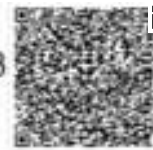




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MRC-7-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

MRC-7-2022

Date of Decision:26.05.2025

STATE OF HARYANA

... Appellant(s)

Versus

SUMIT @ FUNDI & ANOTHER

...Respondent

CRA-D-229-2023

SUMIT @ FUNDI & ANOTHER

... Appellant(s)

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Munish Sharma, DAG, Haryana,
for the appellant-State.

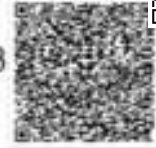
Mr. J.S. Mehendiratta, Advocate with
Mr. E.A. George, Advocate with
Mr. Randeep Singh Dhull, Advocate,
for the respondent/accused in MR-7-2022 and
for the appellant in CRA-D-229-2023.

JASJIT SINGH BEDI, J.

This judgment shall dispose of MRC-07-2022 sent by the District and Sessions Judge, Sonipat titled as State of Haryana Versus Partap Sumit @ Fundi & another and CRA-D-229-2023 titled as Sumit @ Fundi & another Versus State of Haryana as the same are arising out of the same FIR. However, for the sake of convenience the facts have been taken from CRA-D-229-2023.



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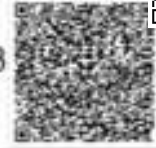
2. The present appeal has been filed against the judgment of conviction and order of sentence dated 19.12.2022 passed by the Addl. Sessions Judge, Sonipat.

3. The FIR was registered on 11.05.2017, the judgment of conviction and order of sentence passed by the Addl. Sessions Judge, Sonipat is dated 19.12.2022, the appeal was filed on 13.02.2023 and the matter is being taken up for hearing now i.e. after a period of 8 years from the date of registration of the FIR.

4. The brief facts of the prosecution case are that on 11.05.2017 the complainant Ved Kaur (PW9) wife of Mahender Singh (PW8), Dhanak by caste r/o Sant Kabir Ashram Kalupur, Sonipat presented a complaint in the police station in the name of SHO, P.S. City, Sonipat. She stated that she had two children. Amit was her son and her daughter was 'S' (hereinafter known as the deceased) aged about 19 years and was working in a medicine factory in the industrial area, Sonipat. Sumit r/o Kalupur used to harass her daughter for which she had several times objected to his activities several times. He had slapped her because he lost his temper due to non-response from her daughter one week earlier. They did not lodge any protest anywhere. On 09.05.2017 at about 6/7.00 a.m. she went to the factory but she did not return back. They continued to search at their own level but no clue could be found. She suspected that Sumit r/o Kalupur had taken her somewhere after abducting her. She prayed that her daughter be traced and legal action be taken against Sumit @ Fundi. In the complaint, she had also given her particulars and description. On this complaint, case FIR No.232 on 11.05.2017 under Section 365 IPC, Police Station City, Sonipat was



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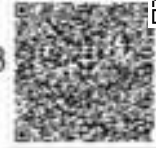
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registered. The investigation was carried out by P/SI Prem, P.S. City, Sonipat. Information was received on 12.05.2017 from one Satish son of Om Parkash that on 11.05.2017 the dead body of unknown lady had been found at Parsvanath City, Rohtak in the area of Urban Estate, Rohtak. On receipt of this information, P/SI Prem went to Urban Estate, Rohtak with the family members of the deceased where ASI Samunder Singh disclosed that a dead body of a lady was found at Parsvanath City, Rohtak in the area of Bohar regarding which the proceedings under Section 174 Cr.P.C. were carried out and the dead body was kept in mortuary of PGIMS, Rohtak for identification. The Investigating Officer along with the ASI and family members of the deceased reached the mortuary of PGIMS, Rohtak where they identified the body as 'S' daughter of Mahender, Dhanak by caste, r/o Kabirpur Ashram, Kalupur, Sonipat. The dead body was subjected to post mortem examination by a board of doctors of PGIMS, Rohtak was handed over to the family members for cremation. As per PME/2017/05/2014 dated 12.05.2017 the doctors opined that the cause of death was head injury described which were ante mortem in nature and sufficient to cause death in the ordinary course of nature. The anal and vaginal swabs were taken for detecting seminal fluids, if any. The manner of death was given after receipt of the scene of crime report and photographs. The post mortem samples from the body of deceased were obtained from the doctor and were converted into separate parcels and were taken into police possession. Proceedings under Section 174 Cr.P.C. were carried out and the statements of the witnesses were recorded.

Meanwhile, in case FIR No.234 of 2017 dated 12.05.2017 under Section 25-54-59 of the Arms Act, P.S. City, Sonipat accused Sumit @ Fundi



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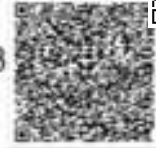
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son of Hari Om r/o Kirti Nagar, Kalupur, Sonipat was arrested by HC Dalbir. He produced the copy of disclosure statement and the recovery memo and sketch of pistol dated 12.05.2017 recovered from Sumit and the accused who was confined in the Arms Act case, was taken out from the police lock up was interrogated and was arrested in the instant case on finding evidence of his involvement. Accused Vikas @ Lalu son of Surender Yadav r/o near Sai Mandir, Kabirpur, Sonipat was also arrested on 12.05.2017 on finding the evidence of his involvement. Meanwhile Sections 201, 302, 328, 376-A (d) / 34 IPC and Arms Act were added in the case.

During investigation, on 13.05.2017 the Investigating Officer Prem took both the accused from the police lock up interrogated them and recorded their disclosure statements. Accused Sumit @ Fundi and Vikas @ Lalu were got medico legally examined from General Hospital, Sonipat. After medical examination, the parcels of papers, undergarments of accused Sumit and one parcel of papers alongwith undergarments of Vikas duly sealed alongwith one parcel of sample of blood of Sumit and that of Vikas along with forwarding letters duly sealed by doctors were taken into police possession. During police remand of both the accused, they reneged from their earlier disclosure statements and they made additional disclosure statements that they had kidnapped the deceased on 09.05.2017 by car No.HR-26AL-4237 make Santro silver colour and got the place demarcated. Thereafter, accused Vikas as per his disclosure statement got effected the recovery of car No.HR-26AL-4237 Santro silver colour and the back plate of the car as HR-26AL-4237 which was broken and also got effected the recovery of t-shirt worn by him at the time of the occurrence. The t-shirt and



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number plates were converted into parcels duly sealed with 'RK' were taken into police possession along with sample seals.

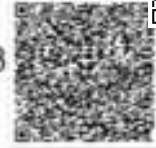
The car was got inspected from the FSL team and finger print expert. Hair strands were found from both the windows and a liquor bottle of make Officer's Choice blue below the driver's seat and one soda bottle from the gear had the word 'catch' was recovered. RC and driving licence of accused Vikas were found from the dashboard of the car and the dickey. Two blue sun shades, one black sun shade and another black sun shade from the rear glass of the car with make JMS Build Tech were found and as per directions of the FSL, the seat cover of the back seat of the car was removed. The hair strands from the windows, liquor bottle, soda bottle and sun shade were converted into parcels duly sealed with 'RK' along with sample seals, were taken into police possession.

Further investigation was carried out by SI Ajay Kumar on 13.05.2017, the then SHO, P.S. City, Sonipat. On 13.05.2017 the complainant got recorded her supplementary statement wherein she stated that Ved son of Daya Nand, Naveen, Vinod sons of Mahabir, Kuldeep, Amit sons of Hari Om, Sheela wife of Hari Om r/o Kalupur were involved in the murder of her daughter at which section 120-B IPC was added in the case.

During investigation on 14.05.2017 accused Sumit @ Fundi and Vikas @ Lalu got the place of occurrence demarcated where they had raped the deceased and had murdered her in the Parsvanath City, Rohtak in the area of Bohar. The place of occurrence was also got inspected from the FSL team as per directions of the FSL team. The earth stained with blood, stones, hair strands stained with blood, stains of blood in the cemented sewer pipe were



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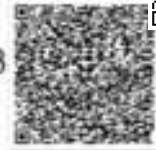
found. The earth from the sewer pipe was scratched and the pieces of sewer pipe where the blood was present, were broken and those were converted into parcels duly sealed with 'AK' and were taken into police possession along with sample seal.

Site plan of the place of occurrence was prepared. The accused had got effected the recovery of two bricks as per their disclosure statements used in the murder of the deceased. Their sketches were prepared. Those were wrapped in cotton and converted into parcels duly sealed with 'AK' and along with sample seals were taken into police possession. Accused Sumit @ Fundi got effected the recovery of a pant and shirt which were worn by him, at the time of commission of offence as per his disclosure statement and the same were bloodstained after being converted into sealed parcels duly sealed with 'AK' along with sample seal. On 14.05.2017 P/SI Prem took the footage of CCTV cameras of the route upto the place of occurrence.

5. On the basis of the complaint and the evidence collected during the investigation, Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was added. The further investigation of the case was carried out by DSP Sonipat. Further police remand of both the accused was obtained. On 15.05.2017 P/SI Prem obtained the footage of the route to the place of occurrence. The pen drive of the CCTV footage was taken into police possession. The Santro car was found to be going to the place of occurrence and returning from the place of occurrence as per the disclosure statements of the accused. The photos from the CCTV footage of the same were got prepared. On 15.05.2017 the papers and undergarments of accused Sumit and Vikas along with sample seals and the blood samples of



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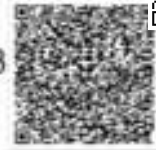
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both the accused alongwith forwarding letter and the cover of the rear seat of the car upon which there were blood stained, the hair strands from the windows of the car, liquor bottle and soda bottle from the car were converted into parcels duly sealed along with sample seals were taken into police possession. From the place of occurrence, the earth soaked in the blood and stones stained with the blood were converted into parcels duly sealed with the sample seals alongwith bricks, broken pieces of sewer pipes stained with blood and clothes of both the accused stained with blood duly sealed along with the sample seals, were deposited in FSL Madhuban for examination. Opinion of the doctor of PGIMS, Rohtak with regard to the recovered bricks was also obtained. The board of doctors opined that after perusal of the PMR vide PME/2017/05/14 dated 12.05.2017 and examination of alleged weapon of offence i.e. two bricks, the board was of the opinion that the injuries described in the post mortem examination report over the head could be caused due to such type of hard and blunt weapon. The scaled site plan of the place of occurrence was got prepared on 16.05.2017. The call details of the numbers of the deceased and that of accused were also taken into police possession. The ID of mobile phone of the accused was found in their names. From the examination of the CDR of mobile No.9991528090 belonging to accused Sumit it was found that accused Sumit had made a call on the mobile of accused Vikas bearing No.9991342135 on 08.05.2017 and on 09.05.2017 accused Vikas had made different calls to accused Sumit @ Fundi.

On 17.05.2017 one parcel of viscera of the deceased duly sealed with the seal of doctor alongwith sample seal and one parcel of DNA bone of deceased, one parcel vaginal swab of deceased, one parcel of anal swab of



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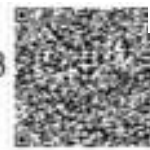
deceased and one parcel of clothes of deceased, one parcel of forwarding letter duly sealed by the doctor along with sample seal and two parcels of bricks duly sealed by 'AK' along with sample seals were deposited in FSL Madhuban for examination.

