

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Murder Reference No. 03/2023

State Of Rajasthan, Through Pp

-----Petitioner

Versus

Arjun Singh S/o Gulab Singh, R/o Aasan Jodhvan, Police Station
Siriyaari, Dist. Pali (Raj.)

-----Respondent

Connected With

D.B. Criminal Appeal (Db) No. 60/2024

Arjun Singh S/o Shri Gulab Singh, Aged About 22 Years, R/o
Aasan Jodhwan, Police Station Siriyaari, Dist. Pali (Raj.) (Presently
Lodged At Central Jail, Jaipur)

-----Petitioner

Versus

1. State Of Rajasthan, Through PP.
2. XXXXXX S/o Shri Jogaram, Aged About 48 Years, R/o
Navaguda, Police Station Siriyaari, Dist. Pali.

-----Respondents

For Petitioner(s)	:	Mr. Deepak Choudhary, GA cum AAG with Mr. Kuldeep Singh Kumpawat.
For Respondent(s)	:	Mr. Dilip Singh Rathore.

**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
HON'BLE MR. JUSTICE ANUROOP SINGHI**

Judgment

RESERVED ON : 15/09/2025

DATE OF PRONOUNCEMENT : 03/10/2025

BY THE COURT : (PER HON'BLE MR. JUSTICE ANUROOP SINGHI, J.)

1. By the impugned judgment and order dated
11.12.2023, passed in Sessions Case No.87/2023, the Learned

Special Judge (The Protection of Children from Sexual Offences Act, 2012 and Commissions for Protection of Child Rights Act, 2005) No.3, Pali (referred to herein after as 'the Trial Court') convicted and sentenced the accused/appellant Arjun Singh as below :-

S.No.	Offences for which convicted	Punishment
1.	302 IPC	Death Penalty alongwith fine of Rs.1,00,000/-, in default of payment of fine, to undergo two years' rigorous imprisonment.
2.	376AB IPC	--
3.	5m/6 of POCSO Act	Rigorous imprisonment for natural life alongwith fine of Rs.1,00,000/-, in default of payment of fine, to undergo two years rigorous imprisonment.
4.	3/4 of POCSO Act	--
Both the sentences have been ordered to run concurrently.		

2. Death Reference No.03/2023 has been submitted by the Trial Court under Section 366 Cr.P.C. seeking confirmation of the capital punishment awarded to accused Arjun Singh. Appeal No.60/2024 has been preferred by accused/appellant Arjun Singh assailing the impugned judgment.

3. As the Death Reference as well as Appeal both arise out of the same judgment and order, they have been heard and are being decided together.

FACTUAL ASPECTS :

4. Facts relevant for the adjudication of the present case are that a written report dated 03.05.2023 was submitted by Kalu

Ram (P.W.4) father of deceased son (referred to herein after as 'DR') and daughter (referred to herein after as 'D') to the police officials of the Police Station, Siriyari, District Pali, who visited the place of incident, stating therein that his son 'DR' aged 13 years and daughter 'D' aged 10 years had gone for grazing of goats in the afternoon of 01.05.2023 to Mamaji Oran, Mani but as they did not return back, he along with his family members started searching for them and it was only in the morning of 03.05.2023 around 07:30 to 08:00 AM that he and his younger brother Arjun Ram (P.W.16) found the dead body of his son 'DR' in the bushes near the river going from Nawaguda Karmal to Mani. The said fact was informed to the police officials after which the police officials arrived at the said spot. After searching further, around 400 meters from the said spot, the naked dead body of his daughter 'D' was also found. It was further stated that some unknown person has committed murder of his children. Upon the said written report, FIR No.113/2023 **(not exhibited)** was registered on 03.05.2023 at Police Station, Siriyari and investigation commenced.

5. The accused/appellant was arrested from his house on 09.05.2023 and after completion of investigation, the investigating agency filed a charge-sheet against him for offence punishable under Sections 376AB and 302 IPC, Sections 3/4 & 5m/6 of the Protection of Children from Sexual Offences Act, 2012 (referred to herein after as 'the POCSO Act') and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989.

6. The learned Trial Court framed, read over and explained the charges for the aforesaid offences to the accused/appellant who denied the same and sought trial. During the trial, the prosecution examined 16 witnesses and produced as many as 45 exhibits in support of its case. In defence, the accused/appellant examined 2 witnesses and exhibited 2 documents. The prosecution also produced material objects as Articles 1 to 21.

Upon being questioned under Section 313 Cr.P.C. and when confronted with the circumstances appearing against him in the prosecution evidence, the accused/appellant denied the same, stating that the prosecution witnesses have deposed falsely and he has been falsely implicated.

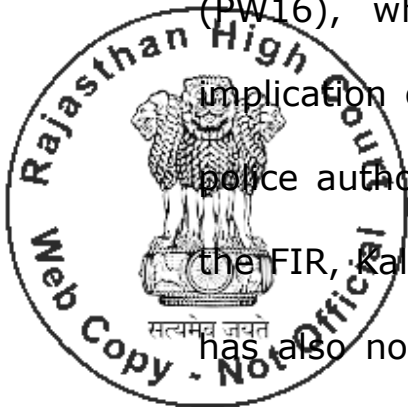
8. The learned Trial Court framed 3 points for determination and after hearing the arguments advanced by the learned Public Prosecutor and defence counsel and after appreciating the evidence (oral as well as documentary) available on record, proceeded to convict and sentence the accused/appellant as above.

9. SUBMISSIONS ON BEHALF OF ACCUSED/APPELLANT :

9.1. Learned counsel for the accused/appellant vehemently submitted that the entire prosecution case is wholly fabricated and based on no evidence. It was submitted that as there is no eye witness to the incident, the accused has been directed to be sent to the gallows on the basis of circumstantial evidence which, is absolutely incomplete so as to form a chain so that it rules out any

other possibility of any person except the accused alone, having committed the offence in question.

