



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 937 OF 2014

**RAVI KUMAR SINGH
MALHOTRA**

... APPELLANT(S)

VERSUS

**THE STATE OF MADHYA
PRADESH**

...RESPONDENT(S)

J U D G M E N T

AUGUSTINE GEORGE MASI, J.

1. The present appeal assails the common judgment and order dated 09.10.2012 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.491 of 1994 and Criminal Appeal No.1190 of 1996 whereby the judgment and order of the Additional Sessions Judge, Panna was reversed, and the appellant was convicted under sections 302 and 201 of the

Indian Penal Code (hereinafter, “IPC”) and sentenced to undergo imprisonment for life and rigorous imprisonment for 2 years respectively.

2. The case of the prosecution in brief is that on 26.09.1989 at about 7:00 am, one Mohammed Naimuddin (PW-31) was passing through Bhero Ghat while driving his truck when he saw a naked male child aged 4-5 years (PW-28) waving his hands indicating him to stop. The boy appeared injured with abrasions on his abdomen. PW-31 brought him to Naga Baba (PW-7) who took him to the police station and thereafter for medical treatment. The next day in the evening, the dead body of a deceased woman, and then of a male child were found in the ghat.
3. Investigation revealed that in the morning of 20.09.1989, the deceased Sushma had left with her sons and their father, i.e. the appellant herein, for a trip from Kanpur to Khajuraho. The appellant had been living separately from Sushma and his two sons for about six years. The deceased lived in a rented house with her sons. Under the pretext of the trip, the appellant is alleged to have murdered the deceased persons by strangulation. An attempt was also made to kill the male child, PW-28, who managed to escape.

4. Two consecutive FIRs bearing Case Crime nos. 22 and 23 of 1989 dated 01.10.1989 came to be lodged and further investigation proceeded. The Investigating Officer, Rajeev Singh Bhadoria (PW-21), visited the house and office of Ravi Malhotra at Kanpur, but found them locked. A few days later, the statement of the child, PW-28 was recorded by the police wherein he gave testimony regarding witnessing the killing of his mother and brother by his father, the appellant.
5. Further investigation was transferred to Mr. Lavi Mishra (PW-11). On 08.03.1990, a tipster informed him that a person was seeking information regarding an unknown child at Basti hotel, leading to the arrest of the appellant. He reached the spot and the appellant came to be arrested.
6. It is the case of the prosecution that at around 3:00 am on the same night, the appellant, in the presence of witnesses, confessed to killing his wife, Sushma and their child, Shashank, and thereafter clothes, and one empty bottle, allegedly used to pour acid on the deceased persons, were recovered from the dump at Bhero ghat at his instance. The recovered articles were sent to FSL.
7. Chargesheets were filed in both the FIRs before the Judicial Magistrate of First Class and on 05.09.1991 the

committal orders were passed and the cases came to be committed to the Sessions Court. Charges were framed under Sections 302 and 201 of the IPC. The appellant pleaded not guilty and the trial proceeded on the clubbing of both cases with common evidence, as Sessions Trial Nos.86 and 87 of 1991.

8. By judgment and order dated 14.12.1993, the Additional Sessions Judge, Panna, acquitted the appellant of all the charges, holding that the prosecution had failed to prove the case beyond reasonable doubt. The testimony of the child, PW-28 was found to be unreliable, being filled with contradictions. It was observed that he was only 4.5 years old at the time of the incident and was not in a position to state with whom he was then residing. It was also observed that the magistrate had made a remark that while recording the statement, the child had remained silent upon being asked a question, and had then said that he would tell him in ears. Thereafter, he had made a different statement in his testimony, leading to the conclusion that his testimony was not totally natural and reliable. Other than such unreliable evidence, the court further observed that there was not enough evidence to corroborate the case.

9. Appeals bearing Criminal Appeal Nos.491 of 1994 and 1190 of 1996 were filed in the High Court by the State against this judgment of acquittal, which came to be allowed by the impugned judgment and order. The High Court found that testimony of the child, PW-28, implicating the appellant, to be reliable. It was held that there was no occasion and reason to tutor the child. The said testimony was held to have corroborated with the conduct of the appellant in absconding and giving an explanation under Section 313 CrPC of being on a pilgrimage, which the Court considered to be false. Based on the said circumstances, the court arrived at a finding that the case was proved beyond reasonable doubt, and the appellant was convicted and sentenced to imprisonment for life.
10. Aggrieved, the appellant approached this Court by way of the present appeal.
11. Learned counsel for the appellant submits that the High Court has failed to appreciate the findings of the Trial Court. When the view expressed by the Trial Court is a plausible one, the High Court should not replace the Trial Court's view with its view.

