was held that even if the statement of a child witness is found to be tutored it can be relied upon, if the same is found to be believable or inspire confidence after separating the tutored part from the untutored portion. The relevant observation reads as under: (SCC p. 792, para 13)



“13. Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored part inspires confidence. In such an eventuality the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness.”

23. Thus the ocular evidence as well as the circumstantial evidence shall be considered in the light of law laid down by Supreme Court in the case of **Sharad Birdhichand Sarda (Supra)** and **Balveer Singh (Supra)**

Recovery of incriminating articles + DNA report

24. The appellant Chhatrapal was arrested on 10/5/2022 at 11:15 AM vide arrest memo (Ex.P/12). The memorandum of appellant Chhatrapal was recorded on 10/5/22 at 10:30 AM, (Ex. P/10) and on 10/5/22 itself at 11:00 AM, following articles were seized on disclosure made by the appellant Chhatrapal vide seizure memo (Ex.P/11):-

A blue-colored shirt belonging to the appellant, a blue-colored jeans pant of the victim, and 1 pink-colored handkerchief of the victim which was stained with blood, were recovered from the other side of the canal.

25. On 10/5/22 itself, appellant Chhatrapal was sent for medical examination and the MLC of the appellant Chhatrapal is Ex. P/22. The medical examination of appellant Chhatrapal was done by Dr. D.S. Sharma (PW8). As per the MLC report, smegma was found absent. 2 semen slides were prepared and sealed along with 1 underwear, nail clippings, pubic hairs of the appellant were packed, sealed and handed



over to police constable. Penis swab was prepared and sealed, and was handed over to police constable. According to the medical opinion, the doctor could not find anything which may be suggestive of the fact that the appellant is not capable of performing sexual intercourse.

26. Vide seizure memo (Ex. P/13), the articles which were sealed by the doctor during medical examination of the appellant, including his nail clippings, were seized on 10/5/22 at 17:15.

27. Dr. Jai Bharat Singh (PW 9) collected the blood sample of the appellant vide identification form (Ex.P/15) and the blood sample was sealed in EDTA vial and after putting the seal of District Hospital Datia, the same was handed over to Police Constable Dheeraj Kaushal.

28. After conducting the postmortem of the deceased victim on 9/5/2022, clothes found on the dead body were preserved, sealed, and handed over to the concerned police constable, fingernail clippings on both hands were procured separately on a white paper, vaginal swab or cotton swab and 2 vaginal slides were prepared, anal swab was prepared, hyoid bone and trachea of the victim was preserved in formalin solution and the viscera was preserved for chemical examination. Stomach and part of small intestine was preserved in salt solution. Part of liver, part of spleen, and half of each kidney was preserved in salt solution. The aforesaid articles of the clothes, nail clippings, and the internal organs of the victim were seized on 9/5/22 at 23:00 hours vide seizure memo Ex. P/43. On 10/5/22, the Superintendent of Police District Datia, vide requisition (Ex. P/31) sent the incriminating articles of the victim including clothes, nail clippings, vaginal slide, cotton swab, anal swab,



small and large intestine, and the clothes, as well as the nail clippings of the appellant to Director, FSL, Sagar. The aforesaid articles were received by State Forensic Science Laboratory, Bhopal on 11/5/2022 vide receipt (Ex.P/32).

29. As per the DNA test report (Ex.P/33) dated 29/6/22, all the articles were found in sealed condition. Articles A, B, and C, i.e. the shirt of the appellant, pant of the victim, and the handkerchief of the victim were found sealed with the seal of police station, Goraghat, District Datia, whereas articles D, E, F, G, L and M i.e. clothes of victim, nail clippings of the victim, vaginal slide and swab of the victim, anal swab of the victim, stomach, small and large intestine, and, solution, as well as, articles H, I, J, and K, which are the underwear, nail clippings, penis swab, and blood sample of appellant, Chhatrapati, were found sealed with the seal of Medical Officer, District Hospital, Datia.

30. In DNA test report (Ex. P/33), mixed DNA profiles were found on the pant of the victim which was seized on the disclosure made by the appellant, Chhatrapal and the DNA profile of the appellant was also found on the pant of the victim; on the shirt and nail clippings of the victim, which were sealed by the autopsy surgeon, DNA profile of appellant was found . On the shirt of appellant, the DNA profile of the victim, which was extracted from her viscera, was found; on the underwear of appellant, the DNA profile of the victim, which was extracted from her viscera, was found.

31. From the DNA test report, it is also clear that on the handkerchief of the victim which was recovered on the disclosure made by the



appellant Chhatrapal, mixed autosomal STR DNA profile was found and the DNA profile of the victim which was extracted from her viscera was also found on the handkerchief of the victim. From the nail clippings of the appellant, as well as penis swab of the appellant, uninterpretable low autosomal STR DNA profile were found.

32. Challenging the DNA test report, it is submitted by counsel for appellant that the prosecution has failed to prove the recovery and seizure of the clothes of the victim on the disclosure made by the appellant. It is submitted that the Investigating Officer had already inspected the spot on 9/5/2022, and did not find any incriminating article, but on 10/5/2022, it was shown that on the disclosure made by the appellant, a blue-colored jeans and the pink-colored handkerchief of the victim were seized. It is submitted that in fact, the recovery of the blue-colored jeans and the pink handkerchief of the victim on the disclosure of the appellant is concocted.

33. Heard the submission made by counsel for the appellant.

34. Kamal Kishore Goyal (PW20) was re-examined by the trial Court after the matter was remanded back by this Court. He has stated that on 9/5/2022, he was posted as SHO, Police Station, Goraghat, District Datia. He received information from the villagers of village Bharsula that a dead body of a 9-year-old girl is lying in the bushes in a pool of blood. Thereafter, he went towards village Tilataitha-Bharsula along with his staff. In village Bharsula, the dead body of a girl was lying covered with a cloth. He removed the cloth and found that the pant was not on the dead body, the dead body was stained with blood, and the blood had dried down after oozing out from her private part. The senior officers were



informed. On the information given by Control Room, Datia, Sub Inspector Vandana Shakya also reached on the spot. Since the offence was committed with a 9-year-old girl, therefore, *merg* intimation, Dehati Nalishi, FIR, etc., were recorded by Sub Inspector Vandana Shakya. On the very same day, he issued Safina form (Ex. P/6) and notices were issued to witnesses. The Shav Panchnama (Ex.P/7) was prepared. He prepared a requisition for postmortem of the dead body of the victim, which is Ex. P/18. The dead body of the victim was sent for postmortem along with a lady constable whose duty certificate is Ex. P/49. The statements of the witnesses were recorded. On 10/5/22, he inspected the area which is on the other side of the canal in the presence of the complainant. The spot map is Ex. P/8. The place of incident was marked as A-1, and the place where the dead body of the victim was kept by the family members of the victim was marked as A-2. FSL Officer Satish Maan carried out the inspection of the spot. On the very same day, he had seized blood stained leaves, plain leaves, blood stained wood, plain wood, and Aadhar card of the appellant vide seizure memo (Ex. P/9). A white-colored envelope was opened in which the Aadhar card of the appellant was found, which is Ex. P/50. Accordingly, the accused, appellant was searched and he was interrogated. He voluntarily disclosed that on 9/5/22, he had gone to attend the marriage in the family of Indar Singh Rawat. He disclosed about the manner in which the offence was committed and also disclosed the place where the articles were kept by him. On memorandum of appellant (Ex.P/10), 1 blue-colored shirt of the appellant and 1 blue-colored jeans pant and pink-colored handkerchief of the victim which was



stained with blood, were recovered and seized vide seizure memo (Ex. P/11). On the very same day, he had arrested the appellant, vide arrest memo (Ex. P/12). The information regarding arrest of the appellant was given to his relative, vide Ex. P/51. On the very same day, the accused/appellant was sent for medical examination vide Ex. P/22. On the very same day, he had seized the incriminating articles of accused which were brought by Constable Dheeraj Kaushal from District Hospital Datia, vide seizure memo Ex. P/13. The blood sample of the accused, along with the specimen sample of seal, were also brought by Constable Dheeraj Kaushal from District Hospital Datia, which was seized vide seizure memo Ex. P/14. The blood stained shirt of the appellant is Ex.A. The bloodstained blue-colored jeans of the victim is Ex.B. The bloodstained pink-colored handkerchief of the victim is Ex.C. The clothes of the victim, which were brought by Police Constable Priyanka Bhadoriya from District Hospital Datia is Ex.D. The nail clippings of the deceased are Ex. E. The sealed box containing 2 vaginal swabs, cotton swab of the victim is Ex F. The anal swab of the victim sealed in a box is Ex.G. The underwear of the appellant is Ex.H. The sealed nail clippings of the appellant are Ex. I. The sealed penis swab of the appellant is Ex. J. Sealed blood sample of the appellant stored in EDTA vial is Ex. K. The stomach, as well as small and large intestine of the victim sealed in a box are Ex.L. The solution, sealed in a box is Ex. M. A query was sent to Civil Surgeon District Hospital, Datia (Ex.P/56) by Incharge- Police Station, Goraghat. The query report sent by Dr. Anil Mangeshkar is Ex. P/21. On 22/5/2022 he had sealed 4 compact CDs, (CD of Eagle Company), containing the



videographs of the spot, statements, postmortem and recording of the FIR, as well as had also seized 8 photographs of the spot along with a certificate under Section 65B of the Evidence Act vide Seizure Memo (Ex. P/45). The photocopies are Ex. A-67 to A-74, and the CDs are Article A-1, A-2, A-65, and A-66. Requisition for recording statement of the eyewitness under Section 164 of CrPC was sent on 10/5/2022, which is Ex. P/52. The pant of the victim, shirt of the accused and handkerchief of victim, which were seized by this witness, were identified by him which were marked as Article A-5, A-3, and A-7 respectively.

