

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 29/01/2020****Judgment delivered on : 02/03/2020****CRA No. 168 of 2013**

- Ramdhan Kahra S/o Radhelal Aged About 28 Years R/o Kahra Para, Janjgir, Distt Janjgir Champa C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through - P.S. Janjgir, Distt. Janjgir Champa C.G.

---- Respondent**CRA No. 249 of 2013**

1. Raghvendra @ Talu Singh Bhardwaj S/o Premi Lal Aged About 30 Years R/o Chandaniya Para, Janjgir, Distt. Janjgir-Champa C.G.
2. Tingu @ Prakash Kahra S/o Dayaram Aged About 27 Years R/o Kahrapara, Janjgir, Distt. Janjgir-Champa C.G.

---- Appellants**Versus**

- State Of Chhattisgarh Through Police Station Janjgir, Distt. Janjgir-Champa C.G.

---- Respondent

For Appellant in : Shri Sumit Singh, Advocate.
Cr.A.No.168/2013

For Appellants in : Shri R.K. Gupta, Advocate.
Cr.A.No.249/2013

For Respondent/State : Shri Rajendra Tripathi, P.L.

Hon'ble Shri Prashant Kumar Mishra, &
Hon'ble Shri Gautam Chourdiya, JJ

C A V JUDGMENT**Per Gautam Chourdiya, J**

01. Since both these appeals arise out of the judgment dated 8th February, 2013 passed by Additional Sessions Judge, Janjgir, Distt. Janjgir-Champa (CG) in ST No.04/2012, they are being disposed of by this common judgment. By the impugned judgment, each of the

accused/appellants stands convicted and sentenced as under:

Conviction	Sentence
Under Section 120B/34 of Indian Penal Code.	RI for six months, fine of Rs.500/-, in default to undergo additional RI for one month.
Under Section 376(g)/34 of Indian Penal Code.	RI for ten years, fine of Rs.1,000/-, in default to undergo additional RI for six months.
Under Section 302/34 of Indian Penal Code.	Life imprisonment, fine of Rs.3,000/-, in default to undergo additional RI for six months.
Under Section 201/34 of Indian Penal Code.	RI for three years, fine of Rs.300/-, in default to undergo additional RI for one month.

All the sentences were directed to run concurrently.

02. Case of the prosecution, in brief, is that on 24th September, 2011, deceased, Laxmin Bai, aged about 20 years, went for her work but she did not return thereafter. Her dead body was found near FCI Godown as mentioned in the spot maps of Ex.P/26, P/33 & P/59. As per Merg Ex.P/27 lodged by Devkumar Gadwal (PW-7) on 25th September, 2011 at 7.30 am, he informed the police that as usual at 4 pm on 24.9.2011 deceased had gone to Deendayal Avas Colony in connection with her work but she did not return in the night and thereafter, her dead body was found behind FCI Godown. Postmortem on the body of the deceased was conducted on 25.9.2011 at 12.35 pm by PW-12 DR. AK Jagat vide Ex.P/34 wherein he noticed following symptoms/injuries on the person of the deceased:

“Dead body was cold and calmy. Rigor mortis present all over the body. P.M. liquidity present in dependent parts of body. Face was pale. Pupils are dilated and fixed. Cornea semi hazy, Dried nasal secretion present over right angle of mouth and right cheek. Mouth semi open. Little amount of greenish solid materials over tongue. Fingers cyanosed both hand nails. Diffuse superficial contusion present over right cheek and below right ear rough measurement (redish pink) 10 x 6 cm. Diffuse contusion present below left ear rough measurement 6 x 4 cm, redish pink. Redish abrasion present over both below elbow eternally 2 x 1 cm each. Ant bite like mark present all over trunk, around mouth and around both eyes. Ulceration redish present over right labia majora 0.5 x 0.5 cm. Abrasion reddish present over left labia majora 0.5 x 0.3 cm.”

In his opinion, the mode of death was asphyxia caused due to alcoholic intake with suspected poisoning and that along with this, possibility of sexual offence is there. However, viscera and clothings were preserved and advised to send it to FSL, Raipur for confirmation. The time of death was 12 to 18 hours prior to the postmortem examination.

