

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 305 of 2017

Arising Out of PS. Case No.-6 Year-2016 Thana- MORKAHI District- Khagaria

Bhushan Sada, son of late Prabhu Sada, resident of village-Khairidih, P.S.-
Morkahi, District-Khagaria

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 298 of 2017
Arising Out of PS. Case No.-6 Year-2016 Thana- MORKAHI District- Khagaria

Anjesh Sada S/o Late Kallar Sada @ Kaleshwar Sada @ Late Laleshwar Sada
R/o vill - Khairidih, P.S.- Morkahi, Distt.- Khagaria

... .. Appellant/s

Versus

1. The State of Bihar
 2. Mr. X S/o Y R/o vill - Khairidih, P.s.- Morkahi, Distt.- Khagaria
- Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 305 of 2017)
For the Appellant/s : Mr. Aditya Kumar, Adv.
Mr. Ram Sumiran Rai, Adv.
For the State : Ms. Shashi Bala Verma, APP
For the Informant : Ms. Surya Nilambari, Amicus Curiae
(In CRIMINAL APPEAL (DB) No. 298 of 2017)
For the Appellant/s : Mr. Vivekanand Singh, Adv.
Mr. Aarsh Kumar, Adv.
Mr. Hira Jha, Adv.
For the State : Ms. Shashi Bala Verma, APP
For the Informant : Ms. Surya Nilambari, Amicus Curiae

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 12-11-2025



The aforesaid appeals preferred under Section 374 (1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C.”) arise out of the same judgment of conviction and order of sentence dated 10.1.2017 and 17.1.2017 respectively, hence the aforesaid appeals have been heard together and are being disposed off by the present common judgment. By the said judgment dated 10.1.2017, passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Khagaria (hereinafter referred to as “the Ld. Trial Judge”) in Protection of Children from Sexual Offences Act Case No. 3 of 2016 (arising out of Morkahi P. S. Case No. 6 of 2016), the appellants have been convicted under Sections 302/34, 376(A) and 376(D)/34 of the Indian Penal Code (hereafter referred to as “the I.P.C.”) and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the “POCSO Act, 2012”). By the aforesaid order of sentence dt. 17.01.2017, the appellants have been directed to undergo rigorous imprisonment for life under Section 376 (A) of the IPC and rigorous imprisonment for life under Section 376 (D) of the IPC with fine of Rs. 25,000/- each and in default of payment of fine, they have been further directed to undergo one-year rigorous imprisonment each. The learned Trial Judge has further clarified that the sentence of



imprisonment for life shall mean imprisonment for the remainder of the appellants' natural life. No separate sentence has been awarded under Section 302, considering the fact that Section 376(A) of the I.P.C. is a joint form of Section 302 and 376 I.P.C. The appellants have also been sentenced to undergo rigorous imprisonment for life under Section 4 of the POCSO Act, 2012 with fine of Rs. 25,000/- each & in default of payment of the fine, they have been further directed to undergo one-year rigorous imprisonment each.

2. The short facts of the case are that a written report was submitted by the informant, namely Ganeshi Sada (P.W.-5) on 17.01.2016 before the Officer-in-Charge, Morkahi Police Station (Khagaria), wherein he has stated that on 16.01.2016 at about 6:00 pm in the evening while he was feeding his cattle at the *basa* (cattle house) along with his daughter (hereinafter referred to as "the victim girl"), aged about 10 years, his co-villagers, namely Bhushan Sada, Gholat Sada and Anjesh Sada had arrived there, whereafter they had forcibly held the hand of her daughter and dragged her away, whereupon the informant had objected to the same leading to the said accused persons having shown country made pistol and after threatening him they had forcibly taken away the daughter of the informant and



upon hearing *hulla* (alarm), the co-villagers had assembled there. The informant with the aid of the villagers had engaged in search and during the course of search, they found the dead body of the victim girl in the corn field of Dhaneshwar Singh in a semi-nude condition with blood oozing out of her private parts. The informant has further stated that he has reasons to believe that his daughter (victim girl) was forcibly taken away by the aforesaid three accused persons, who had raped and killed her. On the basis of the aforesaid written report of the informant, Morkahi P.S. Case No. 6 of 2016 was registered on 17.01.2016 at about 11:00 am under Sections 302/ 376(G)/34 of the I.P.C. and Section 3/4 of the POCSO Act, 2012.

3. The police had then investigated the matter and having found the occurrence to be true, had filed the charge-sheet on 31.03.2016 under Sections 302/376(G)/34 of the I.P.C. and Section 3/ 4 of the POCSO Act, 2012. The learned Trial Judge had then taken cognizance against the appellants and one another under Sections 302, 376(D)/201 of the I.P.C. and Section 3/ 4 of the POCSO Act, 2012. Thereafter, the learned Trial Judge had framed charges vide order dated 09.05.2016, 18.07.2016 and 14.09.2016 respectively against the appellants and one another under Section 376(D)/34, 302/34 and 376(A) of



the I.P.C. as also under Section 3/ 4 of the POCSO Act, 2012.

4. The prosecution has examined nine witnesses, inasmuch as while P.W.1 (Maheshwar Sada), P.W.2 (Suresh Sada), P.W.3 (Malti Devi), P.W.4 (Punam Kumari), P.W.5 (Ganeshi Sada, the informant of this case) and P.W.6 (Anil Kumar Sada) have been examined by the prosecution to prove the guilt of the accused persons, P.W. 7 (Dr. Purushottam Kumar Sinha) is the Doctor who had examined the accused persons and prepared their medical reports, P.W.8 (Dr. Ashok Prasad) is the Doctor who had conducted the postmortem examination of the dead body of the deceased (victim girl) and P.W.9 (Mahesh Kumar) is the Investigating Officer of the present case.

5. The prosecution by way of documentary evidence, had proved the following documents, which were marked as exhibits during the course of the trial: -

Ext. 1 to 1 /1	Signature of Anil Kumar Sada on two seizure lists.
Ext. 1/2	Signature of Anil Kumar Sada on written report.
Ext. 2 to 2 /2	Medical report of Anjesh Sada, Tanuki Sada @ Gholat Sada and Bhushan Sada, issued by Medical Officer.
Ext. 3	Post Mortem Report of deceased Anita Kumari.



Ext. 4	Confessional statement of Bhushan Sada.
Ext. 5	Registration endorsement on written petition.

6. The learned counsel for the appellants of the aforesaid two cases has submitted that there is huge variance in the version as narrated in the written report submitted by the informant, Ganeshi Sada (P.W.5) and his evidence tendered before the learned Trial Court. It is stated that while in the written report, Ganeshi Sada (P.W.5) has stated that the appellants and one another accused person had arrived at his *basa* (cattle house), while he along with his daughter (victim girl) were feeding their cattle and had forcibly, on pistol point, taken away the victim girl, whereafter they had committed rape with her and killed her. On the contrary, in his deposition, P.W.5 (Ganeshi Sada) has changed the story and he has stated that the occurrence had taken place at 6:00 pm in the evening on 16.01.2016 when he was at his cattle house and his daughters were coming back to their home, then all the three accused persons had arrived, whereafter Bhushan Sada, who was holding a cycle in his hand had asked the victim girl to climb on the cycle so that he can leave her at her home and then he had taken away the victim girl, however he did not drop the victim girl at her home and instead took her in the corn field and committed rape with her, whereupon she was killed. The learned counsel



for the appellants has further submitted that the incident is stated to have taken place at 6:00 pm on 16.01.2016, whereafter the Investigating Officer had received a rumor information to the effect that a girl has been killed, whereupon he had come to the village at 11:45 pm, however no FIR was registered. Again, in the morning of 17.1.2016 at 6:00 am, the Investigating Officer i.e. P.W.9 and one Arjun Prasad Mehta (A.S.I.) had gone to the village, whereafter the inquest report was prepared on the same day at 10:30 am. Thus, it is submitted that the delay in lodging the FIR shows that the actual version of the occurrence has been suppressed and the appellants have been falsely implicated.

7. The learned counsel for the appellants has further submitted that the inquest report would show that the dead body was recovered from near a mobile tower at village Khairidih, however P.W.1 (Maheshwar Sada) has stated that in the night itself, they had brought the dead body of the victim girl to their home. Thus, it is submitted that even the place of occurrence has not stood proved and more importantly the two witnesses, who had signed on the inquest report and the A.S.I., Arjun Prasad Mehta, who had prepared the inquest report have not been examined, hence the inquest report has also not stood proved. It is next submitted that the theory of last seen would not be



relevant in the present case, inasmuch as the FIR neither contains the name of the mother nor the other daughter of the informant, thus their presence at the place of occurrence is also not proved. The learned counsel for the appellants has next referred to the deposition of P.W.1 (Maheshwar Sada) and has submitted that in paragraph no. 13 thereof, he has stated that the dead body was brought at home on 16.01.2016 at 10:45 pm. Reference has also been made to paragraph no. 5 of the deposition of P.W.1 (Maheshwar Sada) to submit that the dead body was found at around 11:00 pm and the police had arrived in the village in the night itself, where all the family members were present. Reference has also been made to paragraph no. 6 of the deposition of P.W.1 (Maheshwar Sada) to submit that the police had first recorded the statement of P.W.1 (Maheshwar Sada) and had then gone away, however on the basis of the said statement, no FIR was registered, meaning thereby that the first version has been suppressed by the prosecution. It is also submitted that there are no eye-witnesses to the alleged occurrence, nobody had seen the appellants taking away the victim girl, hence the present case is a case of circumstantial evidence, however the chain of circumstance is not complete, thus the guilt of the appellants has not stood proved.



8. The Ld. counsel for the appellants has further submitted that all the witnesses are stated to have learnt about the incident from P.W.4 (Punam Kumari), however the deposition of P.W.4 (Punam Kumari) would show that the same is full of contradictions and in fact, she has also admitted in paragraph no. 16 of her deposition that she has deposed as she was taught. Thus, it is submitted that the very basis of the case of the prosecution vanishes, hence the appellants are fit to be acquitted.