35. From the evidence of this witness, it is clear that the viscera and internal organs of the victim, nail clippings, vaginal swab and cotton swab of victim, were sealed by autopsy surgeon at the time of post mortem and were seized by the Police on 9/5/2022 itself. No question was put to this witness with regard to seizure of the incriminating articles of the deceased vide seizure memo (Ex.P/43). According to the seizure memo, these articles were seized on 9/5/2022 at 23.00 hours. Post mortem of the victim was done on 9/5/2022 at 5.10 pm and the internal organs, clothes and nail clippings etc. of the deceased were sealed by Dr. Anil Mangeshkar (PW7). Thus, it is clear that the shirt, vaginal swab and cotton swab of the victim, internal organs of the victim including viscera and nail clippings of the victim were sealed on 9/5/2022 at 5:10 PM, which were seized by Police on production of the same by Priyanka Bhadauriya vide seizure memo (Ex.P/43).

36. Priyanka Bhadauriya (PW15) has specifically stated that on 9/5/2022 she had taken the dead body of the deceased to the District



Hospital, Datia for postmortem. The requisition for postmortem is Ex.P/18. She had brought one sealed box containing the kidney, liver, spleen, another box containing stomach, small and large intestine, one sealed box containing hyoid bone, one sealed box containing formalin, one sealed box containing sample solution, one sealed box containing the nail clippings, one sealed box containing the vaginal slide and cotton swab, one sealed box containing anal swab of the victim, as well as the specimen of seal of District Hospital, Datia and in another bag, she had brought the clothes of the victim to Police Station Goraghat, which were handed over to Head Constable Indal Singh Sengar in presence of Constable Dheeraj and Rocky Rawat and were seized vide seizure memo Ex.P/43. In her cross-examination, she has stated that the aforesaid articles which were seized vide seizure memo Ex.P/43 were given by the employees of District Hospital. She has further stated that she had not opened the boxes, and the boxes were sealed and were containing the seal of District Hospital, Datia. The doctor had also signed on the boxes. However, she could not disclose the name of the doctor. She denied that seizure memo (Ex.P/43) was not prepared in her presence.

37. Thus, it is clear that at the time of the postmortem, the internal organs, the nail clippings, two vaginal swabs, cotton swab, one anal swab, apart from the clothes of the shirt of the victim were sealed, which were immediately handed over to police and which were ultimately seized vide seizure memo Ex.P/43. By that time, the appellant was not in custody. No question was put to Kamal Kishore Goyal (PW20), with regard to the safe custody of these articles. Thus, it is clear that the safe custody of these



articles was never challenged by the appellant. The appellant was arrested on 10/5/22 at 11:15 AM vide arrest memo (Ex.P/12). Therefore, in absence of challenge to the safe custody of the incriminating articles of the deceased, which were sealed by the doctor at the time of postmortem, the presence of DNA profile of the appellant on the nail clippings as well as the shirt of the victim, clearly indicates the involvement of the appellant in the commission of the offence.

38. So far as the recovery of pant of victim on the disclosure made by the appellant is concerned, it is submitted by counsel for appellant that, in fact, this evidence was created by the prosecution. By referring to paragraph 34 of evidence of Kamal Kishore Goyal (PW20), it is submitted by counsel for appellant that this witness had admitted that on 9/5/22 and 10/5/22, he had not recovered any article other than the articles which are mentioned in Ex.P/14 and on 9/5/22, when he went to the spot, he did not find the Aadhaar card of the appellant. Therefore, the evidence of the prosecution that apart from the recovery of pant of the victim on the disclosure made by the appellant, Aadhaar card of the appellant was also seized from the spot is suspicious and concocted.

39. Considered the aforesaid submission.

40. It is not out of place to mention here that the dead body of the deceased was noticed by the family members of the deceased, and they brought the dead body back to their house. This witness has explained that when he went to the spot, he did not minutely inspect the spot because the dead body of the deceased was already shifted to another place. He denied



the suggestion that the recovery of Aadhaar card was falsely shown in the police station.

41. Since arguments were advanced by the appellant with regard to the place where the dead body was found and the place where the pink handkerchief and blue pant of the victim were found, this Court had played the compact disc containing the videography of the spot. From the video, it was found that the blue jeans pant and a pink handkerchief of the deceased were lying behind the bushes. However, this Court was unable to find out the distance between the place where the dead body was found and the place where the blue jeans pant and handkerchief of the deceased victim were found.

42. From the DNA report, it is clear that the DNA profile of the appellant was found on the pant of the victim, which was seized at the behest of the appellant. No suggestion whatsoever was given to the prosecution witnesses that the blood of the appellant was sprinkled over the pant of the deceased in order to create an evidence. Similarly, in the handkerchief of the victim, which was seized at the behest of the appellant, the mixed autosomal STR DNA profile was found, and it was also found that the DNA of the victim, which was extracted from her viscera, was also found in the handkerchief of the deceased. One shirt of the appellant was also seized from his possession and as per the DNA test report (Ex.P/33), the DNA profile of the deceased, which was extracted from her viscera, was found. Similarly, on the underwear of the appellant, the DNA profile of the victim was found.



43. Under these circumstances, where the seizure and safe custody of shirt and nail clippings of the victim and presence of the DNA profile of the appellant in the said articles as per the DNA report (Ex.P/33) (the presence of DNA profile of victim on the clothes of appellant/accused) was not challenged by the appellant, this Court is of the considered opinion that the recovery of blue colored jeans pant of the victim at the behest of the appellant is not to be doubted. The Investigating Officer Kamal Kishore Goyal (PW20), has given an explanation that since the dead body of the victim was already shifted from the place where the offence was committed, therefore, he did not inspect the spot minutely, appears to be plausible and reasonable. Under these circumstances, it is held that on the disclosure made by the appellant, blue colored jeans and pink colored handkerchief of the victim were seized from the spot and the DNA test report (Ex.P/33) proves that the pink colored handkerchief was that of the victim, and the DNA profile of the appellant was found on the blue colored jeans pant of the victim.

44. Thus, not only the prosecution has successfully proved the seizure of the nail clippings, internal organs, vaginal slide and swab, anal swab, shirt of the victim by the autopsy surgeon Dr. Anil Mangeshkar (PW7), but its seizure memo (Ex.P/43) has also been proved beyond reasonable doubt and in absence of any challenge to the safe custody of these articles, it is held that the articles were kept in safe custody and on the next day, one blue colored jeans pant and pink colored handkerchief of the victim was seized on the disclosure made by the appellant, and a shirt of the appellant was also seized and the DNA profile of the appellant was found



on the incriminating articles of the deceased, as well as the DNA profile of the victim was found on the incriminating articles of the appellant.

Last seen together.

45. 'A', the cousin sister of the victim who is aged about eleven years, was examined by prosecution as PW1. This witness, after looking at the appellant through video conferencing, claimed that appellant is known to her and his name is Chhatrapal. He is a resident of Bansgarh. She has stated that appellant is her maternal uncle by relation. The victim was also known to her. She was her cousin sister being the daughter of her *Masi*. In the night of 08/05/22, marriage of the son of her *Bua* was fixed. She, along with her mother, father, brother, sister, aunty, uncle, had gone to attend the marriage. Lot of relatives had come in the marriage. Her *Masi*, her two daughters, including the victim and *Mausaji* had also come. It was about 12:00 in the night. She, the victim, and the sister of the victim were sleeping on a cot. At some distance, father-in-law of her *Bua* was also sleeping. Other relatives were having their meals, some were dancing, DJ was playing. At that time, appellant came nearer to the cot and dragged her inside a room. A cot was lying in the room. The appellant instructed this witness that she has to sleep on that cot, but she did not sleep on the said cot and came out of the room from the door which is situated on the backside of the room and went to her mother. Her mother was sitting where the DJ was playing, She stayed back with her mother for a while, and thereafter, she came back to the place where the cot was lying. She found that appellant was taking the victim in his lap, and the victim was



asleep. She got terrified, and slept on the same cot. In the morning, when the relatives were searching for the victim and the dead body of the victim was found near the canal, then she informed her mother, *Masi*, and other relatives that in the night, the appellant had taken away the victim while she was asleep. She further stated that earlier also her statement was recorded in the Court and accordingly, at the request of the public prosecutor, one sealed envelope containing the details of Crime No. 75/22 under Section 376AB, 302 of IPC and 5/6 of POCSO Act was opened, which was containing the statements of this witnesses and parents of the victim recorded under Section 164 of CrPC / 183 of the BNSS apart from the order sheet dated 10/5/22, as well as an application for recording their statements. She admitted that she had given her statement under Section 164 of CrPC as Ex.P/1. She also admitted that she had given a police statement which was videographed. The compact disc containing the videography of the recording of her statement is marked as Article A-1, and the transcript was also marked as Ex.P/2. The packet containing CDs were opened, and it was found that one of the CD was containing the video recording regarding the recording of police statement of the witnesses. The CD was played, and it was found that it was in a running condition. A note was appended by the Court that when the statement videographed by the police was matched with the transcript, then it was found that the transcript was identical to what was stated by the victim.