03. FIR (Ex.P/50) was registered upon merged enquiry on 27.9.2011 at 8.40 am by Shyam Sunder Sharma (PW-24) under Sections 302, 34 & 376(g) of IPC against Prakash Kahra and Raghvendra Bhardwaj. During investigation, Dog Panchanamas were prepared vide Ex.P/3 & P/4 in presence of Vijay Kumar Lakda, Labour Officer (PW-4) and Bhupat Lal Dewangan, Labour Inspector (PW-5) in which it is mentioned that the sniffer dog having smelt the dead body of the

deceased and her bicycle lying on the place of occurrence, went to the house of the deceased and thereafter went to the Labour Office. After breaking open the lock of the Labour Office, in the room of the Office Assistant used packets of snacks (*Haldiram*) and hologram of liquor bottle were found. The dog was beating the door of Store room made in the Office Assistant Room. From the verandah of the Labour Office, Janjgir, one yellow coloured seal made of aluminum, one plastic hologram of Excise Department, two steel locks were seized vide Ex.P/5. From the room of the Office Assistant of District Labour Office, one open green coloured plastic sprite bottle of 600 ml containing 200 ml liquid like water lying on the table of accused Raghvendra Bhardwaj, wrappers of packets of snacks, one yellow coloured seal made of aluminum, wrapper of one tablet of Manforce 100 lying on the floor near the table of accused Raghvendra Bhardwaj, were seized vide Ex.P/6.

04. As per Ex.P/7, broken bottle of liquor and empty packet of snacks (*Haldiram*) lying outside the Labour Office were seized. As per Ex.P/8 & P/8A, screen shot showing call by accused Raghvendra @ Talu Singh from Mob.No.919770407400 to Jeevanlal Sahu (PW-19) on 24.9.2011 at 18:46 hours on being produced by Jeevanlal Sahu was seized. Vide Ex.P/9 two keys of District Labour Office were seized from Bharatlal Yadav (PW-6), Watchman. On being produced by Bhupat Lal Dewangan, Log Book, Daily Attendance Register; Outgoing Register, 2011; Diesel receipts were seized for the purpose of comparing handwriting and signature of accused Prakash Kahra vide Ex.P/10. From the house of the deceased, one mobile having Tata Docomo SIM

No.7415890282, one love letter kept in the copy of the deceased and one note book were seized vide Ex.P/11.

05. During investigation, confessional statement (memorandum) of accused Prakash Kahra was recorded vide Ex.P/25 wherein he stated that he was in love with the deceased and had written her letter for meeting him on 24th and that she was also having relations with others, therefore, he had a dispute with her over this issue. He states that on the said date, at around 6 pm the deceased came to the office, she had consumed liquor, he introduced her with accused Raghvendra and Raghvendra committed sexual intercourse with her against her will and thereafter, he (Prakash Kahra) also had sexual intercourse with her by using condom. He states that he made her drink I.B. liquor in which he had already mixed borate (*Suhaga*) with intent to kill her. When the deceased fell unconscious, doctor Jeevanlal and accused Ramdhan were called. She had died and therefore, her dead body was brought out by Ramdhan and himself and then in the motorcycle of Raghvendra, he along with Ramdhan took the dead body and threw it near FCI godown at about 9 pm. The cycle of the deceased was thrown a bit away from the dead body by him. The keys of the office and the remaining borate have been hidden in his house and the condom has been hidden behind the door of the store room. He states that borate mixed IB liquor bottle was thrown out of the window of the office.

06. About 160 ft. away from the place of occurrence, bicycle of the deceased was seized vide Ex.P/12. Vide Ex.P/13 on being produced

by accused Prakash Kahra, one railway ticket of Akaltara to Korba dated 25.9.2011, one Nokia mobile bearing two SIMs No.8435263102 (Idea) and 9907913613 (Smart Reliance GSM Service) were seized. Likewise, on being produced by accused Prakash Kahra from his house, borate like powder wrapped in a piece of newspaper, three keys, brown cargo fullpant and one half shirt were seized. As per Ex.P/15 on being produced by accused Prakash Kahra, his underwear bearing semen like stains was seized. As per Ex.P/16, one white coloured used condom was seized from the store room of Office Assistant, District Labour Office on being produced by accused Prakash Kahra. Similarly, on being produced by accused Prakash Kahra, one Imperial Blue liquor bottle of 180 ml containing 20 ml liquor and white powder and one empty liquor bottle of 180 ml in which High Esteem Special Malt Whisky is written, which were lying outside the window of the Clerk Room of accused Raghvendra Bhardwaj, were seized vide Ex.P/18. On being produced by accused Prakash Kahra, one blue-black coloured lady's cycle Hero Citi Bike was seized vide Ex.P/19 from the room of watchman at Shankar Vihar Colony, Janjgir.

07. On being produced by accused Raghvendra Singh Bhardwaj, his underwear bearing semen like stains and one Samsung mobile bearing SIM No.9770407400 were seized vide E.P/20 and one motorcycle bearing No.CG-11-ZE-1988, K-Bajaj-Caliber, its RC book and insurance policy were seized vide Ex.P/21.

08. As per FSL report (Ex.P/58) human sperm was found on Articles A, B, G1, J & K i.e. underwear of accused Raghvendra, Condom

seized from accused Tingu @ Prakash Kahra, panty of deceased & vaginal swabs of the deceased respectively. However, the semens found on Articles A, B & G1 were not sufficient for serological examination.