12. It is submitted that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The case rests solely on the uncorroborated and tutored testimony of the child, PW-28. Referring to his statement, the counsel submitted that the child deposed that prior to his entering the Court, a person from the police department had read out a statement and instructed him to give a statement in Court on the same lines. No circumstantial evidence corroborates this testimony.
13. This, the counsel states is corroborated by the statement of PW-11 and PW-7, who have stated that the child was living with a police constable. The account of PW-28 regarding he being strangled and burnt with acid is falsified by medical evidence which records that no external injuries were present on his throat, and no injuries were attributable to acid.
14. Furthermore, it is submitted that there is no evidence linking the appellant to the crime or the place of occurrence. The origins of the bloodstains, having disintegrated, could not be determined. Neither the alleged car and truck nor the driver was ever traced. Motive is also not proved as PW-17 had deposed that the relations between the appellant and the deceased were amicable.

15. It is also contended that the delay in lodging the FIR, and the fact that the panchnama and post-mortem all precede the FIR makes the prosecution case doubtful. Even though PW-28 was handed over to the police on 26.09.1989, the FIR was filed almost 5 days later i.e. on 01.10.1989. He thus prays for setting aside the impugned judgment and acquittal of the appellant.
16. Per contra, learned counsel for the State supports the impugned judgment and order of the High Court.
17. It is submitted that the direct testimony of the child witness, PW-28 is reliable and natural. He correctly disclosed his identity and school where he was studying. He further categorically stated that he came with his mother, brother and the appellant from Kanpur to Khajuraho, and that he witnessed the killing of his mother and his brother by the appellant.
18. It is further submitted that the homicidal nature of the deaths is established by medical evidence. Dr. Jain (PW-20) found a torn wound on the neck of the brother of PW-28 which aligned with the testimony of strangulation. Chemical analysis also confirmed traces of sulphuric acid on the articles seized from the spot of occurrence.

19. Furthermore, it is submitted that the motive and relationship of the appellant and the deceased is established by the testimony of the neighbours who stated that they were married and had two children. The fact that PW-17 used to send reminders regarding rent to the appellant proves presence of financial burden on the appellant.
20. Lastly, it is contended that the subsequent conduct of the appellant in remaining absconding, and the recoveries of the clothes and the bottle from the spot of occurrence at his instance, anchor him to the crime. Therefore, the chain of circumstances is complete and points solely towards the guilt of the appellant. On this basis, dismissal of appeal is prayed for.
21. We have heard the learned counsel for the parties and upon perusal of the material on record, we are unable to sustain the view taken by the High Court for the reasons mentioned hereinbelow.
22. At the very outset, it must be noted that this being an appeal against an order reversing an acquittal, the High Court, as per settled law, was bound to bear in mind the double presumption of innocence operating in favour of the appellant, and could interfere only upon a finding that the

view taken by the Trial Court was not merely different from its own but was one no reasonable court could have taken on the material before it. This principle is well settled and expounded in *Chandrappa v State of Karnataka*¹. The relevant paragraph is produced hereinbelow.

“44. (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

23. In our considered opinion, this threshold has not been met in the present case. The High Court’s finding of guilt principally rested on the statement of the child witness, PW-28, whom the court found to be a reliable and natural witness. The Trial Court had declined to give undue weight to this testimony for reasons that were duly supported by material.

¹ (2007) 4 SCC 415

24. It is well settled that while there is no inflexible rule requiring the testimony of a child witness to be corroborated before a conviction can be sustained, this Court has held that such corroboration is a rule of prudence which is to be ordinarily followed. In *Bhagwan Singh v. State of M.P.*², this Court held that the evidence of a child has to be evaluated carefully given he is an easy prey to tutoring. Paragraph 19, which deals with it is as follows:

“19. The law recognises the child as a competent witness but a child particularly at such a tender age of six years, who is unable to form a proper opinion about the nature of the incident because of immaturity of understanding, is not considered by the court to be a witness whose sole testimony can be relied upon without other corroborative evidence. The evidence of a child is required to be evaluated carefully because he is an easy prey to tutoring. Therefore, always the court looks for adequate corroboration from other evidence to his testimony. (See Panchhi v. State of U.P. [(1998) 7 SCC 177 : 1998 SCC (Cri) 1561])”

Tested against this standard, the Trial Court’s insistence on independent corroboration of the child witness’s account, given the specific and serious doubts as to tutoring as discussed below, cannot be said to be an unreasonable or impermissible approach.