During investigation, on 21.05.2017 accused Sumit and Vikas made their disclosure statements before DSP. Accused Sumit in his disclosure statement stated that accused Pankaj son of Chinta Mani, Dhanak by caste had asked him to break the sim card and to destroy the evidence of the bag of deceased. Accused Sumit had thrown the bag consisting of a tiffin belonging to deceased in the canal near the bridge of village Mehlana and got demarcated that place.

Accused Sumit got effected the recovery of a mobile phone make Nokia from his house situated in Kirti Nagar, Sonipat as per his disclosure statement which was taken into police possession. The accused also got the place of occurrence demarcated where he had broken the sim. Accused Sumit also got effected the recovery of an Apple I-phone which was converted into a sealed parcel and are taken into police possession. On 22.05.2017 the pieces of pipes stained with blood duly sealed along with sample seal were deposited in FSL Madhuban for examination. During investigation, blood samples of Ved Kaur wife of Mahender and Mahender Singh son of Giani Ram were obtained at General Hospital, Sonipat for DNA analysis which samples were taken into police possession and deposited with the FSL for DNA analysis. Accused Pankaj son of Chinta Mani was arrested on finding evidence of his involvement. He got the place demarcated where the bag of deceased was thrown by the accused and also where the sim was thrown after breaking.



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Thereafter, memo accused Pankaj was produced in the court and was released on bail.

The opinion of the doctor was obtained with regard to the manner of death of the deceased in which the members of the board of doctors after perusal of the post mortem examination report, scene of crime report and photographs opined that the injuries described in the PMR were homicidal in manner and sufficient to cause death in the ordinary course of nature.

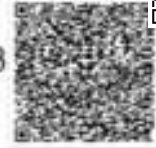
On 01.06.2017 the father of the deceased, namely, Mahender produced the mobile phone of the deceased which was taken into police possession after being converted into a parcel. Accused Ved son of Daya Nand, Naveen and Vinod sons of Mahabir, Kuldeep and Amit sons of Hariom were joined in the investigation by Ajay Kumar, the then SHO by Inspector Indiwari, SHO CIA Sonipat and by Mukesh Kumar DSP. Sheela wife of Hari Om was joined in the investigation of Inspector Parmila Devi, Women Cell, Sonipat. After investigation, no evidence regarding their involvement could be found and they were found innocent Section 120- B IPC was dropped in the case.

On 08.06.2017 Nodal Office, Tata Tally Services, Karnal and Nodal Officer, Vodafone, Haryana Circle, Peera Garhi, Delhi gave certificates under section 65-B of Evidence Act and copy of CDR and CAF form which were taken into police possession. The viscera report was obtained from FSL, Madhuban.

From the investigation, the evidence regarding the involvement of accused Sumit, Vikas and Pankaj was found and they were challaned



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accordingly. During checking of the challan section 25 of the Arms act was dropped and section 27 of Arms Act was added. The complainant produced her caste certificate on 17.06.2017 which was taken into police possession.

On 14.06.2017 the mobile phones of accused Sumit, Vikas and deceased were got inspected from Ditech Lab, Gurugram and the statements of the witnesses were recorded. On 20.06.2017 the production warrants of accused Vikas were obtained and on 22.06.2017 he was joined in the investigation by ACP Mukesh Kumar. In further interrogation, accused Vikas got recorded his disclosure statement that the t-shirt which he had got recovered on 13.06.2017, he had not worn the same at the time of incident. He had got the same recovered in his defence. The clothes worn by him at the time of the occurrence consisting of blood (pant and shirt) were thrown by him in the canal near the bridge of Rohtak canal. He could get the same demarcated. Thus, after obtaining the permission from the court, the accused Vikas got demarcated the place where the pant and shirt were thrown.

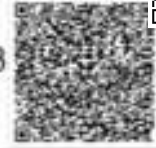
Thus, after obtaining all the reports the supplementary challan was submitted against accused Sumit, Vikas and Pankaj.

6. On commitment the Trial began before the Special Court under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

7. The prosecution in its evidence examined Satbir Singh as PW- 1, HC Sukhbir Singh as PW-2, HC Dalbir Singh as PW-3, ASI Sunil Kumar as PW-4, HC Devender as PW-5, HC Sandeep as PW-6, Anjali as PW-7, Mahender Singh as PW-8, Ved Kaur as PW-9, C. Surender as PW-10, Anand Mohan as PW-11, C. Pawan Kumar as PW-12, ASI Anil Kumar as PW-13,



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Ramesh as PW-14, Jatinder @ Jeetu as PW-15, Karambir as PW-16, Mahavir Singh as PW-17, Priya as PW-18, Virender as PW-19, Ravinder Rana as PW-20, Satish as PW-21, Dev Parkash as PW-22, ESI Rajesh Kumar as PW-23, Manoj Kumar as PW-24, SI Mahender as PW-25, HC Vijay Pal as PW-26, SI Naresh Kumar as PW-27, Rohit Kumar as PW-28, Jagbir Singh as PW-29, PSI Ajay Kumar as PW-30, Sukhvinder as PW-31, Deepak Kumar as PW-32, Inspector Rajpal as PW-33, Karambir as PW-34, HC Harender as PW-35, ASI Samunder Singh as PW-36, Dr.Dara Singh as PW-37, Dr.Vinod Kumar as PW-38, HC Bijender as PW-39, Ajay as PW-40, Dr.Sunita, Deputy Civil Surgeon as PW-41, ACP Mukesh Kumar as PW-42, Rajesh Kumar, Nodal Officer as PW-43, P/SI Prem Singh as PW-44, Constable Bijender as PW-45 and Satyam Clerk as PW-46 and placed and proved on record all the relevant.

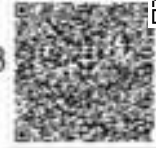
8. The gist of the prosecution evidence is as under:-

PW1-Satbir Singh, uncle of the deceased stated that while going towards the house of Mahender on 09.05.2017 he had met the deceased. He identified her body on 12.05.2017.

PW7-Anjali stated that on 09.05.2017 at around 6.30/6.45 AM she was going to the Global Medicines Factory in Industrial Area with the deceased. Someone called her from the back side. The deceased told her that her friend Sumit @ Fundi was calling her and she would meet her (this witness) later. When the deceased did not come in front of the factory she informed Ms. Anita in the factory of this fact. She stated that she had not seen accused Sumit @ Fundi at that time. She was declared hostile and cross-examined by the P.P. for the State. She denied the suggestion that she had



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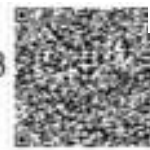
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compromised the matter with the accused persons or that she was deposing falsely in order to save them.

Mahender Singh, father of the deceased was examined as PW8. He stated that his daughter was being harassed by accused Sumit @ Fundi persistently. His deceased daughter had given a slap blow to accused Sumit @ Fundi one week prior to murder. At that time Sumit @ Fundi had threatened the deceased that he would commit rape upon her and get her raped by others and would thereafter kill her in future. However, they (complainant's family) did not lodge any complaint with the police. On 09.05.2017 the deceased had left their house at about 06.30 AM for her place of work. The accused Sumit @ Fundi and Vikas @ Lalu had abducted her and committed gangrape upon her. On 11.05.2017 his wife Ved Kaur and son Amit (since deceased) had lodged a complaint to the police. On 12.05.2017 he came to know about the recovery of the dead body of his daughter at Rohtak and he identified the same in the mortuary at PGIMS Rohtak. There was evidence of injuries on the body which was decomposed and maggots were crawling on the same. He was able to identify her from the clothes that she was wearing and a chain in her neck. On 01.06.2017 he handed over one mobile phone having two SIMs and one memory card which was being used by his daughter. The date of birth of his daughter was 11.10.1996 and the date of birth of his son was 15.08.1996. In cross-examination, he was confronted with the statement under Section 161 Cr.P.C. where the allegations regarding threat of rape and murder were missing. He clarified that it was the police that had disclosed to him that the accused Sumit @ Fundi and Vikas @ Lalu had committed rape upon his daughter before her death.



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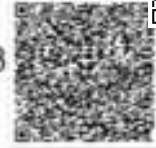
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Ved Kaur PW9 is the mother of the deceased and the complainant of the instant case. She stated that Sumit @ Fundi used to harass and tease her daughter. Her daughter had given a slap blow to Sumit @ Fundi. Accused Sumit @ Fundi had also given a slap blow to her daughter and he had threatened her that he would disrobe her, get her disrobe by others and would thereafter kill her in future. The said incident had taken place one week prior to the present occurrence. However, she did not disclose about the same to anyone due to fear. On 09.05.2017, her daughter had left the house at about 06.00 to 07.00 AM to go to the factory. The accused Sumit @ Fundi and Vikas @ Lalu had abducted her in a car at gun point. They administered some intoxicant substance to her and committed gangrape upon her after which they murdered her with bricks etc. On 11.05.2017 she along with her son Amit had gone to Police Station Sonipat to file the complaint Ex.PW4/A. On 12.05.2017, they received information from the police that the body of a young female had been found in the area of Rohtak. She along with her family members including her husband went to PGIMS Rohtak and identified the body of her deceased daughter. On 13.05.2017, the police recorded a supplementary statement. On the same night two unknown persons had come to her house with an intention to kill and they were armed with a pistol. She made a telephonic call to the police. On 09.05.2017, accused Sumit @ Fundi, Vikas @ Lalu and Pankaj issued threats on the telephone. Accused Sumit @ Fundi and Vikas @ Lalu had gangraped her daughter after abducting her and had killed her. After committing the offence, they disclosed about the same to their co-accused Pankaj and took him to Rohtak where they had shown the dead body and place of occurrence to him. Sumit @ Fundi and Vikas @ Lalu



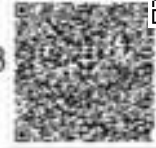
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had destroyed the evidence with the help of accused Pankaj. In cross-examination, she admitted that Sheenu was married at Village Selana about two years prior to the incident and resided at her matrimonial home for two months. In cross-examination, she stated that her family had received a sum of Rs.10 lakh from the Deputy Commissioner, Sonipat. The police had obtained thumb marks on 12/13 blank pages. She clarified that she had put her thumb marks on written documents. She stated that she had received a threat from Sumit @ Fundi on 09.05.2017. She was confronted with a complaint and statements wherein this fact was not recorded. She admitted that she had not got recorded the fact that accused Sumit @ Fundi had threatened her deceased daughter that he would disrobe, get her disrobe by others and that he would kill her in future. She admitted that she had not seen her daughter being abducted by accused Sumit @ Fundi and Vikas @ Lalu at gun point on 09.05.2017. She voluntarily stated that on 13.05.2017 the police brought Vikas @ Lalu and Sumit @ Fundi to her house and both the accused had confessed about the commission of the gangrape and murder after abducting the deceased from Sonipat on gunpoint. She admitted that she was not a witness of the occurrence and that the police had disclosed to her about the commission of gangrape and murder of the deceased by the accused after administering some intoxicant substance. She admitted that Sumit @ Fundi was known to her being a neighbour and that he had given a slap to her daughter one week prior to this incident. She stated that her daughter had told her about the same but that she had not got recorded the above fact regarding giving the slaps to Sheenu in her complaint.