As per FSL report (Ex.P/53), ethyl alcohol and sodium borate was found in Articles C, H & I i.e. one bottle containing 50 ml yellow liquid, viscera (pieces of heart & stomach) of deceased & viscera (pieces of lungs, liver, spleen & kidney) of deceased. In Article F i.e. white powder wrapped in paper, sodium borate was found. However, no chemical poison was found in Articles D & L i.e. empty glass bottle and specimen salt solution respectively.

09. During investigation, call details of PW-19 Dr. Jeevanlal Sahu and accused Ramdhan were obtained vide Ex.P/48 and P/49 respectively. After recording statements of the witnesses and completing the formalities of investigation, charge sheet was filed against all the accused/appellants under Section 302, 376(g), 120B, 201 read with 34 of IPC. The trial Court framed charges under Sections 120B/34, 376(g)/34, 302/34 & 201/34 of IPC against the appellants, which were abjured by them and they pleaded for trial.

10. So as to hold the accused persons guilty, the prosecution examined 25 witnesses in all. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which accused Raghvendra and Prakash denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. Accused Ramdhan stated that he knows Jeevanlal Sahu (PW-19), he

did not enter TCL College building with Jeevanlal Sahu and that Jeevanlal Sahu asked accused Raghvendra for taking the girl to hospital. In his statement under Section 313(5) of CrPC accused Ramdhan specifically stated that accused Raghvendra and Prakash are known to him; accused Raghvendra called him on his mobile phone and requested to come to Labour Office, on which he reached the said place where both Raghvendra and Prakash were standing. Raghvendra told him (Ramdhan) that one person is lying unconscious in Labour Office, Dr. Jeevanlal Sahu has been called and after some time Dr. Jeevanlal Sahu reached there and asked about the patient, on which Raghvendra and Prakash took Dr. Jeevanlal into Labour Office whereas he (Ramdhan) was standing outside. After some time, all the three came out and Dr. Jeevanlal asked Raghvendra to take the patient to District Hospital and thereafter, he (Ramdhan) returned to his home. He states that he has never seen the deceased and that he has been falsely implicated in this offence. However, no witness in defence was examined by the accused persons.

11. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned in para-1 of this judgment.

12. Counsel for the appellants Raghvendra & Prakash submits that:

- in this case the alleged love letter seized from the house of the deceased was examined by the handwriting expert for motive but looking to the contents of the said love letter no motive is proved

against accused Prakash. It is also not proved by the prosecution that the said letter was written by accused Prakash to the deceased because the handwriting expert has not been examined before the Court by the prosecution. Therefore, opinion of the handwriting expert is not admissible under the law.

Reliance has been placed on the decision of the Supreme Court in the matter of ***State of M.H. Vs. Damu, (2000) 6 SCC 269.***

- the place of occurrence is also not proved by the prosecution as no eyewitness has seen the accused persons along with the deceased nor there is any eyewitness to the incident. Tracking by sniffer dog has no evidentiary value in view of judgment of the Hon'ble Supreme Court in the matter of ***Dinesh Borthakur Vs. State of Assam, (2008) 5 SCC 697.***
- only PW-19 Jeevanlal Sahu has identified the accused persons who states about being called by accused Raghvendra, going to old TCL College building and finding there a girl lying unconscious in the room, examining her pulse and advising accused Raghvendra to take her to hospital. However, this witness has not identified the deceased as the same girl who was found lying unconscious in TCL College building. Therefore, it is not proved by the prosecution that the appellants were last seen with the deceased.
- recovery of key of Labour Office from accused Prakash is not reliable looking to the fact that another key remains with other employee of the Office and key is shown to have been seized

from this accused only to falsely implicate him in this offence.

- Even evidence regarding the place of occurrence is also contradictory. PW-19 Jeevanlal Sahu states that he saw the girl with the accused persons in TCL College building. He does not state about the Labour Office where the offence is allegedly committed. The prosecution has failed to prove the place of occurrence and the statement of PW-19 is not trustworthy.
- recovery of sodium borate (*Suhaga*) from the house of accused Prakash is also not reliable looking to the statement of PW-14 Samaru who has turned hostile and not supported the prosecution case regarding purchase of sodium borate by this accused.
- the seized bottle containing poisonous substance is of no consequence looking to the fact that as per seizure there was 20 ml liquid (liquor) in the bottle but as per FSL report, 50 ml was found in it and its colour is also changed to some extent, therefore, it is doubtful whether the same contents seized from the accused were sent to FSL.
- when on 25th September, 2011 also search was made by the police and they found some articles from the Labour Office, seizure of other articles from the accused on 27th September, 2011 was doubtful because already search was made prior to 27th September, 2011.
- no any conspiracy, pre-meeting of mind or sharing of common intention has been proved by the prosecution against the accused/appellants.

