



2026:CGHC:16354-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 614 of 2023**

Bablu Kalmoom S/o - Shri Mangu Kalmoom Aged About 19 Years
Gadamali, Police Station - Jangla, District : Bijapur, Chhattisgarh

... Appellant**versus**

State of Chhattisgarh Through- Police Station- Jangla, District : Bijapur,
Chhattisgarh

... Respondent

(Cause-title taken from Case Information System)

For Appellant	: Mr. Dinesh Tiwari, Advocate holding brief of Mohd. Azad Siddiqui, Advocate
For State/Respondent	: Mr. Shailendra Sharma, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board**Per Ramesh Sinha, Chief Justice****09.04.2026**

1. Heard Mr. Dinesh Tiwari, learned counsel holding brief of Mohd. Azad Siddiqui, learned counsel for the appellant as well as Mr. Shailendra Sharma, learned Panel Lawyer, appearing for the State/respondent.

2. Today, though the criminal appeal has been listed for hearing on I.A. No.01, application for suspension of sentence and grant of bail to the appellant, however, with the consent of learned counsel for the parties, the appeal is heard finally as the appellant is in jail since 19.01.2020.
3. Accordingly, I.A. No.01, application for suspension of sentence and grant of bail to the appellant, stands disposed of.
4. This criminal appeal is filed by the appellants/accused under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is directed against the impugned judgment of conviction and order of sentence dated 22.12.2022 passed by the learned Additional Sessions Judge (F.T.C.), South Bastar Dantewada (C.G.) in Special Case (POCSO) No.10/2020, whereby the appellant/accused have been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC') and sentenced to undergo imprisonment for life and fine of Rs.2,000/-, in default of payment of fine amount, additional rigorous imprisonment for one year as well as under Section 376 (AB) of the IPC and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') and sentenced to undergo imprisonment for life till natural death and fine of Rs.2,000/-, in default of payment of fine amount, additional rigorous imprisonment for one year, respectively, and it is directed that both the sentences were run concurrently.

5. The prosecution case, as emerging from the record, is that on 13.01.2020, the deceased, a minor girl, had proceeded towards the market. At that point of time, her grandmother, examined as PW-08, objected to her going alone and attempted to restrain her. It is the case of the prosecution that the accused intervened and assured the grandmother that he would accompany the deceased to the market and safely bring her back home. Acting upon such assurance, the deceased was permitted to go along with the accused. However, thereafter, the deceased went missing, and subsequently, information was received regarding the recovery of a dead body. Upon reaching the spot, the relatives of the deceased, including PW-07 and PW-13, identified the body as that of the missing girl.
6. At the place of occurrence itself, a village intimation of unnatural death (Dehati Merg) was recorded vide Ex.P/18, and a preliminary complaint (Dehati Nalishi) was registered vide Ex.P/17 against the accused for the offence punishable under Section 302 of the Indian Penal Code. Prior to conducting the inquest proceedings, notices were issued to the witnesses under Section 175 of Cr.P.C. vide Ex.P/4, and thereafter, the inquest panchnama was prepared vide Ex.P/13. The body of the deceased was sent for post-mortem examination vide requisition Ex.P/29, and upon completion thereof, the post-mortem report was brought on record as Ex.P/54, after which body was handed over to family members.

7. During the course of investigation, the spot was inspected and a detailed spot inspection report was prepared vide Ex.P/53, along with the spot map vide Ex.P/12, proved by PW-16 (Investigating Officer) and PW-06 (Patwari). From the place of occurrence, several incriminating articles were seized under seizure memos Ex.P/14 and Ex.P/33, including the undergarment of the deceased, her ring, plain soil, blood-stained soil, cotton swabs containing blood collected from the genital and thigh region, and plain cotton. On the basis of the Dehati Merg, a formal merg intimation was recorded vide Ex.P/31, and on the basis of the Dehati Nalishi, a formal First Information Report was registered vide Ex.P/32 at Police Station Jangla.
8. The accused was apprehended and taken into custody vide arrest memo Ex.P/25, and his disclosure statement was recorded, which led to recovery of incriminating articles. Pursuant to his memorandum, a bicycle and the undergarment allegedly worn by him at the time of the incident were seized vide seizure memo Ex.P/7, duly proved by PW-05 and PW-18. The accused was also subjected to medical examination vide Ex.P/6, and his blood sample was collected pursuant to permission granted by the competent authority vide Ex.P/36 to Ex.P/38. The age of the deceased was established through documentary evidence, including the Anganwadi register, exhibited as Ex.P/15C, thereby proving that she was a minor at the time of the incident.