This witness was cross-examined. She stated that she is a student of class 6th , and her mother has two sisters and two brothers. Both the maternal uncles are younger to her mother, and they are working in the



city. However, she was not in a position to disclose the names of the cities and the names of the offices in which her maternal uncles are working. She further stated that appellant is the brother of her aunty. She had seen the appellant for the first time in the marriage of her sister and the appellant was known to her about one year prior to the date of incident. Appellant used to come to meet her aunty. She was also on talking terms with the appellant. Lot of relatives had come to attend the marriage, but she clearly admitted that she does not know the names of all the relatives, except the relatives who are the residents of the same house. She further stated that she was sleeping outside the house on a cot along with her sisters. She admitted that it was dark. She further stated that when the appellant dragged her to the room, then neither she stopped the appellant, nor raised any alarm, nor called anybody for her help. She claimed that at that time, nobody was there. The room where she was taken by the appellant is about 2-4 steps away from the cot. She had noticed the time on the watch kept in the room of her *Bua*. The father-in-law of *Bua* was sleeping about fifteen to twenty steps away from the place where she was sleeping. She denied that because of night she could not notice as to who was taking away the victim. She denied that at the instance of her parents, she is disclosing the name of the appellant. She denied that because of enmity, the appellant has been falsely implicated. She further stated that she had disclosed for the first time to her mother and *Masi* about the fact that it was appellant who had taken away the victim with him. She further stated that she had disclosed this fact in the morning, but could not disclose the exact time. She further claimed that she had not gone along



with other persons to search out for the victim, but she stayed back in her house. She further admitted that she had seen the appellant from behind while he was taking away the victim in his lap. She denied that she has been tutored by her parents. She further explained that the height of the person who was taking away the victim in his lap was like that of the appellant. Therefore, she has stated that it was the appellant who had taken away the victim. She denied the suggestion that she had not seen the incident.

46. In order to appreciate her evidence, this Court would like to consider the law relating to the circumstance of last seen together.

47. The Supreme Court in the case of **Digamber Vaishnav v. State of Chhattisgarh** reported in **(2019) 4 SCC 522** has held as under:-

40. The prosecution has relied upon the evidence of PW 8 to show that the accused and victims were last seen together. It is settled that the circumstance of last seen together cannot by itself form the basis of holding accused guilty of offence. If there is any credible evidence that just before or immediately prior to the death of the victims, they were last seen along with the accused at or near about the place of occurrence, the needle of suspicion would certainly point to the accused being the culprits and this would be one of the strong factors or circumstances inculcating them with the alleged crime purported on the victims. However, if the last seen evidence does not inspire the confidence or is not trustworthy, there can be no conviction. To constitute the last seen together factor as an incriminating circumstance, there must be close proximity between the time of seeing and recovery of dead body.

41. In *Arjun Marik v. State of Bihar* [*Arjun Marik v. State of Bihar*, 1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] , it has been held as under: (SCC p. 385, para 31)



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

42. In *Kanhaiya Lal v. State of Rajasthan* [*Kanhaiya Lal v. State of Rajasthan*, (2014) 4 SCC 715 : (2014) 2 SCC (Cri) 413] , the Court has reiterated that the last seen together does not by itself lead to the inference that it was the accused who committed the crime. It is held thus: (SCC p. 719, para 12)

“12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.”

48. The Supreme Court in the case of *Nizam v. State of Rajasthan*, (2016) 1 SCC 550 has held as under :

14. The courts below convicted the appellants on the evidence of PWs 1 and 2 that the deceased was last seen alive with the appellants on 23-1-2001. Undoubtedly, the “last seen theory” is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The “last seen theory” holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well settled by this Court that it is not prudent to base the conviction solely on “last seen theory”. “Last seen theory” should be applied taking into



consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.

15. Elaborating the principle of “last seen alive” in *State of Rajasthan v. Kashi Ram* [(2006) 12 SCC 254 : (2007) 1 SCC (Cri) 688], this Court held as under : (SCC p. 265, para 23)

“23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in *Naina Mohamed, In re.* [1959 SCC OnLine Mad 173 : AIR 1960 Mad 218] ”

The above judgment was relied upon and reiterated in *Kiriti Pal v. State of W.B.* [(2015) 11 SCC 178 : (2015) 5 Scale 319

49. The Supreme Court in the case of **State of U.P. v. Satish**, reported in **(2005) 3 SCC 114** has held as under:-



22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2.

50. The Supreme Court in the case of **Ashok v. State of Maharashtra** reported in **(2015) 4 SCC 393** has held that the initial burden of proof is on the prosecution to adduce sufficient evidence pointing towards the guilt of the accused. However, in case if it is established that the accused was last seen together with the deceased, the prosecution is exempted from proving the exact happening of the incident as the accused himself would have special knowledge of the incident, thus, would have burden of proof as per Section 106 of the Evidence Act. Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, etc. non-explanation of death of the deceased, may lead to a presumption of guilt.

51. According to this witness, the appellant had taken away the victim along with him at about twelve in the night. The dead body of the victim



was noticed by her family members in the morning, and the FIR was lodged on 9/5/2022 at 11:23 AM. The postmortem was conducted on 9/5/2022 at about 5:10 PM and the duration of death was found within one day. The postmortem report is Ex.P/18 & P/20. Thus, it is clear that there is a close proximity between the time when the victim was allegedly taken away by the appellant and the time when the dead body of the victim was noticed by her family members.

52. Although the counsel for the appellant tried to challenge and demolish the evidence of this witness by submitting that this witness had admitted that she had noticed the appellant from his back, therefore, there is a possibility of mistaken identity, but in the considered opinion of this Court, the aforesaid submission made by counsel for the appellant cannot be accepted for the reasons that – (i) appellant was known to the victim at least for the last one year, and he used to visit the house as well as this witness also used to talk to him; (ii) at the time of incident, appellant had taken this witness to a nearby room and had instructed her to sleep on a cot. Therefore, the appellant had every opportunity to identify the victim from a very close range; and (iii) this witness has also clarified the reasons for identifying the appellant from behind, as she has specifically stated that the height of the person who was taking away the victim was similar to that of the appellant.

53. So far as the absence of light is concerned, it is suffice to mention here that the eyes of the villagers are accustomed to see in the night. The Supreme Court in **Ramesh v. State**, reported in (2010) 15 SCC 49, has held as under:



“15. As stated earlier, the appellant and these two witnesses (PWs 3 and 4) are neighbours and, therefore, knew the appellant well and their claim of identification cannot be rejected only on the ground that they have identified him in the evening, when there was less light. It has to be borne in mind that the capacity of the witnesses living in rural areas cannot be compared with that of urban people who are acclimatised to fluorescent light. Visible (*sic* visual) capacity of the witnesses coming from the village is conditioned and their evidence cannot be discarded on the ground that there was meagre light in the evening. There is nothing on record to show that these two witnesses are in any way interested and inimical to the appellant. Their evidence clearly shows that the deceased was last seen with the appellant and the High Court did not err in relying on their evidence.”

54. Thus, this Court is of considered opinion that ‘A’ (PW1) had every occasion to notice the presence of the appellant on the spot from where the victim was taken away by him and because of her acquaintance with the appellant, it was possible for this witness to identify the appellant from behind also, and she has specifically clarified the reasons for identifying the appellant.

55. It was next contended by counsel for appellant that the father of the victim ‘B’ (PW2) had lodged Dehathi Nalishi (Ex.P/5) at 11:00 AM. In the Dehati Nalishi, the father of victim had not disclosed that he has been informed by the victim that it was the appellant who took away the victim with him. Thus, the evidence of this witness becomes doubtful and as this victim is a child witness and a close relative of the victim, therefore, she is not a reliable witness.



56. Considered the submissions made by counsel for appellant.

57. Father of the victim, 'B' (PW2) has stated that when they recovered the dead body of the victim in a naked condition, he found that there were multiple injuries on her body. He, along with his brother and wife, brought the dead body of the victim back to village Bharsola on a Motorcycle. Thereafter, relatives were called. The police also reached the spot, where he lodged the Dehati Nalishi (Ex.P/5). He further stated that thereafter, the cousin sister of victim, A (PW-1), informed all the relatives that earlier the accused/appellant, who is her maternal uncle, took her to a room and instructed her to sleep on a cot lying in the room, but she ran away and came to the place where marriage function was going on, and thereafter, when she went back to the same place for sleeping, then she found that the accused/appellant was taking away the victim along with him.