Reliance has been placed on the decisions in the matters of *Sharad Birdichand Sarda Vs. State of MH, (1984) 4 SCC 116 (para 165)*; *Rahim Beg and another Vs. State of UP, (1972) 3 SCC 759*; *Krishan Kumar Malik Vs. State of Haryana, (2011) 7 SCC 130 (para 44)*; *Vasanta Sampat Dupare Vs. State of M.H., (2015) 1 SCC 253 (paras 21 to 26)*; *Mehboob Ali and another Vs. State of Rajasthan, (2016) 14 SCC 640 (paras 12 to 19)*; *Baldev Singh Vs. State of Punjab, (2009) 6 SCC 564 (paras 17 to 22)* and *Noor Mohammad Mohd. Yusuf Momin Vs. The State of M.H., (1970) 1 SCC 696 (para 7)*.

13. Learned counsel for accused/appellant Ramdhan submits that:

- in the FIR (Ex.P/50) name of appellant Ramdhan is not mentioned. He was arrested on 24th November, 2011 i.e. after two months of the incident. No one has stated that appellant Ramdhan committed any offence.
- as per confessional statement of accused Prakash (Ex.P/25), accused Ramdhan was not present at the time of incident and he was called by accused Raghvendra after the incident when the deceased became unconscious. At the same time, PW-19 Dr. Jeevanlal Sahu was also called. Therefore, the said statement is a very strong evidence in favour of accused Ramdhan to prove that he was not present at the time of incident nor committed any offence with other co-accused. It also shows that accused Ramdhan did not hatch any criminal conspiracy with the other co-accused and he was not sharing common intention with them.

Therefore, the trial Court has wrongly convicted him.

- as per call details of Ramdhan obtained by the police (Ex.P/49), at the time of occurrence, appellant Ramdhan was not present at TCL College building. As per Ex.P/49, he (Ramdhan) was called by accused Raghvendra from his mobile phone bearing No.9770407400 on 24th September, 2011 at 18:13 hours and thereafter Ramdhan from his mobile No. 9770148609 called Raghvendra at 18:17:55. Till that time Ramdhan did not reach the place of occurrence. Thereafter, Raghvendra called Ramdhan at 18:23:36. This document is filed by the prosecution and according to the prosecution till 6 pm appellant Ramdhan was not there and he did not reach there prior to 18:23:36. As per PW-19, Ramdhan had reached there before him. Call details of PW-19 Dr. Jeevanlal Sahu has also been proved by the prosecution vide Ex.P/48. PW-19 was called by Raghvendra on his mobile No.9827183706 on 24th September, 2011 at 18:34:25 and thereafter at 18:46:16. Looking to this fact that PW-19 also reached in front of TCL (Labour Office), it also supports the defence of Ramdhan.
- there is no direct evidence or circumstantial evidence in the form of FSL report or seizure from appellant Ramdhan to prove commission of sexual intercourse with the deceased or sharing of common intention with other co-accused or causing of disappearance of evidence of the crime. He only reached the place of occurrence on being called and requested by co-accused Raghvendra.

14. On the other hand, State counsel supporting the impugned judgment has submitted that with the help of the sniffer dog the police reached the place of occurrence i.e. Labour Office and prior to that no person was involved in this case. In this case, specific evidence is collected by the prosecution. As per confessional statement (memorandum) of accused Prakash (Ex.P/25), a love letter was written by accused Prakash to the deceased which was seized from her house prior to recording of this statement. Accused Prakash with intent to commit murder of the deceased in a pre-planned manner mixed sodium borate in the liquor and made the deceased drink the same. Both accused Raghvendra and Prakash committed sexual intercourse with the deceased. The said confessional statement is supported by seizure of certain articles from these accused persons including sodium borate. The postmortem report and the FSL reports also support the prosecution case. From the evidence on record, involvement of accused Ramdhan in commission of the said crime is also proved by the prosecution beyond all reasonable doubt. Therefore, the trial Court after due appreciation of the entire material available on record has rightly convicted and sentenced the appellants, which needs no interference by this Court.