9.2. Learned counsel further submitted that none of the witnesses have named the accused/appellant in their statements and on the contrary, as per the version of witness Arjun Ram (PW16), who is the uncle of victims, he learnt about the implication of the accused/appellant only after being told by the police authorities. It was further argued that even the author of the FIR, Kalu Ram (PW4), who is the father of deceased children, has also not alleged anything against the accused/appellant and thus, the accused has been falsely implicated.



9.3. Learned counsel further submitted that for the offence committed on 01.05.2023, the accused/appellant was arrested from his house on 09.05.2023 without any evidence available with them and the prosecution has miserably failed to explain the basis of his arrest. The prosecution has virtually failed to establish as to how the accused has been linked and suspected with respect to the incident in question.

9.4. Learned counsel further submitted that the prosecution has failed to establish any motive for the said offence being committed by the accused/appellant and the alleged motive of there being a fight between the accused/appellant and victim 'DR' for cutting of branches of tree is not only incongruous but also imaginary and based on no evidence.

9.5. Learned counsel further submitted that the recovery of clothes and iron *koot* (कूट) as shown by the prosecution is not

worth believing as both the recovery memos (Ex.P/25 and Ex.P/26 respectively) have no independent witnesses and have been signed by the police officials alone. Even the fard Naksha Nazri Baramdagi Sthal Ex.P/27, which is the house of the accused/appellant, fard Naksha Ex.P/28 with respect to the place of incident of death of victim 'D' and Ex.P/29 with respect to the place of incident of victim 'DR' are not worth believing as even they have only the police officials as witnesses. It was submitted that the weapon – iron *koot* which has been alleged to be used by the accused for killing both the victims is a sharp-edged weapon whereas, the cause of death is due to multiple head injury (blunt force). In these circumstances, the alleged recovery cannot form the basis of conviction.

9.6. Learned counsel has also argued that the expert, who carried out the DNA examination has not been examined and thus, the DNA report cannot be admitted in evidence and thus, the prosecution has no case against the accused/appellant. It was further urged that the FSL report relied upon by the prosecution is inconclusive and fails to prove the offence against the accused/appellant. Rather, the fact remains that from a bare perusal of FSL and DNA report, there is no conclusion of the offences being committed by the accused/appellant. Reliance on such inconclusive scientific evidence for recording conviction is impermissible in law and demonstrates grave error in the approach of the Trial Court.

9.7. Learned counsel further argued that the learned Trial Court has simply relied upon the version of I.O. (PW13) so much so that the punishment of death penalty has been awarded without appreciating the true and correct facts available on record. The impugned judgment and order is based on surmises and conjectures and fails to record any finding to hold the accused/appellant guilty of the alleged offences much less to make out a case of "rarest of rare" nature. The prosecution has miserably failed to establish the case against the accused/appellant beyond all reasonable doubt, which is a sine qua non for any conviction.



9.8. Learned counsel thus, prayed that as the prosecution has failed to discharge its burden, the accused/appellant deserves to be acquitted and the impugned judgment and order deserve to be set aside.

10.1. *E-Converso*, learned Public Prosecutor has opposed the submissions made by the learned counsel for the appellant and supported the findings recorded by the learned Trial Court and prayed that the conviction deserves to be confirmed more so, looking to the heinous offences of two murders and the rape committed by the accused/appellant.

10.2. Learned Public Prosecutor further submitted that once the accused/appellant has accepted the recoveries of his shirt having blood stains of victim 'DR' and the weapon iron *koot* from his house, the offence stands established and the Trial Court rightly convicted the accused/appellant.

10.3. Learned Public Prosecutor also submitted that on the basis of information received by the I.O. (PW13), the accused/appellant was arrested and the prosecution has been able to prove its case beyond all reasonable doubt. Thus, it was urged that the death sentence be confirmed and the reference be answered accordingly while dismissing the appeal preferred by the accused/appellant.



We have considered the rival submissions and have carefully scrutinised the material available on record, exhibits as well as deposition of the witnesses.

12. DISCUSSION & ANALYSIS :

12.1. Unquestionably, there is no eye witness to the incident. The accused/appellant has been convicted on the basis of circumstantial evidence which in the opinion of the Trial Court constitutes a chain so complete that rules out any and/or other possibility of any other person except the accused/appellant alone having committed the offences. The law in respect of circumstantial evidence is extremely well settled by a series of judgments of Hon'ble Supreme Court as well as this Court, reference of a few of which would be relevant for the purposes of present consideration :-

12.2. The Hon'ble Supreme Court in the case of **Hanumant Govind Nargundkar vs. State of M.P. ; (1952) 2 SCC 71** has held as under :-

"12. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be

fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

12.3. In **Sharad Birdichand Sarda vs. State of Maharashtra ; (1984) 4 SCC 116**, the Hon'ble Supreme Court laid down the Panchsheel Principles governing the circumstantial evidence which reads as under :-

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

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

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793]* where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

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

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

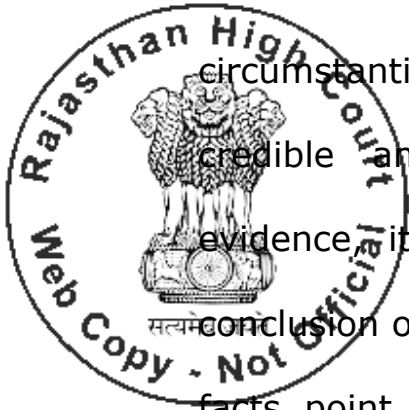
(3) the circumstances should be of a conclusive nature and tendency,

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

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



12.4. Very recently, the Hon'ble Supreme Court in the cases of ***Thammaraya vs. State of Karnataka ; (2025) 3 SCC 590*** and ***Kattavellai @ Devakar vs. State of Tamil Nadu ; 2025 SCC OnLine SC 1439***, has reiterated the said principles. It is also a well established principle of criminal jurisprudence that the conviction on the charge of murder can be based purely on circumstantial evidence, provided that such evidence is deemed credible and trustworthy. In cases involving circumstantial evidence, it is crucial to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutable towards the accused person's guilt. The chain of incriminating circumstances must be conclusive and should exclude any hypothesis other than guilt of the accused. The gap between 'may be guilty' and 'must be guilty' is significant, separating uncertain speculations from definitive conclusions. Thus, it is the duty of the prosecution to elevate its case from realm of 'may be true' to 'must be true'. Every piece of relevant fact needs to be sewn via the golden thread of circumstantial evidence in order to fabric the guilt.

