

Neutral Citation No. - 2025:AHC:34898-DB

Court No. - 45

Case :- CRIMINAL APPEAL No. - 847 of 2014

Appellant :- Saleem

Respondent :- State of U.P.

Counsel for Appellant :- Avadh Pratap Singh Shishodia, Dheeraj Singh (Bohra), Jayant Kumar, Praveen Kumar

Counsel for Respondent :- Govt. Advocate

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard Shri Jyant Kumar, learned Amicus Curiae for the appellant, Shri Patanjali Mishra, learned A.G.A.-I for the State.

2. This appeal arises from the judgment and order dated 31.01.2014 passed by Shri Nalin Kant Tyagi, learned Additional District and Sessions Judge, Court No. 11, Ghaziabad in Sessions Trial No. 1184 of 2009 (State Vs. Saleem) in Case Crime No. 106 of 2009, under Sections 376, 302, 201 I.P.C., Police Station Niwadi, District Ghaziabad, whereby the accused-appellant has been convicted and sentenced under Section 376 I.P.C. to undergo ten years rigorous imprisonment along with fine of Rs. 5,000/- and under Section 302 I.P.C. to undergo life imprisonment along with fine of Rs. 5,000/-. In default in payment of fine of Rs. 10,000/- to further undergo additional imprisonment of six months. The appellant has been acquitted from the charges under Section 201 I.P.C.

3. The F.I.R. emerges on a written report dated 25.04.2009 (Ex.Ka.-1) submitted by Riyaz (P.W.1 at the trial). The written report was written by the scribe Shaharyar (not examined at the trial) and was submitted to the Station House Officer of Police

Station Newadi, District Ghaziabad. On that written report the First Information Report (Ex.Ka.-11) was registered on the same day as Case Crime No. 106 of 2009, under Sections 376, 302, 201 I.P.C., Police Station Niwadi, District Ghaziabad. According to the F.I.R., the minor grand daughter of the first informant-Riyaz (P.W.1) namely 'X', who was aged about 09 years, went missing on 22.04.2009. According to the first informant, his grandson Javed (who was examined as P.W.2 at the trial), informed Riyaz on 24.04.2009 that he had seen 'X' with the present appellant, and that two were riding in a *buggy*. According to the F.I.R. narration, upon inquiry made the appellant did not give any correct answer and the appellant along with his family members disappeared from the village. On further search being made for 'X', her dead body was discovered in the agricultural fields of Naresh and Premveer. At that time, the undergarment and trouser worn by the 'X' were found lying near her dead body, giving rise to further suspicion that rape had been committed upon her. On such F.I.R. being registered on 25.04.2009 itself, the *Panchayatnama* was recorded on 25.04.2009 (Ex.Ka.-3). Thereupon, autopsy was conducted by Dr. D. K. Jain on 25.04.2009. In that, following ante mortem injuries were found on the person of the deceased:

“Ligature mark on whole neck, uninterrupted size 29 cm x 2 cm. 5 cm below from both ears. Subcutaneous tissues below ligature mark is echymosed.”

The cause of death was found to be asphyxia due to strangulation.

4. Vaginal slides were also prepared. According to the autopsy report, such examination was conducted at about 04:30 p.m. on 25.04.2009. The autopsy report is Ex.Ka.-2. On 25.04.2009 sample of soil was also drawn from the place of occurrence. It is Ex.Ka.-9. Further, clothes of the deceased 'X' found lying near her dead body were also recovered. That recovery memo is Ex.Ka.-10 at the trial. Since human semen mark was found on the clothing of the deceased 'X', those clothes were sent for forensic examination. The forensic report dated 14.07.2009 is on the record (Ex.Ka-14). It clearly records the undergarments of the deceased, her shirt and trouser had traces of human semen. Such evidence was also found on her trouser. Blood was also found on all samples sent for forensic examination, namely, clothing of the deceased and her clothes. On that evidence found, no D.N.A. matching or further tests were conducted to trace the blood and/ or semen of the present appellant. After investigation, the charge sheet was submitted against the appellant.