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Satish S/o Om Parkash was examined as PW21. He stated that on 11.05.2017 at about 10.00 AM while he was grazing his cattle in the area of Parsav Nath City and IMT Rohtak he along with some other persons saw a decomposed body of a girl and informed the police. He was declared hostile. In cross-examination by the P.P., he stated that he had not told the police that the dead body was of Sonu of Village Kalupur of that Sonu had been kidnapped by two boys and murdered after committing rape by them. In cross-examination by the defence counsel he stated that the murder was not committed in his presence.

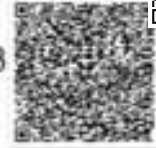
Dev Parkash S/o Raj Singh was examined as PW22. He stated that he and the deceased used to talk on the phone about six months prior to occurrence. She wanted to meet him. However, Sumit @ Fundi asked him not to talk with the deceased as he wanted to marry her. On 09.05.2017, Sumit @ Fundi had made 2/3 telephonic calls from his Mobile No.9991528090 on my Mobile No.8813006465. Later, he had come to know that Sumit @ Fundi had murdered the deceased after committing rape upon her with the help of friends. In cross-examination, he stated that he had received a wrong call and the caller introduced herself as Seema and also used to tell her name as Sheenu the deceased who used to tell him her name. He had never met the deceased though she used to keep asking him to meet her. He had no personal knowledge of the commission of the offence.

HC Sukhbir was examined as PW2 and stated that he had delivered the Special Report on 11.05.2017.

HC Dalbir Singh was examined as PW3. The second I.O. in FIR No.234 dated 12.05.2017 under Section 25 Arms Act, P.S. City Sonipat stated



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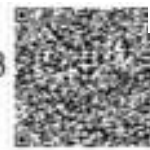
that on 12.05.2017 Sumit @ Fundi while being interrogated in FIR No.234 dated 12.05.2017 confessed before him that he had committed the instant offence as well. The said disclosure statement Ex.PW3/A along with weapon i.e. a country-made pistol of .315 bore was handed over by him to the I.O. S.I. Prem Singh. On the same day, the disclosure statement of Pankaj was recorded as Ex.PW3/D. He demarcated the canal bridge from where the bag of the deceased was thrown into the canal. He also demarcated the place where Sumit @ Fundi accused had thrown the mobile SIM after chewing it. In cross-examination, he stated that he had tried to find out the source/origin of the recovered pistol which was purchased from a gun vendor.

ASI Sunil Kumar was examined as PW4. He stated that on 11.05.2017 complainant/Ved Kaur had moved an application Ex.PW4/A on which he had recorded the formal FIR Ex.PW4/B and made an endorsement Ex.PW4/C on the complaint. The disclosure of Sumit @ Fundi Ex.PW4/D was recorded who stated that he could demarcate the place of occurrence. This disclosure statement of Vikas @ Lalu Ex.PW4/E was recorded wherein he stated that he could get recovered car bearing No.HR-26AL-4237, a broken number plate and a T-shirt from bosch service station. Sumit @ Fundi and Vikas @ Lalu demarcated the place from where the deceased was abducted at pistol point. Vikas @ Lalu got recovered the car, the broken number plate and a T-shirt. The FSL and fingerprint teams were called who on a search of the car recovered hair and the seat cover. The car stood in the name of Anita Sharma.

HC Devender was examined as PW5. He stated that he had arrested Sumit @ Fundi on 12.05.2017 and recovered a .315 country-made



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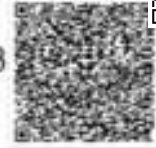
pistol from his possession. In cross-examination, he stated that he could not tell whether the said weapon was in working condition. A similar statement was made by HC Sandeep. In pursuance of his disclosure statement accused Sumit @ Fundi demarcated the place occurrence vide Memo Ex.PW4/F. Vikas accused also demarcated the place of occurrence vide Memo Ex.PW4/G. Vikas @ Lalu got recovered a car bearing No.HR-26AL-4237 make Santro and the number plate and a T-shirt were taken into possession vide memo Ex.PW4/H. On the same day, accused Vikas @ Lalu got recovered the seat cover of the car, hair, wine bottle, soda bottle, sunshades, driving licence of Vikas @ Lalu and the R.C. of the car bearing No.HR-26AL-4237 and the same were taken into possession vide memo Ex.PW4/I. On 22.05.2017, he deposited the case property to FSL Madhuban and the exhibited articles were Ex.MO/1 to Ex.MO/11.

Constable Pawan Kumar was examined as PW12. He stated that on 14.05.2017 bloodstained earth was lifted by the I.O. along with pieces of grass, hair, stone pieces and piece of a pipe and the same were taken into possession possible Ex.PW12/D. In cross-examination, he stated that the blood samples of the accused were handed over by the doctor.

ASI Anil Kumar was examined as PW13. He stated that on 14.05.2017, he had joined investigation. Sumit @ Fundi and Vikas @ Lalu demarcated the place of occurrence near the Parsavnath City. Bloodstained earth, grass and hair etc. were lifted. A bloodstained brick was recovered from 500 mtrs. away from the place of occurrence on the demarcation of the accused. A bloodstained brick was also got recovered by Vikas @ Lalu in the area of Parsavnath City. Sumit @ Fundi got recovered his clothes which were



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taken into possession vide memo Ex.PW13/E. Sumit @ Fundi got recovered a Nokia phone from his house and demarcated the place where he had thrown bags into the canal. Both the accused demarcated the place where the SIM cards were thrown. Vikas @ Lalu got recovered an Iphone and demarcated the place from where the clothes were thrown into the canal vide memo Ex.PW13/M.

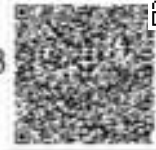
ESI Rajesh, photographer was examined as PW23, Manoj Halqa Patwari who had prepared the site plan Ex.PW24/A was examined as PW24, SI Mahender Singh was examined who had recorded the disclosure statement of Pankaj was examined as PW25, HC Vijay Pal was examined as PW26 who brought the FIR Nos.232 and 234, Jagbir Singh, SSA/SOC, MFSU Sonipat was examined as PW29. He inspected the Santro on 13.05.2017 and inspected the spot on 14.05.2017 as per report Ex.PW29/A.

SI Naresh Kumar was examined as PW27. He stated that Sumit @ Fundi and Vikas @ Lalu got recorded their disclosure statements on 21.05.2017. Sumit @ Fundi demarcated the place from where he had thrown a bag containing the lunch box and documents into the canal. He got recovered his mobile phone make Nokia and also demarcated the place from where he had thrown the SIM Card after chewing. Vikas @ Lalu demarcated the place of the Bosch Car Service Centre wherein he had thrown after chewing it. He got recovered his Iphone, the DNA sample from the parents of the deceased were obtained by SHO Rajpal on 24.05.2017.

SHO Ajay Kumar was examined as PW30. He stated that he had recorded the supplementary statement of Ved Kaur on 13.05.2017. On 14.05.2017 he had interrogated Sumit @ Fundi and Vikas @ Lalu who led



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them to the place of occurrence and the demarcation memos were prepared. The FSL teams reached the spot. The rough site plan Ex.PW30/A was prepared. On 13.05.2017 recoveries were effected from Sumit @ Fundi and Vikas @ Lalu. Sumit @ Fundi got recovered his jeans and shirt. On 16.05.2017, he obtained an opinion from the doctor regarding the injuries. He also got prepared a site plan, seizure memo of CDRs prepared and got a DDR of the photographs taken by the photographer. In cross-examination, he stated that the place of occurrence was 800 mtrs from the highway.

Inspector Rajpal was examined as PW33. He stated that he was the SHO of P.S. City Sonipat. The blood samples of the parents of the deceased were taken for DNA profiling and the CDRs were taken into possession along with the caste certificate and the opinion of the doctor. He prepared the challan and the supplementary challan.

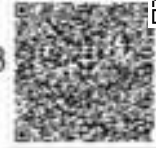
HC Harender was examined as PW35. He stated that he was a Computer Operator and had downloaded the CDRs on 16.05.2017 Ex.PW30/F and Ex.PW30/G.

ASI Samunder Singh was examined as PW36. He stated that on 11.05.2017, the body was discovered at Urban Estate, P.S. Rohtak, Parsavnath City. Satish S/o Om Parkash discovered the body. On 12.05.2017 the body was identified. He prepared the inquest report Ex.D2.

ACP Mukesh Kumar was examined as PW42. He stated that he was posted as DSP Headquarter, Sonipat on 15.05.2017. He interrogated Sumit @ Fundi and Vikas who suffered their disclosure statements pursuant to which recoveries were made. He arrested Pankaj on 31.05.2017 and recorded his disclosure statement. On 01.06.2017, the father of the deceased



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produced a mobile phone. On 22.06.2017, he interrogated Vikas @ Lalu who demarcated the place from where he had thrown clothes into the canal. Bloodstained clothes of Vikas @ Lalu were not recovered. In cross-examination, he stated that the bloodstained clothes of Vikas @ Lalu were not recovered. Vikas @ Lalu was interrogated after obtaining permission from the Magistrate.

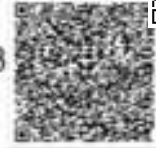
Prem Singh, then posted at P.S. City Sonipat was examined as PW44. He stated that he had recorded the statement of Amit brother of the deceased wherein he had mentioned the role of Sumit @ Fundi. On 12.05.2017, he received information regarding the recovery of a body of a girl on 11.05.2017. The dead body was identified by Satbir, Mohinder and Rajkumar. ASI Samunder prepared the inquest report Ex.D2. Sumit @ Fundi had already been arrested in FIR No.234 dated 12.05.2017 under Section 25 of Arms Act. During interrogation, Sumit @ Fundi suffered his disclosure statement confessing his crime. In cross-examination, he stated that the investigation was transferred to the DSP after the provisions of SC/ST Act were invoked.

Constable Bijender was examined as PW45. He stated that on 14.06.2017, he received three mobile phones and converted the data of the said mobiles into a pendrive. In cross-examination he stated that no data relating to the instant crime was detected in any of the mobile phones.

HC Bijender, Malkhana Munshi was examined as PW39. He stated that parcels were deposited on 12.05.2017, 13.05.2017, 14.05.2017, 15.05.2017 and 17.05.2017. They were sent to the FSL on 22.05.2017



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Satyam, Clerk was examined as PW46. He brought on record the SC Certificate Ex.PW9/B.

Anand Mohan Chawla S/o Shri Amar Chand Chawla (PW11), Ramesh S/o Hari Singh (PW14), Jatinder @ Jeetu S/o Dharampal (PW15), Karanbir S/o Raja Ram (PW16), Mahavir S/o Late Shri Bhagwan Singh (PW17), Priya W/o Dilbag Singh (PW18), Virender S/o Shri Raj Singh (PW19), Sukhvinder S/o Kundan Lal (PW31) and Ajay S/o Dara Singh (PW40) were examined with respect to the CCTV footage showing the location of the Santro Car at different places.

Ravinder Rana was examined as PW20. He stated that he had purchased Santro car bearing No.HR-26AL-4237 from Anita Sharma and had sold the same to Karambir S/o Hem Raj from Sonipat.