9. The learned counsel for the appellants has next submitted that it is evident from the evidence of the Investigating Officer that the informant was not present at the *basa* at the time of occurrence and he had returned back to his *basa* only at 7:00 pm on 16.01.2016, hence he is also not a relevant witness in the present case. The learned counsel for the appellants has referred to the deposition of P.W.4 (Punam Kumari) to submit that she has stated that she was at school at the time the girl was killed and she does not know how the victim girl was taken away. Reference is also made to the deposition of P.W.7 (Dr. Purushottam Kumar Sinha) to submit that though all the accused persons were examined by the Doctor and swab was taken as also swab of victim girl was taken and sent for F.S.L.



examination, but the report has not yet been received, hence it has not been conclusively proved that the accused persons are the perpetrators of crime. Lastly, it is submitted that the accused persons were examined by the Doctor after two days on 18.01.2016 and the prosecution has failed to prove the injuries sustained by the accused persons. Thus, it is submitted that the judgment of conviction and order of sentence rendered by the learned Trial Judge is perverse and fit to be set aside.

10. The learned Amicus Curiae, Ms. Surya Nilambari, appearing for the informant has submitted that the present case is based on circumstantial evidence wherein the foundational facts are required to be proved. The first circumstance which has been pointed out in the present case is the last seen theory. The learned Amicus Curiae has referred to the deposition of P.W.3 (Malti Devi) to submit that she has stated that all the three accused persons had come and taken away the victim girl. Reference has also been made to the deposition of P.W.4 (Punam Kumari), who has stated that the appellants had taken away the victim girl. Again, reference is made to P.W.5 (Ganeshi Sada, the informant) to submit that in the opening paragraph of his Examination-in-Chief, he has stated that he saw the victim girl being taken away by the accused persons including the



appellants and in paragraph no. 10 of his deposition, he has categorically denied that he had arrived at his cattle house at 7:00 pm. Thus, it is submitted that the theory of last seen is proved in the present case, inasmuch as admittedly at least P.W.3 (Malti Devi) has deposed consistently to the effect that the three accused persons had taken away the victim girl and no contradiction has been elicited during her cross-examination by the defense. Hence, it is submitted that the said circumstance is enough to shift the burden on the defence U/s. 29 of the POCSO Act, 2012 to prove their innocence, which they have failed to discharge, hence the appellants are guilty of the offence which they have committed. In this regard, reference has been made to a judgment rendered by the Hon'ble Apex Court in the case of ***Sambhubhai Raisangbhai Padhiyar vs. State of Gujarat***, reported in ***(2025) 2 SCC 399***, paragraphs no. 13, 23 and 25 whereof are reproduced herein below:-

“13. Approaching the case at hand with the above principles in mind, we find the following.

23. It is well-settled that if the accused is last seen with the deceased and particularly in a case of this nature when the time-gap between the last seen stage and occurrence of death is so short, the accused must offer a plausible explanation as to how he parted company with the deceased and the explanation offered must be satisfactory. Section 106 of the Evidence Act mandates that when any fact is especially within the knowledge of



any person, the burden of proving that fact is upon him. It is on this principle that this Court has repeatedly held that if an accused fails to offer an explanation, he fails to discharge the burden cast upon him under Section 106 and if he fails to offer a reasonable explanation that itself provides an additional link in the chain of circumstances [see State of Rajasthan v. Kashi Ram [State of Rajasthan v. Kashi Ram, (2006) 12 SCC 254] and Pappu v. State of U.P. [Pappu v. State of U.P., (2022) 10 SCC 321].

25. PW 7, Dr Kamlesh Kumar who examined the accused on 15-4-2016 deposed that there was injury on the genitals of the accused. Ext. P-27 certificate also reveals that there were abrasions on the prepuce of the accused. It will be seen from the injuries on the deceased as reflected in the evidence of PW 8 Dr Kalpesh and the post-mortem report Ext. P-28 that the perianal region of the deceased had multiple scratch abrasions with the underlying contusions; that the perianal skin was swollen and reddish in colour; the anal orifice dilated, roomy and that part of the rectum protruded out through the anal orifice. The doctor has also opined that these injuries were ante-mortem in origin. The abrasions in the prepuce of the accused were there even two days after the incident. The only suggestion in the cross-examination to the doctor raised that if a person scratches the genitals a lot, signs of contusions could be observed. No other explanation is offered. Considering the overall facts, we are inclined to accept this circumstance as an additional link in the chain of circumstances”

11. The Ld. Amicus Curiae has also referred to a judgment rendered by the Hon’ble Apex Court in the case of **Pappu Vs. State of Uttar Pradesh**, reported in **2022 (2) BLJ 231 (SC)**, para nos. 21 and 22.13 whereof are reproduced herein below:-

“21. As noticed, the trial court and the High Court have concurrently recorded the findings that the prosecution



has been able to successfully establish the chain of circumstances leading to unmistakable conclusion that the appellant is guilty of the offences of rape and murder of the victim child as also of concealing her dead body. The fundamental fact, as held proved against the appellant is that the deceased was lastly seen in the company of the appellant when he took the deceased along with himself while shooing away other children. The other significant fact, as held proved, is that the dead body of the victim child was recovered at a faraway place near the riverbank at the instance of the appellant. Coupled with the said two aspects is the factor that the appellant had failed to satisfactorily explain his whereabouts since he was last seen in the company of the deceased as also his knowledge of the location of the dead body. These facts and factors, taken together with the medical & other scientific evidence, are said to be of a complete chain of circumstances, leading to the conclusion on the guilt of the appellant.

22.13. *As regards the last seen theory and operation of Section 106 of the Evidence Act, in Kashi Ram (supra) this Court has explained and laid down as follows :*

“23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of Evidence Act. In a case resting on circumstantial evidence if the accused



fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in Naina Mohamed [AIR 1960 Mad 218].

24. There is considerable force in the argument of counsel for the State that in the facts of this case as well it should be held that the respondent having been seen last with the deceased, the burden was upon him to prove what happened thereafter, since those facts were within his special knowledge. Since, the respondent failed to do so, it must be held that he failed to discharge the burden cast upon him by Section 106 of the Evidence Act. This circumstance, therefore, provides the missing link in the chain of circumstances which prove his guilt beyond reasonable doubt.”

12. Thus, it is submitted by referring to the judgment rendered in the case of ***Sambhubhai Raisangbhai Padhiyar*** (supra) that the accused were obliged to offer explanation as to how they had parted company with the victim girl especially when the gap between the last seen and the occurrence is short.

13. The second circumstance which has been urged by the learned Amicus Curiae is the injuries found on the private parts



of the accused persons including the appellants. It is submitted that P.W.7 (Dr. Purushottam Kumar Sinha) had examined the appellants including one another and has found injuries on the private parts of the accused persons including the appellants as also has opined that the injuries are suggestive of recent sexual contact / intercourse. In fact, P.W.8 (Dr. Ashok Prasad), who had conducted the postmortem of the dead body of the victim girl has also found grievous injury on the private parts of the victim girl and has opined that the death has been caused on account of neurogenic shock due to above-mentioned injuries and hemorrhage has been caused due to rape. Thus, in light of the injury report of the appellants, coupled with the postmortem report of the victim girl, it was incumbent upon the appellants to have offered explanation as to how they had sustained injuries on their private parts, hence in absence of any explanation, the said circumstance would be an additional link in the chain of circumstance. Therefore, it is submitted that the circumstances enumerated hereinabove have stood established and are consistent with the guilt of the accused which are not explainable by any hypothesis, thus the circumstances are conclusive in nature and the chain of circumstance is so complete so as to point towards the guilt of the appellants for



the offences charged, hence the conviction as imposed by the learned Trial Court is not required to be interfered with.

14. Thus, it is submitted by the learned Amicus Curiae that in view of the provisions contained under Section 106 of the Indian Evidence Act, it was incumbent upon the appellants to have discharged their burden of offering a reasonable explanation with regard to the last seen theory and the injuries sustained by them on their private parts.

15. Now coming to the issue of variance in the story as disclosed in the F.I.R. as compared to the deposition of the informant (P.W.5), it is submitted by the learned Amicus Curiae that neither the informant nor any other witnesses were confronted with the written report so as to elicit their response and in case they had been confronted with the written report, their response could have been elicited and possibly, the informant could have explained the disparity between the F.I.R. and his evidence. It is submitted that First Information Report is not a substantive piece of evidence and it can only be used to either draw contradictions or for corroboration but then it has to be put to the witnesses to elicit their response, which has not been done in the present case. Thus, the difference between the F.I.R. and the evidence of the informant cannot lead to any



prejudice to the prosecution. Reference has been made to a judgment rendered by the Hon'ble Apex Court in the case of ***Munna Pandey vs. State of Bihar***, reported in ***2023 SCC OnLine SC 1103***. 16. Therefore, it is submitted that unless and until the discrepancy in the F.I.R. was put to the witnesses so as to elicit an answer from the witnesses with regard to the same, no benefit can enure to the advantage of the defense, thus on such basis the case of the prosecution cannot be thrown out, especially in case evidence of other nature such as medical evidence etc. are available so as to prove the case of the prosecution. In this regard, reference has been made to a judgment dated 18.03.2025 passed by the Hon'ble Apex Court in Criminal Appeal No. 586 of 2017 (***State of Rajasthan vs. Chatra***), paragraph no. 19 whereof is reproduced herein below:-

“19. The question that arises for consideration is whether this contradiction in the FIR versus the statement made in Court is material, in as much as, to discredit his statement, thereby landing a fatal blow to the prosecution case. A Constitution Bench of this Court in State of Punjab v. Kartar Singh speaking through Pandian J., held that the purpose of cross-examination is to discredit the witness/elicit facts from such person, which may favour the other party, etc. Having gone through the cross-examination of this witness, we find none of these criteria to have been met. Even this discrepancy was not



put to him so as to get an answer from the witness in this regard. That apart, we may also take note of what has been held in Sanjeev Kumar Gupta v. State of U.P. In the said case, a coordinate Bench of this Court was confronted with a similar situation while deciding an appeal arising from the High Court of Uttarakhand. There was a discrepancy in the statement made in the FIR and the deposition in Court. It was held that whether the discrepancy is material or not so, is a determination to be made in the facts and circumstances of the case. It was held that since evidence of other nature, such as the medical evidence, supports the prosecution case, then the contradiction is to be judged in that light, as was done in that case.”