5. In such circumstances, the learned court below framed following charges against the appellant:

प्रथम :- यह कि दिनांक 22.04.2009 से 25.04.2009 तक ग्राम साग्गा ढेड़ा थाना गंगोह जिला सहारनपुर की सीमा के अंतर्गत आपने परिवादी रियाज की लड़की रुखसार {उम्र -9 वर्ष} के साथ जबरदस्ती उसकी इच्छा के विरुद्ध बलात्कार किया। इस प्रकार आपने आई. पी. सी. की धारा - 376 का दंडनीय अपराध किया जो मेरे प्रसंज्ञान में है।

द्वितीय :- यह कि उपरोक्त दिनांक, समय व स्थान पर आपने परिवादी की पुत्री कु० रुखसार के साथ जबरजस्ती बलात्कार करने के पश्चात उसकी हत्या की। इस प्रकार आपने आई. पी. सी. की धारा - 302 का दंडनीय अपराध किया जो मेरे प्रसंज्ञान में है।

तृतीय :- यह की उपरोक्त दिनांक, समय व स्थान पर आपने परिवादी रियाज की वर्षीय पुत्री कु० रुखसार की हत्या करके उसके शव को साक्ष्य नष्ट करने के उद्देश्य से नरेश व प्रवीण के खेत में छिपा दिया। इस प्रकार आपने आई. पी. सी. की धारा - 201 का दंडनीय अपराध किया जो मेरे प्रसंज्ञान में है।

6. At the trial, besides above noted documents, the prosecution relied upon the oral evidence of the informant Riyaz, as P.W.1; solitary eye witness of the last seen namely Javed, child witness (who was aged about 06 years on the date of occurrence and 10 years on the date of evidence) as P.W.2; Dr. D. K. Jain, who conducted autopsy on the dead body of the deceased as P.W.3; Jai Veer Singh, the Sub Inspector, who conducted *Panchayatnama*, as P.W.4; Shah Nazar Ahmed, the Sub Inspector, who prepared the recovery memo of clothing of the deceased, as P.W.5; Anees Ahmad, the Chik Writer, as P.W.6; Zinya Hasan Khan, who turned hostile during examination-in-chief, as P.W.7; Faiyyaz, who supported the evidence of last seen, as P.W.8; Inspector Sudhir Kumar Tyagi, the Investigating Officer, who has submitted the charge sheet, as P.W.9; Sub Inspector Rajendra Singh who proved the Recovery Memo, as P.W.10 and Constable Ravindra Singh who proved F.S.L. report, as P.W.11.

7. Thereafter, statement of appellant was recorded under Section 313 Cr.P.C. Thereafter, Raj Kumar was examined as A.W.1 with respect to the claim of juvenility made by the appellant. However, it may be noted that, that claim was rejected and there is no challenge made by the appellant, to the same.

8. On such evidence, the trial court has concluded the trial and the appellant was convicted for the offence as noted above and he has been sentenced, accordingly.

9. Submission of learned Amicus Curiae is, there is no direct evidence of the occurrence. The entire prosecution story is based on weak circumstantial evidence. That evidence is not corroborated. No recovery, whatsoever, was made at the pointing out of the appellant. The prosecution story itself emerged late and hinges on solitary child witness of last seen. Referring to the statement of the said child witness (P.W.2), it is stated that he neither proved the date, nor he proved the time when he had last seen the deceased with the appellant. At the same time, it remained admitted to the prosecution that both the appellant and the family of the deceased were known to each other and both used to work at same brick kiln. Unless the date and time of last seen was disclosed by the prosecution, conviction may not stand, on such evidence.

10. Second, it has been emphasized that disappearance of the deceased was caused on 22.04.2009. Yet, no missing report was lodged, even upon the alleged disclosure made by the minor Javed (P.W.2) to his grandfather Riyaz (P.W.1), on the morning of 24.04.2009 (as disclosed in the F.I.R.). On the contrary, the F.I.R. was first registered on 25.04.2009 at about 08:30 a.m., i.e., 72 hours after the disappearance and 24 hours after gaining knowledge of last seen. That itself renders the prosecution story wholly doubtful.

11. Third, it has been emphasized that there is no corroboration to the weak story of last seen. Both P.W.1 and

P.W.8 are not the witness of last seen. They rely wholly on the statement of child witness (P.W.2). Thus, even if the testimony of the solitary child witness is to be read, to any extent, the prosecution wholly failed to establish the date and time of that evidence of last seen.