- 9.** The medical evidence was adduced through PW-17 Dr. Deepika Sinha and PW-19 Dr. B. Suri Babu, who conducted the medical and post-mortem examination. The post-mortem report Ex.P/54 and related medical documents Ex.P/30 reveal that various samples, including smear slides, vaginal swabs, vaginal slides, vaginal mucosa, blood samples in EDTA vial, and hair samples were preserved. All seized articles, including the biological samples of the deceased and the accused, were forwarded for forensic examination vide memos Ex.P/46, Ex.P/47 and Ex.P/48, and the DNA test report along with covering memo was brought on record as Ex.P/51 and Ex.P/52. The forwarding and receipt of exhibits were proved vide Ex.P/49 and Ex.P/50.
- 10.** During the course of investigation, statements of material witnesses, including PW-01 to PW-15, were recorded under Section 161 Cr.P.C., which were duly exhibited as Ex.P/5, Ex.P/16 to Ex.P/26 and Ex.P/55. Upon completion of investigation, a charge-sheet was filed against the accused for offences punishable under Sections 302 and 376 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012. Upon perusal of the material available on record, the Trial Court found that a prima facie case was made out and accordingly framed charges under Sections 376(AB) and 302 IPC and Section 6 of the POCSO Act, which were read over and explained to the accused, who denied the same and claimed trial.

- 11.** During the course of trial, prosecution examined PW-1 to PW-20 and exhibited documents Ex.P/1 to Ex.P/55 in support of its case. The statement of the accused under Section 313 of the Cr.P.C. was recorded, wherein he denied all the incriminating circumstances appearing against him and claimed to be innocent. The accused did not adduce any evidence in defence, and accordingly, the defence evidence was closed. In view of the material available on record, the Trial Court proceeded to consider whether the prosecution had succeeded in proving the guilt of the accused beyond reasonable doubt with respect to the offences alleged against him.
- 12.** The trial Court after completion of trial and after appreciating oral and documentary evidences available on record, by the impugned judgment dated 22.12.2022 convicted and sentenced the appellant in the manner mentioned in the fourth paragraph of this judgment, against which this appeal under Section 374(2) of the Cr.P.C. has been preferred by them calling in question the impugned judgment.
- 13.** Mr. Dinesh Tiwari, learned counsel appearing on behalf of the appellant, submits that the impugned judgment of conviction and sentence dated 22.12.2022 passed by the learned Trial Court is wholly unsustainable in law as well as on facts. It is contended that the findings recorded by the Trial Court are perverse, contrary to the evidence available on record and suffer from serious

infirmities, thereby rendering the conviction of the appellant liable to be set aside. The learned counsel would submit that the Trial Court has failed to appreciate the evidence in its proper perspective and has proceeded on assumptions and conjectures.

- 14.** It is further submitted by Mr. Tiwari that the appellant has been falsely implicated in the present case. The appellant is an illiterate person belonging to a tribal area and was unaware of the implications of the criminal proceedings. He submits that the entire prosecution case rests on circumstantial evidence, there being no eyewitness to the alleged incident. Despite this, the prosecution has failed to establish a complete chain of circumstances so as to unerringly point towards the guilt of the appellant. It is contended that the essential ingredients of the offences alleged, particularly the element of mens rea and criminal culpability, have not been proved beyond reasonable doubt.
- 15.** Mr. Tiwari contends that the conviction of the appellant is based almost entirely on the DNA profiling report, exhibited as Ex.P/51 and Ex.P/52, without there being any substantive corroborative evidence. It is argued that although the Investigating Officer (PW-16) seized certain articles, including the undergarment of the prosecutrix, ring, plain soil, blood-stained soil and cotton swabs from the thigh region under seizure memo Ex.P/33, and the same were sent to the Forensic Science Laboratory, Raipur, the

prosecution has failed to establish the link evidence and the chain of custody in a reliable manner. In the absence of independent corroboration, reliance solely on the DNA report, without proving the surrounding circumstances, is unsafe and insufficient to sustain conviction.

- 16.** It is also submitted by Mr. Tiwari that the prosecution has failed to prove any motive on the part of the appellant, and the entire case is based on presumptions rather than legally admissible and cogent evidence. Learned counsel argues that in criminal jurisprudence, the burden lies heavily upon the prosecution to prove the case beyond all reasonable doubt, and unless the chain of circumstances is complete and consistent only with the hypothesis of guilt of the accused, the conviction cannot be sustained. In the present case, the prosecution has failed to discharge this burden, and the Trial Court has erred in shifting the burden upon the appellant.
- 17.** In support of his submissions, learned counsel for the appellant has placed reliance upon the judgment of the Hon'ble Supreme Court in *Ashok v. State of Uttar Pradesh*, 2024 SCC OnLine SC 3580 to buttress his submissions and contended that the present case is a fit case where benefit of doubt ought to have been extended to the appellant. Lastly, it is prayed that the appeal be allowed and impugned judgment passed by the learned Trial Court is set-aside.

- 18.** Per-contra, Mr. Shailendra Sharma, learned Panel Lawyer Per contra, learned State counsel vehemently opposes the submissions advanced on behalf of the appellant submits that the judgment passed by the learned Trial Court is well-reasoned, based on proper appreciation of oral as well as documentary evidence, and does not suffer from any perversity or illegality warranting interference by this Court in exercise of appellate jurisdiction. The learned State counsel submits that the prosecution has successfully established the guilt of the appellant beyond all reasonable doubt by leading cogent, reliable and clinching evidence.
- 19.** It is further submitted by Mr. Sharma that although there is no direct eyewitness to the incident, the present case is based on a complete and unbroken chain of circumstantial evidence which unequivocally points towards the guilt of the appellant. The “last seen” circumstance has been duly proved through the testimony of PW-08 (grandmother of the deceased), who categorically stated that the appellant had taken the deceased along with him on the pretext of accompanying her to the market. This crucial circumstance has remained unshaken in cross-examination and firmly establishes that the deceased was last seen alive in the company of the appellant. The appellant has failed to offer any plausible explanation under Section 313 of the Cr.P.C. regarding the circumstances under which the deceased parted company

with him, thereby giving rise to a strong adverse inference against him.