² (2003) 3 SCC 21

25. The child (PW-28) was only four and a half years of age when the incident occurred and the testimony was recorded 4 years later. Moreover, it is an admitted fact that the child lived with a constable Ramkishore. The said child witness in paragraphs 30 and 61 of his statement had also categorically stated that he was tutored. He had said that the Station House Officer had made him read his statement before going to the Court and had told him that the same statement was to be given before the Magistrate. He had also stated that the appellant had tried to strangle him with a rope and thrown acid on him. However, the said statement stands falsified by medical evidence.
26. The Trial Court also noted that the version of PW-28, that upon hearing his mother cry, he had woken up and witnessed the appellant killing his mother and then throwing her in the jungle, and then had gone back to sleep. It was further stated that he had again woken up and witnessed his brother being killed, which was unnatural and contrary to human conduct. In light of these circumstances, the testimony of PW-28 was not found to be reliable.
27. The High Court has also disbelieved the explanation of the appellant regarding his absence from his office and

residence, and held it to be an important circumstance pointing to his guilt. We are of the opinion that mere suspicion arising from the appellant's explanation cannot substitute for the requirement that each circumstance in the chain of events needs to be established by cogent evidence, such that the sequence so taken as a whole, points solely to the guilt of the accused. The settled position in law has been summarized by a judgment of this Court in **Karakattu Muhammed Basheer v. State of Kerala**³. The relevant paragraphs are produced hereinbelow.

“14. This Court in Ramreddy Rajesh Khanna Reddy v. State of A.P. [Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172 : (2006) 3 SCC (Cri) 512] while referring to the various earlier judgments which have been passed by this Court from time to time, summarised key principles which act as a guide for the courts to come to a conclusion with regard to the guilt of an accused in cases which are solely dependent on the circumstantial evidence. The same have been referred to as the “panchsheel principles” and are discussed in paras 26 to 28 of the said judgment, which read as follows : (SCC p. 181)

“26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be,

³ (2024) 10 SCC 813

cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See Anil Kumar Singh v. State of Bihar [Anil Kumar Singh v. State of Bihar, (2003) 9 SCC 67 : 2004 SCC (Cri) 1167] and Reddy Sampath Kumar v. State of A.P. [Reddy Sampath Kumar v. State of A.P., (2005) 7 SCC 603 : 2005 SCC (Cri) 1710])

27. The last seen theory, furthermore, comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and 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. Even in such a case the courts should look for some corroboration.

28. In State of U.P. v. Satish [State of U.P. v. Satish, (2005) 3 SCC 114 : 2005 SCC (Cri) 642] this Court observed : (SCC p. 123, para 22)

‘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.’

(See also Bodhraj v. State of J&K [Bodhraj v. State of J&K, (2002) 8 SCC 45 : 2003 SCC (Cri) 201] .)

15. Thereafter, the above principles have been reiterated in the subsequent judgments of this Court and hold the field till date.

16. Thus, these basic established principles can be summarised in the following terms that the chain of events needs to be so established that the court has no option but to come to one and only one conclusion i.e. the guilt of the accused person. If an iota of doubt creeps in at any stage in the sequence of events, the benefit thereof should flow to the accused. Mere suspicion alone, irrespective of the fact that it is very strong, cannot be a substitute for a proof. The chain of circumstances must be so complete that they lead to only one conclusion, that is, the guilt of the accused.

17. Even in the case of a conviction where in an appeal the chain of evidence is found to be not complete or the courts could reach to any another hypothesis other than the guilt of the accused, the accused person must be given the benefit of doubt which obviously would lead to his acquittal. Meaning thereby, when there is a missing link, a finding of guilt cannot be recorded.

18. In other words, the onus on the prosecution is to produce such evidence which conclusively establishes the truth and the only truth with regard to guilt of an accused for the charges framed against him or her, and such evidence should establish a chain of events so complete as to not leave any reasonable ground for the conclusion consistent with the innocence of accused.”

28. In this light, upon perusal of the record, we are of the view that the prosecution has not been able to bring forth

sufficient evidence in order to establish the guilt of the appellant and link him to the alleged offences.