12. What then survives for consideration is the confessional statement of the appellant. In that regard, doubt has been raised to the prosecution narration that the appellant fled from the village. Relying upon the entry made in C.D.-2 on 26.04.2009 (that exists on record), we have shown that the appellant was arrested on 26.04.2009 at about 05:00 a.m. from the same village itself. Thus, four days after the occurrence and one day after the F.I.R. was registered, the appellant was found present in the village itself.

13. Learned counsel for the appellant has relied upon the judgment of Hon'ble Supreme Court in the case of **R. Sreenivasa Vs. State of Karnataka : 2023 INSC 803**, wherein it has been observed as below:

17. In the present case, given that there is no definitive evidence of last seen as also the fact that there is a long time-gap between the alleged last seen and the recovery of the body, and in the absence of other corroborative pieces of evidence, it cannot be said that the chain of circumstances is so complete that the only inference that could be drawn is the guilt of the appellant. In **Laxman Prasad v State of Madhya Pradesh, (2023) 6 SCC 399**, we had, upon considering **Sharad Birdhichand Sarda v State of Maharashtra, (1984) 4 SCC 116** and **Shailendra Rajdev Pasvan v State of Gujarat, (2020) 14 SCC 750**, held that '*... In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime.*' It would be unsafe to sustain the conviction of the appellant on such evidence, where

the chain is clearly incomplete. That apart, the presumption of innocence is in favour of the accused and when doubts emanate, the benefit accrues to the accused, and not the prosecution. Reference can be made to **Suresh Thipmappa Shetty v State of Maharashtra, 2023 INSC 749.**

14. On the other hand, learned A.G.A.-I would submit, this is a case of circumstantial evidence. The prosecution may not be burdened to prove the exact manner in which the occurrence had been caused or how the deceased had been abducted by the appellant and done to death after commission of rape, soon thereafter. Minor inconsistencies pointed out by the defence may lose their relevance in face of evidence of last seen. He has also referred to the age of the deceased and the testimony of P.W.2 to submit that, that minor child witness had seen the appellant at relevant point of time with the deceased 'X'. Looking to his age, he would have taken time to report such matter to P.W.1. A child's world, is a world of trust and not of doubt or suspicion. Therefore, no adverse inference may be drawn for reason of the child witness taking time to report the evidence of last seen, to his grandfather (P.W.1).

15. Having heard the learned counsel for the parties and having perused the record, the F.I.R. narration noted above was reiterated by P.W.1. During his cross-examination, he admitted that after 'X' went missing, the appellant and his family participated in the search for 'X', everyday. Thus, the prosecution narration in the F.I.R. that the appellant had fled from the village was contradicted by P.W.1 himself. That contradiction finds further corroboration from the Case Diary dated 26.04.2009 indicating that the appellant was arrested on 26.04.2009 from the village itself. P.W.1 also admitted that the

parties were known from before and that prior to the present occurrence there was no incident involving any misbehaviour caused to any of the parties.

16. Faiyyaz (P.W.8) stated that he had not seen the appellant with the deceased. During his cross-examination, P.W.8 denied that Javed (P.W.2), the child witness, had disclosed to him and others that he had last seen the deceased with the appellant on a '*Buggy*'. As to the discovery of the dead body of the deceased, he has reiterated the facts as narrated in the F.I.R. Thus, P.W.8 did not come with the evidence of last seen of the deceased with the appellant, rather he had claimed that he derived knowledge from the narration made by Javed (P.W.2).

17. That child witness (P.W.2) was examined on 30.01.2013 and at that time he was 10 years. He named the deceased 'X' correctly. He described that she died 3-4 years ago. Then, he only stated that, "मुझे कुछ नहीं पता". Yet, he further stated that, "बुगी से सलीम के साथ बैठ कर गई थी". He never disclosed the date or time of the day when he had last seen that the deceased riding on a '*Buggy*' with the appellant. In the process of further questioning by way of cross-examination, he stated, he did not know 'X' had travelled on a '*Buggy*'. Then on being asked, which of the two statements was correct, whether he had seen the deceased riding on Buggy with the appellant or that he did not know, he stated that, "दोनों में से सलीम नहीं पता वाली बात सही है". As to the specific question, when and what time he had last seen 'X' with the appellant, he stated that, "किस समय गई मुझे नहीं पता कि शाम को गई या सुबह". On further question whether he knew the appellant, he answered in the negative. Then, he further

stated that he had not seen 'X' with anyone. He also denied having told Riyaz (P.W.1) that he had last seen 'X' with the appellant. He further denied having disclosed such occurrence to the Investigating Officer. His cross-examination was thus concluded on 30.01.2013 itself. The prosecution did not recall that witness and no further statement of P.W.2 was recorded.