15. Heard counsel for the respective parties and perused the material on record.

16. First we consider regarding the death of the deceased. The deceased was a young girl, aged about 20 years. Her dead body was found behind FCI godown as per spot map merg Ex.P/59 prepared by PW-25 Rajshree Ramu. Merg Ex.P/27 was lodged by Devkumar

Gadwal (PW-7) on 25th September, 2011 at 7.30 am informing the police that as usual at 4 pm on 24.9.2011 deceased had gone to Deendayal Avas Colony in connection with her work but she did not return in the night and thereafter, her dead body was found behind FCI Godown. The spot map and the merg intimation have been proved by PW-25 Rajshree Ramu and PW-7 Devkumar Gadwal respectively. Thereafter, inquest Ex.P/2 was prepared in presence of mother of the deceased and other witnesses. On the same day i.e. 25th September, 2011 the police with the help of sniffer dog reached the place of occurrence Labour Office vide Dog Panchanamas Ex.P/3 & P/4 prepared in presence of Vijay Kumar Lakda, Labour Officer (PW-4) and Bhupat Lal Dewangan, Labour Inspector (PW-5). From the verandah of the Labour Office, Janjgir, one yellow coloured seal made of aluminum, one plastic hologram of Excise Department, two steel locks were seized vide Ex.P/5. From the room of the Office Assistant of District Labour Office, one open green coloured plastic sprite bottle of 600 ml containing 200 ml liquid like water lying on the table of accused Raghvendra Bhardwaj, wrappers of packets of snacks, one yellow coloured seal made of aluminum, wrapper of one tablet of Manforce 100 lying on the floor near the table of accused Raghvendra Bhardwaj, were seized vide Ex.P/6. These seizures have not been challenged by the defence.

17. Postmortem on the body of the deceased was conducted on 25.9.2011 at 12.35 pm by PW-12 DR. AK Jagat vide Ex.P/34 wherein he noticed certain symptoms/injuries as mentioned in para-2 of this judgment. The doctor opined that the mode of death was asphyxia

caused due to alcoholic intake with suspected poisoning and that along with this possibility of sexual offence is there. However, viscera and clothings were preserved and advised to send it to FSL, Raipur for confirmation. As per FSL report (Ex.P/53), ethyl alcohol and sodium borate was found in Articles C, H & I i.e. one bottle containing 50 ml yellow liquid, viscera (pieces of heart & stomach) of deceased & viscera (pieces of lungs, liver, spleen & kidney) of deceased. In Article F i.e. white powder wrapped in paper, sodium borate was found. As per FSL report (Ex.P/58) human sperm was found on Articles A, B, G1, J & K i.e. underwear of accused Raghvendra, Condom seized from accused Tingu @ Prakash Kahra, panty of deceased & vaginal swabs of the deceased respectively. Thus, looking to the postmortem report and FSL reports, it stands proved that the deceased died due to poisonous substance and that she was also subjected to sexual intercourse.

18. PW-1 Rambai, mother of the deceased, states that on the date of incident the deceased had gone in connection with her usual work but did not return and they thought that she might have stayed at her work place. However, next morning her neighbour informed her that the deceased has been murdered and thrown behind the godown. On this, she along with other persons went towards FCI godown and found dead body of the deceased lying near FCI godown and her bicycle was also lying at some distance. She is a witness to inquest Ex.P/2.

19. PW-2 Anju Kumari Kenwat also states that the deceased used to say that two boys are following her and out of those two boys, one has

given her a letter. PW-3 Naresh Kumar Vishvakarma also states in para-2 that a day prior to the incident, accused Prakash had asked him about his sister/deceased. Accused Prakash also told that if no suitable boy is available for his sister/deceased, he wants to marry her. In his diary statement Ex.D/2 this fact is also mentioned. Therefore, it is proved from the evidence of this witness as also his diary statement that accused Prakash was interested in the deceased and was having infatuation with the deceased.

20. As per Ex.P/11, one love letter from the copy of the deceased was seized. PW-21 Ajit Singh in para-11 states that one mobile, one love letter and one copy as per Ex.P/11 were seized and he signed that document. PW-25 Rajshree Ramu also states that she seized articles as per Ex.P/11. Therefore, it is proved that one love letter was seized by the police from the house of the deceased.

21. As per confessional statement (memorandum) Ex.P/25 this fact is also disclosed by accused Prakash that he had written a letter to the deceased. True it is that in this case handwriting expert is not examined before the Court. But as per evidence of PW-3 Naresh Kumar it is proved that accused Prakash had infatuation with the deceased and he was looking for her and wanted to marry her.

22. The fact that on the date of incident, PW-19 Dr. Jeevanlal Sahu was called by accused Raghvendra, has been proved by PW-19 and his statement is corroborated by the copy of screenshot given by PW-19 as per Ex.P/8A of his mobile which was seized by the police as per Ex.P/8 and that document is not challenged by the defence. Mobile

bearing SIM No. 9770407400 is seized from accused Raghvendra as per Ex.P/20. PW-21 Ajit Das has admitted his signature on Ex.P/20 but not supported the prosecution case that he went to the house of accused Raghvendra.

23. PW-7 Dev Kumar Gadwal also admits his signature from Exs.P/16 to P/21. He also identified both the accused Raghvendra and Prakash in the Court vide para-7 of his deposition.