Karambir S/o Hem Raj was examined as PW34. He stated that the vehicle in question had been purchased by him from Ravinder Rana who had purchased it from Anita Sharma. The car was in possession of Vikas @ Lalu who was working at his shop.

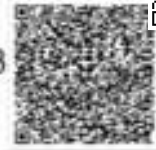
Rohit Kumar was examined as PW28. He brought on record call details pertaining to Mobile No.9991342135 of Vikas @ Lalu.

Deepak Kumar, Nodal Officer Vodaphone was examined as PW32. He brought on record the call details of Sumit @ Fundi Ex.PW32/A with other mobile phones.

Rajesh Kumar, Nodal Officer, Vodafone was examined as PW43. In cross-examination, he stated that the exact location could not be mentioned except the circle number.



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Dr. Dara Singh was examined as PW37. He medico-legally examined Sumit @ Fundi and Vikas @ Lalu. In cross-examination stated that there were no injuries on their private parts.

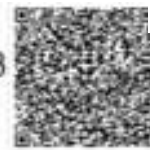
Dr. Vinod Kumar furnished his affidavit and was examined as PW38. He brought on record the postmortem report. He stated that on 12.05.2017 he along with Jitender Kumar Jakhar, Associate Professor as a Board Member with Dr. Sandeep Kumar Giri conducted the postmortem on the body of the deceased. The following injuries were found on her person:-

“That during postmortem examination, following injuries are found on the body of deceased:-

1. A lacerated wound of size 4 x 2 cm was present over the right parietal region of the scalp, situated 3 cm from midline. Margins of the wound were irregular and underlying tissue bridging was present. On dissection, underlying soft tissues were ecchymosed. On reflection of scalp echhymosis seen over the bilateral temporal parietal and occipital region. On further dissection, part of the right parietal bone was missing and the available right parietal bone showed linear fracture in its middle, situated 5 cm from the coronal suture and fracture further traverse through the sagittal suture and passes through the left parietal bone. Left temporal and parietal bones were found fractured in multiple pieces. Linear fracture of bilateral occipital, middle and posterior cranial fossa was seen. The fractured ends showed infiltration of blood in the bony trabeculae. The sphenoid, ethmoid and maxilla bones were



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found shattered into multiple pieces with infiltration of blood in the bony trabeculae. Brain matter was missing and duramater was parchment like and shriveled into soft tissue mass.

2. A lacerated wound of size 3 * 2 cm was present over the right parietal region of the scalp, situated 2 cm lateral to injury no.1. Margins of the wound were irregular and underlying tissue bridging was present. On dissection, underlying soft tissues were ecchymosed.

3. Multiple lacerated wounds of size varying from 1 x 1 cm to 3 * 2 cm were present over the left temporo-parietal region of the scalp over an area of 11 * 4 cm, situated 4 cm from midline. Margins of the wound were irregular and underlying tissue bridging was present. On dissection, underlying soft tissues were ecchymosed.

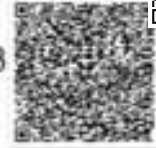
4. Left half of the mandible was available and fractured at the level of 2nd and 3rd molar teeth and also at the level of canine and lateral incisor with infiltration of blood in the bony trabeculae.

5. Anal margins showed a crescentic tear along with its posterior and left lateral margins. Injury margins were irregular and ecchymosed. On dissection, underlying soft tissues were ecchymosed.

C. That after conducting the postmortem examination I along with other board members opined that the cause of death in



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this case was head injury described which is antemortem in nature and sufficient to cause death in ordinary course of nature. The anal and vaginal swabs have been taken for detecting seminal fluid, if any. The manner of death will be given after receipt of scene of crime report and photographs. The probable time elapsed between death and autopsy was 2 to 3 days.”

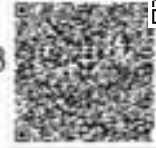
In further examination, he stated that on 16.05.2017 on an application was moved by the I.O. Ex.PW30/D he along with Dr. Sandeep Kumar Giri gave their opinions Ex.PW30/E that the injuries on the deceased could have been caused by bricks which were produced by the police officials before them. On 01.06.2017, an application dated 25.05.2017. Ex.PW38/C regarding seeking opinion about the manner of the death he along with the other Board Members gave an opinion Ex.PW30/D that the death was homicidal in nature. He also gave his opinion on 23.06.2017 which is Ex.PW38/E. The said opinion is reproduced hereinbelow:-

“Date 23/06/17

Today Sh. Rajpal, SHO, P.S. City Sonipat put few questions in front of the board of doctors in the case of Ms. Sheenu D/o Mohinder Singh Caste Dhanak, 224/F R/o Sant Kabir Nagar Ashram P.S. Sonipat, Distt. Sonipat vide PMR No.PME/2017/05/14 dated 12.05.2017. After perusal of post-mortem examination report vide No.PME/2017/05/ 14 dated 12.05.2017 chemical analysis report vide No.FSL(H) No.17/T-8951 dated 01.06.2017 Toxi No.436/17, laboratory examination report of semen vide No.FSL(H) No.1718-2866 dated 31/05/17, letter of SSO/chemistry in reference to the letter No.1279/DSP(HQ)Spt. dt. 21/06/2017 and letter of SSO/Biology FSL, Madhuban Karnal in reference to the letter



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No.1279-DSP HQ Spt. dt. 21/06/17 the board is of following opinion regarding the asked questions:-

1) In the dead body sperms may destroyed by the decomposition. However, time period is not certain.

2) In the anus sperms have been found upto two days it is not possible to suggest that after two days it could not be found in the anus.

3) The concentration of acid phosphatase gradually falls with time gradual disappearance in 72 hours. It is not possible to suggest that after 72 hours it could be detect.

4) Laboratory examination report vide No.FSL(H) No.17/B-2866 dated 31.05.2017 showed no semen was detected in the vaginal swabs and smears which were presented at the time of postmortem examination and as per the PMR vide PME/2017/05/14 dated 12/05/2017 growing effects over the external genitalia and perianal region. Labia majora & minora were missing and vestibule region was exposed. So, no definite opinion regarding sexual intercourse could be given.

Laboratory examination report also showed that no semen was detected in the anal swab and smear. So, no definite opinion regarding unnatural sexual intercourse could be given.

However, a crescentic tear was present along with posterior and left anal margins as described in the postmortem report. So, possibility of sexual assault cannot be ruled out.

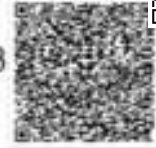
5) As the dead body was in the stage of decomposition and due to putrefactive condition of viscera no specific finding of poisoning was appreciable that's why the viscera have been preserved for chemical analysis and chemical analysis report showed that no common poison/drug/ethyl alcohol could be detected."

Dr. Sunita was examined as PW41. She had received the dead body of the deceased in the mortuary at PGIMS Rohtak.

Rajesh Kumar, Nodal Officer, Vodafone Idea Ltd. was examined as PW43. He stated that he had handed over the record of mobile numbers i.e. 8053779068, 9050464971, 8395986774, 9991528090, 8396969172,



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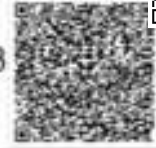
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8930729843, 8053516448, 8930767114 and 9813499667 to the Investigating Agency which was taken into possession by them vide Ex.PW32/B. The customer application form of mobile No.8395986774 was in the name of Sumit @ Fundi was Ex.PW32/A and call details were Ex.PW32/B. Customer application form Ex.PW32/C and ID Proof Ex.PW32/C/1 of Mobile No.9991528090 was also in the name of Sumit @ Fundi and call details were Ex.PW32/D. The customer application form Ex.PW32/E of Mobile No.8396969172 was in the name of Sant Ram and call details were Ex.PW32/F. Customer application Ex.PW32/G and ID Proof Ex.PW32/G/1 of Mobile No.8930729843 was in the name of Kuldeep and the call details were Ex.PW32/H. Customer application form Ex.PW32/I and ID Proof Ex.PW32/J of Mobile No.8053516448 was in the name of Ved Singh and call details were Ex.PW32/K. Customer application form Ex.PW32/L and ID proof Ex.PW32/M of Mobile No.8930767114 was in the name of Sheela and call details were Ex.PW32/N. Customer application form Ex.PW32/O and ID Proof Ex.PW32/P of Mobile No.9813499667 was in the name of Vinod and call details were Ex.PW32/Q. Customer application form Ex.PW32/R of Mobile No.8053779068 was in the name of Ved Kaur and call details were Ex.PW32/S. Customer application form Ex.PW32/T and ID Proof Ex.PW32/U of Mobile No.9050464971 is in the name of Ved Kaur and call details were Ex.PW32/V.

9. The P.P. tendered in evidence the FSL report Ex.PX, DNA report Ex.PX/1, FSL reports Ex.PX/2, Ex.PX/3, Ex.PX/4, Ex.PX/5 and DNA report Ex.PX/6.



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10. The statements of the accused were recorded under Section 313 Cr.P.C. but as the new evidence came on an application of the Public Prosecutor for the State against the accused, therefore, the supplementary statements of all the accused were recorded under Section 313 Cr.P.C. The incriminating material coming in the prosecution evidence against the accused was put to them in their statements under Section 313 Cr.P.C. as well as their supplementary statements under Section 313 Cr.P.C. The accused Sumit @ Fundi and Vikas stated that they had not made any disclosure statements and the alleged recovery was planted by the police. They had not got the place of occurrence demarcated and they had been falsely implicated in the case. Similarly, accused Pankaj also stated that he had not got the place of occurrence demarcated. He was innocent and had not committed any offence.

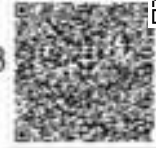
11. After their statements were recorded under Section 313 Cr.P.C. accused Pankaj moved an application seeking the examination of Manish S/o Naresh as DW1, Deependu S/o Dalip Viswas and Anil S/o Baljor. The said witnesses in defence sought to project that accused Sumit @ Fundi had confessed before these witnesses and co-accused Pankaj that he had murdered his girlfriend because she was in an illicit relationship with others. The defence also tendered documents Ex.DA/1 and Ex.DA/2.