58. It is submitted by counsel for appellant that since Dehati Nalishi (Ex.P/5) was lodged at 11:00 AM, therefore, if this statement of father of victim, 'B' (PW-2), is accepted, then it would run contrary to what was stated by cousin sister of the victim, A (PW-1). A (PW-1) has stated that when the dead body of the victim was recovered near the canal, then she had informed her mother, her *Mausi* /C (PW-3), and other relatives that the victim was taken away by the accused/appellant. It is submitted that if A (PW-1) had already informed the father, mother, and other relatives of the victim about the fact of taking away of the victim by the appellant immediately after the recovery of the dead body, then the said fact should have been mentioned in the Dehati Nalishi (Ex.P/5), which is missing.



Therefore, it is clear that A (PW-1) never saw the accused/appellant taking away the victim with him. It was also submitted that A (PW-1) has stated in Paragraph 11 of her deposition that she had narrated the incident to the family members in the morning, but could not disclose the specific time.

59. However, in Paragraph 11 of her cross-examination, 'A' (PW-1) has specifically stated that she did not go along with her relatives to search out the victim which clearly means that the relatives were informed by A (PW-1) after the body was recovered and they had come back to the house. Furthermore, minor omissions and contradictions in the evidence of witnesses show that they are truthful and not tutored witnesses. The Supreme Court in the case of **Shyamal Ghosh v. State of W.B.** reported in (2012) 7 SCC 646 has held as under:-

68. From the above discussion, it precipitates that the discrepancies or the omissions have to be material ones and then alone, they may amount to contradiction of some serious consequence. Every omission cannot take the place of a contradiction in law and therefore, be the foundation for doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contradistinction to mere marginal variations in the statement of the witnesses. The prior



may have effect in law upon the evidentiary value of the prosecution case; however, the latter would not adversely affect the case of the prosecution.

69. Another settled rule of appreciation of evidence as already indicated is that the court should not draw any conclusion by picking up an isolated portion from the testimony of a witness without adverting to the statement as a whole. Sometimes it may be feasible that admission of a fact or circumstance by the witness is only to clarify his statement or what has been placed on record. Where it is a genuine attempt on the part of a witness to bring correct facts by clarification on record, such statement must be seen in a different light to a situation where the contradiction is of such a nature that it impairs his evidence in its entirety.

60. The Supreme Court in the case of **Yogesh Singh v. Mahabeer Singh** reported in **(2017) 11 SCC 195** has held that minor discrepancies are not to be given undue emphasis, and evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court or not. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, then the defence can take advantage of such inconsistencies. However, every omission cannot take the place of a material omission, and therefore minor contradictions, inconsistencies, or insignificant embellishments do not affect the core of the prosecution case and should not be taken as a ground to reject the prosecution evidence.

61. A similar law has been laid down by the Supreme Court in the case of **Rohtas v. State of Haryana** reported in **(2019) 10 SCC 554**, where it has been held that the mental capabilities of a human being cannot be



expected to be attuned to absorb all the details, and minor discrepancies are bound to occur in the statements of witnesses.

62. The Supreme Court in the case of **Kuriya v. State of Rajasthan** reported in **(2012) 10 SCC 433** has held that appreciation of evidence is to primarily and clearly sift chaff from grain and find out the truthful testimony of witnesses. Where the discrepancies do not affect the core of the prosecution case, such discrepancies should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, minor discrepancies may occur. Such discrepancies, even in law, render credential to depositions.

63. The Supreme Court in the case of **State of Karnataka vs. Suvarnamma and another** reported in **(2015)1 SCC 323**, has held as under:-

11. It is also well settled that though the investigating agency is expected to be fair and efficient, any lapse on its part cannot per se be a ground to throw out the prosecution case when there is overwhelming evidence to prove the offence.

12. We may refer to the well-known observations from decisions of this Court:

12.1. *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : (1974) 1 SCR 489] : (SCC p. 801, para 8)

“8. Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that



variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered. The learned Sessions Judge has at some length dissected the evidence, spun out contradictions and unnatural conduct, and tested with precision the time and sequence of the events connected with the crime, all on the touchstone of the medical evidence and the post-mortem certificate. Certainly, the court which has seen the witnesses depose, has a great advantage over the appellate Judge who reads the recorded evidence in cold print, and regard must be had to this advantage enjoyed by the trial Judge of observing the demeanour and delivery, of reading the straightforwardness and doubtful candour, rustic naiveté and clever equivocation, manipulated conformity and ingenious inaccuracy of persons who swear to the facts before him. Nevertheless, where a Judge draws his conclusions not so much on the directness or dubiety of the witness while on oath but upon general probabilities and on expert evidence, the court of appeal is in as good a position to assess or arrive at legitimate conclusions as the court of first instance. Nor can we make a fetish of the trial Judge's psychic insight.”

12.2.*Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* [(1983) 3 SCC 217 : 1983 SCC (Cri) 728] : (SCC pp. 222-23, para 5)

“5. ... We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by the learned counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious:

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an



incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by the counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving



a truthful and honest account of the occurrence witnessed by him—perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.”

12.3. *Appabhai v. State of Gujarat* [1988 Supp SCC 241 : 1988 SCC (Cri) 559] : (SCC pp. 246-47, para 13)

“13. ... The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. Jaganmohan Reddy, J. speaking for this Court in *Sohrab v. State of M.P.* [(1972) 3 SCC 751 : 1972 SCC (Cri) 819] observed : [SCC p. 756, para 8 : SCC (Cri) p. 824, para 8]

‘8. ... This Court has held that *falsus in uno, falsus in omnibus* is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered....”



12.4. *State of Haryana v. Bhagirath* [(1999) 5 SCC 96 : 1999 SCC (Cri) 658] : (SCC pp. 100-01, paras 8-11)

“8. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression ‘reasonable doubt’ is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge.

9. Francis Wharton, a celebrated writer on criminal law in the United States has quoted from judicial pronouncements in his book *Wharton's Criminal Evidence* (at p. 31, Vol. 1 of the 12th Edn.) as follows:

‘It is difficult to define the phrase “reasonable doubt”. However, in all criminal cases a careful explanation of the term ought to be given. A definition often quoted or followed is that given by Chief Justice Shaw in the *Webster case* [*Commonwealth v. Webster*, 5 Cush 295 : 59 Mass 295 (1850)] . He says: “It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that consideration that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.”’

10. In the treatise *The Law of Criminal Evidence* authored by H.C. Underhill it is stated (at p. 34, Vol. 1 of the 5th Edn.) thus:

‘The doubt to be reasonable must be such a one as an honest, sensible and fair-minded man might, with reason, entertain consistent with a conscientious desire to ascertain the truth. An honestly entertained doubt of guilt is a reasonable doubt. A vague conjecture or an inference of the possibility of the innocence of the accused is not a



reasonable doubt. A reasonable doubt is one which arises from a consideration of all the evidence in a fair and reasonable way. There must be a candid consideration of all the evidence and if, after this candid consideration is had by the jurors, there remains in the minds a conviction of the guilt of the accused, then there is no room for a reasonable doubt.'

11. In *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : (1974) 1 SCR 489] this Court adopted the same approach to the principle of benefit of doubt and struck a note of caution that the dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence demand special emphasis in the contemporary context of escalating crime and escape. This Court further said : (SCC p. 799, para 6)

'6. ... The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt.'"

12.5. *Leela Ram v. State of Haryana* [(1999) 9 SCC 525 : 2000 SCC (Cri) 222] : (SCC pp. 532-33, paras 9-10)

"9. Be it noted that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference



may be made to the decision of this Court in *State of U.P. v. M.K. Anthony* [(1985) 1 SCC 505 : 1985 SCC (Cri) 105] . In para 10 of the Report, this Court observed : (SCC pp. 514-15)

- ‘10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.’
10. In a very recent decision in *Rammi v. State of M.P.* [(1999) 8 SCC 649 : 2000 SCC (Cri) 26] this Court observed : (SCC p. 656, para 24)
- ‘24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true



witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.’

This Court further observed : (SCC pp. 656-57, paras 25-27)

‘25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

“155.Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him—

(1)-(2) ***

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;”

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be “contradicted” would



affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to “contradict” the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to “contradict” the witness.

27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness (vide *Tahsildar Singh v. State of U.P.* [AIR 1959 SC 1012 : 1959 Cri LJ 1231])”

12.6.*State of H.P. v. Lekh Raj* [(2000) 1 SCC 247 : 2000 SCC (Cri) 147] : (SCC pp. 259-60, para 10)

“10. The High Court appears to have adopted a technical approach in disposing of the appeal filed by the respondents. This Court in *State of Punjab v. Jagir Singh* [(1974) 3 SCC 277 : 1973 SCC (Cri) 886] held : (SCC pp. 285-86, para 23)

‘23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given



to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.’

The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hypertechnicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a utopian thought but have to be considered as part and parcel of the human civilisation and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind.”