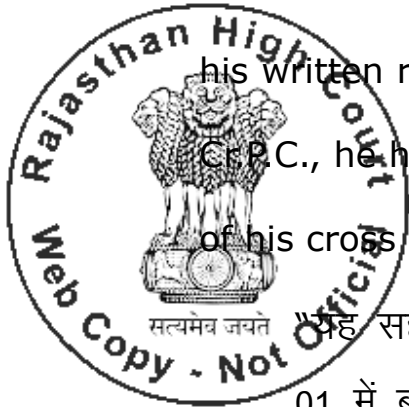


13. **Consideration of Testimonies :**

13.1. As the entire edifice of the prosecution case primarily hinges upon the testimonies, it would be worthwhile to consider the relevant testimonies.

13.2. PW4 Kalu Ram (father of victims) in his testimony has stated that on 01.05.2023, his children went for grazing of goats but failed to return till evening. On the next day, he went for registration of a document. He further confirmed that there was

heavy rainfall on the said day and it was only in the morning of 03.05.2023 that the bodies of both the children were found. In the statements recorded under Section 161 Cr.P.C. or under Section 164 Cr.P.C., no allegations were levelled against the accused/ appellant and it was evident that there is no animosity or enmity with the accused/ appellant. He further confirmed that neither in his written report nor in his statement recorded under Section 161 Cr.P.C., he has casted doubt upon any person. The relevant extract of his cross examination reads as below :-



“यह सही है कि मैंने रिपोर्ट प्रदर्श पी 07 व मेरे पुलिस बयान प्रदर्श डी 01 में बलात्कार करने वाले व्यक्ति का नाम नहीं लिखवाया और ना ही किसी पर संदेह होने का लिखवाया। यह कहना सही है कि घटनास्थल सार्वजनिक स्थान है जहां और भी लोग बकरियां चराने आ सकते हैं। रिपोर्ट मैंने बोल कर लिखवाई थी। अर्जुनसिंह हमसे 1 किमी दूर रहता है मेरा इसके घर आना जाना नहीं रहता है। यह सही है कि मेरा इससे कोई आपसी झगड़ा नहीं है।”

13.3. PW-16 Arjun Ram (uncle of the victims) stated that no missing report of the children was lodged in the police station by his brother (Kalu Ram) and it was he, who called the police officials in the morning of 03.05.2023, immediately after the dead body of the victim 'DR' was found. He further stated that the accused/appellant Arjun Singh is not known to him and the fact that the said offence has been committed by the accused/appellant was learnt by him only from the police officials.

The relevant extract of the statement of PW-16 reads as under:

“यह कहना सही है कि अर्जुनसिंह मेरे गांव का नहीं है। मैं अभियुक्त अर्जुनसिंह को नहीं जानता अज खुद कहा कि उसके माता पिता को जानता था। यह घटना अभियुक्त अर्जुनसिंह ने ही कारित की हो इसकी

जानकारी पुलिस वालों के पकड़ने के बाद ही पता चली थी। यह बात सही है कि हमें तो पुलिस वालों ने ही कहा कि अर्जुनसिंह ने ही इस घटना को कारित किया।”

13.4. PW-13 Praveen Nayak (Investigating Officer) refers to the information divulged by the accused/appellant under S.27 of the Indian Evidence Act, 1872 with respect to the disclosure of the place of incident and recovery of the clothes which were worn by the accused/appellant on the fateful day as also the weapon (Iron Koot) used by him for killing both the victims. The said witness further states that as per his investigation, the motive of killing both the victims was a fight between accused/appellant and victim son 'DR' with respect to the cutting of branches of tree and of which victim, daughter 'D' was eye witness and solely with the intent to demolish the evidence, rape was committed with victim daughter 'D' and was thereafter killed. The said witness in his cross-examination states that there is no witness on record to confirm the presence of accused/appellant near the place of incident.

P.W.13 further states that there is no information with respect to clothes worn by the accused/appellant. However, the said clothes were recovered at the instance of the accused/appellant from his house. He further confirms that recovery memos with respect to search carried out at the residence of accused/appellant with respect to the clothes and alleged weapon as also the map of house of accused/appellant were drawn with his subordinates as witnesses. He further records his inability with respect to the initial information being received



regarding the offence being committed by the accused/appellant and also accepts the fact that the alleged weapon (Iron Koot) is easily available in the market. The cross examination of the said witness reads as under:

"मेरे समक्ष तफ्तीश 04.05.2023 को आई थी। प्रथम बार मैं घटनास्थल पर आरोपी की निशादेही से मौका देखा तब गया था उससे पूर्व मैंने घटनास्थल पर नहीं गया था। यह बात सही है कि मेरे घटनास्थल पर पहुंचने से पहले पत्रावली पर घटनास्थल के नक्शें मौजूद थे। मैंने घटनास्थल के आसपास व गांव के लोगों से इस घटना के बारे में कोई बयान नहीं लिये अज खुद कहा मृतक के पिता, चाचा तथा माता के बयान लेकर शामिल पत्रावली किये। इन तीनों गवाह के बयान मैंने गांव में लिए थे। इन तीनों गवाहन अलग अलग तारीख में लिए जाने के पीछे कारण मौजूद थे। जो किसी परिवार में मृत्यु की गई थी। किसी के बैठक थी। कालूराम के बयान लिए तब उसकी पत्नी मथरा व उसका भाई अर्जुनराम मौजूद थे अथवा नहीं यह आज मुझे ध्यान नहीं है। मृतक देवली तथा डूंगाराम की एफआईआर दर्ज होने से पूर्व कोई गुमशुदगी नहीं थी। यह कहना सही है कि उक्त मृतकगण 01 तारीख से लापता थे। यह कहना सही है कि मृतकगणों की लाश को उक्त तीनों गवाहान द्वारा सर्वप्रथम तलाश कर पुलिस को सूचना दी गई थी। अज खुद कहा कि गवाह कालूराम की बहन द्वारा भी सूचना दी गई थी। यह कहना सही है कि कालूराम की बहन से मेरे द्वारा कोई तफ्तीश नहीं की गई तथा ना ही उसके बयान पत्रावली पर है। बहन से तफ्तीश न करने का कोई विशिष्ट कारण नहीं है। यह सही है कि घटनास्थल के आसपास अभियुक्त को किसी गवाहन ने देखा हो ऐसा पत्रावली पर कोई गवाह उपस्थित नहीं है। यह सही है कि उक्त तीनों गवाहन तीनों एक ही परिवार के तथा रिश्तेदार है। यह सही है कि मुलजिम तथा मृतकगण अलग अलग गांव के है। यह कहना सही है कि घटनास्थल मामा जी का ओरण है। यह सही है कि धार्मिक मान्यता अनुसार ओरण के पेड़ की लकड़ी नहीं काटी जाती है। मुलजिम को उसके गांव में उसके घर



से गिरफ्तार किया था। मुलजिम को गिरफ्तार कर 09.05.2023 को मेरे सामने टीम ने प्रस्तुत किया था। सूचना मुझे किस स्थान पर दी थी आज मुझे मौखिक याद नहीं है। सभी सूचनाएं अलग अलग दी थी। मैंने मुलजिम के वक्त घटना पहने हुए कपड़े किस जगह से बरामद किए वो मुझे याद नहीं है अज खुद कहा कि पत्रावली देखकर बता सकता हूं। मुलजिम के वक्त घटना पहने हुए कपड़े उसके मकान से बरामद किए थे। यह सही है कि मुलजिम के पहने हुए कपड़ों की कोई सूचना पत्रावली पर मौजूद नहीं है। यह कहना सही है कि प्रदर्श पी 28 तथा 29 में बबूल के पेड़ की काटी हुई डालियों की उपस्थिति नहीं है। यह कहना सही है कि प्रदर्श पी 25,26,27,28 तथा 29 के सभी मोतबिरान में अधीनस्थ पुलिस कर्मचारी ही है। यह सही है कि गांव में स्वतंत्र मोतबिरान आसानी से उपलब्ध हो सकते हैं। मैंने स्वतंत्र मोतबिरान बुलाने के प्रयास किए थे किंतु कोई उपलब्ध नहीं हुआ। यह सही है कि इस आशय का इन्द्राज मैंने कही नहीं किया। यह सही है कि मैं मुलजिम का मेडिकल कराने लेकर नहीं गया था। तथा मेडिकल सैम्पल भी मैंने कलेक्ट नहीं किये। यह मुझे ध्यान नहीं है कि घटनास्थल पर घटना के बाद जोरदार बारिश हुई हो तथा पानी बहा हो। अर्जुनसिंह के घटना कारित करने की पहली सूचना कब तथा किसके द्वारा दी गई आज ध्यान नहीं है। यह सही है कि आर्टिकल 1 जैसी कूट बाजार में आसानी से उपलब्ध हो जाती है। हमने हमारी तफ्तीश के दौरान अभियुक्त अर्जुनसिंह के अलावा अन्य पर भी फोकस किया था। इस बारे में हमने विस्तृत पुछताछ की थी। ऐसे किसी गांव वालों के बयान पत्रावली पर नहीं है। यह कहना गलत है कि मैंने परिवादी पक्ष के साथ मिलकर गलत तफ्तीश कर अभियुक्त को झूठा फंसाया हो। यह कहना गलत है कि मृतकों की माता मथरा का उसके पूर्व पति से भी विवाद चल रहा हो इस कारण उसके पूर्व पति द्वारा ही हत्याएं की गई हो।”



13.5. PW-15 Hamir Singh, who was the police officer who received the information regarding the incident on 03/05/2023

confirms that the investigation was with him on the date of information i.e. 03.05.2023, which was handed over next day to PW-13 Praveen Nayak. The said witness confirms that no branches cut from the tree have been mentioned in the naksha mauka (Ex.P/29). He further states that he has not seen accused/appellant near the place of incident during the investigation.



13.6. PW 8 Suresh Chaudhary, who was the constable posted at police station Siryari, while in his examination in chief states that the accused/appellant was arrested by I.O. in his presence and Prahalad Singh ASI, but in his cross examination, he expressed his inability with respect to as to who brought Arjun Singh and at what time. The relevant extract of his examination-in-chief reads as below :

“दिनांक 09.05.2023 को पुलिस थाना सिरियारी में सिपाही कार्यरत था उसरोज हाजा प्रकरण में आरोपी अर्जुनसिंह पुत्र गुलाबसिंह को आई०ओ० ने मेरे व सहायक उपनिरीक्षक प्रहलादसिंह की उपस्थिति में गिरफ्तार किया जिसकी फर्द प्रदर्श पी 24 है जिस पर ए से बी मेरे हस्ताक्षर हैं सी से डी प्रहलादसिंह के हस्ताक्षर हैं जो मेरे सामने किये थे एक्स स्थान पर आरोपी का फोटो है।”