16. The learned Amicus Curiae has submitted that there is no hard and fast rule that the names of all the witnesses, more particularly eyewitnesses, should be indicated in the FIR. In this connection reliance has been placed on a judgment rendered by the Hon'ble Apex Court in the case of ***State of M.P. vs. Mansingh & Others***, reported in ***(2003) 10 SCC 414***, paragraph no. 10 whereof is reproduced herein below:-

“10. One of the circumstances highlighted by the High Court to discard the evidence of PW 8 is non-mention of his name in the FIR. As stated by this Court in Chittar Lal v. State of Rajasthan [(2003) 6 SCC 397] evidence of the person whose name did not figure in the FIR as a witness does not perforce become suspect. There can be



no hard-and-fast rule that the names of all witnesses, more particularly eyewitnesses, should be indicated in the FIR. As was observed by this Court in Shri Bhagwan v. State of Rajasthan [(2001) 6 SCC 296] mere non-mention of the name of an eyewitness does not render the prosecution version fragile.”

17. The learned Amicus Curiae for the informant has next submitted that it is a well-settled law that merely because the F.I.R. is found to be full of discrepancies and doubtful, the whole prosecution case and the evidence of the eye-witnesses / witnesses, as a rule cannot be thrown out. Reference has been made to a judgment rendered by the Hon’ble Apex Court in the case of ***Alagarsamy & Others vs. State Represented by Deputy Superintendent of Police, Madurai***, reported in ***(2010) 12 SCC 427***, para nos. 36 to 40 whereof are reproduced herein below:-

“36. Similarly, for the report by the Collector to the Secretary, the same comment is applicable. The Collector was not a man on the spot. He was merely acting on the basis of the report sent to him by the local officer. Therefore, his report is also of no consequence. The High Court has considered these contentions in paras 14 and 15 of the impugned judgment and the High Court has come to the conclusion that the contention that original FIR was suppressed and the present FIR is a concocted FIR, was liable to be rejected. The High Court has, in its finding, accepted the explanation given by Rajshekharan (PW 47) and has recorded his satisfaction on that explanation. We do not agree with some expression in para 15 of the impugned judgment, which is to the



following effect:

“As rightly pointed out, when the entire village was under the grip of fear on account of 6 murders, that too between two communities in the same village, it cannot be said that the investigating officer was sitting idle in doing the investigation systematically and as per rules.”

37. We do not think that the investigating officer was expected to act contrary to the rules and we do not think that in the investigation, he has acted contrary to the rules. We agree with the High Court's subsequent comment that Rajshekharan (PW 47) had acted diligently and quickly and, therefore, the confusion regarding the FIR could not be such a discrepancy, which would taint the FIR with illegality. The High Court has correctly relied on the reported judgment in State of Karnataka v. K. Yarappa Reddy [(1999) 8 SCC 715], wherein this Court observed:

“19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be



made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case."

38. *The other decisions relied upon by the High Court, for example, decisions in Nirmal Singh v. State of Bihar [(2005) 9 SCC 725] and Sanganagouda A. Veeranagouda v. State of Karnataka [(2005) 12 SCC 468] also give out the position that merely because doubts are raised about the FIR and the nature of prosecution case, that by itself, would (sic not) be fatal to the prosecution case.*

39. *After all, the FIR is not a be-all and end-all of the matter, though it is undoubtedly, a very important document. In most of the cases, the FIR provides corroboration to the evidence of the maker thereof. It provides a direction to the investigating officer and the necessary clues about the crime and the perpetrator thereof. True it is that a concocted FIR, wherein some innocent persons are deliberately introduced as the accused persons, raises a reasonable doubt about the prosecution story, however, a vigilant, competent and searching investigation can despoil all the doubts of the court and on the basis of the evidence led before the court, the court can weigh the inconsistencies in the FIR and the direct evidence led by the prosecution. It is not a universal rule that once FIR is found to be with discrepancies, the whole prosecution case, as a rule, has to be thrown. Such can never be the law.*

40. *In the decision relied upon by Shri Altaf Ahmed, learned Senior Counsel for the appellants in Sevi v. State of T.N. [1981 Supp SCC 43], it is clear that the Court had thrown the prosecution case not merely because the FIR was doubtful, but as the Court found that the prosecution case and the evidence of the eyewitnesses, even otherwise, were liable to be rejected, as they were the*



partisan witnesses. The Court took into account the dramatic pattern of the evidence of the witnesses and, therefore, threw the prosecution case because of the non-availability of the FIR book.”

18. It has been next argued by the learned Amicus Curiae for the informant that even if the Court finds that the child witness has been tutored, then also the statement of a child witness can be relied upon if the tutored part can be separated from the untutored part and the remaining untutored part inspires confidence. Reference in this connection has been made to a judgment dated 24.02.2025 rendered by the Hon’ble Apex Court in the case of ***The State of Madhya Pradesh vs. Balveer Singh*** (Criminal Appeal No. 1669 of 2012), paragraph No. 34 whereof is reproduced herein below:-

“34. This Court in State of M.P. v. Ramesh, reported in (2011) 4 SCC 786 summarized the principles pertaining to the appreciation of evidence of a child witness as under: -

(i) First, it held that a child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him. The evidence of a child witness must reveal that he was able to discern between right and wrong, and the court may ascertain his suitability as a witness through either cross-examination or by putting questions to the child in terms of Section 165 of the Evidence Act or by determining the same from the evidence or testimony of the child itself. The relevant observation reads as under: -

“11. The evidence of a child must reveal that he



was able to discern between right & wrong and the court may find out from the cross-examination whether the defence lawyer could bring anything to indicate that the child could not differentiate between right and wrong. The court may ascertain his suitability as a witness by putting questions to him and even if no such questions had been put, it may be gathered from his evidence as to whether he fully understood the implications of what he was saying and whether he stood discredited in facing a stiff cross- examination. A child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him. (Vide Himmat Sukhadeo Wahurwagh v. State of Maharashtra (2009) 6 SCC 712.)”

(Emphasis supplied)

(ii) Secondly, if the evidence of the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the court, his deposition does not require any corroboration whatsoever. The relevant observation reads as under: -

“12. In State of U.P. v. Krishna Master, (2010) 12 SCC 324 this Court held that there is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate the facts in his memory. A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in the future. In case the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the court, his deposition does not require any corroboration whatsoever. The child



at a tender age is incapable of having any malice or ill will against any person. Therefore, there must be something on record to satisfy the court that something had gone wrong between the date of incident and recording evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of a serious nature.”

(Emphasis supplied)

(iii) Thirdly, even if the courts find that the child witness had been tutored, even then the statement of a child witness can be relied upon if the tutored part can be separated from the untutored part and the remaining untutored part inspires confidence. In such cases, the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness. The relevant observation reads as under: -

“13. Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored part inspires confidence. In such an eventuality the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness. (Vide Gagan Kanojia v. State of Punjab, (2006) 13 SCC 516.)”

(Emphasis supplied)

(iv) Lastly, it held that an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition. If the deposition of a child witness inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to



show that a child has been tutored, the court can reject his statement partly or fully and look for corroboration. The relevant observation reads as under: -

“14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.”

(Emphasis supplied).

19. The learned Amicus Curiae has thus submitted that the aforesaid facts and circumstances, taken together with the medical evidence, as aforesaid, definitely completes the chain of circumstances leading to guilt of the appellants having been proved beyond all reasonable doubts.

20. Besides hearing the learned counsel for the parties, we have minutely perused both the evidence, i.e. oral and documentary. Before proceeding further, it is necessary to cursorily discuss the evidence led by the prosecution.

21. P.W.1 (Maheshwar Sada) has stated in his deposition that



the occurrence dates back to six months at about 06:00 - 06:30 pm in the evening when he was at his home. He has stated that the daughter of Ganeshi Sada (P.W.5) had asked whether her sister (victim girl) has come or not whereupon her grandmother said that she has not come and when the whereabouts of the victim girl could not be ascertained, Maheshwar Sada (P.W.1) told Ganeshi Sada (P.W.5) to catch hold of Bhushan Sada and bring him, whereafter Ganeshi Sada (P.W.5) had brought him, whereupon he was asked as to where he has hidden the child, upon which he told them that he had taken the victim girl on his cycle into the corn field where Tanuki Sada and Anjesh Sada were present from before and the dead body of the victim girl is lying in the corn field of Chandeshwar Mahto. Thereafter, Maheshwar Sada (P.W.1) and others had gone to the corn field where they found the dead body of the victim girl as also they found that her *pant* had been removed and blood was oozing out from her lower part of the body. The dead body was then brought home and the administration was informed on phone. The administration had then arrived, however they told them to keep the dead body in the night and they would look into the matter in the morning. In the morning, the dead body was taken by the administration to the hospital where postmortem was



conducted. Maheshwar Sada (P.W.1) had recognized the accused persons present in the dock. In paragraph no. 4 of his cross-examination, Maheshwar Sada (P.W.1) has stated that Ganeshi Sada (P.W.5) has settled down at his in-laws' place and has four children out of which one has died. In paragraph no. 5 of his cross-examination, Maheshwar Sada (P.W.1) has stated that the dead body of the victim girl was found in the night of the day of occurrence at about 11:00 pm and the police had arrived in the night of the same day, when the dead body of his niece was at home and all the family members were present near the dead body. In paragraph No. 6 of his cross-examination, Maheshwar Sada (P.W.1) has stated that the police had firstly recorded his statement, which was written by the Officer-in-Charge and after the same was read over to him, he had put his signature, whereafter the police had gone away, informing them that the dead body would be taken on the next day and when the police had come on the next day, Ganeshi had filed the case.