12.7.*Gangadhar Behera v. State of Orissa* [(2002) 8 SCC 381 : 2003 SCC (Cri) 32] : (SCC pp. 292-93, para 15)



“15. To the same effect is the decision in *State of Punjab v. Jagir Singh* [(1974) 3 SCC 277 : 1973 SCC (Cri) 886] and *Lehna v. State of Haryana* [(2002) 3 SCC 76 : 2002 SCC (Cri) 526] . Stress was laid by the appellant-accused on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of *falsus in uno, falsus in omnibus* (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim *falsus in uno, falsus in omnibus* has no application in India and the witnesses cannot be branded as liars. The maxim *falsus in uno, falsus in omnibus* has not received general acceptance nor has this maxim come to occupy the status of the rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called ‘a mandatory rule of evidence’. (See *Nisar Ali v. State of U.P.* [AIR 1957 SC 366 : 1957 Cri LJ 550]) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from



those who were convicted. (See *Gurcharan Singh v. State of Punjab* [AIR 1956 SC 460 : 1956 Cri LJ 827] .) The doctrine is a dangerous one especially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See *Sohrab v. State of M.P.* [(1972) 3 SCC 751 : 1972 SCC (Cri) 819] and *Ugar Ahir v. State of Bihar* [AIR 1965 SC 277 : (1965) 1 Cri LJ 256] .) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel v. State of M.P.* [(1952) 2 SCC 560 : AIR 1954 SC 15 : 1954 Cri LJ 230] and *Balaka Singh v. State of Punjab* [(1975) 4 SCC 511 : 1975 SCC (Cri) 601] .) As observed by this Court in *State of Rajasthan v. Kalki* [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] normal discrepancies in evidence are those which are due to normal errors of observation,



normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi v. State of Bihar* [(2002) 6 SCC 81 : 2002 SCC (Cri) 1220] . Accusations have been clearly established against the appellant-accused in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as the acquitted and the convicted accused are concerned.”

12.8. *State of Punjab v. Swaran Singh* [(2005) 6 SCC 101 : 2005 SCC (Cri) 1359] : (SCC pp. 104-06, paras 10-14)

“10. The questioning of the accused is done to enable him to give an opportunity to explain any circumstances which have come out in the evidence against him. It may be noticed that the entire evidence is recorded in his presence and he is given full opportunity to cross-examine each and every witness examined on the prosecution side. He is given copies of all documents which are sought to be relied on by the prosecution. Apart from all these, as part of fair trial the accused is given opportunity to give his explanation regarding the evidence adduced by the prosecution. However, it is not necessary that the entire prosecution evidence need be put to him and answers elicited from the accused. If there were circumstances in the evidence which are adverse to the accused and his explanation would help the court in evaluating the evidence properly, the court should bring the same to the notice of the accused to enable him to give any explanation or answers for such adverse circumstance in the evidence. Generally, composite questions shall not be asked to the accused bundling so



many facts together. Questions must be such that any reasonable person in the position of the accused may be in a position to give rational explanation to the questions as had been asked. There shall not be failure of justice on account of an unfair trial.

11. In *State (Delhi Admn.) v. Dharampal* [(2001) 10 SCC 372 : 2003 SCC (Cri) 1012] it was held as under : (SCC pp. 376-77, para 13)

‘13. Thus it is to be seen that where an omission, to bring the attention of the accused to an inculpatory material has occurred, that does not ipso facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission. Further, in the event of an inculpatory material not having been put to the accused, the appellate court can always make good that lapse by calling upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against the accused but not put to him.’

12. In *Jai Dev v. State of Punjab* [AIR 1963 SC 612 : (1963) 1 Cri LJ 495 : (1963) 3 SCR 489] it was observed thus : (AIR p. 620, para 21 : SCR p. 510)

‘21. ... The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity.’

13. In *Bakhshish Singh Dhaliwal v. State of Punjab* [AIR 1967 SC 752 : 1967 Cri LJ 656 : (1967) 1 SCR 211] a three-Judge Bench of this Court held that : (AIR p. 760, para 33 : SCR p. 225 D)



‘33. ... It was not at all necessary that each separate piece of evidence in support of a circumstance should be put to the accused and he should be questioned in respect of it under that section....’

14. In *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : (1974) 1 SCR 489] a three-Judge Bench of this Court considering the fallout of omission to put to the accused a question on a vital circumstance appearing against him in the prosecution evidence, widening the sweep of the provision concerning examination of the accused after closing prosecution evidence made the following observations : (SCC p. 806, para 16)

‘16. ... It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of



the circumstances on which the trial court had relied for its conviction.”

12.9. *Zahira Habibullah Sheikh (5) v. State of Gujarat* [(2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] : (SCC pp. 395-97, paras 37 & 40)

“37. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact in issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

* * *

40. ... Consequences of defective investigation have been elaborated in *Dhanaj Singh v. State of Punjab* [(2004) 3 SCC 654 : 2004 SCC (Cri) 851] . It was observed as follows : (SCC p. 657, paras 5-7)

‘5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See *Karnel Singh v. State of M.P.* [(1995) 5 SCC 518 : 1995 SCC (Cri) 977])

6. In *Paras Yadav v. State of Bihar* [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] it was held that if the lapse or omission is committed by the investigating agency or because of negligence the



prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not, the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

7. As was observed in *Ram Bihari Yadav v. State of Bihar* [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in *Amar Singh v. Balwinder Singh* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] .”

12.10. *Main Pal v. State of Haryana* [(2004) 10 SCC 692 : 2004 SCC (Cri) 1882] : (SCC pp. 698-99, para 12)

“12. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. As a matter of fact, in an appeal against acquittal, the High Court as the court of first appeal is obligated to go into greater detail of the evidence to see whether any miscarriage has resulted from the order of acquittal, though it has to act with great circumspection and utmost care before ordering the reversal of an acquittal. 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 reappraise 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.* [(2002) 4 SCC 85 : 2002 SCC (Cri) 736]) 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. This position has been recently reiterated in *Joseph v. State of Kerala* [(2003) 1 SCC 465 : 2003 SCC (Cri) 356] , *Devatha Venkataswamy v. Public Prosecutor* [(2003) 10 SCC 700 : 2004 SCC (Cri) 963] , *State of Punjab v. Phola Singh* [(2003) 11 SCC 58 : 2004 SCC (Cri) 276] , *State of Punjab v. Karnail Singh* [(2003) 11 SCC 271 : 2004 SCC (Cri) 135] , *State of U.P. v. Babu* [(2003) 11 SCC 280 : 2004 SCC (Cri) 144] and *Suchand Pal v. Phani Pal* [(2003) 11 SCC 527 : 2004 SCC (Cri) 220] .”

12.11. *State of Rajasthan v. Jaggu Ram* [(2008) 12 SCC 51 : (2009) 1 SCC (Cri) 317] : (SCC pp. 60-62, paras 27-29)

“27. In our considered view, this was a fit case for invoking Section 106 of the Evidence Act, which lays down that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In *Ram Gulam Chaudhary v. State of Bihar* [(2001) 8 SCC 311 : 2001 SCC (Cri) 1546] this Court considered the applicability of Section 106 of the Evidence Act in a case somewhat similar to the present one. This Court noted that the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused,



however, offered no explanation as to what they did after they took away the boy. It was held that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they had murdered the boy. It was further observed that even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of their special knowledge must offer an explanation which might lead the court to draw a different inference.

28. In *Trimukh Maroti Kirkan v. State of Maharashtra* [(2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80] a two-Judge Bench of which one of us (G.P. Mathur, J.) was a member, considered the applicability of Section 106 of the Evidence Act and observed : (SCC pp. 689-91, paras 13-15)

‘13. The demand for dowry or money from the parents of the bride has shown a phenomenal increase in the last few years. Cases are frequently coming before the courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in court as they want to keep aloof and do not want to antagonise a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may



inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the houses should go unpunished.

14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* [1944 AC 315 : (1944) 2 All ER 13 (HL)] —quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* [(2003) 11 SCC 271 : 2004 SCC (Cri) 135] .) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”



15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.'

Similar view has been expressed in *State of Punjab v. Karnail Singh* [(2003) 11 SCC 271 : 2004 SCC (Cri) 135] , *State of Rajasthan v. Kashi Ram* [(2006) 12 SCC 254 : (2007) 1 SCC (Cri) 688] and *Raj Kumar Prasad Tamarkar v. State of Bihar* [(2007) 10 SCC 433 : (2007) 3 SCC (Cri) 716] .

29. We are sure, if the learned Single Judge of the High Court had adverted to Section 106 of the Evidence Act and correctly applied the principles of law, he would not have committed the grave error of acquitting the respondent.”

64. Therefore, in the considered opinion of this Court, the contention made by counsel for appellant that if A (PW-1) had already narrated the factum of taking away of the victim by the appellant prior to lodging of Dehati Nalishi (Ex.P/5) then the same should have been mentioned in the Dehati Nalishi, cannot be accepted. We can understand the mental condition of the parents and relatives of the victim after recovering the



dead body in a semi-naked condition with multiple injuries on the body. Therefore, it was not expected from the witnesses to keep their mental calm and start looking for the accused instead of mourning the death of their minor daughter, who was apparently subjected to rape in a brutal manner. Therefore, minute-to-minute details are not expected from natural witnesses.