18. Dr. D. K. Jain, who conducted the autopsy of the deceased, clearly proved the cause of death as asphyxia due to strangulation. He also proved commission of rape on the deceased before her death. As to the date and time of occurrence, he stated that same may have taken place about four days earlier. He opined that death was caused four days earlier, i.e., 21.04.2009.

19. Thereafter, evidence of other formal witnesses was recorded. They proved various steps of investigation.

20. In so far as Zinya Hasan Khan (P.W.7) is concerned, he turned hostile during his examination-in-chief itself. He denied having been told by Javed (P.W.2) that the later had last seen the deceased with the appellant. After he was declared hostile, he was cross-examined by the prosecution. Nothing of significance was revealed during that cross-examination, except that he denied his previous statement recorded under Section 161 Cr.P.C. On further cross-examination by the defence, he disclosed that he was not present at the time of occurrence.

21. With respect to conviction based on circumstantial evidence, the law has been discussed by the Supreme Court in its various decisions. In **Sharad Birdhichand Sarda Vs. State of**

Maharashtra : 1984 Cri. L.J. 178 the Supreme Court observed as under:

“150. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete than a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

151. 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 fundamental and basic decision of the Apex Court is **Hanumant v. The State of Madhya Pradesh**.⁽¹⁾ This case has been uniformly followed and applied by this Court in a large number of later decisions upto date, for instance, the cases of **Tufail (Alias) Simmi v. State of Uttar Pradesh**⁽²⁾ and **Ramgopal v. State of Maharashtra**⁽³⁾. It may be useful to extract what Mahajan, J. has laid down in **Hanumant's case (supra)**:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances 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."

152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in **Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra** where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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

154. 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 **The King v. Horry**,⁽¹⁾ 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 up on no rational hypothesis other than murder can the facts be accounted for."

155. Lord Goddard slightly modified the expression, morally certain by 'such circumstances as render the commission of the crime certain'.

156. 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's case (supra) was approved by this Court in Anant Chintaman Lagu v. The State of Bombay⁽²⁾ Lagu's case as also the principles enunciated by this Court in Hanumant's case (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases Tufail's case (supra), Ramgopals case (supra), Chandrakant Nyalchand Seth v. The State of Bombay (Criminal Appeal No. 120 of 1957 decided on 19.2.58), Dharmbir Singh v. The State of Punjab (Criminal Appeal No. 98 of 1958 decided on 4.11.1958). There are a number of other cases where although Hanumant's case has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration⁽¹⁾. Mohan Lal Pangasa v. State of U.P.,⁽²⁾ Shankarlal Gyarsilal Dixit v. State of Maharashtra⁽³⁾ and M.C. Agarwal v. State of Maharashtra⁽⁴⁾-a five-Judge Bench decision.

157. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in **Deonandan Mishra v. The State of Bihar**(5), to supplement this argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:

"But in a case like this where the various links as started above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation—such absence of explanation of false explanation would itself be an additional link which completes the chain."

158. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied:

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved.
- (2) the said circumstance point to the guilt of the accused with reasonable definiteness, and
- (3) the circumstance is in proximity to the time and situation."

22. Applying that principle, we have to see if the chain of evidence is complete to support the prosecution story in material parts, as may lead us to the conclusion of guilt, free from other possibilities and doubt that the occurrence may have been

caused by someone else, in some other manner. In the first place, the prosecution has been able to successfully prove that the deceased 'X' went missing on 22.04.2009 at about 12:00 noon, while she was playing. Yet, no F.I.R. came to be lodged for more than one and half day. The First Information Report itself was lodged on 25.04.2009, on the date the discovery of the dead body of 'X' and after one day from disclosure claimed to have been made by the child witness (P.W.2) to his grandfather Riyaz (P.W.1)-of having last seen the deceased with the present appellant.