22. In paragraph no. 7 of his cross-examination, Maheshwar Sada (P.W.1) has stated that he had told the police that when he was at his home, at around 10:00 pm in the night, *hulla* (alarm) was raised and the news regarding recovery of dead body had spread in the village. Maheshwar Sada (P.W.1) has also stated



that when he had filed the case at that time Ganeshi (P.W.5) and his family members were present. Upon a question being put to Maheshwar Sada (P.W.1) as to after interval of how much time of killing of the victim girl, the case was lodged, Maheshwar Sada (P.W.1) has answered that case was lodged after cremation of the child. In paragraph no. 10 of his cross-examination, Maheshwar Sada (P.W.1) has stated that the victim girl is his niece, hence she used to come to his house and on the day of incident also, she had come to his house, about 4-4½ hours before the incident and at that time, she had come along with her mother and father. In paragraph no. 11 of his cross-examination, Maheshwar Sada (P.W.1) has stated that Ganeshi (P.W.5) stays at a distance of one kilometer from his house and on the day of incident, he had come to his house and then had gone back to his house. In paragraph no. 12 of his cross-examination, Maheshwar Sada (P.W.1) has stated that the corn field of Chandeshwar Singh is situated towards the northern-western side of the village. In paragraph no. 13 of his cross-examination, Maheshwar Sada (P.W.1) has stated that he had seen the dead body of the victim girl for the first time at 10:45 pm, which was lying in the field and then they had brought the same to their home at about 10:45 in the night. He has also



stated that upon seeing the dead body, he used to get agitated. In paragraph no. 15 of his cross-examination, Maheshwar Sada (P.W.1) has stated that he had told Ganeshi (P.W.5) to catch hold of Bhushan and bring him, however it is wrong to say that they had tied the hands and feet of Bhushan and assaulted him, rather they had softly manhandled Bhushan. In paragraph no. 20 of his cross-examination, Maheshwar Sada (P.W.1) has stated that on the next day morning, no panchayat had sat in the village. In para no. 21 of his cross-examination, P.W.1 has stated that Tanuki and Anjesh were not beaten. In paragraph no. 22 of his cross-examination, Maheshwar Sada (P.W.1) has stated that he had gone to the house of Tanuki and Anjesh, along with the administration, however both of them including their family members had fled from their house. He has added that they had not fled on account of fear of the police but they had fled after the dead body was found. In paragraph no. 24 of his cross-examination, P.W.1 has stated that police had gone to the house of Bhushan, however his family members had fled away and there was no one at the house. In para no. 25, P.W.1 has described the place from where the dead body was recovered. In paragraph no. 31 of his cross-examination, Maheshwar Sada (P.W.1) has stated that the house of Bhushan is at a distance of



100 *gaj* (yard) from his house and he has good relations with him.

23. P.W.2 (Suresh Sada) has stated in his deposition that the occurrence dates back to six months at about 6:00 pm in the evening and when he was coming back to his house after feeding his cattle, he heard *hulla* (alarm) being raised in the village, whereafter Punam Kumari (P.W.4) said that her sister (victim girl) has been taken away by Anjesh Sada and Bhushan Sada in the corn field, whereupon they started searching for her and found the dead body of the victim girl in the field. P.W.2 has stated that he had seen the dead body of the victim girl and blood was oozing out from her private parts. He had identified Bhushan and Anjesh standing in the dock. In paragraph no. 6 of his cross-examination, Suresh Sada (P.W.2) has stated that the police had arrived in the night when the dead body of the victim girl was brought, however enquiry was not made from him. In para no. 9 of his cross-examination, Suresh Sada (P.W.2) has stated that he has stated in his deposition whatever he had heard.

24. P.W.3 (Malti Devi) is the mother of the victim girl and she has stated in her deposition that the occurrence dates back to six months at about 6:00 pm in the evening when she was at her *basa* and her two daughters were also present along with her,



whereafter she had told them to go back to their home and in the meantime, from behind Tanuki Sada, Anjesh and Bhushan had arrived. Bhushan was holding a cycle and then he had made the victim girl sit on the cycle, whereupon Punam (P.W. 4) told him by addressing him as Bhushan mamu (maternal uncle) to make her also sit on the cycle, however Bhushan had reprimanded her and pushed her as also had told her that he would drop her sister at home, hence she should go to her house. Thereafter, Punam (P.W.4) reached her house but saw that the victim girl had not come there. Then Punam (P.W.4) asked her grandmother as to whether the victim girl has come or not, upon which she told that she has not come and then Punam (P.W.4) had returned back to the *bas*a and told Malti Devi (P.W. 3) that Bhushan Sada has taken the victim girl on his cycle and along with them the other two accused persons had also gone, however the victim girl has not reached her house. Thereafter, Malti Devi (P.W. 3) had confronted Bhushan and asked him as to where her daughter is and then the co-villagers had also asked Bhushan about the whereabouts of the victim girl, whereafter he disclosed that he had raped and thrown her daughter in the corn field. Thereafter, Malti Devi (P.W.3) along with the co-villagers had gone to the corn field, where they saw the victim girl lying in a nude



condition and blood was oozing out from her private parts as also she had died. Malti Devi (P.W. 3) had recognized the accused persons standing in the dock.

25. In paragraph No. 4 of her cross-examination, Malti Devi (P.W.3) has stated that Bhushan is her maternal brother. She has also stated that *basa* is at a distance of 1-1½ kilometers from her house. In paragraph No. 7 of her cross-examination, Malti Devi (P.W.3) has stated that there was no quarrel with Bhushan Sada. In paragraph No. 9 of her cross-examination, P.W.3 has stated that police had recorded her statement and it had enquired twice from her. She has stated that upon seeing the condition of her daughter and the police she had become perplexed. She has also stated that her daughter was 10 years old. In paragraph no. 11 of her cross-examination, Malti Devi (P.W.3) has denied the suggestion that she used to sell liquor and since the accused persons used to tell her not to do so, she has falsely implicated them. In para no. 13 of her cross-examination, P.W.3 has stated that Punam (P.W.4) is 7-8 years of age and is unmarried. In para no. 14 of her cross-examination, P.W.3 has stated that both Punam (P.W.4) and the victim girl used to study in Government school and she cannot say as to whether on the day of incident her daughter had gone to the school or not since on that day she



was at *basa*. In paragraph no. 16 of her cross-examination, P.W.3 has stated that when Punam (P.W. 4) had come and asked her about the victim girl at the *basa*, she had left her *basa* to search for the victim girl and at that time police had not come at the *basa* but the police arrived after the victim girl was found, meaning thereby that the police had come after the dead body of the victim girl was recovered. In paragraph no. 17 of her cross-examination, P.W.3 has stated that when Punam had come to the *basa* and asked her about the victim girl, there were two persons at the *basa*. In para no. 18 of her cross-examination, P.W.3 has stated that police had arrived at the village after the dead body of the victim girl was recovered. In para no. 19 of her cross-examination, P.W.3 has denied the suggestion that she has got no *basa* and that they used to carry out illicit trade of liquor in the *basa*.

26. P.W. 4 (Punam Kumari) at the time of deposing is stated to be aged about 8 years, hence some questions were put to her by the learned Trial Judge, which are as follows:-

“साक्षी कम उम्र होने के चलते उसकी गवाही प्रकोष्ठ में ली जा रही है।

प्रश्न – प्रश्न क्या करने आयी हो?

उत्तर – गवाही देने आयी हूँ।

जिस जगह मैं आयी हूँ उसका नाम नहीं जानती। “



In her deposition, Punam Kumari (P.W.4) has stated that occurrence dates back to six months and the time was in the morning when both sisters were going from *basa* to their home, when on the way Bhushan was coming on a cycle and he said that he would drop them at their house and then he made the victim girl sit on his cycle. Thereafter, Punam Kumari (P.W.4) had gone to her grandmother and asked her whether the victim girl has come or not and then she had again gone to the *basa* and told her mother that the victim girl has been taken away by Bhushan by making her sit on his cycle and Anjesh and Gholat have pressed the mouth of the victim girl and taken her into the corn field, whereupon they have raped her and killed her. Punam Kumari (P.W.4) had recognized the accused persons standing in the dock by name. In paragraph no. 4 of her cross-examination, Punam Kumari (P.W.4) has stated that at *basa* her father is having a shop in which he sells potatoes, bidi and grocery items. She has also stated that the house of Bhushan is situated near the *basa* and he used to purchase articles of requirement from the shop of her father, both in cash and on credit. In paragraph no. 6 of her cross-examination, Punam Kumari (P.W.4) has stated that it is wrong to say that no such type of incident has taken place. In paragraph No. 7 of her cross-examination, Punam Kumari



(P.W.4) has stated that there are six days in a month, however she cannot say how many days are there in a week. In paragraph No. 8 of her cross-examination, Punam Kumari (P.W.4) has stated that the day on which victim girl had gone missing, she had gone to the school and had remained in the school for the entire day as also had eaten food at the school and in the evening when she had left she had gone to the *basa* where she came to know that her sister is missing, whereafter her mother had left her at the house and gone to search for her sister in the village. In paragraph no. 10 of her cross-examination, Punam Kumari (P.W.4) has stated that when the dead body of victim girl was brought to the house then she came to know that the victim girl has been killed. She has also stated that her statement was recorded by the police and she had told the police officer about her having gone to the school. In paragraph no. 12 of her cross-examination, Punam Kumari (P.W.4) has stated that when the dead body was brought to the house, all the villagers had arrived there. In para no. 13 of her cross-examination, P.W.4 has stated that the dead body of the victim girl was at the house for three days. In paragraph no. 15 of her cross-examination, P.W.4 has stated that when she was in school the victim girl was killed, however she cannot say as to who killed her and where she was



killed. In paragraph no. 16 of her cross-examination, P.W.4 has stated that she has deposed as has been taught to her.