- 20.** Mr. Sharma further submits that the medical and forensic evidence conclusively corroborates the prosecution case. The post-mortem report Ex.P/54, proved by PW-19 Dr. B. Suri Babu, clearly establishes that the death of the deceased was homicidal in nature. Further, the evidence of PW-17 Dr. Deepika Sinha supports the case of sexual assault. It is contended that the biological samples collected from the body of the deceased and the articles seized from the spot and the accused were scientifically examined, and the DNA profiling report Ex.P/51 and Ex.P/52 conclusively establishes that the biological material found on the seized articles matched with the DNA profile of the appellant. Thus, the presence of the appellant at the scene of crime and his involvement in the commission of the offence stands scientifically established.
- 21.** It is also submitted by Mr. Sharma that the seizure of incriminating articles, including the undergarment of the deceased, blood-stained soil and other materials, was duly proved through seizure memo Ex.P/33 and the testimony of the Investigating Officer PW-16, and there is no material contradiction or discrepancy so as to discredit the same. The chain of custody of the seized articles has been properly maintained, and the same were duly sent to the Forensic Science Laboratory through proper channel, as

evidenced by Ex.P/46, Ex.P/47, Ex.P/48, Ex.P/49 and Ex.P/50.

The defence has failed to point out any material lapse in the investigation which could go to the root of the matter.

- 22.** It is contended by Mr. Sharma that the argument of the appellant that the conviction is based solely on DNA evidence is misconceived and factually incorrect. The DNA evidence in the present case is not in isolation but forms a part of a larger chain of circumstances, including the last seen evidence, recovery of incriminating articles at the instance of the appellant, medical evidence establishing sexual assault and homicidal death, and the failure of the appellant to furnish any explanation for the incriminating circumstances appearing against him. All these circumstances, when taken together, form a complete chain pointing unerringly towards the guilt of the appellant. It is also submitted that the prosecution has duly proved that the deceased was a minor at the time of the incident through documentary evidence, including the Anganwadi register Ex.P/15C, thereby attracting the provisions of the Protection of Children from Sexual Offences Act, 2012. The learned Trial Court has rightly appreciated the evidence and recorded a finding of guilt under Sections 376(AB) and 302 of the Indian Penal Code as well as Section 6 of the POCSO Act.
- 23.** In conclusion, it is submitted by Mr. Sharma that the prosecution has successfully proved its case beyond all reasonable doubt,

and the findings recorded by the Trial Court are based on sound appreciation of evidence. There is no infirmity, illegality or perversity in the impugned judgment warranting interference by this Court. Accordingly, the appeal filed by the appellant deserves to be dismissed.

24. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the original records of the trial Court with utmost circumspection.

25. In light of the submissions advanced by learned counsel for the parties and upon perusal of the record of the Trial Court, the following points arise for determination in the present appeal:

(i) Whether, on the date of the incident, the victim/deceased was a “child” within the meaning of Section 2(1)(d) of the POCSO Act ?

(ii) Whether the appellant is the author of the crime and has committed the offences punishable under Sections 376(AB) and 302 of the IPC and Section 6 of the POCSO Act ?

Point for Determination

(i) Whether, on the date of the incident, the victim/deceased was a “child” within the meaning of Section 2(1)(d) of the POCSO Act ?

26. When a person is charged for the offence punishable under the POCSO Act, or for rape punishable in the Indian Penal Code, the

age of the victim is significant and essential ingredient to prove such charge and the gravity of the offence gets changed when the child is below 18 years, 12 years and more than 18 years. Section 2(d) of the POCSO Act defines the “child” which means any person below the age of eighteen years.

27. In *Jarnail Singh Vs. State of Haryana, (2013) 7 SCC 263*, the Hon’ble Supreme Court laid down the guiding principles for determining the age of a child, which read as follows:

“22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under :

“12. Procedure to be followed in determination of Age.? (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be

recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after

examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub- rule(3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

23. *Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is*

expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.”

- 28.** In view of the aforesaid settled legal position, the provisions of Section 94 of the Juvenile Justice (Care and Protection of

Children) Act, 2015 assume significance. The said provision clearly stipulates the hierarchy of evidence for determination of age, wherein the date of birth certificate from the school or the matriculation certificate is to be accorded primacy; in the absence thereof, the birth certificate issued by a municipal authority or panchayat is to be considered; and only in the absence of both, medical opinion is to be resorted to.