24. Now we consider the evidence regarding last seen and articles seized from the accused persons. PW-19 Dr. Jeevanlal Sahu states in paras 1 to 4 that on 24th September, 2011 at about 6-7 he was in his clinic, on his mobile phone No.98271-83706 accused Talu @ Raghvendra called him and told that his friend has consumed liquor and is lying, on which he replied that there are patients in his clinic, so he cannot come. However, again he was called by the same number and requested to come, on which he along with one of the patients present in his clinic went on motorcycle at Khokhra road where all the three accused persons stopped him and informed that their friend has consumed liquor, therefore, he should be examined. Then he (PW-19) along with the accused persons went to TCL college building where he found that one girl was lying unconscious. When he told the accused persons that on the false pretext they have called him whereas a girl is lying there unconscious, the accused persons kept mum. On the request of the accused persons he checked the pulses of the said girl, she was alive at that time and then he advised the accused persons for taking her to hospital and thereafter returned to his clinic.

25. PW-13 Santosh Kumar accompanied PW-19 Jeevanlal Sahu on motorcycle. He also states that when he along with PW-19 reached near old college, three persons stopped the motorcycle of PW-19 and then PW-19 went to the old college along with three accused persons, however, he (PW-13) stayed outside. This apart, accused Ramdhan has also admitted in reply to question No.98 in his statement under Section 313 of CrPC that PW-19 had asked accused Raghvendra to take the girl to hospital. Therefore, statement of PW-19 is also corroborated by the statement of PW-13 and aforesaid admission of accused Raghvendra in his defence statement u/s 313 of CrPC. Hence there is no reason to disbelieve the statements of PW-13 & PW-19.

26. Learned counsel for the appellants submitted that PW-19 has not identified the deceased as the same girl which was seen by him in the TCL college building because no identification was conducted by the police regarding identification of the deceased.

PW-19 says that when he entered TCL college building, he found one girl lying there unconscious, on being checked he found her alive and advised all the three accused persons to take her to hospital. Next morning dead body of the deceased was found near TCL college building behind FCL godown. No explanation has been given by all the three accused persons as to who was the girl examined by PW-19. There is no explanation by the accused persons as to why they kept mum when PW-19 told them that he has been called on the false pretext of their friend (one boy) having consumed liquor is lying whereas there was a girl. Thus, calling of PW-19 without informing him

about the real facts shows the guilty mind of accused Raghvendra and Prakash. Further, no explanation has been given by the accused persons as to who was the girl seen by PW-19 in unconscious condition, where she went thereafter and what happened to her.

27. Thus, from the above, it stands proved beyond all reasonable doubt that all the three accused persons were last seen with the deceased at the spot as mentioned in spot maps Ex.P/26, P/33 & P/59.

28. It is not disputed that both accused Raghvendra and Prakash are working in the Labour Office as Computer Operator and Driver respectively. This fact has been duly proved by PW-4 Vijay Kumar Lakda, PW-5 Bhupat Lal Dewangan and PW-6 Bharatlal Yadav.

29. It is well settled that while the services of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be taken as evidence for the purpose of establishing the guilt of an accused. In this case, with the help of sniffer dog the police reached the house of the deceased and the place of occurrence Labour Office and got the clue for investigation.

30. As per confessional statement (treated as memorandum) of Ex.P/25 of accused Prakash, he was in love with the deceased and had written a letter to her on 24th September and as she was having relation with other persons, there was a dispute between accused Prakash and the deceased. In this statement, he disclosed the above fact and a letter was also seized from the house of the deceased, author of which is mentioned as Prakash. Though prior to this

statement, the said love letter was seized from the house of the deceased during merg enquiry but it is corroborated by the disclosure statement of Ex.P/25 as well as the evidence of PW-3 Naresh Kumar who admits that accused Prakash was after his sister/deceased and used to ask about her.

In this statement Ex.P/25, accused Prakash also states that accused Ramdhan and Dr. Jeevanlal Sahu were called by them. This fact is also proved by accused Ramdhan in his defence statement as well as from call details Ex.P/48 and P/49 of PW-19 Dr. Jeevanlal Sahu and accused Ramdhan respectively. If any document is produced by the prosecution, the same can be used in defence by the accused. Though the documents of Ex.P/48 & P/49 are not proved as per Section 65 of the Indian Evidence Act but there is a direct evidence of PW-19 Jeevanlal Sahu who is known to accused Raghvendra and Prakash Kahra and has proved this fact that accused Raghvendra called him on the date of incident and has also proved the screenshot of his mobile vide Ex.P/8 & P/8A. The aforesaid piece of evidence also supports the defence of accused Ramdhan that he was called by accused Prakash and then he reached the place of occurrence.