27. Ganeshi Sada (P.W.5) is the Informant of the case and he has stated in his deposition that he has filed the present case, the deceased victim girl is his daughter whose age is 10 years, the occurrence dates back to six months at about 6:00 pm in the evening when he was at his *basa* and at that time her daughters Punam (P.W.4) and the victim girl were going to their home when Bhushan Sada, Anjesh Sada and Gholat Sada @ Tanuki Sada had come there. Bhushan Sada was holding cycle and he told the victim girl to sit on the cycle and he would drop her at her home, however he did not drop the victim girl at her home and instead took her into the corn field on the way and committed rape with her as also killed her. Thereafter, they had caught Bhushan Sada at his home and then the informant had asked him about the whereabouts of the victim girl in presence of the co-villagers, totaling 10-20 in number, who had assembled there, whereupon he said that he along with the other two accused persons had committed rape with the victim girl in the corn field, had killed her and thrown her there. The informant and others had then gone to the corn field and searched for the victim girl, whereafter they saw that the victim



girl was lying dead in a nude condition in the corn field of Dhaneshwar Singh and blood was oozing out from her private parts. They had then picked up the dead body and brought it home and in the meantime the police had arrived and recorded the statement there as also had inspected the corn field. The police had then taken the dead body to the police station where the police had recorded the statement of the informant. The written report was read over to the informant and finding the same to be correct, he had made his thumb impression over the same. Ganeshi Sada (P.W.5) has recognized the three accused persons standing in the dock. In paragraph no. 9 of his cross-examination, P.W.5 has stated that he stays at *basa* till 8:00 pm in the night every day. In paragraph no. 10 of his cross-examination, Ganeshi Sada (P.W.5) has denied the suggestion that on 16.1.2016 he had gone to the house of his relation and had returned at 7:00 pm to his *basa*. In paragraph No. 11 of his cross-examination, Ganeshi Sada (P.W.5) has stated that out of the accused persons, one is son of co-brother and all are related to him.

28. In paragraph no. 12 of his cross-examination, Ganeshi Sada (P.W.5) has stated that the accused persons did not use to look after his mother-in-law and their house is at a distance of 2-



4 *lagga* from his house and the house of Bhushan is situated adjacent to his *basa*. In paragraph No. 13 of his cross-examination, P.W.5 has stated that he sells potato etc. at his *basa* and Bhushan used to purchase articles from his shop in cash and on credit. He has also stated that one day Bhushan had asked the victim girl for giving articles on credit, however she had refused whereupon Bhushan had said that he would beat her. In paragraph no. 14 of his cross-examination, P.W.5 has stated that after they had seen the dead body, they became ashamed but he has stated that he knows as to what has happened or what has not happened and it is not a fact that what happened thereafter, is not known by him. In paragraph no. 15 of his cross-examination, P.W.5 has stated that he does not know how to read and write. The statement regarding the occurrence was written in the manner he had narrated, whereafter he had put his impression. In paragraph no. 16 of his cross-examination, P.W.5 has stated that Maheshwar (P.W.1) and Anil Sada (P.W.6) had gone to the police station. He has stated that it is wrong to say that he had given such statement as was told by Maheshwar (P.W.1) and Anil Sada (P.W.6). In paragraph no. 17 of his cross-examination, P.W.5 has stated that they had all given separate statements. P.W.5 has also stated that his



statement was read over to him which he had found to be correct and then he had put his impression, whereafter Anil (P.W.6) and Maheshwar (P.W.1) had also put their signature. In paragraph no. 19 of his cross-examination, P.W.5 has stated that the dead body of the victim girl was recovered in the evening which was taken away by the police in the morning and while the dead body was being brought Maheshwar (P.W.1) and co-villagers were present there. Ganeshi Sada had carried the dead body in his lap and brought it home. Blood was falling from the private parts of the dead body and there was teeth impression on the cheek of the dead body. P.W.5 has also stated that no bloodstains were found on his clothes because he had brought the dead body after wrapping the same in a cloth sheet (*chadar*).

29. In paragraph no. 20 of his cross-examination, Ganeshi Sada (P.W.5) has stated that the place from where he had picked up the dead body, little bit blood had fallen there. The police personnel had gone to the said place and he had shown the blood to the police personnel. A road is situated at the place where the blood had fallen and the said road goes up to Sugarrol river. In paragraph no. 21 of his cross-examination, P.W.5 has stated that when he had gone to the place where the dead body was found, police had not gone with him. He has also stated that



as soon as they had brought the dead body home, police had come from behind and after five minutes they had gone to the place of occurrence, however the police had not picked up any blood from the place of occurrence and had remained with the dead body for half an hour as also the Officer-in-Charge had done some documentation work and at that time the dead body was open and was not wrapped in cloth. In paragraph no. 22 of his cross-examination, P.W.5 has stated that the clothes from the dead body were not taken away by the Officer-in-Charge but after postmortem the clothes were taken away by the police. In paragraph no. 23 of his cross-examination, P.W.5 has stated that his and his wife's impression was taken on the paper which was prepared by the Officer-in-Charge after seeing the dead body and at that time the dead body was at the house of his mother-in-law. In paragraph no. 25 of his cross-examination, P.W.5 has stated that his statement was recorded by the police at the police station and he had stated before the police that he stays at the *basa* constructed by him since two years which is at a distance of one kilometer from his village Khairidih and his mother-in-law stays at village Khairidih.

30. In paragraph no. 26 of his cross-examination, P.W.5 has stated that after marriage he started staying at his in-laws' place



and it is wrong to say that when quarrel had taken place with them, he started staying at the *basa* constructed by him near the road. In paragraph no. 30 of his cross-examination, P.W.5 has stated that he had stated before the police that when Punam (P.W.4) had come from home she had told her mother that Bhushan had made the victim girl sit on his cycle and had taken her away, which he had also heard. In paragraph no. 31 of his cross-examination, P.W.5 has stated that he had told the police that at that time he was milking cattle, hence he had told his wife (Malti Devi) to go to the village and make a search, whereafter Malti (P.W.3) and Punam (P.W.4) had gone to the village. In para no. 32 of his cross-examination, P.W.5 has stated that at the time when Punam (P.W.4) had come at the *basa* it was 6:30 pm in the evening, it was cold and fog had set in. He has also stated that before Punam (P.W.4) came to the *basa*, *hulla* had spread in the village, since Punam had told her grandmother, whereafter villagers had started searching for the dead body and during the course of search being made for the dead body, Mukhiya had informed the police. In paragraph no. 33 of his cross-examination, P.W.5 has stated that when he reached at the house of his mother-in-law, at that time many people had not arrived there but maternal grandmother of the



victim girl, Malti Devi and neighbors were present there. He has also stated that when the dead body was recovered, he did not become unconscious. He has next stated that he had gone with the dead body to the police station and when he saw the dead body for the first time, his daughter was not alive. He has stated that when the police came at the house, he was present there, however at 8:00-9:00 am in the morning, he had taken the dead body to the police station.

31. In paragraph no. 40 of his cross-examination, P.W.5 has stated that Bhushan Sada had come to see the dead body, whereafter they had caught him and had handed him over to the police. In paragraph no. 41 of his cross-examination, P.W.5 has stated that they had not engaged in beating Anjesh and Tanuki. He has also stated that Maheshwar Sada (P.W.1) is his maternal brother-in-law. In paragraph no. 42 of his cross-examination, P.W.5 has stated that he had not gone with the police to the house of Bhushan and at the time when he had gone to the police station, Bhushan was present there, since he had been caught in the night and brought there. Bhushan had also filed a case. In paragraph no. 44 of his cross-examination, P.W.5 has stated that he had not seen as to how and who killed the victim girl but he had heard about the same. In paragraph no. 48 of his



cross-examination, P.W.5 has stated that he had told the Officer-in-Charge that when the victim girl was going to her house, the accused persons, namely Bhushan, Anjesh and Gholat had also arrived and Bhushan had told her to sit on the cycle so that he could drop her at her house.

32. P.W. 6, Anil Kumar Sada has stated in his deposition that the seizure list of the frock and pant being worn by the deceased victim girl was made in his presence, which he has identified and has stated that the same also bears his signature, which has been marked as Exhibit-1. He has stated that the seizure list of the clothes i.e. half pant, full pant and lungi being worn by Bhushan Sada, Anjesh and Gholat was also made which he has identified and he has stated that the same bears his signature, which has been marked as Exhibit-1/1. P.W.6 has also identified his signature on the written report, which has been marked as Exhibit-1/2. He has also stated that his house is situated adjacent to that of Ganeshi Sada (P.W.5) on the eastern side. In paragraph no. 6 of his cross-examination, P.W.6 has stated that he had gone to the police station in the morning where 5-7 persons known to him were present and there Maheshwar Sada (P.W.1), Suresh Sada (P.W.2), father of the victim girl, namely Ganeshi Sada (P.W.5), mother of the victim girl, namely Malti Devi (P.W.3)



were also present. In paragraph no. 7 of his cross-examination, P.W.6 has stated that those documents upon which he had put his signature were written in his presence at the Morkahi Police Station. He has also stated that documentation was done at the police station in their presence. In paragraph no. 11 of his cross-examination, P.W.6 has stated that the Officer-in-Charge had registered F.I.R. and prepared the injury report. He has also stated that he cannot say as to whether the Officer-in-Charge had torn and thrown the paper or not. In para no. 13 of his cross-examination, P.W.6 has stated that after putting his signature on the documents at 3 o'clock in the day time, he had gone home.