- 29.** In the present case, the prosecution has relied upon documentary as well as oral evidence to establish the age of the victim. The Investigating Officer, PW-16 R.N. Gautam, has categorically deposed that he had requisitioned the Anganwadi records pertaining to the victim and seized the admission register maintained at the Anganwadi centre. The said document has been exhibited as Ex.P/15C. The seizure of the said register has also been duly proved and corroborated by PW-06 Laxmi Telam, the Anganwadi worker, who brought the original register before the Court and deposed that the date of birth of the victim, as recorded therein, is 06.03.2010.
- 30.** A careful perusal of Ex.P/15C reveals that the name of the victim, along with her parentage and date of birth, has been duly recorded, and the entry indicates that she was admitted to the Anganwadi centre on 01.12.2010, i.e., shortly after her birth. This lends assurance to the authenticity of the entry, as the same appears to have been made contemporaneously in the ordinary

course of official duty. It is also pertinent to note that the defence has not seriously challenged the genuineness of the said document, nor has any suggestion been put to the prosecution witnesses disputing the recorded date of birth.

- 31.** Although, in the cross-examination, PW-06 admitted that no formal birth certificate was produced at the time of admission of the victim and that the date of birth was recorded on the basis of information furnished by the family members, such an admission, by itself, does not render the document unreliable, particularly in the absence of any contra evidence adduced by the defence. It is well settled that entries made in official records maintained in due course of duty carry a presumption of correctness unless rebutted by cogent evidence.
- 32.** Further, the medical evidence also lends support to the prosecution case. The doctor who conducted the post-mortem examination has opined that the age of the victim was approximately 9 years at the time of her death. Though medical opinion is not conclusive and is to be treated as an approximation, it nonetheless corroborates the documentary evidence placed on record.
- 33.** Thus, upon conjoint consideration of the documentary evidence in the form of Ex.P/15C, duly proved by PW-06 and PW-16, along with the supporting medical evidence, this Court is satisfied that the prosecution has successfully established that the date of birth

of the victim was 06.03.2010. Consequently, on the date of the incident i.e. 13.01.2020, the victim was approximately 9 years and 10 months old, and in any case below 12 years of age.

34. In view of the aforesaid, it is held that the victim was a “child” within the meaning of Section 2(1)(d) of the POCSO Act on the date of the incident. Accordingly, Point No. (i) is answered in the affirmative.

(ii) Whether the appellant is the author of the crime and has committed the offences punishable under Sections 376(AB) and 302 of the IPC and Section 6 of the POCSO Act ?

35. Upon careful examination of the evidence available on record, it emerges that the present case rests entirely on circumstantial evidence, there being no direct eyewitness to the occurrence. In such a situation, it becomes the bounden duty of the Court to subject the entire material on record to a meticulous and cautious scrutiny, as conviction in such cases cannot be based on conjectures or surmises but must rest upon a firmly established chain of circumstances. Each circumstance relied upon by the prosecution must not only be proved beyond reasonable doubt, but must also be consistent only with the hypothesis of the guilt of the accused and inconsistent with any other plausible hypothesis.

36. The law governing cases based on circumstantial evidence has been authoritatively laid down by the Hon’ble Supreme Court in

Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984

SC 1622, wherein the Court enunciated the well-known “five golden principles” (*panchsheel*) which must be satisfied before a conviction can be recorded. These principles require that: (i) the circumstances from which the conclusion of guilt is to be drawn must be fully established; (ii) the facts so established must be consistent only with the hypothesis of the guilt of the accused; (iii) the circumstances must be of a conclusive nature and tendency; (iv) they must exclude every possible hypothesis except the one to be proved; and (v) there must be a complete chain of evidence which leaves no reasonable ground for a conclusion consistent with the innocence of the accused.

- 37.** It is equally well settled that suspicion, however strong, cannot take the place of proof. The distance between “may be true” and “must be true” must be completely bridged by the prosecution through cogent, reliable and unimpeachable evidence. In a case resting on circumstantial evidence, if any one link in the chain is found to be missing or not satisfactorily proved, the benefit of doubt must necessarily go to the accused. The Court must also guard against the danger of allowing conjectures or moral conviction to substitute legal proof.
- 38.** At the same time, it is not the law that each circumstance must be proved by direct evidence. Circumstantial evidence, if of a sterling quality and forming a complete chain, can be as conclusive as

direct evidence. The cumulative effect of all the circumstances must be taken into consideration, and the Court must examine whether the circumstances, taken together, lead to the only irresistible conclusion that the accused is the perpetrator of the crime.

- 39.** Therefore, in the present case, this Court is required to evaluate each incriminating circumstance relied upon by the prosecution—such as the “last seen” theory, recovery of incriminating articles, medical and forensic evidence, extra-judicial confession, and conduct of the accused and thereafter assess whether these circumstances collectively form a complete and unbroken chain pointing unequivocally towards the guilt of the appellant, thereby excluding every hypothesis consistent with his innocence. Only upon such satisfaction can a conviction be sustained in law.
- 40.** In the present case, the first and foremost circumstance pertains to the identification of the dead body, which assumes considerable significance in a case resting entirely on circumstantial evidence. The prosecution, in order to discharge its burden, has led cogent and consistent evidence to establish beyond doubt that the body recovered from the spot was that of the victim. In this regard, PW-07, the maternal grandfather of the victim, has categorically deposed that upon receiving information about the recovery of a dead body, he immediately proceeded to the place of occurrence and identified the body as that of his

granddaughter. His testimony is natural, trustworthy, and inspires confidence, particularly as he is a close relative who would be in a position to recognize the victim.

