

Riyasat Vs. State of U.P.

Riyasat Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/468151

Court : Allahabad

Decided On : Nov-26-1992

Reported in : 1993CriLJ2834

Judge : S.K. Mookerji and ;J.P. Semwal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 201, 302 and 376; Evidence Act, 1874 - Sections 25, 26, 27; Code of Criminal Procedure (CrPC) - Sections 82, 83, 161, 313 and 342

Appeal No. : Criminal Appeal (Capital Case) No. 2224 of 1991 (conn. with Cri. Ref. No. 6 of 1991)

Appellant : Riyasat

Respondent : State of U.P.

Advocate for Def. : G.A.

Advocate for Pet/Ap. : Malik Sayeeduddin, Adv.

Judgement :

S.K. Mookerji, J.

1. This is an appeal filed by Riyasat against the judgment and order of the District & Sessions Judge, Haridwar, dated 14-11-1991, in Sessions Trial No. 171 of 1991,

convicting the appellant under Section 302, 376 and 201, I.P.C. and sentencing him to death, rigorous imprisonment for ten years and one year's, R.I. respectively.

2. Usual reference for confirmation of the death sentence of Riyasat has also been made by the learned Sessions Judge, which is numbered as Reference No. 6 of 1991. Both criminal appeal as well as the Reference have been heard together.

3. The story of rape followed by ghastly murder of a girl 'Guria', aged about 6 years by the appellant, Riyasat, has been revealed by the prosecution in the present case.

4. PW1, Badlu, a Harijan, resident of village Larhaura, Police Station Mangalore, District Haridwar, is the father of the deceased Guria. The prosecution case, as disclosed by PW 1, Badlu, father of the deceased, is that Guria was his daughter and at the time of the occurrence she was six years of age. He deposed that 31-1-1991 was the date of Ravidas Jayanti procession. There is a temple in the village, On the occasion of Ravidas Jayanti a procession, is taken out from the temple and it goes around the village and ultimately terminates near the temple. His daughter, Guria, was playing near the temple at about 5.30 p.m., which was situated in the mohalla of his village and on 31-1-1991, when Guria did not return back he searched her in the village but she was not found. Next day (1-2-1991) early in the morning at about 5 a.m. when he was still searching Guria, he (PW 1) was told by one Bina that his daughter was lying dead in a sugar cane field. Bina has gone to ease in the morning. PW 1, Badlu, thereafter, reached the sugar cane field of Makkhan and saw that his daughter, Guria, was lying dead in the sugar cane field with her back on the ground. Her neck was tied with her 'Salwar' for strangulating her. To a court question PW 1 Badlu, has stated that after the murder, when on 14-2-1991 accused had taken out the shoes and chunni, of the deceased from the sugar cane field of Makkhan, he has also reached there. Witnesses, PW 4 Raj Pal and PW6, Dharpal were also present there along with Darogaji. He categorically stated that the shoes and chunni belonged to his daughter, Guria. He also submitted that the above things were also identified by him at the time of recovery in presence of Darogaji and witnesses. He also clarified that on 31-1-1991 when his daughter, Guria, had gone to the temple for playing she was putting 'salwar',

'frock', 'chunni' and 'shoes'. Out of the above things the accused had taken out the 'chunni' and the 'shoes'.

5. PW 1, Badlu, in his statement, stated that after seeing the dead body on 1-2-1991 he returned to his house and lodged the first information report scribed by Kunwar Pal. The report was read out to PW 1, Badlu, and he affirmed the contents thereof. The first information report was exhibited on Ext. Ka 1. It appears that the report was lodged on 1-2-1991 at about 7.15 a.m. and the distance between the village Larhaura and the Police Station Mangalaur is about 7 kms. on the east. On the basis of the above report a case was registered under Section 302/201, I.P.C. The first information report, lodged by PW 1, Badlu, states that his daughter, Guria, aged about six years, was playing near the temple on 31-1-1991 at about 5.30 p.m. when she did not return then PW 1, Badlu and his wife searched her but she was not found and on 1-2-1991 in the morning, when the search was continued in the morning, his daughter was found dead in the sugar cane field of Makkhan son of Patru, resident of Larhaura. She was done to death by strangulating her with her own 'salwar'. It was also written in the first information report that the dead body of Guria was lying in the field of Makkhan. This first information report was submitted at police station for taking action according to law. The first information report also contains the thumb impression of Badlu son of Rajpal, Harijan, resident of Larhaura, Police Station Mangalaur, district Haridwar. The name of the scribe was shown as Kunwarpal Singh son of Harish Chand. There is a note in the first information report by the Head Moharrir that chik was correctly prepared on the basis of the actual averments made in the first information report.