29. There is no medical or scientific evidence connecting the appellant to the crime. The post-mortem report of the deceased persons was of no assistance since as per the statements of the doctors, PW-1 and PW-20, the bodies were in an advanced stage of decomposition. Therefore, no definite opinion could be given regarding the cause of death. The chemical examination report of the blood-stained soil was also inconclusive as there was not enough blood for examination and it had decomposed.
30. Furthermore, no forensic link was established between the recovered articles, or the scene of occurrence, and the appellant. Although as per the prosecution case, some clothes and a bottle were recovered from the site of occurrence at the behest of the appellant, there was no evidence led by the prosecution to connect these clothes to the deceased persons or to the appellant.
31. Moreover, the independent witnesses to such confession by the appellant and the subsequent recovery, namely PW-4 and PW-5, turned hostile. They deposed that they had studied only up to the first and second standard, respectively, and had merely put their signatures on the

memorandum of arrest, panchnama and recoveries without enquiring the police regarding the contents thereof.

32. The recovery of the clothes, in such circumstances also becomes doubtful considering that such recoveries were made from the place of occurrence 6 months subsequent to the discovery of the bodies of the deceased persons. Further doubt is created when the statement of PW-10, a witness to the recovery memo of articles seized from the house of the deceased, is seen who stated that certain clothes were taken from the house by the police without any writing. PW-11, the subsequent Investigating Officer, has also admitted in cross-examination that the recovered articles did not show any water, mud, or earth residue which is highly doubtful considering the fact that as per the prosecution case these articles were seized from under a rock, 6 feet deep in the ground after being hidden for several months. In light of the above, the possibility of the articles being planted cannot be ruled out.

33. The prosecution has also failed to establish last seen evidence and motive of the appellant. As per the statements of the neighbours, the appellant had not been seen near the house of the deceased for several months. Shadi Lal (PW-17), the landlord, stated that Sushma had

told his wife, few days prior to 20.09.1989, that she was going to visit Lucknow for some days, but had not mentioned that she was going with the appellant. On 20.09.1989 at about 6:30- 7:00 am, Sushma and her children had left with a person he could not identify.

34. Similarly, Vipin Gosai (PW-18) stated that he saw Sushma coming out of Shadi Lal's flat at about 7:00 am in the morning of 20.09.1989, after which she went and sat in a car where one person was sitting in this car, he, however, categorically stated that the said person was not the appellant and that the appellant had not visited for 7-8 months. Although the Investigating Officer, PW-21 had given the statement that Vijay Kumar (PW-24) had told him that Sushma and the children had left with the appellant on the morning of 20.09.1989, no such statement was made by PW-24 in his own deposition.
35. On motive, none of the witnesses deposed regarding any enmity between the appellant and the deceased. In fact, PW-17 deposed that the relations between the deceased and the appellant were amicable. It was stated that they had resolved their issues and decided to live separately, and she was paying her rent herself. Thus, motive is found absent and in any case there is lack thereof for the appellant to have committed such act.

36. Additionally, although as per the case of the prosecution, the appellant, the deceased and the children travelled in a truck and a car, and as per the statement of PW-28, the truck was being driven by a driver. Although a road tax receipt was obtained by the investigating officer, no efforts were made to trace the driver or examine him, who, as per the statement of the child witness, PW-28, was a witness to the killing of the deceased persons. Further, there was failure to trace the said car and its driver. This creates a significant gap in the chain of events.
37. Another circumstance casting a shadow of doubt over the prosecution case is the inordinate and unexplained delay in lodging the FIR. The record reveals that the male child, PW-28, was brought to the police station as early as 26.09.1989, while the bodies of the deceased were recovered over the course of the following two days. It is further the prosecution's own case that PW-28 disclosed the identity of the accused to PW-21 on 29.09.1989. Despite this, the FIR came to be registered only on 01.10.1989. Such unexplained delay in setting the criminal law into motion, particularly when the identity of the accused was purportedly known well before the FIR was recorded, seriously undermines the credibility of the

prosecution version and lends credence to the possibility of embellishment in the investigation.

38. In light of the above stated reasons, in absence of cogent evidence leading to the sole conclusion of guilt of the appellant beyond reasonable doubt, this Court is of the view that the conviction of the appellant cannot be sustained. The present appeal is allowed and the impugned judgment and order dated 09.10.2012 passed by the High Court is set aside. The appellant is acquitted of the charges.
39. In light of the acquittal of the appellant, the bail bonds as submitted by the appellant stand discharged.
40. Pending applications, if any, shall also stand disposed of.

.....J.
[SANJAY KAROL]

.....J.
[AUGUSTINE GEORGE MASIH]

**NEW DELHI;
AUGUST 20, 2026.**