- 41.** The testimony of PW-07 finds substantial corroboration from the evidence of PW-10 Chinnaram Telam, who has clearly stated that the grandfather of the victim had identified the dead body at the spot itself. This independent corroboration lends further assurance to the version put forth by PW-07 and rules out any possibility of mistaken identity. Both these witnesses have remained consistent in their statements, and nothing material has been elicited during their cross-examination to cast any doubt upon their credibility or to discredit their version.
- 42.** Further strengthening the prosecution case is the testimony of PW-19 Dr. B. Suri Babu, who was associated with the post-mortem examination of the deceased. He has deposed that the identification of the body was carried out by the relatives of the victim on the basis of the clothes found on the body, namely the school uniform and undergarment. This medical witness, being an independent and expert witness, lends an added layer of reliability to the identification process. His testimony clearly establishes that the identification was not a casual or speculative exercise, but was based on recognizable and specific features.
- 43.** In addition to the oral evidence, the prosecution has also relied upon documentary and material evidence in the form of

photographic proof. The photographs of the deceased, exhibited as Ex.P/54, have been duly proved on record and corroborate the oral testimony of the witnesses. The said exhibit provides visual confirmation of the identity of the deceased and supports the prosecution version that the body recovered was indeed that of the victim. Notably, the defence has not raised any substantial challenge to the authenticity or admissibility of this exhibit.

- 44.** It is also pertinent to note that the defence has not seriously disputed the identity of the dead body during the course of trial. Though an attempt was made in cross-examination to suggest that the body was in a decomposed condition, no suggestion was put forth that the body was unidentifiable or that the identification made by the relatives was erroneous. In the absence of any such challenge, the version of the prosecution witnesses remains unshaken and continues to hold the field.
- 45.** Thus, upon a comprehensive appreciation of the oral as well as documentary evidence, this Court finds that the prosecution has successfully established the identity of the deceased beyond reasonable doubt. The consistent and corroborative testimonies of PW-07, PW-10, and PW-19, read with Exhibit P/54, form a complete and reliable chain in this regard, leaving no scope for any doubt that the dead body recovered was that of the victim.
- 46.** The next circumstance sought to be established by the prosecution is that the victim was last seen alive in the company

of the appellant, a circumstance which, if proved, could form a vital link in the chain of circumstantial evidence. It is well settled that the “last seen” theory can be relied upon only when the time gap between the point when the accused and the deceased were last seen together and the recovery of the dead body is so small that the possibility of any person other than the accused being the author of the crime becomes highly improbable. However, such a circumstance must be proved with clarity, consistency, and certainty, and cannot rest on vague or unreliable testimony.

- 47.** In the present case, upon a careful and critical appreciation of the evidence of the relevant prosecution witnesses, namely PW-01 Indra Telam, PW-03 Dhaniram Avlam, PW-09 Rambati Wacham, PW-10 Chinnaram Telam, PW-11 Suresh Wacham, PW-12 Shailu Kudiyam, PW-14 Munnaram Kudiyam, and PW-15 Sarita Avlam, it becomes apparent that the prosecution has failed to discharge this burden. A substantial number of these witnesses have not supported the prosecution version in material particulars and have been declared hostile. Their testimonies do not advance the case of the prosecution insofar as the “last seen” circumstance is concerned.
- 48.** Even otherwise, the statements of these witnesses suffer from material inconsistencies, omissions, and lack of specificity. None of the witnesses have made a clear, cogent, and categorical assertion that they had seen the victim in the exclusive company

of the appellant at or about the relevant time. The evidence, at best, is vague and lacks the precision required to establish such a crucial circumstance. There is no consistent version as to the exact time, place, or manner in which the victim was allegedly last seen with the appellant, nor is there any reliable indication of proximity of time between such alleged sighting and the death of the victim.

- 49.** It is also significant that the testimonies of the hostile witnesses have not been effectively corroborated by any independent or circumstantial evidence. The prosecution has not been able to extract any material admissions in the cross-examination of these witnesses that would lend support to its case. In the absence of such corroboration, the evidentiary value of their statements stands considerably diminished.
- 50.** Furthermore, the “last seen” theory, being a weak type of evidence by itself, requires strong corroboration from other incriminating circumstances to form a complete chain pointing towards the guilt of the accused. In the present case, not only is the “last seen” circumstance itself doubtful, but it also does not find support from any other reliable evidence on record. This creates a significant gap in the chain of circumstances sought to be established by the prosecution.
- 51.** In view of the aforesaid deficiencies, this Court is of the considered opinion that the prosecution has failed to conclusively

establish that the victim was last seen in the company of the appellant. The evidence on this aspect is neither reliable nor sufficient to form a definite link in the chain of circumstances. Consequently, this circumstance remains unproved and cannot be relied upon to sustain the conviction of the appellant.