65. Under these circumstances, it is held that A (PW-1) must have narrated the incident to her mother, mother, father and other relatives of the victim after the Dehati Nalishi was lodged, and that is how the absence of such fact has been plausibly explained by the prosecution and the evidence of 'A' (PW-1), father of the deceased 'B' (PW-2), *Mausi* of the deceased 'C' (PW-3), *Tau* of the deceased 'D' (PW-4), mother of the deceased 'E' (PW-5), *Mausa* of the deceased 'F' (PW-6) cannot be said to be unreliable. F (PW-6), who is father of A(PW-1) has specifically stated that A (PW-1) had informed them at about 11 AM. C (PW-3), who is the mother of A (PW-1), has stated that she was informed by A (PW-1) at about 10 AM. Thus, it is clear that although there is a minor discrepancy with regard to the time at which A (PW-1) had narrated the incident to the family members, but it is clear from the evidence of A (PW-1) that she did not go along with the other relatives to search for the missing victim and only when everybody came back along with dead body of victim, the incident was narrated by A (PW-1). It is a well-established principle of law that the entire evidence of a witness must be read, and picking up a stray sentence and giving undue importance to it should always be avoided. A (PW-1) is a minor girl, aged about 11 years. After the recovery



of dead body of victim from which it was clearly visible that the victim was subjected to rape and killed in a brutal manner, the mental status of A(PW-1) as well as other relatives of victim including her parents (PW2 and PW5) can be understood. The things must have gone beyond the stage of normalcy to grief and annoyance. Under these circumstances, making an attempt to find out as to whether the incident was narrated by A (PW-1) to her parents as well as the parents of the victim prior to lodging of Dehati Nalishi or immediately thereafter, would be nothing but an attempt to look into evidence of witness with a preconceived notion that such witness is a vulnerable witness and prone to tutoring. As already pointed out by Supreme Court in the case of **Balveer Singh (Supra)**, the only precaution which the Court should take while assessing the evidence of a child witness is that such witness must be reliable one, due to susceptibility of children to falling prey to tutoring, but this in no manner means that the evidence of a child must be rejected outrightly at the slightest discrepancy, rather, what is required is that the same is evaluated with great circumspection.

66. Under these circumstances, this Court is of considered opinion, that the statement of A (PW-1) that she had seen the accused/appellant taking away the victim in his lap in the night of 8/5/2022, is reliable.

67. Now the next question for consideration shall be as to whether the evidence of last seen together establishes the guilt of the accused/appellant beyond reasonable doubt ?

68. From the judgments passed by Supreme Court in the cases of **Digamber Vaishnav (Supra)**, **Nizam (Supra)**, **Satish (Supra)** and



Ashok (Supra), it is clear that in order to treat the circumstance of last seen together as an incriminating circumstance against the appellant, not only prosecution has to prove close proximity between the time of last seen together and recovery of the body, duration of death, no possibility of deceased suffering a homicidal death in any other manner not involving the accused, but under certain circumstances the Court should also look for surrounding circumstances which may give credence to the evidence of last seen together.

69. The Supreme Court in the case of **Rajender v. State (NCT of Delhi)**, reported in **(2019) 10 SCC 623** has held as under:-

12.2.5. Notably, a circumstance of last seen does not, by itself, necessarily lead to an inference that the accused committed the crime. There must be something more that establishes a connection between the accused and the crime. For instance, there may be cases where close proximity between the event of last seen and the factum of death may persuade a rational mind to reach the irresistible conclusion that the last seen of the deceased is material and merits an explanation from the accused.

12.2.6. In the instant case, there is proximity between the time of last seen of the deceased with Sharda Jain and the time of his death. As mentioned supra, it is proved that the deceased was last seen with Sharda Jain on 24-8-2002. It has also been shown that the deceased expired on 24-8-2002, as indicated in the testimony of Dr S.K. Aggarwal (PW 21) who conducted the post-mortem examination of the deceased at 2.30 p.m. on 31-8-2002. He has deposed that the probable date of death of the deceased was about a week prior to the post-mortem examination i.e. on 24-8-2002. Thus, the proximity between the time of last seen and the time of death of the deceased is established. This, in turn, connects the accused to the crime in question.



70. In the present case, A (PW-1) had seen appellant taking away the victim at about 12 in the night, and the dead body of victim was recovered in the first half of next day i.e. on 9/5/2022 i.e. within 10-11 hours of last seen together. As per the postmortem report (Ex.P/20), the time since death was found to be within one day. The post mortem was conducted on 9/5/2022 at 5.10 pm. From the postmortem report (Ex.P/20) as well as from the query report (Ex.P/21), it is clear that the injuries over neck of the victim were due to asphyxia and were homicidal in nature, and injuries over the private parts of the victim, as mentioned in the postmortem report, are possible to be caused by sexual assault/penetration. The injuries over the neck of the deceased/victim, which resulted in death due to asphyxia, are possible to be caused by throttling. Therefore, there is a close proximity between the time of last seen together and the time of death, as well as the recovery of the dead body.

71. It is also not out of place to mention here that this case is not based solely on the evidence of last seen together, but it is also based on the recovery of incriminating articles of the deceased from the possession of the appellant, the presence of the DNA profile of the victim on the clothes of the appellant, and the presence of the DNA profile of the appellant in the nail clippings of the victim as well as her clothes, which also establish the guilt of appellant beyond reasonable doubt that it was the appellant, and the appellant only, who had committed rape on the victim and thereafter killed by strangulating her.

72. Thus, it is held that the prosecution has established the circumstance of last seen together leading to a conclusive conclusion



regarding the guilt of accused/appellant in committing rape and murder. Accordingly, the conviction of the appellant for offences under Sections 363, 366, 376AB, 376A and 302 of the IPC and 5(m)/6 of the POCSO Act, 2012 is hereby confirmed.

73. The trial Court has awarded capital sentence for offences under Section 376A and Section 302 of the IPC, and under section 5(m)/6 of the POCSO Act, 2012 along with fine of Rs.5000/- with default sentence of 6 months' RI for each offence, as well as, RI for 3 years with fine of Rs.1000/- with default sentence of 1 month's RI for offence under section 363 of IPC and seven years' RI with fine of Rs.2000/- with default sentence of 6 months' RI for offence under section 366 of IPC.

74. Now the moot question for consideration is death penalty awarded by the trial Court should be affirmed or not ?

75. The Supreme Court in the case of **Aman Singh (Supra)** has held as under:-

“13. In wake of the above discussion and the concerns noted in the preceding paras particularly in relation to the ineffective consideration of mitigating and aggravating circumstances and the need to ensure meaningful legal representation in cases involving a potential death sentence, the following directions are being issued: -

A. The report pertaining to aggravating and mitigating circumstances shall, as a matter of course, be called for by the trial Court itself once the accused is convicted, prior to the determination of sentence.

B. In the event such a report has not been called for or placed on record before the trial Court, the High Court shall mandatorily call for the same at the stage of admission of the death reference.



C. The concerned authorities shall ensure that such reports are comprehensive, duly verified, and furnished within a stipulated timeframe so as to avoid any delay in the adjudicatory process, and to aid and enable the Courts to undertake a meaningful, informed, and constitutionally compliant sentencing exercise. Upon receipt of such report, the Court concerned shall afford adequate opportunity to the parties to peruse the same and to advance oral submissions thereon. In cases where the reports procured by the trial Court are found to be ineffective or lacking in proper details, the High Court would be at liberty to call for a fresh report.

D. In every death sentence confirmation reference brought before the High Courts and this Court, the Legal Services Committee concerned shall assign a dedicated legal team comprising one Senior Counsel and at least two advocates having a minimum of 7 years practice, to represent the convicted person. Such representation shall be provided irrespective of whether the convict has engaged private counsel, so as to ensure full and effective assistance to the Court in matters involving death penalty, which necessitate a careful balancing of the interests of justice, societal concerns, and the possibility of reformation and rehabilitation. The appointed legal team shall be furnished with the complete case records and afforded adequate time to prepare, conduct research, and present a comprehensive assessment of mitigating circumstances. The legal aid team so appointed shall work in cohesion with the representing private counsel, if any.

E. Each High Court, under the aegis of the High Court Legal Services Committee, shall constitute and maintain a dedicated panel of advocates for handling death reference matters.

F. The National Legal Services Authority shall frame and circulate appropriate guidelines identifying the relevant fields of enquiry for gathering mitigating circumstances and may engage trained teams, including legal and social science professionals, to undertake fieldwork involving interaction with the convict, their family, and relevant authorities, for the purpose of collecting detailed information regarding background, antecedents, socio-economic conditions, mental



health status, and other relevant factors. Such information shall be made available to the appointed legal team, which shall, in turn, place before the Court a holistic and well-documented account of the convict's potential for reformation along with all pertinent mitigating and aggravating circumstances to assist in a just and informed determination of sentence.”