12. Based on the evidence led, the accused came to be convicted and sentenced by the Court of Addl. Sessions Judge, Sonipat vide judgment and order of sentence dated 19.12.2022 as under:-

Name of convicts	Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
Sumit @	366 IPC R/w	RI 10 years	Rs.2000/-	SI 01 year



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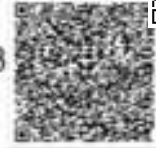
Fundi & Vikas	Section 120-B and 34 IPC	each	each	
	328 IPC R/w Section 120-B and 34 IPC	RI 05 years each	Rs.1000/- each	SI 06 months
	376-A IPC R/w Section 120-B & 34 IPC	RI 20 years	Rs.4000/- each	SI 02 years
	376-D IPC R/W Section 120-B and 34 IPC	Life imprisonment each	Rs.10,000/- each	--
	302 IPC R/w Section 120-B and 34 IPC	Death penalty each	--	--
Sumit @ Fundi	27 of Arms Act	RI 03 years	Rs.750/-	SI 03 months
Vikas	Section 3(2) (v) of the SC/ST Act	Life imprisonment	Rs.10,000/-each	--

13. It is the aforementioned judgment, which is under challenge, in the present appeal.

14. The learned counsel for the accused/appellants contends that the case is based on circumstantial evidence and the chain of circumstantial evidence is not complete so as to warrant the conviction of the accused. PW7-Anjali D/o Umed is stated to have seen the deceased accompany accused Sumit @ Fundi in a silver coloured car but she has turned hostile. The CDRs between the deceased and Sumit @ Fundi only establish that they were well-known to each other. As per complainant/PW9 Ved Kaur and her husband PW8-Mahender Singh, the deceased had given slap blows to accused Sumit @ Fundi whereas he had also done the same. Further, it is alleged that he used to tease and harass the deceased and had also threatened to rape her. The said allegations are unsubstantiated by any other corroborative evidence and no complaint was ever made by these PWs to the police. However, even if the



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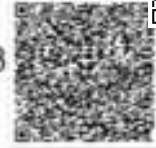
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allegations are taken to be true to establish motive on the part of the accused, motive itself is not sufficient to convict the accused. The recovery of two bloodstained bricks are stated to have been effected at the instance of both the accused. The said factor even if taken to be correct would only show that the accused persons knew where the bricks were lying and no presumption could be raised that they had used the bricks to assault the deceased. The bloodstained earth/vegetative material/stone pieces stained with the blood of the deceased also do not inculcate the accused. Further, Sumit @ Fundi has got recovered his trouser and shirt both of which were bloodstained with the blood-group of the deceased. This factor is also insufficient to establish the guilt of the accused in the absence of other corroborative evidence. There are discrepancies in the FSL reports of the bricks and the bloodstained clothes and the link evidence is missing. Therefore, the said reports cannot be relied upon to inculcate the accused. Reliance is placed on the judgments of the Hon'ble Supreme Court in the case of **Rahul Versus State of Delhi Ministry of Home Affairs & Anr. 2022(4) RCR (Criminal) 993** and **Karandeep Sharma @ Razia @ Raju Versus State of Uttarakhand, 2025 INSC 444.**

Semen found on the underwear of one accused and trouser of the other would not further the prosecution case because correspondingly, no semen has been detected on the person of the deceased. He further contends that the CCTV footage purportedly showing the car at different locations does not further the prosecution case. The persons driving the car or sitting inside are not visible. Even the number plate is not visible. In fact, there is no evidence at all that the deceased was taken away in the said car. He thus, contends that as there is



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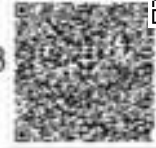
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no evidence of kidnapping, intoxicating rape or murder, the present appeal ought to be allowed and the judgment of conviction be set aside.

15. On the other hand, the learned State counsel contends that the deceased and the accused Sumit @ Fundi were well-known to each other. As per PW8-Mahender Singh and PW9-Ved Kaur, Sumit @ Fundi used to tease and harass their daughter. They had slapped each other a few weeks prior to the alleged occurrence and Sumit @ Fundi had gone to the extent of threatening to rape their daughter. Therefore, the motive stands established. While referring to the call detail records between the deceased on the one hand and Sumit @ Fundi on the other, he contends that between 24.04.2017 and 08.05.2017, Sumit @ Fundi had made 189 calls to the deceased. In the same period the deceased had made 35 calls to Sumit @ Fundi which only goes to show that it was Sumit @ Fundi who was teasing and harassing the deceased. As regards the role played by co-accused Vikas @ Lalu, he contends that in the preceding 03 months before the occurrence, Sumit @ Fundi and Vikas @ Lalu spoke only three times. However, on 08.05.2017, Sumit @ Fundi called his co-accused Vikas @ Lalu four times whereas Vikas @ Lalu called Sumit @ Fundi once. Thereafter, on the next day i.e. 09.05.2017, the date on which the deceased was allegedly kidnapped, Vikas @ Lalu spoke to Sumit @ Fundi three times. This shows that Sumit @ Fundi and Vikas @ Lalu had no reason to speak each other but for one day prior to the occurrence as Sumit @ Fundi wanted to use the vehicle of Vikas @ Lalu. He further contends that the bloodstained clothes of Sumit @ Fundi were recovered on his disclosure statement and the DNA of the blood matched that of the deceased. Similarly, on the disclosure statements of both the accused



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bloodstained bricks used to assault the deceased were recovered which on DNA analysis were found to contain the blood group of the deceased. He, therefore, contends that as the chain of circumstantial evidence is complete, the guilt of the accused stands established beyond doubt and thus, the present appeal is liable to be dismissed. Further, looking at the heinous nature of the offence, the murder reference ought to be confirmed.

16. We have heard the learned counsel for the parties and gone through the record.

17. The present case is based on circumstantial evidence and in the context of circumstantial evidence, the Hon'ble Supreme Court in the case of **Sharad Biridhichand Sarda Vs. State of Maharashtra, 1984 AIR Supreme Court 1622** held as under:-

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

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

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 where the following observations were made :-

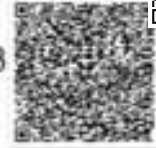
"certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

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

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



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

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

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

(emphasis supplied)

18. In **Ramanand @ Nandlal Bharti Versus State of Uttar Pradesh, 2022 AIR Supreme Court 5273**, in the context of circumstantial evidence, the Hon’ble Supreme Court held as under:-

“46. Although there can be no straight jacket formula for appreciation of circumstantial evidence, yet to convict an accused on the basis of circumstantial evidence, the Court must follow certain tests which are broadly as follows:

1. Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

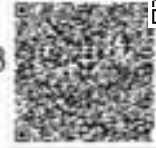
2. Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;

3. The circumstances, if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except the one to be proved.”



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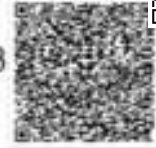
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47. There cannot be any dispute to the fact that the case on hand is one of the circumstantial evidence as there was no eye witness of the occurrence. It is settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt the complete chain of events and circumstances which definitely points towards the involvement and guilty of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eye witness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the expected principles in that regard.”

(Emphasis supplied)

19. In **‘Karakattu Muhammed Basheer versus The State of Kerala 2024(10) SCC 813’**, in the context of circumstantial evidence, the Hon’ble Supreme Court held as under:-

11. Thereafter, the above principles have been reiterated in the subsequent judgments of this Court and hold the field till date. Thus, these basic established principles can be summarized in the following terms that the chain of events needs to be so established that the court has no option but to come to one and only one conclusion i.e. the guilt of the accused person. If an iota of doubt creeps in at any stage in the sequence of events, the benefit thereof should flow to the accused. Mere suspicion alone, irrespective of the fact that it is very strong, cannot be a substitute for a proof. The chain of circumstances must be so complete that they lead to only one conclusion that is the guilt of the accused. Even in the case of a conviction where in an appeal the chain of evidence is found to be not complete or the courts could reach to any another hypothesis other than the guilt of the



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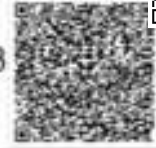
accused, the accused person must be given the benefit of doubt which obviously would lead to his acquittal. Meaning thereby, when there is a missing link, a finding of guilt cannot be recorded. In other words, the onus on the prosecution is to produce such evidence which conclusively establishes the truth and the only truth with regard to guilt of an accused for the charges framed against him or her, and such evidence should establish a chain of events so complete as to not leave any reasonable ground for the conclusion consistent with the innocence of accused.

20. The Hon'ble Supreme Court in the case of **Anjhus Dungdung Versus State of Jharkhand, 2006(4) RCR (Criminal)** has held that suspicion howsoever strong cannot take the place of proof. The relevant paragraph is as under:-

“12. Thus, from the aforesaid discussion, it would be clear that out of the five circumstances, the prosecution has failed to prove the recovery of bloodstained balwa and tangi upon the disclosure statement of accused Rajesh Yadav @ Raju Gowala by credible evidence. The circumstance that the appellant came to his village from Punjab four to five days before the date of the alleged occurrence and was seen by PW18 in village Simdega cannot be said to be an unnatural conduct on the part of the appellant, as such the same cannot be taken as a circumstance against him. Recovery of one torch cell and knife from the pocket of appellant after the date of alleged occurrence cannot be used as a circumstance against him, especially when neither there is any case nor evidence that the knife recovered was stained with blood. The other circumstances which remain are motive and letter written by the appellant giving false information to his brother that he was dead. These two circumstances raise strong suspicion against the appellant, but it is well settled that suspicion howsoever strong it may be cannot take the place of proof. In any view of the matter, on the basis of these circumstances, it is not possible to draw an irresistible conclusion which is incompatible with innocence of the



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appellant so as to complete the chain. It is well settled that in a case of circumstantial evidence, the chain of circumstances must be complete and in case there is any missing link therein, the same cannot form the basis of conviction. For the foregoing reasons, we are of the opinion that prosecution has failed to prove its case beyond reasonable doubt against all the accused persons, much less the appellant.”

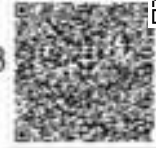
(Emphasis supplied)

21. The Hon’ble Supreme Court in the case of **‘Sujit Biswas versus State of Assam 2013(3) RCR(Criminal) 227’**, has held that suspicion however grave it may be, cannot take the place of proof and there is a large difference between something that ‘may be proved’ and something that ‘will be proved’. The relevant paragraph is as under:-

6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that ‘may be’ proved, and something that ‘will be proved’. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between ‘may be’ and ‘must be’ is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between ‘may be’ true and ‘must be’ true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between ‘may be’ true and ‘must be’ true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the



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benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant Govind Nargundkar & Anr. v. State of M.P., AIR 1952 Supreme Court 343; State through CBI v. Mahender Singh Dahiya, 2011(1) RCR (Criminal) 706 : 2011(1) Recent Apex Judgments (R.A.J.) 389 ; and Ramesh Harijan v. State of U.P., 2012(3) RCR (Criminal) 998 : 2012(4) Recent Apex Judgments (R.A.J.) 218).

22. In light of the aforementioned judgments, we are required to examine the different planks of circumstantial evidence in the instant case.

23. **Last Seen Evidence**

The statement of Anjali D/o Umed Singh was recorded during the course of investigation to the effect that the deceased had accompanied accused Sumit @ Fundi in a car on the morning of 09.05.2017. However, Anjali was examined as PW7 did not support the prosecution case and was declared hostile. On being cross-examined by the P.P. nothing favourable to the prosecution could be elicited from her deposition/cross-examination.

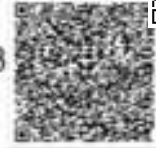
The Investigating Agency also produced different CCTV footages of a car travelling from Sonipat to Rohtak. However, neither the accused nor the deceased are visible in the car in question. Even the registration number of the vehicle is not visible.

24. **Motive**

As per the prosecution case emanating from the statement of complainant/Ved Kaur PW9 and her husband Mahender Singh PW9, Sumit @ Fundi used to tease their daughter because of which she had given a slap blow to him and a week prior to the murder Sumit @ Fundi had also given a slap to



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the deceased. He had threatened that he would disrobe her, rape her and thereafter kill her in future. In order to substantiate motive, the prosecution has brought on record CDRs showing that the accused Sumit @ Fundi used to repeatedly call the deceased and between 10.04.2017 and 08.05.2017 Sumit @ Fundi from both his cellphones had called on the two cellphones of the deceased 555 times whereas the deceased has called Sumit @ Fundi 56 times.