52. However, the prosecution has placed considerable reliance upon the extra-judicial confession allegedly made by the appellant, treating the same as a vital incriminating circumstance. In this regard, PW-18 Sunil Kudiyam has deposed that the appellant, in the presence of villagers, voluntarily confessed that he had committed the offence in question. According to this witness, the confession was not extracted under any coercion or inducement but was made voluntarily by the appellant, thereby lending a degree of authenticity to such statement.

53. The law relating to extra-judicial confession is fairly well settled. It is trite that an extra-judicial confession is a weak piece of evidence and ordinarily requires cautious scrutiny. However, it is equally well established that if such a confession is found to be voluntary, truthful, and made in a fit state of mind, and if it inspires confidence of the Court, it can be relied upon and may even form the basis of conviction without the need for further corroboration. At the same time, the Court must be satisfied that the witness before whom the confession is alleged to have been made is trustworthy and that the surrounding circumstances do not cast

any doubt on the genuineness of the confession. In the present case, the testimony of PW-18 Sunil Kudiya assumes significance. A careful reading of his deposition reveals that he has consistently stated about the appellant having confessed his guilt before the villagers. His testimony has remained unshaken during the course of cross-examination, and nothing substantial has been elicited to discredit his version or to suggest that he is deposing falsely. There are no material contradictions or omissions which would render his testimony unreliable or unworthy of credence.

- 54.** It is also noteworthy that there appears to be no apparent reason or motive for PW-18 to falsely implicate the appellant. In the absence of any animosity, enmity, or ulterior motive being attributed to the said witness, his testimony gains further credence. The prosecution has thus succeeded in establishing that the extra-judicial confession was made voluntarily and was not the result of any external pressure or influence. Moreover, the fact that the confession was allegedly made in the presence of villagers lends an additional layer of credibility, as it reduces the possibility of fabrication or concoction. The natural conduct of the witness, coupled with the absence of any inherent improbability in his version, strengthens the prosecution case on this aspect.
- 55.** Therefore, upon an overall appreciation of the evidence of PW-18 and the settled principles governing extra-judicial confession, this

Court is of the considered view that the said confession constitutes a relevant and significant incriminating circumstance against the appellant. The same, having been found to be voluntary and trustworthy, can be safely relied upon and forms an important link in the chain of circumstances sought to be established by the prosecution.

- 56.** The most crucial and determinative piece of evidence in the present case is the scientific evidence in the form of DNA profiling, which assumes great evidentiary value, particularly in cases involving offences of sexual assault. The prosecution has meticulously established the chain of custody and the manner in which the biological and material exhibits were collected, preserved, and forwarded for forensic examination. PW-16 R.N. Gautam, the Investigating Officer, has categorically deposed that during the course of investigation, he seized various incriminating articles from the spot, including the undergarment of the victim, blood-stained soil, plain soil, and cotton swabs containing suspected biological material. The said seizure was effected in the presence of witnesses and duly documented vide seizure memo Ex.P/33. The testimony of PW-16 further reflects that due care was taken to ensure that the seized articles were properly sealed and labeled so as to avoid any possibility of tampering.
- 57.** The medical evidence also lends substantial support to the prosecution case. PW-17 Dr. Deepika Sinha, who conducted or

assisted in the post-mortem examination, has deposed that biological samples of the victim, including vaginal swabs and slides, were collected during the post-mortem and preserved in accordance with established medical and forensic protocols. Her testimony inspires confidence and demonstrates that the samples were collected in a scientific manner, maintaining their integrity for subsequent forensic analysis. Furthermore, the accused was also subjected to medical examination, during which his blood sample was collected for the purpose of DNA profiling, thereby completing the necessary procedure for comparative analysis.

- 58.** The prosecution has further established that all the seized articles and biological samples were duly forwarded to the Forensic Science Laboratory for examination. The reports received from the said laboratory have been brought on record and exhibited as Ex.P/51 and Ex.P/52. A careful perusal of these reports reveals that the DNA profile generated from the vaginal swab and other biological samples of the victim matches with the DNA profile of the appellant. The matching of DNA profiles is a highly reliable form of scientific evidence, which, when properly collected and analyzed, provides near-conclusive proof of the involvement of an individual in the commission of the offence.
- 59.** It is well settled that DNA evidence, being based on scientific principles, carries a high degree of accuracy and reliability, and in the absence of any procedural lapses or credible challenge to its

authenticity, the same can be safely relied upon by the Court. In the present case, the defence has not been able to demonstrate any infirmity in the manner of collection, preservation, or analysis of the samples. No suggestion of tampering, contamination, or break in the chain of custody has been substantiated. The cross-examination of PW-16 and PW-17 does not disclose any material contradiction or discrepancy that would cast doubt on the prosecution version in this regard.

- 60.** The evidentiary value of the DNA report, as reflected in Ex.P/51 and Ex.P/52, is of sterling quality and stands unshaken. The conclusive matching of the DNA profile of the appellant with the biological material obtained from the victim establishes a direct and unimpeachable link between the appellant and the offence of sexual assault. This scientific evidence effectively rules out any hypothesis of false implication or mistaken identity, thereby strongly corroborating the prosecution case.
- 61.** In view of the aforesaid, this Court is of the considered opinion that the DNA profiling evidence constitutes a vital and clinching circumstance in the chain of evidence. It not only establishes the presence and involvement of the appellant but also lends strong corroboration to other circumstances relied upon by the prosecution. The same, therefore, forms a complete and unbroken link pointing unerringly towards the guilt of the appellant.