23. Therefore, the critical aspect of the prosecution story hinges on evidence of last seen. Other than that, no adverse circumstance has been found proved against the appellant. Though P.W.1, narrated in the F.I.R. that the appellant had gone missing after the occurrence, but during his cross-examination he specifically admitted that the appellant and his family members joined the search of the deceased 'X', everyday, after she had gone missing. It also appears from C.D.-2 that the appellant continued to remain present in the village even after discovery of the dead body of 'X'. That fact is also proved from the statement made by the Investigating Officer. It indicates that the appellant was arrested from the village, on 26.04.2009, i.e., one day after the discovery of the dead body of the deceased and the F.I.R. being lodged. Therefore, the evidence of solitary child witness-of last seen, requires very careful examination. While a solitary child eye witness may not be disbelieved if his account is consistent and trustworthy and at the same time as to principle, it has been laid down in **Vadivelu Thevar Vs. State of**

Madras : AIR 1957 SC 614, wherein the Supreme Court observed as below :-

“The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well- established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for, proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act

upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.”

24. Then, in **Joseph vs State of Kerala, (2003) 1 SCC 465**, with respect to testimony of single eye-witness, the Supreme Court further observed:

To our mind, it appears that the High Court did not follow the aforesaid standard but went on to analyse evidence as if the material before them was given for the first time and not in appeal. Section 134 of the Indian Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a court to record and sustain a conviction on the evidence of a solitary eyewitness. But, at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implicit confidence. By this standard, when the prosecution case rests mainly on the sole testimony of an eyewitness, it should be wholly reliable. Even though such witness is an injured witness and his presence may not be seriously doubted, when his evidence is in conflict with other evidence, the view taken by the trial court that it would be unsafe to convict the accused on his sole testimony cannot be stated to be unreasonable.

25. Again, in **Bhimappa Chandappa Hosamani vs State of Karnataka, (2006) 11 SCC 323**, word of caution was added by

the Supreme Court, a Court may pass the order of conviction, solely on that testimony. It observed as below:

"We have undertaken a very close and critical scrutiny of the evidence of PW 1 and the other evidence on record only with a view to assess whether the evidence of PW 1 is of such quality that a conviction for the offence of murder can be safely rested on her sole testimony. This Court has repeatedly observed that on the basis of the testimony of a single eyewitness a conviction may be recorded, but it has also cautioned that while doing so the court must be satisfied that the testimony of the solitary eyewitness is of such sterling quality that the court finds it safe to base a conviction solely on the testimony of that witness. In doing so the court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or suspicion, must impress the court as wholly truthful, must appear to be natural and so convincing that the court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness."

26. Applying the above test, we are further mindful that the child witness (who was about six years of age at the time of occurrence and ten years of age on the date when his statement was recorded by the learned court below) is the solitary eye witness. In that regard, the law on that point has been discussed by the Supreme Court in various decisions. In **Dattu Ram Sakhare Vs. State of Maharashtra : (1997) 5 SCC 341** the Hon'ble Supreme Court was pleased to observe as under :-

"The entire prosecution case rested upon the evidence of Sarubai (P.W.2) a child witness aged about 10 years. It is, therefore, necessary to find out as to whether her evidence is corroborated from other evidence on record. A child be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the evidence Act provided that such witness is able to understand the question and able to give rational answers thereof. The

evidence of a child witness and credibility thereof would depend upon the circumstances of each case. case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record. In the light of this well settled principle we may proceed to consider the evidence of Sarubai(P.W.2).”

27. Then, again in **Ratansinh Dalsukhbhai Nayak vs State of Gujarat, (2004) 1 SCC 64**, after relying on **Dattu Ramrao Sakhare (supra)**, the Supreme Court further elaborated on the vulnerability of a child witness and observed that a child witness may remain amenable to tutoring. Therefore, a more careful scrutiny is required - of such evidence. In that regard, it was observed as below:

"The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

28. Then, in **Golla Yelugu Govindu Vs. State of A.P., (2008) 16 SCC 769**, again, reliance was placed on **Dattu Ramrao Sakhare (supra)**. Thereafter, principle laid in **Dattu Ramrao Sakhare (supra)** and **Ratansinh Dalsukhbhai Nayak (supra)** was reiterated. Last, in **Alagupandi vs State of T.N., (2012) 10 SCC 451**, again the principal laid down in **Dattu Ramrao Sakhare (supra)** and **Ratansinh Dalsukhbhai Nayak (supra)** was reiterated.