33. P.W.7, Dr. Purushottam Kumar Sinha has stated in his deposition that on 18.1.2016, he was posted as Medical Officer, Sadar Hospital, Khagaria and on that day at 5:20 pm, he along with other members of the Board, namely Dr. Md. Gulsarobar and Dr. B.N. Singh had examined Anjesh Sada (appellant of the second case) and had found the following:-

“1(i). General condition fair, built average, height 5'3”, weight 46 kg.

(ii). Secondary sexual characters:- Genitalia developed, pubic hairs present, Axillary hair present, mustache appear, teeth-31.

(iii). Local examination:-



(a) Abrasion 1/4" x 1/6" over right thumb dorsal aspect.

(b) Mild congestion over gland corona and margin of prepuce.

(2). Swab taken from genitalia sealed into viol for examination in J.L.M.N.C.H. Bhagalpur.

(3). Patient was advised for X-ray pelvis. X-ray right wrist A.P. and lateral view. X-ray right elbow A.P. and laterally. X-ray mandibula right & left lateral view.

X-ray done at Sadar Hospital Khagaria on 18.1.16.

X-ray plate bears no. 706.

(i). X-ray pelvis shows iliac crest partially fused. X-ray right wrist shows distal end of radius and ultra fused. X-ray mandible right and lateral view shows third molar left upper crown found."

P.W.7 has stated that the aforesaid finding is suggestive of recent contact, however he had reserved the opinion till swab examination. P.W.7 had, on the basis of clinical and radiological examination, assessed the age of Anjesh Sada to be in between 19-20 years. P.W.7 has stated that the injury report of Anjesh Sada is in his writing and bears his signature as also the signature of Dr. Md. Gulsarobar and Dr. Vidyanand Singh, which has been marked as Exhibit-2.

34. The aforesaid Medical Board had also examined Tanuki Sada @ Gholat Sada (now dead) and had found injuries on his



penis as also had inferred that the findings are suggestive of recent contact, however opinion was reserved till the swab report is received. P.W.7, Dr. Purushottam Kumar Sinha has stated that the injury report of Tanuki Sada @ Gholat Sada is in his pen and signature as also bears the signature of Dr. Md. Gulsarobar and Dr. V.N. Singh and the same has been marked as Exhibit-2/1.

35. The aforesaid members of the Medical Board including P.W.7 had also examined Bhushan Sada (appellant of the first case) and had found the following:-

“11(i). General condition:- fair, height 5’1”, weight 43 kg., axillary hair & pubic hair present mustache appeared, genitalia developed.

(ii). Local examination:-

(a) abrasion ½” x 1/6” with congestion over the margin of prepuce.

(b). Abrasion 1”x1/6” and congestion over corona of glans of penis. No abrasion and other mark of injury over other parts of body. Swab taken from genitalia sealed into viol and handed over to I.O. for examination in J.L.N.M.C.H. Bhagalpur and F.S.L. Patna.

12. Advised X-ray pelvis, x-ray right wrist, x-ray right elbow, x-ray mandible right and left lateral view.



X-ray done on the Sadar Hospital Khagaria on the same day. X-ray plate bears no. 705 dated 18.01.16.

X-ray plate pelvis shows iliac crest almost fused. X-ray plate right wrist shows distal end of radius and ulna fused. X-ray plate right elbow shows lower end of humerus and upper end of radius and ulna fused. X-ray mandible shows upper a third molar crown formed.”

P.W.7 has given his inference to the effect that the aforesaid findings are suggestive of recent contact (most possibly sexual intercourse), however the opinion was reserved till the receipt of the swab report. The age of Bhushan Sada was assessed to be in between 19-20 years. P.W.7 has stated that the report is in his writing and bears his signature as also the signature of Dr. Md. Gulsarobar and Dr. V. N. Singh and that of the D.M.S., Sadar Hospital, Khagaria, which has been marked as Exhibit-2/2.

36. In cross-examination, P.W.7, Dr. Purushottam Kumar Sinha has stated that he was on duty at the emergency ward on 18.1.2016 from 2:00 pm in the afternoon to 8:00 pm. The accused had been brought to him along with the requisitions, however the requisitions are not before him at the moment but the Investigating Officer had disclosed the name of the injured



persons. In paragraph no. 19 of his cross-examination, P.W.7 has stated that he had asked the injured persons as to whether they want themselves to be examined and upon consent being given by them, they were examined by him and others. In paragraph no. 20 of his cross-examination, P.W.7 has stated that as far as Bhushan Sada is concerned, the injuries found on his body are also possible by falling down. In paragraph no. 21 of his cross-examination, P.W.7 has stated that no F.S.L. report has been produced before him. In paragraph no. 29 of his cross-examination, P.W.7 has stated that he has given report regarding penis of Tanuki and Anjesh, which has been mentioned by him.

37. P.W.8, Dr. Ashok Prasad is the Doctor who had conducted the postmortem examination of the dead body of the deceased victim girl and he has stated in his Examination-in-Chief that on 17.1.2016 he was posted at Sadar Hospital, Khagaria as Medical Officer and on that day, he had conducted the postmortem examination of the dead body of the victim girl and upon external examination, he had found the following:-

“1(i). Swelling and blackening on right cheek 2”x1”.

(ii). Blackening on lower part of back 1”x1”.

(iii). Abrasion on back of right thigh 3” x 2”

(iv). Swelling of inner side of both thigh near vagina.



(v). Swelling of both labia majora and mons pubis.

(vi). Bleeding coming out from vagina.

There was tear of both labia majora. There was tear of posterior part of vagina.

(2). Internal examination:- On dissection neck muscles were ruptured. There was congestion on thyroid cartilage. There were fracture of 2nd, 3rd and 4th Cervical vertebra. Brain matter pale. Heart both chamber full of blood, lungs congested. Liver spleen, kidneys appeared pale. Stomach contained some digested food.

(3). Vaginal swab taken by lady doctor and packed & sealed and sent to semen analysis and handed over to the I.O. of the case.”

P.W. 8 has stated that cause of death is neurogenic shock due to above-mentioned injuries as also hemorrhage due to rape which are ante-mortem in nature. He has assessed the time elapsed since death within 24 hours. P.W. 8 has stated that medical report (postmortem report) is in his pen and signature and the same has been marked as Exhibit-3. In paragraph no. 8 of his cross-examination, P.W. 8 has stated that it is not possible that injury is sustained on labia majora by falling from the roof or upon falling on a hard substance. In paragraph no. 10 of his cross-examination, P.W.8 has stated that chaukidar Bisheshwar Sah had brought the dead body and the age of the victim girl has



been recorded as 10 years. In paragraph no. 11 of his cross-examination, P.W. 8 has stated that if hematoma is found, the colour of vagina changes but the same was ruptured, hence the colour will not change. In para no. 12 of his cross-examination, P.W. 8 has stated that the report of vaginal swab has not been received by him. In paragraph no. 13 of his cross-examination, P.W. 8 has stated that the blackening which he has mentioned is the colour of injury. He has also stated that the colour of injury changes during its life. In paragraph no. 14 of his cross-examination, P.W. 8 has stated that he has written the time elapsed since death on the basis of colour and rigor mortis. In paragraph no. 16 of his cross-examination, P.W. 8 has stated that rigor mortis starts in between 2 to 4 hours and spreads in all the limbs in 24 hours which persists for 12 hours and then finishes. In paragraph no. 17, P.W. 8 has stated that the death of the victim girl has not taken place in between 2-3 hours of eating food. In para no. 18 of his cross-examination, P.W. 8 has stated that neurogenic shock can also be due to infliction of electric current.

38. P.W.9, Mahesh Kumar is the investigation officer of the present case and he has stated in his deposition that on 17.1.2016, he was posted as Officer-in-Charge, Morkahi Police



Station and on that day, on the basis of written report submitted by Ganeshi Sada (P.W.5), he had registered Morkahi P.S. Case No. 6 of 2016 dated 17.1.2016 under Section 302, 376(G)/34 of the I.P.C. and Section 3/ 4 of the POCSO Act, 2012, whereafter he had assumed the investigation of the case and then he had prepared the inquest report of the victim girl. He had then recorded the restatement of the informant, the statement of the witnesses, Malti Devi (P.W.3), Punam Kumari (P.W.4) and Maheshwar Sada (P.W.1). Thereafter, he had inspected the place of occurrence situated at earthen / gravel road (unmetalled road) at Mochahi Bahiyar in village Gul Khairidih which is lonely and isolated place. The width of the road is about 8 feet. The light grass present there was found to be trampled and the ground of the road as also the grass was found to have been crushed (*ragraya*). He has also stated that he was told that the dead body of the deceased victim girl was recovered from 15 feet deep inside the corn field. P.W.9 has stated that at the place of occurrence he had found one *narangi* fruit and polythene containing *murhi* and *dalmot* which was found scattered and the crop was found to have been trampled as also the height of the corn crop was 3-4 feet. P.W.9 has also described the boundaries of the place of occurrence in detail. In paragraph no. 2 of his



cross-examination, P.W.9 has stated that he had arrested Bhushan Sada and recorded his confessional statement which has been identified by him and he has stated that the same is in his writing and bears his signature and the same has been marked as Exhibit-4. He has next stated that Bhusban Sada had confessed his guilt. In paragraph no. 3 of his cross-examination, P.W.9 has stated that he had also arrested Anjesh Sada and got his medical conducted as also had sent the clothes of all the three accused persons for F.S.L. examination. He has further stated that he had arrested Tanuki @ Gholat Sada and had recorded the statement of all the three accused. He had also seized the clothes of the deceased and received the postmortem report and had sent the vaginal swab and the D.N.A. sample given to him at the hospital to F.S.L. Patna for examination.