31. Present is a case of forcible sexual intercourse and murder of one young girl. Upon clue being received from the sniffer dog, investigation was started promptly. As per statement Ex.P/25, accused Prakash stated that he had mixed borate (*Suhaga*) in the liquor and made the deceased drink the same and that Raghvendra and he committed sexual intercourse with her. As discussed above, it stands

proved from the FSL report (Ex.P/58) that human sperm was found on Articles A, B, G1, J & K i.e. underwear of accused Raghvendra, Condom seized from accused Tingu @ Prakash Kahra, panty of deceased & vaginal swabs of the deceased respectively. Further as per FSL report (Ex.P/53), ethyl alcohol and sodium borate was found in Articles C, H & I i.e. one bottle containing 50 ml yellow liquid, viscera (pieces of heart & stomach) of deceased & viscera (pieces of lungs, liver, spleen & kidney) of deceased. In Article F i.e. white powder wrapped in paper, sodium borate was found, which was seized pursuant to the statement Ex.P/25 of accused Prakash and PW-25 Smt. Rajshree Ramu has proved this fact. In the preceding paragraphs we have discussed that though the witnesses to the seizure and memorandum (Ex.P/25) have not fully supported the prosecution case but they have admitted their signature on the relevant documents. However, PW-25 Smt. Rajshree Ramu, investigating officer, has duly proved all these documents.

32. It cannot be stated as a rule of law that a police officer can or cannot be a sole eyewitness in a criminal case which will always depend upon facts of a given case. If testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a police officer and may have some interest in success of the case. Only when his interest in success of case is motivated by overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement. Presumption that a person acts honestly applies as much in favour of a

police officer as in respect of other persons and it is not proper to distrust and suspect him without there being good grounds therefor.

Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trust worthy, the Court can definitely act upon the same. If, in the course of scrutinizing the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. [**AIR 2013 Supreme Court 3344, [Pramod Kumar v. State \(GNCT\) of Delhi.](#)**]

33. In the present case, the investigating officer (PW-25) has fully supported the prosecution case. The defence has not established that the IO was having any ill-will or enmity with the accused persons and thus falsely implicated them. Therefore, there is no reason to disbelieve the statement of the IO.

34. Learned counsel for the appellants submitted that the case of the prosecution becomes doubtful for the reason that when some articles were seized on 25th September, 2011 as mentioned in Exs.P/5 to P/7 from the place of occurrence Labour Office, as to why other articles were not seized by the police on the same day.

In his statement Ex.P/25 accused Prakash disclosed that he had mixed borate in the liquor and remaining part of borate and keys of the

office were kept in his house. Thereafter, borate and keys were seized on his discovery statement as per Ex.P/14. As per Ex.P/15 & P/16 underwear of accused Prakash and condom used by accused Prakash were seized. It was not possible for the IO to find out these articles i.e. underwear which was kept in the house of accused Prakash and used condom which was hidden in the store room of Labour Office unless disclosed by accused Prakash as it was not easily accessible by any other person. Therefore, non-seizure of the said articles on 25th September, 2011 by the police is not fatal for the prosecution.

35. Learned counsel for the appellants also argued that the place of occurrence is not proved by PW-19 as he states in his deposition that he went to TCL college whereas according to the prosecution, the incident took place in Labour Office. Since as per spot maps proved by the prosecution, TCL college and Labour Office are one and the same, we find no substance in this argument.

36. Learned counsel for the appellant argued that when liquor bottle was seized from accused Prakash, it contained approximate 20 ml liquor of red colour as per Ex.P/18 whereas the FSL report (Ex.P/53) mentions that the said bottle contained 50 ml yellow colour liquid which makes it clear that the property seized by the police was not kept in safe custody and was tampered with and it is a case of plantation of witness and evidence against the accused persons.

As per Ex.P/18, approximate value and property of the liquid found in the bottle was mentioned as 20 ml red colour liquid and in the FSL report, it is mentioned as 50 ml yellow colour liquid. The seizure

memo mentions the approximate value and property of the liquid seized. The IO did not mention the same by specific measurement. Therefore, this argument also being without substance is rejected.

37. So far as judgment in the matter of *Sharad Birdichand Sarda* (supra) replied upon by counsel for the appellants is concerned, it is of no help to the appellants because in the present case, as discussed above, from the evidence of PW-3 Naresh Kumar, brother of the deceased, it is proved that accused Prakash Kahra was after the deceased and had infatuation with her. In his statement Ex.P/25 accused Prakash has stated that since the deceased was having relation with some other persons, he wanted to kill her and with that intention mixed borate in the liquor which was later given to the deceased. As per postmortem report, she died of suspected poisoning and as per FSL report (Ex.P/53), ethyl alcohol and sodium borate was found in the viscera of the deceased. Further, borate like powder was seized at the instance of accused Prakash Kahra and FSL report confirms the same to be borate.