The relevant extract of his cross examination reads as below :-

“बरामदगी हेतु गये तब अर्जुनसिंह का मकान खुला हुआ था उसकी भाभी मौजूद थी, यह सही है कि अर्जुनसिंह का मकान तीन भाईयों का सामलाती मकान है। यह मेरे को ध्यान नहीं कि अर्जुनसिंह को घटना के तुरंत बाद जोजावर चौकी में बुलाया हो। अर्जुनसिंह को कौन दस्तयाब

कर लाया मुझे जानकारी नहीं है अर्जुनसिंह को कितने बजे लाये मुझे पता नहीं।”

13.7. PW-1 Dr. Dipika Rajawat and PW-2 Dr. Kamal Kishore along with PW-3 Dharmendra Kumar were all members of the medical board which was constituted for carrying out the post mortem of both the dead bodies. PW-1 and PW-2 have specifically deposed that the cause of death of both the victims is multiple head injuries (blunt force). They further confirmed that the factum of rape of victim 'D' cannot be denied as blood and semen was found in the samples taken from vulvo vaginal swab. They further confirmed that the male DNA profile obtained from the shirt of the accused/appellant Ex.P/25 (*sic* Ex.P/28) is matching with male DNA profile Ex.P/18 - Blood sample of deceased 'DR' on FTA card.

PW-1 has specifically denied there being any wound by a sharp weapon.

PW-2 in his statement has confirmed that neither the shirt of the accused/appellant was taken in front of him nor it was tested by him.

13.8. Statement of DW-1 Ram Singh (brother of the accused/appellant) was also recorded wherein he deposed that he, alongwith accused/appellant and his another brother Kalu Singh have gone to Devaron ka Guda for attending the marriage of their real niece (bhaanji) at 11:00 a.m. on 01/05/2023 from where they returned to their village Aasan Jodhavan on 02/05/2023. He further stated that the police officials had taken the accused/appellant for investigation on 03/05/2023.

14. **Post-mortem report, FSL Report and DNA profiling**

14.1. Post mortem reports of victim 'D' (Ex.P-1) and victim 'DR' (Ex.P-4) both record that the cause of death is shock due to multiple head injuries (blunt force).

14.2. FSL report Ex. P-3 of both the victims records the conclusion as under :

"Conclusions

On the basis of DNA analysis (Enclosed Table) it is concluded that;

1. Male DNA profile was obtained from exhibit no.28 (shirt of accused)(Table-1).

2. Male DNA profile obtained from exhibit no.28 (shirt of accused) is matching with the male DNA profile obtained from exhibit no.18 (Blood sample of deceased (Dungaram) on FTA card (Table-1).

3. Incomplete male DNA profile was obtained from exhibit no.1 (Vulvo vaginal swab of deceased (Devli) (Table-2).

4. Same female DNA profile was obtained from exhibit no.1 (Vulvo vaginal swab of deceased (Devli), 2 (Nails of deceased (Devli), 3. (Scalp hair of deceased (Devli)), 4. (Vulvo vaginal slide of deceased (Devli), 6 (Blood sample of deceased (Devli) on FTA card, 9 (T-shirt of deceased (Devli) and 13 (Blood smeared stone recovered from crime scene of deceased (Devli) (Table-1)

5. Same male DNA profile was obtained from exhibit no.15 (Scalp hair of deceased (Dungaram), 16 (Nails of deceased (Dungaram), 18 (Blood sample of deceased (Dungaram) on FTA card), 19 (Blood smeared soil of deceased (Dungaram) and 20 (Blood smeared stone of deceased (Dungaram) (Table-1).

6. Same male DNA profile was obtained from exhibit no.21 (Blood sample of accused on FTA card) and 27 (Pant of accused) (Table-1)

7. DNA profile could not be obtained from exhibit no.8 (White cloth of deceased (Devli) recovered from crime scene), 11 (Dhaga of deceased (Devli) and 12 (Blood smeared soil recovered from crime scene of deceased (Devli)

8. DNA profile could not be obtained from exhibit no.22 (Penile swab of accused).



9. Male DNA profile could not be obtained from exhibit no.4 (Vulvo vaginal slide of deceased (Devli)).”

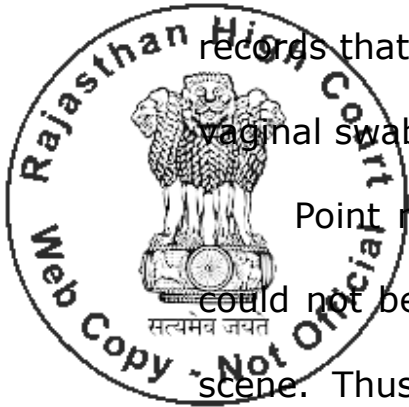
A bare perusal of the above conclusion reveals that as per point no.2, male DNA profile obtained from shirt of the accused Ex.P/25 (sic 28) was matching with male DNA profile obtained from Ex.18 (blood sample of victim 'DR' on FTA card). Point no.3 records that incomplete DNA profile was obtained from Ex.1 (vulvo vaginal swab of victim 'D').

Point no.29 of the FSL report specifically records that blood could not be detected on the Iron Koot recovered from the crime scene. Thus, while the above conclusion refers to matching of male DNA profile from the shirt of accused appellant with male DNA profile of deceased 'DR', there is no such conclusion with respect to victim 'D'. Further, there is no such conclusion of rape being committed by accused/appellant with victim 'D'.

15. Recovery :

Another relevant point relied upon by the prosecution is the recovery of shirt of the accused/appellant having blood stains of victim 'DR' and also the weapon 'iron koot' at the instance of the accused/appellant and thus, relying upon Section 27 of the Indian Evidence Act, it was considered to be an admissible evidence so as to complete the chain for establishing the offence committed by the accused/appellant.