25. As regards the law laid down by the Hon'ble Supreme Court with respect to the evidentiary value of motive:-

In **N.J. Suraj Versus State represented by Inspector of Police, 2004(11) SCC 346**, it was held as under:-

“4. Now, the only circumstance which remains is that the accused has a motive for the commission of the offence which alone cannot form the basis for conviction as it is well settled that in a case of circumstantial evidence, the circumstances should be such so as to lead to only one irresistible conclusion, which is incompatible with the innocence of the accused. This being the position, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and the High Court was not justified in upholding the convictions of the appellant.”

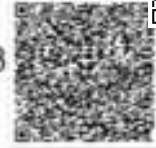
(emphasis supplied)

In **Sampath Kumar Versus Inspector of Police, Krishnagiri, 2012(2) RCR (Criminal)**, it was held as under:

“14. In the present case the testimony cannot be wholly reliable or wholly unreliable. He is not a chance witness who had no reason to be found near the deceased at the time of the occurrence. There is evidence to show that Palani (PW7) used to sleep with the deceased-Senthil in the verandah of the house. What makes it suspect is that the witness has, despite being a natural witness, made a substantial improvement in the version without their being any acceptable explanation for his silence in regard to the fact and matters which was in his knowledge and which would make all the



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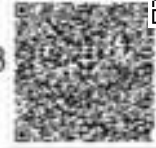
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difference in the case. The Court would, therefore, look for independent corroboration to his version, which corroboration is not forthcoming. All that is brought on record by the prosecution is the presence of a strong motive but that by itself is not enough to support a conviction especially in a case where the sentence can be capital punishment. In N.J. Suraj v. State represented by Inspector of Police, (2004)11 SCC 346, the prosecution case was based entirely upon circumstantial evidence and a motive. Having discussed the circumstances relied upon by the prosecution, this Court rejected motive which was the only remaining circumstance relied upon by the prosecution stating that the presence of a motive was not enough for supporting a conviction, for it is well-settled that the chain of circumstances should be such as to lead to an irresistible conclusion, that is incompatible with the innocence of the accused. To the same effect is the decision of this Court in Santosh Kumar Singh v. State through CBI., 2010(4) RCR (Criminal) 593 : 2010(5) Recent Apex Judgments (R.A.J.) 518 : (2010)9 SCC 747 and Rukia Begum v. State of Karnataka, 2011(3) RCR (Criminal) 745 : 2011(4) Recent Apex Judgments (R.A.J.) 306 where this Court held that motive alone in the absence of any other circumstantial evidence would not be sufficient to convict the appellant. Reference may also be made to the decision of this Court in Sunil Rai @ Paua and Ors. v. Union Territory, Chandigarh, 2011(3) RCR (Criminal) 636 : 2011(4) Recent Apex Judgments (R.A.J.) 164 . This Court explained the legal position as follows :

"In any event, motive alone can hardly be a ground for conviction. On the materials on record, there may be some suspicion against the accused but as is often said suspicion, howsoever, strong cannot take the place of proof."

15. Suffice it to say although, according to the appellants the question of the appellant-Velu having the motive to harm the deceased-Senthil for falling in love with his sister, Usha did not survive once the family had decided to offer Usha in matrimony to the deceased-Senthil. Yet even assuming that the appellant-Velu had not reconciled to the idea of Usha getting married to the deceased-



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Senthil, all that can be said was that the appellant-Velu had a motive for physically harming the deceased. That may be an important circumstance in a case based on circumstantial evidence but cannot take the place of conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond a reasonable doubt.”

(emphasis supplied)

In **Ramanand @ Nandlal Bharti Versus State of Uttar Pradesh,**

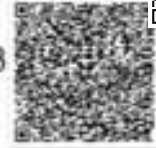
2022 AIR Supreme Court 5273, it was held as under:

“87. It is a settled principle of criminal jurisprudence that in a case based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. This Court in various decisions has laid down the principles holding that motive for commission of offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available. It is equally true that failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. However, it is also well settled and it is trite in law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused.

88. Having regard to the nature of the evidence on record, there is something to indicate that the accused appellant had illicit relationship with Manju and wanted to settle in life marrying Manju. As noted above, in the past accused appellant had got engaged with Manju and was on the verge of getting married. At the relevant point of time when the accused appellant got engaged with Manju, it appears that one and all including the deceased Sangeeta were consenting parties. There is nothing on record to indicate that at the time of engagement of accused appellant with Manju, the



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deceased Sangeeta had raised hue and cry or had opposed such decision of her husband. Of course, this is something which is very personal. If at all we believe the illicit relationship of the accused appellant with Manju, then it is possible that the deceased Sangeeta might be an absolutely helpless lady and could not have done anything in that regard. However, the moot question is should this motive by alone be held sufficient to convict the accused appellant for the alleged crime and sentence him to death.

89. In the case of Sampath Kumar v. Inspector of Police Krishnagiri, (2012) 4 SCC 124, decided on 02.03.2012, this Court held as under:

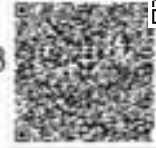
"29. In N.J. Suraj v. State [(2004) 11 SCC 346 : 2004 SCC (Cri) Supp 85] the prosecution case was based entirely upon circumstantial evidence and a motive. Having discussed the circumstances relied upon by the prosecution, this Court rejected the motive which was the only remaining circumstance relied upon by the prosecution stating that the presence of a motive was not enough for supporting a conviction, for it is well settled that the chain of circumstances should be such as to lead to an irresistible conclusion, that is incompatible with the innocence of the accused.

30. To the same effect is the decision of this Court in Santosh Kumar Singh v. State [(2010) 9 SCC 747 : (2010) 3 SCC (Cri) 1469] and Rukia Begum v. State of Karnataka [(2011) 4 SCC 779 : (2011) 2 SCC (Cri) 488 : AIR 2011 SC 1585] where this Court held that motive alone in the absence of any other circumstantial evidence would not be sufficient to convict the appellant. Reference may also be made to the decision of this Court in Sunil Rai v. UT, Chandigarh [(2011) 12 SCC 258 : (2012) 1 SCC (Cri) 543 : AIR 2011 SC 2545]. This Court explained the legal position as follows: (Sunil Rai case [(2011) 12 SCC 258 : (2012) 1 SCC (Cri) 543 : AIR 2011 SC 2545] , SCC p. 266, paras 3132)

"31. ... In any event, motive alone can hardly be a ground for conviction.



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32. *On the materials on record, there may be some suspicion against the accused, but as is often said, suspicion, howsoever strong, cannot take the place of proof."*

31. *Suffice it to say although, according to the appellants the question of the appellant Velu having the motive to harm the deceased Senthil for falling in love with his sister, Usha did not survive once the family had decided to offer Usha in matrimony to the deceased Senthil. Yet even assuming that the appellant Velu had not reconciled to the idea of Usha getting married to the deceased Senthil, all that can be said was that the appellant Velu had a motive for physically harming the deceased. That may be an important circumstance in a case based on circumstantial evidence but cannot take the place of conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt."*

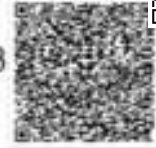
[Emphasis supplied]

90. *Thus, even if it is believed that the accused appellant had a motive to commit the crime, the same may be an important circumstance in a case based on circumstantial evidence but cannot take the place as a conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the accused appellant but suspicion, howsoever strong, cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt.*

91. *The fact that we have ruled out the circumstances relating to the making of an extra judicial confession and the discovery of the weapon of offence as not having been established, the chain of circumstantial evidence snaps so badly that to consider any other circumstance, even like motive, would not be necessary."*



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(Emphasis supplied)

26. A perusal of the law as laid down by the Hon'ble Supreme Court is that in a case based on circumstantial evidence, motive is an essential plank of evidence and the absence of motive would certainly create a doubt in the prosecution case. However, it is also a settled proposition of law that motive in itself, without any other substantial evidence, even if strong is not sufficient to establish the guilt of an accused.

27. **Recoveries**

Both the accused allegedly suffered disclosure statements to the effect that after committing rape upon the deceased, she insisted on making a complaint against them and on account of fear they caused injuries to her with bricks. The said bricks came to be recovered on the basis of the respective disclosure statements of the accused. As per the FSL Report Ex.PX/4 the blood on the bricks was found to be that of the deceased. Jeans and T-shirt also came to be recovered from the spot containing the blood of the deceased as per FSL Report Ex.PX/4.

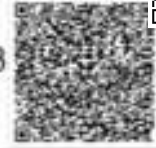
Accused Sumit @ Fundi also got recovered his shirt and jeans. As per the FSL report Ex.PX/1 they were found to contain bloodstains of the same blood group as that of the deceased.

The underwear of Sumit @ Fundi and the trouser of Vikas @ Lalu were found to contain semen stains as per report of the FSL Ex.PX2.

28. As regards the recovery of a weapon on the disclosure statement of an accused and its evidentiary value, the Hon'ble Supreme Court. In **Dudh Nath Pandey Versus State of U.P., AIR (1981) SC 911**, held as under:-



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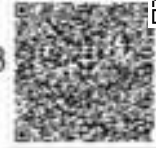
“15. Were this a case of circumstantial evidence, different considerations would have prevailed because the balance of evidence after excluding the testimony of the two eye-witnesses is not of the standard required in cases dependent wholly on circumstantial evidence. Evidence of recovery of the pistol at the instance of the appellant cannot by itself prove that he who pointed out the weapon wielded it in offence. The statement accompanying the discovery is woefully vague to identify the authorship of concealment, with the result that the pointing out of the weapon may at best prove the appellant's knowledge as to where the weapon was kept. The evidence of the Ballistic expert carries the proof of the charge a significant step ahead, but not near enough, because at the highest, it shows that the shot which killed Pappoo was fired from the pistol which was pointed out by the appellant. The evidence surrounding the discovery of the pistol may not be discarded as wholly untrue but it leaves a few significant questions unanswered and creates a sense of uneasiness in the mind of a Criminal Court, the Court of conscience that it has to be : How could the appellant have an opportunity to conceal the pistol in broad-day light on a public thoroughfare ? If he re-loaded the pistol as a measure of self protection, as suggested by the prosecution, why did he get rid of it so quickly by throwing it near the Hathi Park itself ? And how come that the police hit upon none better than Ram Kishore (P. W 4) to witness the discovery of the pistol ? Ram Kishore had already deposed in seven different cases in favour of the prosecution. and was evidently at the beck and call of the police.”

(Emphasis supplied)

29. In **Aloke Nath Dutta & others Versus State of West Bengal, 2007(1) RCR (Criminal) 468**, the Hon'ble Supreme Court deprecated the conduct of the investigating agency in taking on record the entire confession by marking it as an exhibit both the admissible and inadmissible part thereof. The relevant paragraphs are as under:-



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"52. It is, however, disturbing to note that a confession has not been brought on records in a manner contemplated by law. Law does not envisage taking on record the entire confession by marking it an exhibit incorporating both the admissible and inadmissible part thereof together. We intend to point out that only that part of confession which is admissible would be leading to the recovery of dead body and/or recovery of articles of Biswanath, the purported confession proceeded to state even the mode and manner in which Biswanath was allegedly killed. It should not have been done. It may influence the mind of the court.