38. In the matter of *Rahim Beg and another* (supra), the Hon'ble Supreme Court observed as under:

“25. We may now advert to the stains of human blood on the bush shirt of Mahadeo and the stain of semen on the Langot of Rahim Beg. So far as the blood stains on the bush shirt of Mahadeo are concerned, it may be stated that no question was put to Mahadeo during the course of his statement under [Section 342](#) of the CrPC that his bush shirt was stained with blood. Mahadeo not

having been asked to furnish an explanation regarding the stain of human blood on his bush shirt, no inference can be drawn against Mahadeo on that account. As regards the stain of semen on the Langot of Rahim Beg, we find that Rahim Beg is a young man of 22. The Langot in question was dirty at the time it was taken into possession. It cannot be said as to how old was the semen stain on the Langot. The semen stain on the Langot of a young man can exist because of a variety of reasons and would not necessarily connect him with the offence of rape."

The aforesaid judgment is not applicable in the present case because in this case, as per FSL report (Ex.P/58) human sperm was found on Articles A & B i.e. underwear of accused Raghvendra and Condom seized from accused Tingu @ Prakash Kahra. They were asked about the same in their statement under Section 313 of CrPC, however, no explanation whatsoever was offered by them except making bald denial.

39. The other judgments relied upon by learned counsel for the appellants in the matters of *Krishan Kumar Malik*, *Vasanta Sampat Dupare*, *Mehboob Ali and another* and *Noor Mohammad Mohd. Yusuf Momin* (supra) are of no help to the appellants because considering the circumstantial evidence in the present case i.e. last seen of all the accused persons on the spot by PW-19 Dr. Jeevanlal Sahu & PW-13 Santosh Kumar Dubey, the proved fact that the incident took place in the Labour Office where accused Raghvendra and Prakash Kahra were working as Computer Operator and Driver respectively; seizure of certain incriminating articles from the place of occurrence and at the

instance of accused Raghvendra and Prakash Kahra having nexus with the crime in question as per FSL reports (Ex.P/53 & P/58); statement Ex.P/25 of accused Prakash; call details of accused Ramdhan and PW-19 Dr. Jeevanlal Sahu; admission of accused Ramdhan in his statement under Section 313 of CrPC corroborating the statement of PW-19 regarding last seen of the accused persons at the spot with the deceased; non-explanation on part of the accused Raghvendra and Prakash to the incriminating circumstance appearing against them in the prosecution case; their conduct during the course of commission of the offence and subsequent thereto; it stands proved that it is accused Raghvendra and Prakash Kahra who after subjecting the deceased to forcible sexual intercourse committed her murder with common intention by making her drink the liquor mixed with borate (*Suhaga*) and further also caused disappearance of evidence of the crime by throwing the dead body away from the place of occurrence and concealing the other evidence of the crime. However, there is no evidence to prove the charge of criminal conspiracy against them. Therefore, their conviction under Sections 376(g)/34, 302/34 & 201/34 of IPC appears to be just and proper, and they are acquitted of the charge under Section 120B/34 of IPC.

40. So far as culpability of accused Ramdhan is concerned, as already discussed above, from the statement of Ex.P/25 of accused Prakash and the call details of Ex.P/48 & P/49, it is clear that accused Ramdhan reached the place of occurrence on being called by accused Raghvendra after the incident. Though documents of Ex.P/48 & P/49 have not been proved as per Section 65B of the Evidence Act but for

considering the defence of accused Ramdhan it can be considered as a proved document tendered in evidence by the prosecution. No incriminating article has been seized from accused Ramdhan. Therefore, in the given facts and circumstances of the case and the evidence available on record, it cannot be said that accused Ramdhan also committed rape with the deceased or shared common intention with other accused in committing her murder or hatched criminal conspiracy with them for commission of the crime. Though in this statement, accused Prakash has stated that with the help of accused Ramdhan and Raghvendra, the dead body was thrown behind FCI godown, however, there is no evidence available on record to prove that appellant Ramdhan in any manner helped the other accused persons in concealing the evidence of the crime. Therefore, conviction of Ramdhan under Section 201/34 of IPC is also not sustainable.

41. In the result:

- Cr.A.No.168/2013 filed by accused/appellant Ramdhan Kahra is allowed. He is acquitted of the charges under Sections 120B/34, 376(g)/34, 302/34 & 201/34 of IPC. Since he is on bail, his bail bonds shall remain in operation for a period of six months from today in view of provisions of Section 437A of CrPC.
- Cr.A.No.249/2013 filed by accused/appellants Raghvendra @ Talu Singh Bhardwaj and Prakash Kahra is allowed in part. While maintaining their conviction and sentence under Sections 376(g)/34, 302/34 & 201/34 of IPC, they are acquitted of the charge under Section 120B/34 of IPC. Since they are already in

jail, no further order regarding their arrest/surrender etc. is required to be passed.

Sd/

(Prashant Kumar Mishra)

Judge

Sd/

(Gautam Chourdiya)

Judge