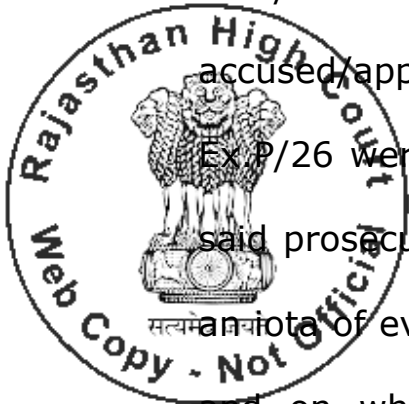
16. We now proceed to assess, evaluate and analyse each of the above circumstances held to be proved against the accused/appellant.



17. A perusal of the facts, testimonies and all other evidences reveals that the entire case of the prosecution is that after receiving the information about the incident on 03.05.2023, the accused/appellant was arrested on 09.05.2023 and on 10.05.2023, the accused/appellant identified the place of incident Ex.P/28 and Ex.P/29. Even the blood stained shirt worn by the accused/appellant on the date of incident Ex.P/25 and weapon Ex.P/26 were recovered at his instance from his house itself. The said prosecution story fails to generate confidence as there is not an iota of evidence to say, much less to establish, as to why, how, and on what basis the accused/appellant was suspected and thereafter arrested for the said incident. As per the prosecution story, there is no connect, link or nexus between the incident and the accused/appellant till the date of his arrest. It was only after the arrest made on 09.05.2023 that the prosecution has built up a case on the basis of recovery of clothes and weapon.

18.1. Consideration of the testimonies :

Despite PW-4 Kalu Ram and PW-16 Arjun Ram both being close relatives of the victims, they have nowhere averred any allegation against the accused/appellant on account of any animosity, enmity or any underlying hostility amongst the accused/appellant, victims or even their family members. It is a matter of record that the accused/appellant was neither named in the FIR, which was registered on the basis of the written report nor in the statement under S.161 CrPC of PW-1. Rather, PW16 states that he learnt about the offences being committed by the accused/appellant only through the police officials. Thus, the



statements of none of the above two witnesses support the case of the prosecution against the accused/appellant.

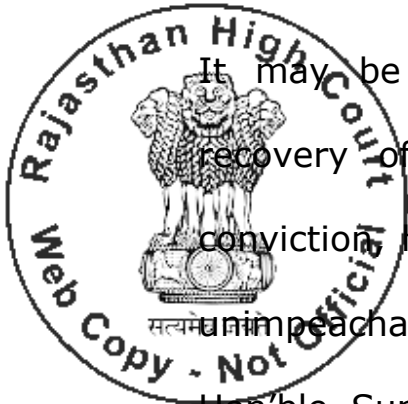
18.2. Even PW13 Praveen Nayak, I.O., has failed to establish as to how he learnt about the offence being committed by the accused/appellant as he in his deposition admits that the accused/appellant was produced before him after arrest by his team on 09.05.2023 and he was arrested from his home. He further pleads ignorance with respect to the initial information received by him about the offence being committed by the accused/appellant. Thus, he miserably fails to establish any nexus between the offence and the arrest of the accused/appellant. It was only after his arrest that the so-called recoveries of clothes of the accused/appellant as also weapon 'iron koot' were made from the house of the accused/appellant at his instance. The factum that the said recoveries were made in absence of any independent witness and in the presence of two subordinate police officials raises a serious doubt about the recovery.

Further, there exists material contradiction with respect to arrest of accused/appellant as according to the I.O. PW13-Praveen Nayak, the accused/appellant was arrested from his house and after the arrest by the police team, the accused/appellant was produced before the I.O. On the contrary, PW8 Suresh Chaudhary - Constable stated that the accused/appellant was arrested by the I.O. in his presence and one ASI Prahalad Singh. However, in his cross examination on being confronted with the said fact, he states that he is unable to tell as to who brought Arjun Singh and at what time. Further, as



per the arrest memo Ex.P/24, the place of arrest has been shown as "O.P. Jojavar, P.S. Siryari, Pali" and the same has been signed by I.O. Praveen Nayak, Prahalad Singh ASI and Suresh Constable as the witnesses. The above facts cast a serious doubt on the manner of arrest of the accused/appellant.

18.3. **Relevance of recovery :**



It may be true that the disclosure statement and resultant recovery of inculpatory material can constitute the basis of conviction; however, to sustain such guilt, the recovery has to be unimpeachable and not shrouded with elements of doubt. The Hon'ble Supreme Court in the case of **Bijender vs. State of**

Haryana ; (2022) 1 SCC 92, held as under :-

"16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. [Vijay Thakur v. State of H.P., (2014) 14 SCC 609] We may hasten to add that circumstances such as : (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v.) the testimony and trustworthiness of the attesting witness before the court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See : Tulsiram Kanu v. State AIR 1954 SC 1, Pancho v. State of Haryana (2011) 10 SCC 165, State of Rajasthan v. Talevar (2011) 11 SCC 666 and Bharama Parasram Kudhachkar v. State of Karnataka (2014) 14 SCC 431)

17. Incontrovertibly, where the prosecution fails to inspire confidence in the manner and/or contents of the recovery with regard to its nexus to the alleged offence, the court ought to stretch the benefit of doubt to the accused. It is nearly three centuries old cardinal principle of criminal jurisprudence that "it is better that ten guilty persons escape, than that one innocent suffer" [W. Blackstone, 6 Commentaries on the Laws of England, Book IV, c. 27 (1897), p. 358. Ed. : see R. v. John Paul Lepage,

1995 SCC OnLine SC 19.]. *The doctrine of extending benefit of doubt to an accused, notwithstanding the proof of a strong suspicion, holds its fort on the premise that "the acquittal of a guilty person constitutes a miscarriage of justice just as much as the conviction of the innocent".*

18.4. It is relevant to note that as per the version of I.O. (PW-13), the accused/appellant was arrested from his house after 8 days of the incident and the clothes and weapon were said to be found in the house itself, which were recovered at the instance of the accused/appellant on the next day. PW13 has also not disputed the fact that the weapon iron koot is easily available in the market. Further, undisputedly, the recoveries were made in absence of any independent witness and solely in the presence of two police officials as witnesses, who were both subordinate to the I.O. and are nothing but stock witnesses of the police. Thus, the recoveries fail to inspire any confidence so much so to constitute an evidence being able to convict the accused/appellant.