[See [State of Maharashtra v. Damu S/o Gopinath Shinde & Others, 2000\(2\) RCR \(Criminal\) 781 \(SC\) : \(2000\) 6 SCC 269 at p. 282 - para 35\]](#)

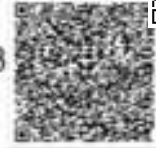
53. In [Anter Singh v. State of Rajasthan \[\(2004\) 10 SCC 657\]](#), it was stated :

"11. The scope and ambit of Section [27](#) of the Evidence Act were illuminatingly stated in [Pulukuri Kottaya v. Emperor in the following words, which have become locus classicus : \(AIR p. 70, para 10\)](#)

"It is fallacious to treat the fact discovered within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that I will produce a knife concealed in the roof of my house does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added with which I stabbed A these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."



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[But see Dhananjoy Chatterjee @ Dhana v. State of West Bengal, 1994(1) RCR (Criminal) 429 (SC) : [(1994) 2 SCC 220 at p. 234-235]

54. Therefore, we would take note of only that portion of the confession which is admissible in evidence.”

(Emphasis supplied)

30. In **Alagupandi @ Alagupandian Versus State of Tamil Nadu, 2013(1) SCC (Cri) 1027**, it was held as under:-

“20. Statement of PW1, supported by the statements of PW11, PW6, PW14 and the recovery of the weapon of crime vide Exhibit M.O. 6, upon disclosure statement of the accused, completes the chain of events as stated in the case of the prosecution. Except the part of the disclosure statement of the accused which led to the recovery of the said knife, the rest of the statement of the accused would be inadmissible in evidence as per Section 27 of the Indian Evidence Act, 1872.”

(Emphasis supplied)

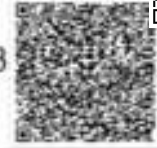
31. In **Ramanand @ Nandlal Bharti** (supra), it was held as under:-

“74. In the aforesaid context, we would like to sound a note of caution. Although the conduct of an accused may be a relevant fact under Section 8 of the Evidence Act, yet the same, by itself, cannot be a ground to convict him or hold him guilty and that too, for a serious offence like murder. Like any other piece of evidence, the conduct of an accused is also one of the circumstances which the court may take into consideration along with the other evidence on record, direct or indirect. What we are trying to convey is that the conduct of the accused alone, though may be relevant under Section 8 of the Evidence Act, cannot form the basis of conviction.

75. Thus, in view of the aforesaid discussion, we have reached to the conclusion that the evidence of discovery of the weapon and the blood stained clothes at the instance of the accused appellant can hardly be treated as legal evidence, more particularly, considering the various legal infirmities in the same.”



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(Emphasis supplied)

32. In **Rahul** (supra), it was held as under:-

“25. At this juncture, it may be noted that the trial court had allowed the entire disclosure statements of the three accused to be admitted in evidence by exhibiting the same as Ex. PW-39/B, PW-41/B and PW-41/C. The said statements were recorded by the PW-48, Sandeep Gupta, when they were in police custody. The said statements being in nature of the confessions before the police were hit by Section 25 of the Evidence Act. The law in this regard is very clear that the confession before the police officer by the accused when he is in police custody, cannot be called an extra-judicial confession. If a confession is made by the accused before the police, and a portion of such confession leads to the recovery of any incriminating material, such portion alone would be admissible under Section 27 of the Evidence Act, and not the entire confessional statements. In the instant case, therefore the trial court had committed gross error in exhibiting the entire disclosure statements of the accused recorded by the PW-48 P1 Sandeep Kumar Gupta, for being read in evidence. Though, the information furnished to the Investigating Officer leading to the discovery of the place of the offence would be admissible to the extent indicated in Section 27 read with Section 8 of the Evidence Act, but not the entire disclosure statement in the nature of confession recorded by the police officer.”

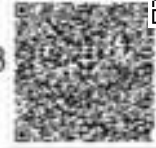
(Emphasis supplied)

33. As regards the evidentiary value of bloodstained clothes recovered from the accused of the same blood group as that of the deceased, the Hon’ble Rajasthan High Court in the case of **Bheru Lal Versus State (Rajasthan) (DB) (Jodhpur) 2019 CriLJ 1692** held as under:-

“13. The learned trial court has also discarded the evidence of conversation between the deceased and the accused appellant soon before the incident on the basis of the call details, therefore,



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the prosecution is left with only following pieces of circumstantial evidence so as to connect the appellant with the crime.

(i) Recovery of ornaments (silver and gold).

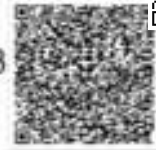
(ii) Recovery of bloodstained clothes of the accused-appellant.

(iii) FSL report showing presence of blood of 'B' group on the clothes of accused-appellant.

15. Thus, the solitary piece of evidence on the basis of which conviction in the present case can be sustained or not is recovery of bloodstained clothes of the accused appellant. We find that recovery of bloodstained clothes (Ex.P/19) and the FSL report (Ex.P/56) wherein blood of group 'B' is present on the clothes of the accused appellant matching with the blood found on the bloodstained clothes of the accused appellant were taken into consideration for convicting the accused appellant in the present case. In our opinion, the presence of blood group 'B' on the Pant (Trouser) and Shirt of the accused-appellant in itself is not sufficient to establish guilt of the accused appellant unless the same is connected by the substantive piece of evidence in the present case.

16. Our view is supported by the judgment of Hon'ble Supreme Court in the case of Mustkeem v. State of Rajasthan reported in AIR 2011 Supreme Court 2769 wherein the Hon'ble Supreme Court has held as under:-

"23. The AB blood group which was found on the clothes of the deceased does not by itself establish the guilt of the Appellant unless the same was connected with the murder of deceased by the Appellants. None of the witnesses examined by the prosecution could establish that fact. The blood found on the sword recovered at the instance of the Mustkeem was not sufficient for test as the same had already disintegrated. At any rate, due to the reasons elaborated in the following paragraphs, the fact that the traces of blood found on the deceased matched those found on the recovered weapons cannot ipso facto enable us to arrive at the conclusion that the latter were used for the murder.



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25. *It is too well settled in law that where the case rests squarely on circumstantial evidence the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. No doubt, it is true that conviction can be based solely on circumstantial evidence but it should be decided on the touchstone of law relating to circumstantial evidence, which has been well settled by law by this Court.*

26. *In a most celebrated case of this Court reported in 1984 (4) SCC 116 Sharad Birdhichand Sarda v. State of Maharashtra in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under:*

(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established,

(ii) 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,

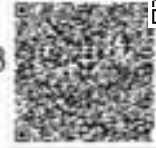
(iii) The circumstances should be of a conclusive nature and tendency, (iv) They should exclude every possible hypothesis except the one to be proved, and

(v) 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.

27. *With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material objects and its use in the*



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commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

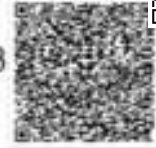
17. Our view further gets fortified from the observations made by the Hon'ble in the case of Navaneethakrishnan v. The State by Inspector of Police (Criminal Appeal No. 1134 of 2013) decided on 16.04.2018 which reads as under,

"23. The law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. When the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubt. The court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. There is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. The Court in mindful of caution by the settled principles of law and the decisions rendered by this Court that in a given case like this, where the prosecution rests on the circumstantial evidence, the prosecution must place and prove all the necessary circumstances, which would constitute a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence, which in the present case, the prosecution has failed to prove."

18. Therefore, in our view, the learned trial court was not correct in convicting the appellant on the basis of recovery of bloodstained



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clothes of the accused appellant on the ground that bloodstains found on the clothes worn by the accused appellant were matching with the blood group of the deceased.”

(Emphasis supplied)

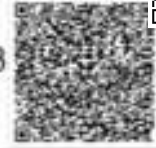
34. A perusal of the law as laid down by the Hon’ble Supreme Court and the Hon’ble Rajasthan High Court would show that the recovery of a weapon on the disclosure statement of an accused only establishes that the person making the disclosure statement knew where the weapon had been kept. However, the recovery of a weapon itself cannot lead to the assumption or prove that it was the accused who had committed the offence. Further, merely because the clothes of the accused were stained with the blood of the deceased would not lead to the assumption that it was the accused who had committed the offence of murder in the absence of any other substantive evidence.

35. **Call Detail Records**

As per the prosecution case, Sumit @ Fundi was using Nos. 8395986774 & 9991528090 whereas the deceased was using Nos.9050464971 & 8053779068. Between 10.04.2017 and 09.05.2017 the accused Sumit @ Fundi had made a total number of 555 calls approximately to the deceased whereas the deceased had made approximately 56 calls to accused Sumit @ Fundi. In the preceding two weeks prior to the occurrence, Sumit @ Fundi made 189 calls approximately whereas the deceased made 35 calls to Sumit @ Fundi. In the preceding week before the occurrence Sumit @ Fundi called the deceased 56 times whereas the deceased called Sumit @ Fundi 7 times only on 05.05.2017.



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In the preceding three months prior to the occurrence, Sumit @ Fundi made only 03 calls (approximately) to Vikas @ Lalu. However, on 08.05.2017 Sumit @ Fundi made 4 calls to Vikas @ Lalu whereas Vikas @ Lalu made one call to Sumit @ Fundi. The next day Sumit @ Fundi called Vikas @ Lalu three times.

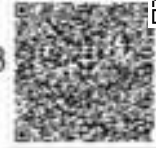
36. The call details only go to show that the deceased knew Sumit @ Fundi well and that he in turn knew Vikas @ Lalu.

37. A perusal of the aforementioned facts and circumstances including the evidence against the accused would reveal mainly two planks of evidence. There is the evidence of motive and that of recovery of bloodstained bricks on the disclosure statement of the accused and bloodstained clothes from Sumit @ Fundi. As regards the presence of semen on the underwear and trouser respectively of the accused Sumit @ Lalu and Vikas Lalu, the same would not further the case of the prosecution in any manner whatsoever in the absence of any semen being detected on the deceased.

39. There is absolutely no evidence of the deceased being seen last in the company of the accused. Anjali (PW7) has turned hostile and the CCTV footage of the car does not reveal the presence of the accused or the deceased. The motive has not been proved beyond reasonable doubt. Though, the parents of the deceased have stated that it was the accused who used to harass their daughter and threatened to rape and murder her and that there had been prior incidents of them slapping each other the said statements have not been corroborated by any other evidence whatsoever. The call details records



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between Sumit @ Fundi on the one hand and the deceased on the other hand would show that they were in some sort of a relationship. If it was a one sided affair, the deceased would not have made multiple calls to the accused and on being threatened/ pressurized would have blocked his number or would have given intimation of the same to either the police or to the Panchayat/respectables. Be that as it may, even if motive stands established what is required to be seen is as to whether motive in itself is sufficient to establish the culpability of the accused.

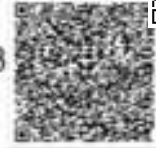
39. As regards the FSL reports showing the 2 bricks recovered on the disclosure statement of the accused and the shirt and trouser of Sumit @ Fundi being stained with the blood of the deceased it would be apposite to examine the judgments in **Rahul** (supra) & **Karandeep Sharma @ Razia @ Raju** (supra).