29. Applying the above tests, we note that at present the statement made by Javed (P.W.2), the solitary child witness, is lacking in material parts. First, he never disclosed to the court, the date or time of the day when he claimed to have last seen the deceased 'X' with the appellant. Unless that proximity of time between the disappearance and the occurrence of death of 'X' was disclosed, it is not possible to reach a conclusion of conviction in the case under Sections 302 read with 376 I.P.C., on a finding that the appellant had caused that occurrence. In that regard, we are mindful of the statement made by Dr. D. K. Jain (P.W.3), that the occurrence may have been caused on 21.04.2009. That doubt raised by the medical opinion is fatal to the prosecution case, as it failed to lead evidence that the deceased was last seen with the appellant close to the time when she went missing. Unless the account offered by the child witness did indicate to the Court that he had indeed last seen the deceased with the appellant on or around 12:00 noon on 22.04.2009, it would be conjectural to reach a firm conclusion that the child witness had last seen the deceased with the appellant soon before she disappeared on 22.04.2009 at around 12:00 noon.

30. Then, upon query the solitary eye witness contradicted the entire prosecution story inasmuch as he denied having last seen the deceased with the appellant. He could not say whether he had seen 'X' with the appellant in the morning hours or in the evening hours or on which day/ date. He also denied that he knew the appellant. He specifically denied that he had ever seen the deceased with the appellant. He also denied that he shared such information with his grandfather Riyaz.

31. In such quality of evidence led by the prosecution, it cannot be said that the prosecution was able to prove beyond reasonable doubt that the appellant was present at the time and place of occurrence when 'X' disappeared. For the reasons not known to us, but relevant, though the forensic report disclosed presence of human sperm on the clothing of the deceased, no D.N.A. test was conducted on those samples and no D.N.A. match was attempted with the appellant, to trace the same of him. No other recovery is related to the appellant and no corroboration material exists to trust the prosecution claim of evidence of last seen.

32. On one hand, there exists duty to bring home the guilt of an offender and on the other hand, prosecution is equally responsible to prove beyond reasonable doubt. The completed chain of evidence must support the prosecution story that the accused alone could have caused the occurrence. Merely because offence involves a minor and the occurrence is of heinous offence, it did not absolve the prosecution of its responsibility to conduct itself with all sincerity-to adduce and collect hard evidence and to prove it, to establish that the appellant had caused the occurrence.

33. For the reasons noted above, we find that the order of conviction cannot be sustained. Reasonable doubt exists that the occurrence was caused otherwise than narrated by the prosecution. The chain of evidence is broken in vital parts. It is not clear that the deceased was last seen with the appellant soon before her disappearance. It is also not clear from the evidence that he had fled from the spot. Rather it is proven, he had joined the search for her, with P.W.1. No corroborative material exists to establish that either rape or murder or both were committed by the appellant. No recovery, whatsoever, exists to corroborate the prosecution story.

34. Consequently, this appeal succeeds and is **allowed**. The judgment and order dated 31.01.2014 passed by Shri Nalin Kant Tyagi, learned Additional District and Sessions Judge, Court No. 11, Ghaziabad in Sessions Trial No. 1184 of 2009 (State Vs. Saleem), arising out of Case Crime No. 106 of 2009, under Sections 376, 302, 201 I.P.C., Police Station Niwadi, District Ghaziabad, is set aside. The appellant is acquitted from the charges of offence framed against him, on a benefit of doubt. The accused-appellant is in jail since 26.04.2009. Let him be released, forthwith, unless he is wanted in any other case, subject to compliance of Section 437-A Cr.P.C.

35. The trial Court record along with the copy of this judgment and order be transmitted to the court concerned, forthwith.

36. Let a copy of this judgment be sent to the Jail Authorities concerned and the court concerned for compliance.

37. In view of the aforesaid, the pending application, if any, of this appeal also stands disposed of.

38. Shri Jyant Kumar, learned Amicus Curiae has rendered his valuable assistance to the Court. He be paid Rs. 25,000/- towards fee for the able assistance provided by him in hearing the present appeal.

Order Date :- 10.3.2025
Mustaqeem.

(Dr. Gautam Chowdhary, J.)

(S. D. Singh, J.)