18.5. Further, it has been observed in a number of pronouncements that absence of independent witnesses during recovery is not fatal in itself, since the law does not mandate their presence, however, when the remaining evidence is also weak or doubtful, such absence can further erode the credibility of the prosecution's case. The Hon'ble Supreme Court in the case of ***Subramanya v. State of Karnataka ; (2023) 11 SCC 255*** observed as under:

"78. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the



investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.”

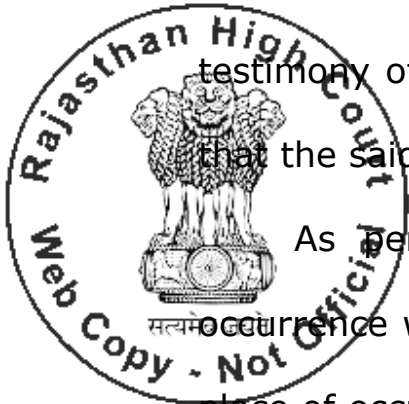
18.6. It is also most relevant to note that as per the FSL report, no blood stains were found on the recovered alleged

weapon (Iron Koot) and thus, under no circumstances it can be said that the said weapon was used by the accused/appellant for committing the said crime. It is relevant to note that PW-8 Suresh Choudhary – Constable in his testimony has stated that the weapon Iron Koot had blood stain, however, in the FSL report, no blood was detected which not only creates doubt about the testimony of PW-15 but also destroys the case of the prosecution that the said weapon was used for committing the said offence.

As per deposition of PW-13, the maps of the place of occurrence were already part of record before his visit to the said place of occurrence and thus, identification and disclosure of place of occurrence by the accused/appellant to the investigating officer loses its significance. It is also a fact of record that PW-15 Hamir Singh had already visited the site on 03/05/2023. Thus, the identification of the place of occurrence cannot be a formidable evidence to record the conviction of the accused/appellant.

18.7. **Significance of Motive :**

The present case being of circumstantial evidence, as there is no direct ocular testimony or evidence on record, motive forms one of the chain of circumstances which can collectively point to the guilt of the accused/appellant. According to the prosecution, the motive of the accused/appellant to kill victim 'DR' was a fight due to cutting of branches of tree. It is noteworthy that as per the naksha mauka (Ex.P/29), no such cut branches were found. Also, the deceased 'DR' was aged 13 years whereas, the accused/appellant was 22 years at the time of incident and thus, it is highly improbable that the victim 'DR' could have given such

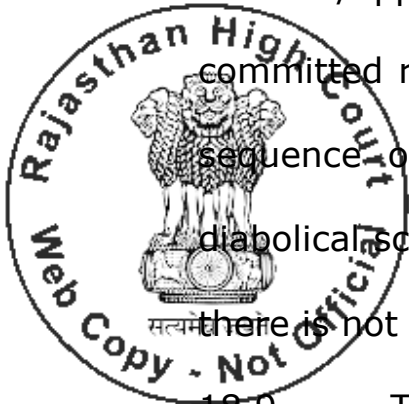


resistance to the accused/appellant so as to compel the accused/appellant to end the life of victim 'DR' and further, no evidence to support such story is part of record.

18.8. The prosecution has further made out a case that as victim 'D' was eye witness to the murder of victim 'DR', the accused/appellant with the intent to destroy any evidence, committed rape and subsequently murdered victim 'D'. The above sequence of events though at the first blush portray a very diabolical scenario, however, is nothing more than a hypothesis as there is not a shred of evidence to establish such an incident.

18.9. The above factual aspects fail to constitute a motive so as to commit a crime as heinous as the one involved in the present case and thus, in our opinion, it cannot be said that the accused appellant had any motive to commit the said crime. It is trite law that the absence of motive in a case of circumstantial evidence is a factor that weighs in favour of the accused. The absence of motive assumes critical importance as it undermines the very substratum of the prosecution case which sought to predicate the guilt upon the existence of motive as a connecting link in the chain of the circumstances. Motive, though relevant, cannot by itself establish the guilt of the accused unless fortified by cogent, credible and corroborating evidence, in absence of which the evidentiary foundation of the prosecution case becomes tenuous and incapable of sustaining the conviction.

18.10. It is a settled principle of law that in cases resting solely on circumstantial evidence, motive plays an important role. Absence of motive, while not fatal, weights in favour of the



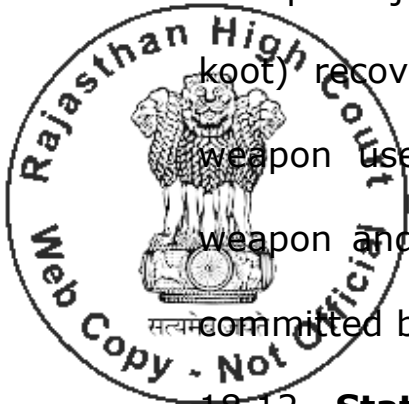
accused. Reliance can be placed on the judgment of the Hon'ble Supreme Court in the case of **State (Delhi Admn.) v. Gulzarilal (1979) 3 SCC 316**, wherein it was held that the accused can be convicted on circumstantial evidence only if every other reasonable hypothesis of guilt is completely excluded and the circumstances are wholly inconsistent with the innocence of the accused. In the instant case, the prosecution has clearly fallen short of proving this fact. Further, the Hon'ble Supreme Court in the case of **Shankar vs. State of Maharashtra ; (2023) 19 SCC 553** has held that while complete absence of motive weighs in favour of the accused, failure to establish motive after attributing one, also give a different complexion in a case based on circumstantial evidence and feeble the case of prosecution.