In **Rahul** (supra), it was held as under:-

“32. It is true that PW-23 Dr. B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ex. PW-23/A, however mere exhibiting a document, would not prove its contents. The record shows that all the samples relating to the accused and relating to the deceased were seized by the Investigating Officer on 14.02.2012 and 16.02.2012; and they were sent to CFSL for examination on 27.02.2012. During this period, they remained in the Malkhana of the Police Station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the Trial Court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection



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and sealing of the samples sent for examination were also not free from suspicion.”

(Emphasis supplied)

In **Karandeep Sharma @ Razia @ Raju** (supra)

“38. The circumstance of the 'last seen' having been disbelieved and 'confessional statement' having been discarded, the only other circumstance which remains in the hands of the prosecution to connect the appellant with the crime as relied upon by the trial Court and the High Court are the DNA/FSL reports. The DNA/FSL reports were proved by Om Prakash Sharma, Investigating Officer(PW-14). The conclusions drawn in the DNA report (18) are as follows: -

[(18) Exhibit Ka-19.]

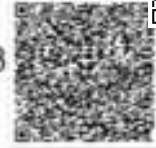
The DNA obtained from the Exhibit-15 (tshirt of accused) is from a single female human source and matching with the DNA obtained from the Exhibit-1 (blood sample of the deceased).

The DNA obtained from the Exhibits-2, 3, 4 and 6 (hair of suspected, vaginal smear slide of deceased, paizami of deceased and underwear of deceased) are matching with the DNA obtained from the Exhibits-1 and 10 (blood sample of deceased and blood sample of accused).

*39. The first flaw in the prosecution case on the aspect of DNA profiling is that the expert who conducted the DNA examination was not examined in evidence and the DNA report was merely exhibited in evidence by the Investigating Officer(PW-14) who undeniably is not connected with the report in any manner. This Court in the case of *Rahul v. State of Delhi, Ministry of Home Affairs & Anr., (2023) 1 SCC 83*, while dealing with the issue concerning evidentiary value of DNA report, has held that DNA profiling reports cannot be admitted in evidence ipso facto by virtue of Section 293 CrPC and it is necessary for the prosecution to prove that the techniques of DNA profiling were reliably applied by the expert. The relevant excerpts from the said judgment are reproduced herein below for the sake of ready reference: -*



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"36. The learned Amicus Curiae has also assailed the forensic evidence i.e. the report regarding the DNA profiling dated 18-4-2012 (Ext. P-23/1), giving incriminating findings. She vehemently submitted that apart from the fact that the collection of the samples sent for examination itself was very doubtful, the said forensic evidence was neither scientifically nor legally proved and could not have been used as a circumstance against the appellant accused. The Court finds substance in the said submissions made by the Amicus Curiae. The DNA evidence is in the nature of opinion evidence as envisaged under Section 45 and like any other opinion evidence, its probative value varies from case to case.

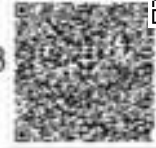
38. It is true that PW 23 Dr B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ext. PW 23/A, however mere exhibiting a document, would not prove its contents. The record shows that all the samples relating to the accused and relating to the deceased were seized by the investigating officer on 14-2-2012 and 16-2-2012; and they were sent to CFSL for examination on 27-2-2012. During this period, they remained in the malkhana of the police station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the trial court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In the absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion."

(emphasis supplied)

40. Thus, in the facts and circumstances of the present case, non-examination of the scientific expert who carried out the DNA profiling is fatal, and the DNA report cannot be admitted in evidence. That apart, we find that the very procedure of collection and forwarding of DNA samples to the FSL is full of lacunae and loopholes. The incident



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took place on the intervening night of 25th/26th June, 2016. The dead body of the child-victim was picked from the crime scene by the Investigating Officer(PW-14) on 26th June, 2016 at 06:16 AM and was forwarded to Dr. Madan Mohan, medical officer(PW-7) for carrying out the post-mortem examination. The medical officer, while deposing on oath, stated that he collected following samples and articles from the child-victim's dead body for forensic examination. The relevant excerpt from his testimony is reproduced below: -

"The following tests were sent from the injuries of the deceased in her vagina.

No. 1: Extract was collected from the vagina and four slides were prepared for spectro majoa and smegma bacilli test and were sent to laboratory. 5 ml. blood was taken from the body of the deceased and sent for DNA test.

The hair stuck on the vagina of the deceased and blood accumulated outside the vagina were also sent for DNA test. The following clothes of the deceased were sent in a sealed bundle for semen and blood test.

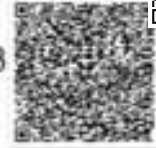
Clothing of the deceased: no.1. ready made blue under wear stained with blood and mud. Printed Salwar of the deceased of white and green colour, stained with blood. One small towel with yellow linings, one bracelet, number 5th:- Mud-stained shirt of the deceased. The chip of the videography of all above samples of the deceased and of post mortem examination was sealed and handed over to the accompanied constables."

41. The medical officer(PW-7) also testified that on 28th June, 2016 at about 12:44 PM, a Constable named Girish Kandpal brought the accused-appellant to the hospital for medical examination. The medical officer stated he collected the following samples from the appellant for forensic examination: -

"On 28.6.2016 at 12.44 PM in the noon, Constable Girish Kandpal, P.S. Kashipur brought the accused. In general examination the accused was found healthy. On examination of sexual organs of the accused, dense hair were found. Skin over the



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glans of the penis of the accused was being folded easily. The glans was neat and clean. There was no blood mark but there were light mark of abrasion around the glans in the circle. I have taken following samples:

(1) Two slides were made from the swab of the glans for DNA test.

(2) Blood of the accused was taken for DNA test.

(3) Samples of hair from the stomach and outside of testicles were taken for DNA test.

(4) Two slides were made from the swab taken from the glans of accused for examination of spermatozoa and smegma vacilli."

42. The medical officer(PW-7) also stated that the samples of the deceased as well as the appellant were handed over to the police officials who came to the hospital at contemporaneous points of time. However, there is not even a whisper in the statement of the medical officer(PW-7) that the samples collected from the appellant were sealed prior to being handed over to the police officials. Hence, at the very inception, the procedure of collecting the samples has been tainted on account of non-sealing of the forensic material collected from the accused-appellant."

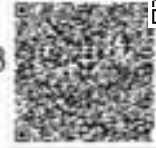
(Emphasis supplied)

40. In **Rahul** (supra) the Court held that though a Senior Scientific Officer of CFSL New Delhi had exhibited the report regarding DNA profiling, however, mere exhibiting would not prove its contents. The Court also found that on the facts of the case tampering with samples could not be ruled out. Further, it was observed that neither the Trial Court nor the High Court had examined the basis of the findings of the DNA report nor did they examine the facts to see whether the techniques were reliably applied by the expert.

41. In **Karandeep Sharma @ Razia @ Raju** (supra) the Court held that as the expert who conducted examination was not examined and the



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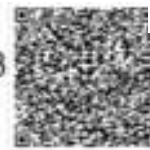
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DNA report had been exhibited by the I.O., the report could not be relied upon. Further, the Court found that the procedure for collection and forwarding of DNA samples to the FSL was full of lacunae and loopholes.

42. In the instant case, Sumit @ Fundi on the basis of his disclosure statement got recovered his shirt and jeans both stated to be bloodstained on 14.05.2017 vide memo Ex.PW13/E. The same were deposited with the MHC on the same day (No.8 seal AK) as per Register Malkhana Ex.PW39/A. The articles are supposed to have been dispatched to the FSL on 17.05.2017 vide RC No.46. The FSL report Ex.PX/2 mentions 20 sealed packets having been received vide RC Nos.44, 46, 51 on 15.05.2017, 17.05.2017 and 22.05.2017. However, as per the report there is no mention of those bloodstained clothes of Sumit @ Fundi though his underwear alone is mentioned. However, strangely the clothes are shown to have been received by the Serology Division from the Biology Division on 20.05.2017 and 31.05.2017 and both blue printed shirt and blue jeans were found to be stained with human blood vide FSL report Ex.PX/4. Thereafter, on examination the clothes were stated to have been stained with the blood of the deceased as per report Ex.PX/1. Thus, apparently there is no link evidence as to how the shirt and trouser recovered on the disclosure statement of Sumit @ Fundi and found to contain the blood of the deceased reached the FSL, Madhuban. Similarly, one blood stained brick each was recovered on the disclosure statement of each accused on 14.05.2017 vide Memo Ex.PW13/A and Ex.PW12/D. They were deposited with the Malkhana on the same day. Both bricks have been shown to have been dispatched to the FSL vide RC No.46 dated 17.05.2017. However, as per FSL report Ex.PX/2 only one brick has been shown to have been received on



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17.05.2017 marked as Ex.16b. Strangely as per FSL report Ex.PX/4 both bricks are shown to have been bloodstained. Further as per FSL report Ex.PX/1 both bricks were found to have been stained with the blood of the deceased. Once again there is no link evidence as to how the 2nd brick reached the FSL Madhuban.

43. The above discussion would show that the recovery of the bloodstained clothes of the accused Sumit @ Fundi and the bloodstained bricks all allegedly containing the blood of the deceased are not free from doubt and it is not clear as to how these articles reached the FSL, Madhuban.

44. Be that as it may, taking the allegations of the bricks being recovered at the instance of the accused to be true, at best it would suggest that the accused persons knew where the weapon of offence (bricks) were kept. No presumption can be drawn of the accused having committed the offence with the said weapons (bricks).

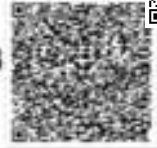
45. The recovery of a semen stained underwear of Sumit @ Fundi and semen stained trouser of Vikas @ Lalu also does not further the prosecution case in the absence of any such semen stains being found on the deceased.

46. The CDRs show that the deceased and accused Sumit @ Fundi were in touch with each other. Apparently, Sumit @ Fundi has made multiple calls to the deceased preceding the murder. Further, there are calls between both the accused on the day prior to the alleged offence and on the day of the offence. All these calls raise some suspicion but nothing more.

47. Even the recovery of a 315 bore country made pistol allegedly from Sumit @ Fundi is not free from doubt as no independent witness was



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examined with respect to the said recovery. Further, no armourer was examined to establish whether the said weapon was in working condition or not.

48. The aforementioned discussion would show that there is some suspicion regarding the accused having committed the offence. However, the chain of circumstantial evidence available on record is not so complete so as to conclusively and unerringly point towards the guilt of the accused. We are conscious of the heinous nature of the offence but at the same time, the prosecution must establish its case beyond reasonable doubt which it has been unable to do. In fact, from the evidence on record, there is no evidence of the deceased having been kidnapped, intoxicated subjected to gangrape and thereafter murdered by none other than the present accused.

49. In view of the aforementioned discussion, we find considerable merit in the present appeal. Therefore, the instant appeal is accepted. The impugned judgment dated 19.12.2022 passed by the Addl. Sessions Judge, Sonipat is set aside and the accused/appellants are acquitted of the charges framed against them.

50. **MRC**

In view of the order passed in CRA-D-229-2023, MRC-7-2022 stands declined.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

26.05.2025

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No