76. The Supreme Court in the case of **Bhagwani v. State of M.P.** reported in **(2022) 13 SCC 365** has held as under:-

21. After considering the judgments of this Court in *Bachan Singh v. State of Punjab* [*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] , *Machhi Singh v. State of Punjab* [*Machhi Singh v. State of Punjab*, (1983) 3 SCC 470 : 1983 SCC (Cri) 681] , this Court in *Mohd. Mannan v. State of Bihar* [*Mohd. Mannan v. State of Bihar*, (2019) 16 SCC 584 : (2020) 2 SCC (Cri) 382] observed as follows : (*Mohd. Mannan case* [*Mohd. Mannan v. State of Bihar*, (2019) 16 SCC 584 : (2020) 2 SCC (Cri) 382] , SCC p. 607, para 72)

“72. The proposition of law which emerges from the judgments referred to above is that death sentence cannot be imposed except in the rarest of rare cases, for which special reasons have to be recorded, as mandated in Section 354(3) of the Criminal Procedure Code. In deciding whether a case falls within the category of the rarest of rare, the brutality, and/or the gruesome and/or heinous nature of the crime is not the sole criterion. It is not just the crime which the Court is to take into consideration, but also the criminal, the state of his mind, his socio-economic background, etc. Awarding death sentence is an exception, and life imprisonment is the rule.”

22. In *Mofil Khan v. State of Jharkhand* [*Mofil Khan v. State of Jharkhand*, (2021) 20 SCC 162 : 2021 SCC OnLine SC 1136] , this Court observed as follows : (SCC para 14)

“14. One of the mitigating circumstances is the probability of the accused being reformed and



rehabilitated. The State is under a duty to procure evidence to establish that there is no possibility of reformation and rehabilitation of the accused. Death sentence ought not to be imposed, save in the rarest of the rare cases when the alternative option of a lesser punishment is unquestionably foreclosed (see *Bachan Singh v. State of Punjab* [*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580]). To satisfy that the sentencing aim of reformation is unachievable, rendering life imprisonment completely futile, the Court will have to highlight clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the Court focuses on the circumstances relating to the criminal, along with other circumstances (see *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* [*Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150]). In *Rajendra Pralhadrao Wasnik v. State of Maharashtra* [*Rajendra Pralhadrao Wasnik v. State of Maharashtra*, (2019) 12 SCC 460 : (2019) 4 SCC (Cri) 420] , this Court dealt with the review of a judgment [*Rajendra Pralhadrao Wasnik v. State of Maharashtra*, (2012) 4 SCC 37 : (2012) 2 SCC (Cri) 30] of this Court confirming death sentence and observed as under : (*Rajendra Pralhadrao Wasnik case* [*Rajendra Pralhadrao Wasnik v. State of Maharashtra*, (2019) 12 SCC 460 : (2019) 4 SCC (Cri) 420] , SCC p. 483, para 45)

‘45. The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the “special reasons” requirement of Section 354(3)CrPC and ought not to be taken lightly since it involves snuffing out the life of a person. To effectuate



this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated. This can be achieved by bringing on record, inter alia, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well.’ ”

23. A perusal of the judgments of the trial court and the High Court would disclose that the gravity of the crime was taken into consideration while imposing death sentence. The mitigating circumstances and the probability of reformation and rehabilitation of the accused have not been considered. It is relevant to refer to the following observations of this Court in *Rajendra Pralhadrao Wasnik v. State of Maharashtra* [*Rajendra Pralhadrao Wasnik v. State of Maharashtra*, (2019) 12 SCC 460 : (2019) 4 SCC (Cri) 420] : (SCC pp. 483-84, para 47)

“47. Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasised. Until *Bachan Singh* [*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] , the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. *Bachan Singh* [*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict. Despite the view expressed by the Constitution Bench, there have been several instances, some of which have been pointed out in *Bariyar* [*Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150] and in *Sangeet v. State of Haryana* [*Sangeet v. State of Haryana*, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed



in *Sangeet* [*Sangeet v. State of Haryana*, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] “In the sentencing process, both the crime and the criminal are equally important.” Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be undertaken. The process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible.”

24. The appellant was aged 25 years on the date of commission of the offence and belongs to a Scheduled Tribe community, eking his livelihood by doing manual labour. No evidence has been placed by the prosecution on record to show that there is no probability of rehabilitation and reformation of the appellant and the question of an alternative option to death sentence is foreclosed. The appellant had no criminal antecedents before the commission of crime for which he has been convicted. There is nothing adverse that has been reported against his conduct in jail. Therefore, the death sentence requires to be commuted to life imprisonment. However, taking into account the barbaric and savage manner in which the offences of rape and murder were committed by the appellant on a hapless 11-year-old girl, the appellant is sentenced to life imprisonment for a period of 30 years during which he shall not be granted remission.



In this case, the accused was alleged to have committed rape and murder of a minor girl. The trial Court and the High Court had awarded death sentence after considering the gravity of the offence. However, the Supreme Court, in absence of any evidence to show that there is no probability of rehabilitation and reformation of the accused and the option of an alternative option to death sentence is foreclosed and in view of the fact that there is nothing adverse that has been reported against his conduct in jail, modified the death sentence to life imprisonment for a period of 30 years during which he shall not be granted remission.

77. The Supreme Court in the case of **Union Of India vs V. Sriharan @ ,Murugan & Ors** reported in (2016)7 SCC 1 has held that in the present distressed and disturbed atmosphere we feel that if deterrent punishment is not resorted to, there will be complete chaos in the entire country and criminals will be let loose endangering the lives of thousands of innocent people of our country. In spite of all the resources at its hands, it will be difficult for the State to protect or guarantee the life and liberty of all the citizens, if criminals are let loose and deterrent punishment is either abolished or mitigated. Secondly, while reformation of the criminal is only one side of the picture, rehabilitation of the victims and granting relief from the tortures and sufferings which are caused to them as a result of the offences committed by the criminals is a factor which seems to have been completely overlooked while defending the cause of the criminals for abolishing deterrent sentences. Where one person commits three murders it is illogical to plead for the criminal and to argue that his life should be



spared, without at all considering what has happened to the victims and their family. A person who has deprived another person completely of his liberty forever and has endangered the liberty of his family has no right to ask the Court to uphold his liberty. While considering the problem of penology we should not overlook the plight of victimology and the sufferings of the people who die, suffer or are maimed at the hands of criminals. However, in death sentence cases, if one were to judge the matter from the standpoint of the victim's side, it can be said without any hesitation that one would have unhesitatingly imposed the death sentence. That may be called as the human reaction of anyone who is affected by the conduct of the convict of such a ghastly crime. That may even be called as the reaction or reflection in the common man's point of view. But in an organized society where the Rule of Law prevails, for every conduct of a human being, right or wrong, there is a well set methodology followed based on time tested, well thought out principles of law either to reward or punish anyone which was crystallized from time immemorial by taking into account very many factors, such as the person concerned, his or her past conduct, the background in which one was brought up, the educational and knowledge base, the surroundings in which one was brought up, the societal background, the wherewithal, the circumstances that prevailed at the time when any act was committed or carried out whether there was any preplan prevalent, whether it was an individual action or personal action or happened at the instance of anybody else or such action happened to occur unknowingly, so on so forth. It is for this reason, we



find that the criminal law jurisprudence was developed by setting forth very many ingredients while describing the various crimes, and by providing different kinds of punishment and even relating to such punishment different degrees, in order to ensure that the crimes alleged are befitting the nature and extent of commission of such crimes and the punishments to be imposed meets with the requirement or the gravity of the crime committed.

78. The report pertaining to aggravating and mitigating circumstances reads as under:-

मृत्यु दण्डित बंदी छत्रपाल पुत्र रणवीर रावत के संबंध में परिवीक्षा अधिकारीप्रोवेशन अधिकारी की रिपोर्ट /

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मृत्यु दण्डित बंदी छत्रपाल रावत पुत्र रणवीर रावत से व्यक्तिगत साक्षात्कार एवं जेल अभिलेखों के परीक्षण उपरांत बंदी के संबंध में निम्न तथ्य प्रकाश में आये:-

केन्द्रीय जेल ग्वालियर में निरुद्ध मृत्यु दण्डित बंदी छत्रपाल पुत्र रणवीर रावत उम्र लगभग -32 वर्ष, निवासीबांसगढ़ -, थानाकरैरा -, जिलारी शिवपु - -एससी -.का होकर केस नं15/2022 में धारा 363, 366, 376 क, 302 भादवि 5(ड)/(6 पोक्सो एक्ट में माननीय न्यायालय विशेष न्यायाधीश पोक्सो एक्ट दतिया द्वारा दिनांक (.प्र.म)21-07-2026 को 03 वर्ष, 07 वर्ष, मृत्यु दण्ड, मृत्यु दण्ड, मृत्यु दण्ड एवं अर्थ दण्ड रुपये 1000, 2000, 5000, 5000, 5000/- न देने पर 01 माह, 06 माह, 06 माह, 06 माह के कठिन कारावास से दण्डित किया गया है।

1. बंदी से दिनांक 06-09-2026 को किये गये व्यक्तिगत साक्षात्कार में प्रारंभिक पारिवारिक पृष्ठभूमि के बारे में पूछे जाने पर बंदी द्वारा बताया