18.11. Medical Examination – A crucial factor :

A bare perusal of post mortem reports Ex.P/1 and P/4 read with FSL report Ex.P/3 reveals that there is no conclusion with respect to any act of rape being committed by the accused/appellant upon victim 'D'. Further, the conclusion of FSL report Ex.P/3 fails to mention about any nexus between the accused/appellant and victim 'DR'. The only connect which the said report makes out is regarding the matching of male DNA profile of shirt of the accused/appellant Ex.P/25 (sic 28) with the male DNA profile Ex. 18 (blood sample of deceased 'DR'). However, once the recovery of shirt itself is doubtful, this lone evidence will not be sufficient enough to prove the guilt of the accused/appellant. Further, it is a matter of record that the expert who conducted the DNA examination was not examined. As held by the Hon'ble



Supreme Court in the case of **Karandeep Sharma v. State of Uttarakhand ; 2025 SCC OnLine SC 773**, non-examination of scientific expert who carried out the DNA profiling is fatal and such report cannot be admitted in evidence. Further also, as per both the post mortem reports, the cause of death is on account of multiple injuries having blunt force whereas, the weapon (iron koot) recovered from the house of the accused/appellant is a weapon used for cutting tree branches and is a sharp-edged weapon and thus, the story of prosecution of the offence being committed by the said weapon stands falsified.



18.12. Statement under Section 313 Cr.P.C. :

With respect to the statement of the accused/appellant recorded under Section 313 of Cr.P.C., the accused/appellant has denied and disputed the case set up by the prosecution against him. However, while in answer to question no.16, he accepts the recovery of his clothes and Iron Koot from him and denies the identification of place of incident, in reply to question no.25, he denied the recovery of clothes and Iron koot from him. It is an established principle of law that statement under Sec.313 of Cr.P.C. cannot form the sole basis of the conviction of the accused and can be a relevant consideration only when the prosecution has otherwise established the chain of events. The statement of the accused recorded under Sec.313 of Cr.P.C. is not a substantive piece of evidence and cannot substitute the evidence of prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 Cr.P.C. cannot

be made the sole basis of his conviction, as held by the Hon'ble Supreme Court in **Mohan Singh v. Prem Singh ; (2002) 10 SCC 236**.

19. The Hon'ble Supreme Court in a recent judgment dated 19/06/2025 delivered in the case of **State of Rajasthan v. Hanuman ; CR Appeal No. 631 of 2017** dealing with a case arising out of similar circumstances while considering the FSL report, motive and recovery of the blood stained weapon has upheld the acquittal of the accused. Reliance, therein was placed upon **Raja Naykar v. State of Chhattisgarh ; (2024) 3 SCC 481** to hold that mere recovery of a blood-stained weapon even bearing the same blood group of the victim would not be sufficient to prove the charge of murder.

In the present case while the weapon is devoid of any such blood stain, recovery of shirt at the instance of the accused/appellant having blood stains of the victim cannot constitute the sole basis to prove the charge of murder. Thus, the solitary conclusion of the above discussion is that the prosecution has miserably failed to establish the guilt of the accused/appellant beyond reasonable doubt, as a consequence to which we have no hesitation in arriving at finding that the chain of circumstantial evidence in no way points to a singular hypothesis i.e., the guilt of the accused, ruling out his innocence and involvement in the crime.

20. The Supreme Court most recently in **Chunni Bai v. State of Chhattisgarh ; SLP (CRL.) No. 13119 of 2024** decided on 28.04.2025 has reiterated the foundational principle as



observed in *Sharad Birdhichand Sharda v. State of Maharashtra* (1984) 4 SCC 116 that the burden of proof is on the prosecution to establish its case beyond all reasonable doubt in order to bring home the guilt of the accused. It was held as under :

"25. It is well settled that in any criminal case, the burden of proof is on the prosecution to prove the case beyond reasonable doubt in order to secure conviction of the accused, that is to say that no reasonable doubt can be said to have arisen in the judicial mind of the court after appreciating the evidence presented, and the outcome reached by the prosecution is the only possible outcome in the given facts and circumstances of the case.

This legal position is necessary for both the ingredients of "actus reus" and "mens rea", though "mens rea" can sometimes be inferred from the nature of "actus reus", and as far as "mens rea" is concerned, intention or guilty knowledge is certainly the most important facet.

21. Thus, the sum and substance of above analysis, evaluation and consideration is that in the present case solely based on circumstantial evidence, the prosecution has miserably failed to establish any chain of events leading to the offence being committed by the accused/appellant, no motive could be established, medical reports stand inconclusive, recoveries being made in absence of any independent witness are not worth relying upon and thus, the prosecution has failed to establish the case beyond all reasonable doubt so as to hold the accused/appellant guilty of the offences.

22. It is a bit astonishing to note that a case wherein this Court is facing difficulty to find any trace of evidence supporting the case of the prosecution, the accused/appellant has been convicted with death sentence by the learned Trial Court. Not a whisper is found in the impugned judgment so as to make the present case fall within the category of "rarest of the rare" case.

23. Consequently, the present appeal stands allowed, the impugned judgment and order dated 11.12.2023 is set aside and the appellant is acquitted of the charges levelled against him. Accordingly, the Death Reference is answered in negative. As the accused/appellant is in jail, he shall be released forthwith, if not warranted in any other case.

24. However, keeping in view the provisions of Section 437A Cr.P.C., the appellant is directed to furnish a personal bond in the sum of Rs.40,000/- and a surety bond in the like amount before the learned Trial Court, which shall be effective for a period of six months to the effect that in the event of filing of a Special Leave Petition against the present judgment on receipt of notice thereof, the appellant shall appear before the Supreme Court.

25. Record of the Trial Court be sent back forthwith.

(ANUROOP SINGHI),J

(VINIT KUMAR MATHUR),J

SPhophaliya/-