39. In paragraph no. 4 of his cross-examination, P.W.9 (Mahesh Kumar) has stated that he had recorded the statement of Anil Kumar Sada (P.W.6) and Suresh Sada (P.W.2) and had also submitted the charge-sheet as per the direction of the senior officials. In paragraph no. 5 of his cross-examination, P.W.9 has stated that the written report is in his writing and bears his signature which he has identified and the same has been marked as Exhibit-5. In paragraph no. 6 of his cross-examination, P.W.9



has stated that the inquest report produced here is carbon copy of its original and both were made in the same transaction in front of him by A.S.I. Arjun Prasad Mehta in his writing and bears his signature which he has identified and the same has been marked as Exhibit-6. In paragraph No. 8 of his cross-examination, P.W.9 has stated that he had arrested Bhushan Sada on the day of occurrence at 13:45 hours with the help of the villagers while he had arrested Tanuki Sada and Anjesh on 18.1.2016 at 9:00 am in the morning. He has also stated that he had arrested Anjesh Sada and Tanuki Sada from Panchmukhi. In paragraph no. 9 of his cross-examination, P.W.9 has stated that the informant in his restatement had told him that on 16.1.2016, he had gone to his relation's place and had returned to his *basa* at about 7:00 pm in the evening and at that time his younger daughter Punam Kumari (P.W.4) and her mother had told him that while the victim girl was going home, Bhushan Sada had made her sit on his cycle and had taken her away. In paragraph no. 11 of his cross-examination, P.W.9 has stated that he had recorded the confessional statement of the accused Bhushan Sada near his house situated at village Khairidih on 17.1.2016 at 14:30 hours. In paragraph no. 14 of his cross-examination, P.W.9 has stated that the written report was given to him on



17.1.2016 at 11:00 am in the day time and on the basis of the same he had registered the case and started investigation, however prior to that A.S.I., Arjun Prasad Mehta had prepared the inquest report. He has stated that since they had reached the place of occurrence immediately upon receiving information, the inquest report had been prepared earlier.

40. In paragraph no. 15 of his cross-examination, P.W.9 (Mahesh Kumar) has stated that the entire work of preparing inquest report and that of seizure was done by Arjun Prasad Mehta, however he had not recorded any statement of Arjun Prasad Mehta and had also not given his name as one of the witnesses in the charge-sheet. In paragraph no. 18 of his cross-examination, P.W.9 has stated that he has mentioned in paragraph no. 6 of the case diary that he along with A.S.I. Arjun Prasad Mehta and police force had reached village Khairidih at 12:30 hours. In paragraph no. 22 of the case diary, it has been written that P.W.9 had gone to Panchmukhi and arrested Anjesh Sada and Tanuki Sada, however he had not written about informing Aloli Police Station. In paragraph no. 28 of the case diary, P.W.9 has stated about preparing the seizure list and about seizing the clothes of the accused persons. In paragraph No. 27 of his cross-examination, he has stated that on 17.1.2016 at



about 13:30 hours, second seizure list was prepared by A.S.I. Arjun Prasad Mehta, reference whereof has been made in paragraph no. 38 of the case dairy. In paragraph no. 27 of his re-examination-in-Chief (upon recall), P.W.9 has stated that the inquest report of the victim girl was prepared by A.S.I. Arjun Prasad Mehta, posted at Morkahi Police Station, District Khagaria, which bears his signature, which he has recognized. He has also identified the certified copy of the inquest report, which bears the signature of D.S.P. and the same has already been marked as Exhibit-6.

41. We have perused the impugned judgment of the learned Trial Court, the entire materials on record as also the evidence adduced at the trial and have given our thoughtful consideration to the rival submissions made by the learned counsel for the appellants as well as the learned A.P.P. for the State and the learned *Amicus Curiae* appearing for the informant. The instant case is entirely based on circumstantial evidence, wherein the foundational facts are required to be proved. Thus, first of all, it would be appropriate to enumerate the relevant circumstances emerging from the evidence adduced by the prosecution, which according to the prosecution shows commission of the alleged occurrence by the appellants. The first circumstance is the last



seen theory, inasmuch as the appellant of the first case is stated to have taken away the victim girl on his cycle followed by the appellant of the second case and one another and thereafter, the victim girl never returned and ultimately, her dead body was found lying in a nude condition with blood oozing out of her private parts in the corn field of Dhaneshwar Singh. The second circumstance is the injuries found on the private parts of the accused persons including the appellants. The third circumstance is confirmation of death of the victim girl on account of neurogenic shock due to the injuries sustained by her including hemorrhage on account of rape committed with her. The fourth circumstance is admission by the appellant of the first case, leading to recovery of the dead body of the victim girl.

42. At this juncture, it may be relevant to mention here that according to the principles laid down by the Hon'ble Apex Court in catena of judgments, a conviction can be based solely on circumstantial evidence if the circumstances so established are consistent with the hypothesis of the guilt of the accused and also conclusive in nature leaving no room of any hypothesis of innocence of the accused in the alleged crime and the entire chain of circumstance, is complete. In this regard, we would like



to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***S. K. Yusuf vs. State of West Bengal***, reported in ***(2011) 11 SCC 754***, paragraph No. 32 whereof is being reproduced herein below:-

“32. Undoubtedly, conviction can be based solely on circumstantial evidence. However, the court must bear in mind while deciding the case involving the commission of serious offence based on circumstantial evidence that the prosecution case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence case. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused and they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. 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 that the act must have been done by the accused.”

43. We may also refer to the landmark judgment rendered by the Hon'ble Apex Court in the case of ***Sharad Birdhi Chand Sarda vs. State of Maharashtra***, reported in ***1984 SCC (4) 116***, wherein in paragraph no.153, the Hon'ble Apex Court has laid



down five cardinal principles which must be fulfilled before a case against an accused can be said to have been fully established. The said principles are being enumerated herein below:-

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793] where the 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.”

The aforesaid judgment rendered in the case of **Sharad**



Birdhi Chand Sarda (Supra) has also been followed in subsequent judgments rendered by the Hon'ble Apex Court in the case of ***Surajdeo Mahto and Anr. vs. State of Bihar***, reported in ***(2022) 11 SCC 800*** and in the case of ***Raghunatha and Anr. vs. State of Karnataka***, reported in ***AIR 2024 SC 1692***.

44. Now coming back to the facts and circumstances of the present case, we would first deal with the evidence brought on record to prove the last seen theory. In this regard, we would first refer to the evidence of P.W.3 (Malti Devi) i.e. the mother of the victim girl, who has stated that while she was at *basa* along with her two daughters she had told them to go home and when they had left for home, from behind the appellants and one another had arrived, whereupon the appellant of the first case, who was holding cycle in his hand, had made the victim girl sit on it, whereupon P.W.4 (Punam Kumari) had told him to make her also sit on the cycle, however the appellant of the first case had reprimanded her and told her that he would drop the victim girl at her home, hence she should also go home. In fact, P.W.3 (Malti Devi) has also stated that after P.W.4 (Punam Kumari) had reached her house and had not found victim girl to have reached there, she had returned to *basa* and had told P.W.3



(Malti Devi) that the appellant of the first case had taken the victim girl on cycle along with two other co-accused persons including the appellant of the second case but the victim girl had not reached home. As far as P.W.4 (Punam Kumari) is concerned, she has also stated that while both sisters were going from *basa* to home, on the way the appellant of the first case had met them and he said that he would drop the victim girl at her home, whereafter he had made her sit on his cycle and taken her away but she did not reach home. Thereafter, P.W.4 had gone to *basa* and told her mother that the victim girl has been taken away by the appellant of the first case by making her sit on his cycle and the appellant of the second case as also one another have also joined them and taken her to the corn field. P.W.5 (Ganeshi Sada) i.e. the informant of the present case has also stated that while her daughters were going home at around 6:00 pm in the evening of 16.1.2016, the appellants along with one another accused person had come there, whereafter the appellant of the first case had made the victim girl sit on his cycle and had told her that he would drop her at her home but they did not drop the victim girl at her home. As far as P.W.1 (Maheshwar Sada) is concerned, he has also substantiated the factum of the appellants having taken away the victim girl along



with them. Thus, the theory of last seen stands proved in the present case, inasmuch as admittedly at least P.W.3 (Malti Devi) has deposed consistently to the effect that the three accused persons including the appellants had taken away the victim girl and no contradictions have been elicited during her cross-examination by the defence. Hence, we find that the said circumstance is enough to shift the burden on the defence under Section 29 of the POCSO Act, 2012 to prove their innocence, which they have failed to discharge. Sections 29 and 30 of the POCSO Act, 2012 reads as under:

“29. Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

30. Presumption of culpable mental state.—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.”

45. In fact, in a case primarily based on circumstantial evidence, if the accused fails to offer a reasonable explanation



for not discharging the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Reference in this connection be had to the observation made by the Hon'ble Apex Court in paragraph No. 23 of the Judgment rendered in the case of *State of Rajasthan vs. Kashi Ram*, reported in (2006) 12 SCC 254.

46. At this juncture, we may also refer to the law laid down by the Hon'ble Apex Court in the case of *Sambhubhai Raisangbhai Padhiyar* (supra), which mandates that in case accused is last seen with the deceased and particularly in a case of this nature when the time gap between the last seen stage and the occurrence of death is short, the accused persons are obliged to offer a plausible explanation as to how they parted company with the deceased and the explanation so offered must be satisfactory, however in the present case, no explanation whatsoever has been offered by the accused persons. In fact, Section 106 of the Indian Evidence Act, 1872 mandates that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. It is on this principle that the Courts have repeatedly held that if an accused fails to offer an explanation, he fails to discharge the burden cast upon him under Section 106 and if he fails to offer a reasonable



explanation that itself provides an additional link in the chain of circumstances. Thus, in view of the provisions contained U/s. 106 of the Indian Evidence Act, it was incumbent upon the appellants to have discharged their burden of offering a reasonable explanation with regard to the last seen theory, however they have failed to do so and moreover, the appellants have also not rebutted the presumption by adducing proof to the contrary.