- 62.** Apart from the aforesaid incriminating circumstances, the medical evidence on record also lends substantial assurance to the prosecution case and provides an independent corroborative foundation to the allegations levelled against the appellant. The post-mortem report, which has been duly exhibited as Ex.P/29, assumes considerable significance in this regard. The said report, prepared by the competent medical officer after a thorough examination of the body of the victim, clearly records that the victim had sustained injuries which are consistent with forcible sexual assault. The nature, location, and extent of the injuries noted in the genital region, as reflected in Ex.P/29, unmistakably indicate that the victim was subjected to violence of a sexual nature prior to her death.
- 63.** The testimony of the medical witness, who proved the post-mortem report, further reinforces the findings recorded therein. The doctor has categorically opined that the injuries found on the person of the victim could not have been self-inflicted or accidental, and are indicative of the use of force. The presence of such injuries, coupled with the recovery of biological samples from the relevant parts of the body, strongly supports the prosecution version that the victim was subjected to sexual assault. The defence has not been able to elicit anything in the cross-examination of the medical witness so as to discredit the medical findings regarding the correctness of the opinion rendered.

- 64.** Furthermore, the post-mortem report Ex.P/29 clearly opines that the cause of death was asphyxia resulting from strangulation, and the nature of death has been categorically described as homicidal. The ligature marks and other corresponding internal findings noted during the autopsy substantiate the conclusion that external force was applied to the neck of the victim, leading to cessation of respiration. The medical opinion in this regard is definite and leaves no room for ambiguity or alternate interpretation. The homicidal nature of death, thus established through medical evidence, completely rules out any possibility of accidental or natural death.
- 65.** It is well settled that medical evidence, though generally corroborative in nature, assumes great importance where it is consistent with and supports the ocular and circumstantial evidence on record. In the present case, the medical findings not only corroborate but also fortify the prosecution case by establishing two crucial aspects, namely, that the victim was subjected to sexual assault and that her death was caused by homicidal violence. The sequence of events, as emerging from the medical evidence, is in complete harmony with the prosecution narrative.
- 66.** In view of the above, this Court finds that the medical evidence, particularly the post-mortem report Ex.P/29, constitutes a vital link in the chain of circumstances. It lends strong corroboration to the

scientific evidence in the form of DNA profiling as well as other circumstances relied upon by the prosecution, thereby further strengthening the conclusion that the victim was subjected to forcible sexual assault and was thereafter done to death by strangulation.

67. Thus, although the “last seen” circumstance has not been firmly established and a number of prosecution witnesses have not supported the case and were declared hostile, it does not ipso facto demolish the prosecution case, particularly when other reliable and cogent circumstances stand duly proved. It is a settled principle of criminal jurisprudence that in cases resting on circumstantial evidence, each circumstance must be independently established and all such circumstances, when cumulatively considered, must form a complete chain leading only to the hypothesis of the guilt of the accused. In the present case, despite the weakness of the “last seen” theory, the prosecution has been able to establish other vital links in the chain of circumstances.

68. Firstly, the identity of the victim stands conclusively established through the consistent and reliable testimony of PW-07, PW-10, and the medical evidence of PW-19, duly supported by the photographic evidence exhibited as Ex.P/54. There is no material contradiction or infirmity in their evidence so as to cast any doubt on the identification of the deceased. Secondly, the recovery and

seizure of incriminating articles from the place of occurrence, as deposed by PW-16 and recorded vide seizure memo Ex.P/33, further strengthens the prosecution case. The proper seizure, sealing, and forwarding of these articles for forensic examination establishes the continuity and integrity of the evidentiary chain. Thirdly, the extra-judicial confession made by the appellant, as deposed by PW-18, constitutes an additional incriminating circumstance. Though extra-judicial confession is considered a weak piece of evidence, in the present case, the same appears to be voluntary and has remained unshaken during cross-examination. There is no plausible reason brought on record to disbelieve the testimony of PW-18 or to infer any motive for false implication, thereby lending credibility to this circumstance.

- 69.** Most importantly, the scientific evidence in the form of DNA profiling, as reflected in Ex.P/51 and Ex.P/52, conclusively establishes that the DNA profile obtained from the biological samples of the victim matches with that of the appellant. This evidence is of unimpeachable character and provides a direct and clinching link connecting the appellant with the crime. The defence has failed to point out any discrepancy or procedural lapse in the collection, preservation, or examination of the samples, thereby rendering the DNA evidence wholly reliable.
- 70.** When all these circumstances, namely (i) the established identity of the victim, (ii) recovery and seizure of incriminating articles, (iii)

the extra-judicial confession of the appellant, and (iv) the conclusive DNA evidence, are taken together and appreciated in their cumulative effect, they form a coherent, consistent, and unbroken chain of circumstances. The said chain is so complete that it leaves no reasonable ground for a conclusion consistent with the innocence of the appellant and points unerringly towards his guilt. Accordingly, this Court is of the considered view that the prosecution has succeeded in proving its case beyond reasonable doubt, notwithstanding the failure to firmly establish the "last seen" circumstance.