गया कि उसका जन्म ग्रामबांसगढ़ -, थानाकरैरा -, जिलाशिवपुरी में - जशोदा -ग्रामीण परिवेश में हुआ है उसके परिवार में माँ, बड़ा भाई - गजेन्द्र, बड़ी बहनमहादेवी है भाई एवं बहन की शादी हो चुकी है -, बंदी द्वारा बताया गया है कि उसकी शादी हो गई है, किन्तु अपराध होने के बाद तलाक हो गया है। गाँव में लगभग -08 बीघा जमीन है जिसको मेरा भाई जोत रहा है माँ भी उसी के साथ रहती है जो चलनेफिरने में असमर्थ हैं। - परिवार का खर्च चलता है-कमाई से घर जमीन की, जमीनी विवाद के चलते उक्त अपराध कारित हो गया था। इसके पूर्व कभी भी उसके विरुद्ध कोई अपराध पंजीबद्ध नहीं हुआ है गाँव में लड़ाईझगड़ा भी नहीं हुआ-, शान्ति पूर्वक पूरा परिवार जीवनयापन करता था। पिता का देहांत बचपन - था। मैं ही हो गया

2. बंदी द्वारा साक्षात्कार में अपनी शैक्षणिक स्थिति के बारे में बताया है कि वह 5 वीं तक गाँव में ही पढ़ा हुआ है। परिवार की स्थिति ठीक न होने के कारण आगे की पढ़ाई नहीं की, उसका भाई 08 वीं तक पढ़ा हुआ है तथा किसानी करता है, माँ पढ़ीलिखी नहीं है।-
3. बंदी द्वारा व्यक्तिगत साक्षात्कार में सामाजिक धार्मिक पृष्ठभूमि के बारे में बताया है कि उसका परिवार धार्मिक पृष्ठभूमि वाला है, उसका परिवार राधाकृष्ण की पूजा करता है। ग्राम में ही आयोजित धार्मिक, सामाजिक कार्यक्रम जैसेजन्माष्टमी -, दीपावली, दशहरा इत्यादि त्यौहारों में सम्मिलित होता है व प्रतिदिन पूजापाठ करता है।-
4. बंदी द्वारा बताया गया कि उसका परिवार खेती करके जीवनयापन करता - है गरीब परिवार से संबंधित है गाँव में एक कच्चा मकान है जिसमें परिवार निवास करता है।
5. बंदी छत्रपाल द्वारा बताया गया कि उसके परिवार में किसी भी सदस्य ने पूर्व में कभी कोई अपराध कारित नहीं किया, जमीनी विवाद के चलते उसके ऊपर उक्त अपराध पंजीकृत हो गया था, जो कि झूठा है।
6. वारंट टीप अनुसार घटना का संक्षिप्त विवरण इस प्रकार है कि बंदी ने दिनांक 09-05-2022 को करीब 01:30 बजे अवयस्क पीड़िता को उसके माताकी विधिपूर्ण संरक्षकता में से ले जाकर उसका व्यपहरण किया पिता-आयुक्त संभोग करने के आशय से पीड़िता का व्यपहरण 12 वर्ष से कम



आयु की पीड़िता के साथ बलात्संग कर उसे ऐसी क्षति कारित की जिस कारण उसकी मृत्यु हो गई, बालिका की मृत्यु कारित करने के आशय से गला दबाकर उसकी साशय मृत्यु कारित कर हत्या का अपराध किया एवं 12 वर्ष से कम आयु की बालिका के साथ गुरुतर प्रवेशन लैंगिक हमला कारित किया, जिसके लिए उसे दोषी मानते हुए माननीय न्यायालय द्वारा मृत्युदण्ड की सजा से दण्डित किया गया है।

7. बंदी द्वारा व्यक्तिगत साक्षात्कार में बताया गया कि वह 5वीं तक गाँव में ही पढा लिखा है। जेल में राधारानी के मंदिर पर पूजा पाठ करता है अन्य कोई कार्य नहीं करता। जेल पर उसकी मुलाकात के लिये उसकी माँ एवं भाइ आते हैं। बंदी घटित अपराध के बाद 2022 से जेल में ही परिरुद्ध है तब से जेल में ही वह अनुशासन में रहता है उसे जेल में किसी भी प्रकार का दंड नहीं दिया गया है नियमित रूप से पूजा पाठ व ईश्वर की आराधना करता है। वह प्रतिदिन ईश्वर से अपने जीवन की मांग करता है, जिससे वह जेल से छूटने के उपरांत अच्छे कर्म कर सके। अपने परिवार के साथ जीवन यापन कर सके इसलिए उसे सजा से माफी दिये जाने की आशा व उम्मीद रहती है। वह ईश्वर की आराधना में लीन रहता है।

निष्कर्ष:- बंदी से किये गये व्यक्तिगत साक्षात्कार एवं जेल अभिलेखों के अवलोकन के अनुसार बंदी छत्रपाल पुत्र रणवीर रावत ग्रामीण पृष्ठभूमि परिवार से संबंधित है एवं गरीब परिवार से संबंध रखता है उसका जन्म ग्रामीण परिवेश में हुआ है बंदी के परिवार में वृद्ध माँ एवं उसका बड़ा भाई है, बहन की शादी हो चुकी है बंदी की शादी भी हो गई थी, किन्तु उक्त अपराध होने के बाद तलाक हो गया। बड़ा भाई वर्तमान में परिवार की देखभालापरिवारिक स्थिति सामान्य प्रतीत होती है। रेख कर रहा है। बंदी की-

बंदी द्वारा व्यक्तिगतसाक्षात्कार में सामाजिक धार्मिक पृष्ठभूमि के तहत बतलाया कि उसका परिवार गाँव में होने वाले सभी पर्व पर नियमित रूप से सम्मिलित होता रहता है, प्रतिदिन गाँव में बने मंदिर पर पूजाअर्चना - भी होती है, जिसमें वह भी सम्मिलित होता था। इससे प्रतीत होता है कि बंदी का परिवार धार्मिक रूप से आस्थावान है बंदी के पिता की पूर्व में ही मृत्यु हो चुकी है परिवार में माँ एवं भाई है गाँव में कच्चा मकान है इससे



प्रतीत होता है कि बंदी का परिवार गरीब परिवार से संबंधित है तथा साधारण जीवनयापन करता है बंदी ने जेल में रहकर अच्छा नागरिक-बनकर अपनी वृद्ध माता एवं भाई के साथ रहकर जीवन यापन करने की इच्छा व्यक्त की है, बंदी का व्यवहार अन्य बंदियों के प्रति सामान्य एवं जेल प्रशासन के प्रति सहयोगात्मक है। बंदी दिये गये निर्देशों का पालन करता है। बंदी जेल में पूर्ण अनुशासित रहता है बंदी का जेल आचरण संतोषप्रद होकर सुधारात्मक प्रतीत होता है। अतः रिपोर्ट सादर प्रेषित है।

सही/-6/9/26

वरिष्ठ परिवीक्षा एवं कल्याण अधिकारी
केन्द्रीय जेल ग्वालियर

79. In the present case, the accused/appellant has criminal history of 4 cases although they are of trivial nature, but it shows the mental status of appellant. For offence under section 376A of IPC and 6 of the POCSO Act, 2012, the maximum sentence is life imprisonment for remainder of life. It is equally true that only the Constitutional Courts can award life imprisonment for the remainder of natural life without any remission. If the facts and circumstances of the case are considered, then a minor girl aged about 9 years was kidnapped, raped, and murdered brutally not by a stranger, but by a person who was her maternal uncle by relationship. Not only the security of minor girls been seriously jeopardized, but even the sanctity of relationship has been murdered. Being a maternal uncle, it was the bounden duty of the appellant to protect the minor niece, but instead of doing that, she was made a victim of his lust. It is also not out of place to mention here that initially, the appellant tried to kidnap and commit the



offence with 'A' (PW-1), and when she ran away, he took away the victim with him and ultimately raped and killed her.

80. After considering the proportionality of the crime committed, this Court is of considered opinion that although the case in hand does not fall within the category of the "rarest of rare cases" as there is no report by the State to show that the conduct of the appellant in jail is not normal, death sentence awarded by the trial Court under sections 376A, 302 of the IPC and section 5(m)/6 of the POCSO Act, 2012 deserves to be interfered with because death sentence is an exception rather than rule.

81. Thus, considering the totality of facts and circumstances of the case, this Court is of considered opinion that life imprisonment for remainder of life without any remission would serve the deterrent policy of sentencing.

82. Accordingly, the death sentence awarded by the trial Court for offences under Sections 376A and 302 of the IPC and under Section 5(m)/6 of the POCSO Act, 2012, is converted into life imprisonment for the remainder of life without any remission. The remaining sentences awarded by the trial Court are hereby affirmed. The accused/appellant is in jail. He shall undergo the jail sentence awarded by this Court.

83. A copy of this judgment along with the record of the trial court shall be immediately sent back to the trial Court for necessary information and compliance.

84. Accordingly, judgment dated 21/7/2026 passed by Special Judge (under the POCSO Act, 2012), Datia in S.C. No. 15/2022 is hereby affirmed and the death sentence is modified as directed above.



85. The death reference made by the trial court and the appeal filed by the accused are decided accordingly.

(G. S. AHLUWALIA)
JUDGE

(ANURADHA SHUKLA)
JUDGE

(and)