47. The next circumstance which arise for consideration in the present case is the injuries found on the private parts of the accused persons including the appellants. In this regard, we would refer to the evidence of P.W.7 (Dr. Purushottam Kumar Sinha), who had examined the appellants including one another and he has found injuries on the private parts (penis) of the accused persons including the appellants and has opined that the injuries are suggestive of recent sexual contact / sexual intercourse. In fact, P.W.8 (Dr. Ashok Prasad), who had conducted the postmortem of the dead body of the victim girl has also found grievous injury on the private parts of the victim girl and has opined that the death has been caused on account of neurogenic shock due to above-mentioned injuries and hemorrhage has been caused due to rape. Thus, in light of the injury report of the appellants, coupled with the postmortem



report of the victim girl, it was incumbent upon the appellants to have offered explanation as to how they had sustained injuries on their private parts but having failed to do so and in absence of any explanation, the said circumstance would be an additional link in the chain of circumstances. Therefore, the said circumstance has also stood established and is consistent with the guilt of the accused which are not explainable by any hypothesis.

48. The third circumstance is confirmation of death of the victim girl due to the injuries sustained by her on account of rape committed with her. In this connection, it would be relevant to refer to the evidence of P.W. 8 (Dr. Ashok Prasad), who had conducted the postmortem examination of the dead body of the victim girl and found grievous injuries on her private parts, and who further opined that the death had been caused on account of neurogenic shock resulting from the above-mentioned injuries, and that hemorrhage had occurred due to rape. Thus, the postmortem report of the victim girl is also an additional link in the chain of circumstance, which has stood established.

49. Now coming to the fourth circumstance i.e. admission by the appellant of the first case, leading to recovery of the dead body of the victim girl from the corn field in a nude condition



with blood oozing out from her private parts, we find that P.W.1 (Maheshwar Sada) has stated in his evidence that after the victim girl had not come home, he had told P.W.5 (Ganeshi Sada) to catch hold of the appellant of the first case and bring him, whereafter P.W.5 had brought him and upon him being questioned as to where he has hidden the child, the said appellant stated that he had taken the victim girl on his cycle to the corn field where Tanuki Sada and Anjesh Sada were present from before and the dead body of the victim girl is lying in the corn field of Chandeshwar Mahto. Thereafter, P.W.1 (Maheshwar Sada) and others had gone to the corn field and recovered the dead body of the victim girl. P.W.3 (Malti Devi) has also stated in her evidence that when the victim girl had not reached home, she and other villagers had confronted the appellant of the first case, whereupon he disclosed that he had raped the victim girl and thrown her in the corn field, whereupon P.W.3 (Malti Devi) and others had gone to the corn field where they saw the dead body of the victim girl lying in a nude condition with blood oozing out from her private parts. Similarly, P.W.5 (Ganesh Sada) has also stated that when they had caught the appellant of the first case and asked about the victim girl in presence of the villagers, he had disclosed that he



and two others including the appellant of the second case had committed rape, killed the victim girl and thrown her in the corn field, whereafter they had gone to the corn field and had found the dead body of the victim girl lying in a nude condition with blood oozing out of private parts. Thus, we find that the said circumstance has also stood established and is consistent with the guilt of the accused.

50. Thus, after consideration of the facts and circumstances of the case as also the entire prosecution evidence and its careful analysis, we find that the circumstances enumerated hereinabove are fully established, which are consistent with the hypothesis of the guilt of the Appellants and are not explainable by any other hypothesis, thus the circumstances being conclusive in nature as also the chain of circumstance being so complete, as to lead to the irresistible conclusion that the appellants are guilty of the offences charged, we find that there is no reason to create any doubt in our minds. Therefore, there is no reason to create any doubt about the guilt of the appellants of the aforesaid two appeals in the alleged occurrence which stands proved beyond all reasonable doubts.

51. Now coming to the argument advanced by the learned counsel for the appellants to the effect that there is huge



variance in the version narrated in the F.I.R./ written report *vis-a-vis* the evidence of P.W.5 (Ganeshi Sada), we find that the written report was never put to either the informant or any other witness to elicit their response and in case the witnesses including the informant had been confronted with the written report, their response could have been elicited and probably, the informant would have explained the disparity between the written report and his evidence. It is a well settled law that First Information Report is not a substantive piece of evidence and it can only be used to either draw contradictions or for corroboration but then it has to be put to the witnesses to elicit their response, which has not been done in the present case. Thus, the variance in between the written report and the evidence of the informant cannot lead to any prejudice to the prosecution. It is a well-settled law that merely because the F.I.R. is found to be full of discrepancies and doubtful, the whole prosecution case and the evidence of the eye-witnesses / witnesses, as a rule, cannot be thrown out. Reference be had to the judgment rendered by the Hon'ble Apex Court in the case of ***Alagarsamy & Others*** (*Supra*). It is equally a well-settled law that merely because doubts are raised about the FIR and the nature of prosecution case, that by itself, would not be fatal to



the prosecution case. Reference be had to the Judgments rendered by the Hon'ble Apex Court in the case of ***Nirmal Singh*** (*Supra*) and ***Sanganagouda A. Veeranagouda*** (*Supra*), respectively.

52. Thus, unless and until the contradiction in between the written report and the evidence of the informant i.e. P.W.5 was put to the witnesses, especially P.W.5, so as to elicit an answer from them with regard to the same, no benefit can enure to the advantage of the defence, hence on such basis, the case of the prosecution cannot be thrown out, especially since evidence of other nature such as medical evidence etc., as referred to hereinabove in the preceding paragraphs, are available so as to prove the case of the prosecution. Reference be had to the judgment rendered by the Hon'ble Apex Court in the case of ***Chatra*** (*supra*), wherein it has been held that whether the discrepancy is material or not, is a determination to be made in the facts and circumstances of the case, however in case evidence of other nature, such as the medical evidence supports the prosecution case, then the contradiction is to be judged in that light.

53. As far as the argument raised by the learned counsel for the appellants to the effect that there has been delay in lodging



F.I.R. and first version has been suppressed, we find that the incident is stated to have taken place at around 6:00 p.m. in the evening of 16.1.2016, whereafter upon having come to know about the disappearance of the victim girl, her family members had engaged in search and had made enquiries from the appellants, whereafter the dead body of the victim girl was recovered from the corn field at around 10:30-11:00 pm in the night and then the police had come to the village but had registered the F.I.R. in the morning of 17.1.2016 at 11:00 am, hence for the fault of the police / investigating officer, the same would not be fatal to the case of the prosecution.

54. The learned counsel for the appellants has next argued that the place of occurrence and the last seen theory have not stood proved, however in our view, the same stands belied from the facts and circumstances, as discussed hereinabove in the preceding paragraphs as also from the evidence led by the prosecution. The next argument raised by the learned counsel for the appellants is that all the witnesses had learnt about the incident from P.W.4 (Punam Kumari) but her deposition is full of contradictions and she has admitted in her evidence that she has deposed as has been taught to her, thus the entire basis of the case vanishes. In this regard, the law is well-settled to the effect



that even if the Court finds that the child witness has been tutored, then also the statement of a child witness can be relied upon if the tutored part can be separated from the untutored part and the remaining untutored part inspires confidence. Reference be had to a judgment dated 24.02.2025 rendered by the Hon'ble Apex Court in the case of *The State of Madhya Pradesh vs. Balveer Singh*, reported in *2025 SCC OnLine SC 390*. As far as the present case is concerned, we find from the evidence of P.W.4 (Punam Kumari) that the factum of her going from the *basa* to her home along with her sister (victim girl), her sister being taken away by the appellant of the first case on cycle, she going to her house and asking her grandmother as to whether the victim girl had come or not and upon coming to know that she had not arrived at home, she having gone to *basa* and told her mother about the victim girl having been taken away by the accused persons including the appellants stands corroborated, not only from the evidence of other witnesses but also from the facts and circumstances of the case, as discussed hereinabove in the preceding paragraphs, thus the said portion of her evidence can be relied upon, inasmuch as the same does not appear to be tutored part as also inspires confidence.

55. Considering the facts and circumstances of the present



case and the evidence which has been brought on record to prove the allegations levelled against the appellants beyond all reasonable doubt, we are of the considered view that though the instant matter is based on circumstantial evidence, however all the material circumstances, right from the mode and manner of disappearance of the victim girl till recovery of her dead body in a nude condition and blood oozing out from her private parts as also P.W.7, Dr. Purushottam Kumar Sinha having examined the appellants and having found injuries on the private parts of the accused persons including the appellants, which have been opined to be suggestive of recent sexual contact / intercourse but the same having remained un-explained, have been successfully established by the prosecution before the trial court and the entire chain of the relevant circumstances is complete without any missing crucial link. The above discussed circumstances clearly indicate the guilt of the appellants in the alleged crime of abduction of the victim, her disappearance, rape and murder and dispel any hypothesis of innocence of the appellants in the alleged offences, hence we find no merit in this appeal, consequently we do not find any reason to interfere with the conclusion and finding of the trial court, leading to conviction of the appellants for the offences punishable under Sections



302/34, 376(A) and 376(D)/34 of the Indian Penal Code and Section 4 of the POCSO Act, 2012 and the ensuing sentence, by the impugned judgment of conviction dated 10.01.2017 and order of sentence dated 17.01.2017. In result, the instant appeal stands dismissed.

56. In view of the fact that the aforesaid appeals have stood dismissed, the bail bonds of the appellant of second case i.e. Criminal Appeal (DB) No. 298 of 2017, namely Anjesh Sada, who was granted bail during the pendency of the present appeal by an order dated 7.3.2018, are hereby cancelled and he is directed to surrender before the learned Trial Court within a period of four weeks from today for being sent to jail for serving the remaining sentence. As far as the sole appellant of the first case i.e. Criminal Appeal (DB) No. 305 of 2017, namely Bhushan Sada is concerned, he is already in custody, hence he is directed to serve the remaining sentence.

(Mohit Kumar Shah, J)

I agree.

(Shailendra Singh, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	30.06.2025
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