- 71.** In view of the aforesaid discussion, this Court is of the considered opinion that the prosecution has proved beyond reasonable doubt that the appellant is the author of the crime. Accordingly, Point No. (ii) is answered in the affirmative.

- 72.** Considering the matter in its entirety, this Court is of the opinion that when the entire evidence available on record is appreciated in a cumulative and holistic manner, the following circumstances stand firmly established against the appellant: (i) the homicidal death of the victim, as proved by the medical evidence of PW-17 Dr. Deepika Sinha and the post-mortem report Ex.P/29, which clearly opines that the cause of death was asphyxia due to strangulation; (ii) the identity of the victim, duly established through the consistent testimony of PW-07, PW-10 and PW-19, corroborated by documentary evidence including Ex.P/54; (iii) the

recovery and seizure of incriminating articles from the spot, including the undergarment of the victim and other biological materials, as deposed by PW-16 R.N. Gautam vide seizure memo Ex.P/33; (iv) the extra-judicial confession made by the appellant before PW-18 Sunil Kudiya, which has remained unshaken in cross-examination and inspires confidence; and (v) the most crucial circumstance of scientific evidence in the form of DNA profiling, as reflected in Ex.P/51 and Ex.P/52, which conclusively establishes that the DNA profile obtained from the vaginal swab of the victim matches with that of the appellant.

- 73.** The aforesaid circumstances, when taken together, form a complete, cogent, and unbroken chain of evidence which points unerringly towards the guilt of the appellant and rules out every hypothesis consistent with his innocence. The scientific evidence, particularly the DNA report, lends a decisive and clinching link connecting the appellant with the commission of the offence of sexual assault, while the medical evidence corroborates the prosecution case regarding the homicidal death of the victim. The extra-judicial confession further strengthens the prosecution case and provides an additional incriminating circumstance against the appellant.
- 74.** Considering the matter in its entirety, this Court is of the opinion that when the entire evidence available on record is appreciated in a cumulative and holistic manner, the following circumstances

stand firmly established against the appellant: (i) the homicidal death of the victim, as proved by the medical evidence of PW-17 Dr. Deepika Sinha and the post-mortem report Ex.P/29, which clearly opines that the cause of death was asphyxia due to strangulation; (ii) the identity of the victim, duly established through the consistent testimony of PW-07, PW-10 and PW-19, corroborated by documentary evidence including Ex.P/54; (iii) the recovery and seizure of incriminating articles from the spot, including the undergarment of the victim and other biological materials, as deposed by PW-16 R.N. Gautam vide seizure memo Ex.P/33; (iv) the extra-judicial confession made by the appellant before PW-18 Sunil Kudiyam, which has remained unshaken in cross-examination and inspires confidence; and (v) the most crucial circumstance of scientific evidence in the form of DNA profiling, as reflected in Ex.P/51 and Ex.P/52, which conclusively establishes that the DNA profile obtained from the vaginal swab of the victim matches with that of the appellant.

- 75.** The aforesaid circumstances, when taken together, form a complete, cogent, and unbroken chain of evidence which points unerringly towards the guilt of the appellant and rules out every hypothesis consistent with his innocence. The scientific evidence, particularly the DNA report, lends a decisive and clinching link connecting the appellant with the commission of the offence of sexual assault, while the medical evidence corroborates the

prosecution case regarding the homicidal death of the victim. The extra-judicial confession further strengthens the prosecution case and provides an additional incriminating circumstance against the appellant.

- 76.** The learned Trial Court has meticulously examined both the oral and documentary evidence brought on record and has recorded well-reasoned and detailed findings while holding the appellant guilty of the offences punishable under Sections 376(AB) and 302 of the IPC as well as Section 6 of the POCSO Act. Upon an independent re-appreciation of the entire evidence, this Court finds that the conclusions arrived at by the Trial Court are based on proper appreciation of evidence and settled principles of law governing cases based on circumstantial evidence. No material contradiction, perversity, or illegality has been pointed out by the defence which would warrant interference by this Court in exercise of its appellate jurisdiction.
- 77.** Consequently, this Court is of the considered view that the prosecution has successfully established beyond reasonable doubt in convicting the appellant for the offences punishable under Sections 302, 376 (AB) of the IPC and Section 6 of the POCSO Act and sentenced him as aforesaid in Section 302 of the IPC and Section 6 of the POCSO Act. The chain of circumstances is complete and incapable of any reasonable explanation other than the guilt of the appellant.

- 78.** It is stated at the Bar that the appellant is reported to be in custody since 19.01.20220, he shall serve out the sentence as ordered by the learned Trial Court.
- 79.** Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.
- 80.** Let a certified copy of this judgment along with the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Head-Note

The heinous offence of sexual assault culminating in murder, established through cogent medical evidence and reliable DNA profiling, conclusively proves the guilt of the appellant beyond reasonable doubt, fully satisfying the standard of proof; if such evidence inspires the Court's confidence, it can serve as the sole basis for conviction.