6. PW 5, Rameshwar Prasad, Head Moharrir, prepared the chik report, (Ext. Ka 3) on the basis of the first information report (Ext. Ka 1) and entered the same in the general diary as report No. 10. At the time of lodging of the first information report PW 8 Ajai Kumar, S.O. was also present at the police station. He took over the investigation of the case, recorded the statements of PW 1, Badlu, PW5, Rameshwar Prasad, Head Moharrir and proceeded along with Badlu (PW 1), to the place where the dead body of Guria was lying in the sugar cane field of Makkhan. He got the panchanama (Ext. Ka 5), photo lash (Ext. Ka 6), challan lash

(Ext. Ka 7), chitthi for R.I. (Ext. Ka 8) and chitthi for post mortem (Ext. Ka 9) prepared by S.I. Saudan Singh. PW 8, Ajai Kumar, identified the handwriting of Saudan Singh. After sealing the dead body, constables Ranvir Singh and Jaikumar, PW 9, took the dead body of Guria for post mortem examination. S.I. Saudan Singh took into his possession 'salwar' (Ex. 3) and 'shawl'(Ext. 4) from the dead body and sealed the same vide Ext. 9. Thereafter, S.O. Ajai Kumar, Investigating Officer, recorded the statement of Kalawati, mother of the deceased, and Dharma. He inspected the place where the dead body of Guria was found lying and prepared a map (Ext. 11). He also recorded the statement of scribe of the first information report, Kunwar Pal. Thereafter, he also recorded the statement of PW 2, Dharam Singh and PW 3, Asha Ram (witnesses on the evidence of last seen) on 1-2-1991. The Investigating Officer, thereafter, went in search of the accused, Riyasat, in his village Ibrahimpur but he was not located. On 2-2-1991 he raided Purqazi but he could not be apprehended. On 3-2-1991, PW 8, Ajai Kumar, Investigating Officer, was transferred and, therefore, he left investigation incomplete, which was subsequently completed by PW 12, Jagdish Singh, Investigating Officer. On 7-2-1991, Jagdish Singh, took over the investigation and on that very day he made a search of the accused Riyasat but could not apprehend him. On 10-2-1991, PW 12, Jagdish Singh, Investigating Officer, recorded the statement of PW 11, Satish Chandra Dohra and PW 7, Ram Pal (witnesses on the evidence of extra-judicial confession).

7. It is stated that accused Riyasat on 9-2-1991 made his extra-judicial confession before PW 11, Satish Chandra Dohra and PW 7, Ram Pal. PW 11, Satish Chandra Dohra, in his statement has stated that Riyasat had admitted to him that on 31-1-1991 'MERIMATIKHARAB HO GAITHI AUR BADLU HARIJAN KI LARKI KE SAATH SHAAM KO 5 BAJE KUKARM KARKE USKA GALA GHOT KAR MAINE USE MAAR DIYA HAI'. Thereafter, on receipt of the information from an informant, the Investigating Officer, Jagdish Singh, PW 12, arrested the accused Riyasat on 14-2-1991 at about 1 p.m. at the bus station of Larhaura. During interrogation at police station accused Riyasat promised to recover the shoes and chunni of Guria, PW 12, Jagdish Singh, Investigating Officer in his statement has deposed 'MULZIM KO THANE PAR LAKAR POOCH TACH KI JISME USKE DWARA MRITIKA KI JOOTI TATHA CHUNNI BARAMAD KARANE KA WADA

KIYA GAYA'. On the above information given to police by the accused in custody and on the expectation of recovery of shoes and chunni accused Riyasat was taken out of the Hawalat and in police custody he was taken to the place pointed out by him in a jeep along with the police party including the Investigating Officer, Jagdish Singh. On the tri-section of the road (TIRAHA) in village Larhaura, PW 6, Dharam Pal and PW 4, Raj Pal witnesses of recovery were also taken with them. Accused Riyasat, who was in police custody, was taken out of the jeep and the accused had then taken the police party along with the above witnesses to Luxer Road and then to the sugar cane field of Makkhan. He went seven steps towards south-east corner of that sugar cane field, took out from inside the MEND one chunni (Ex. 1) and a pair of plastic shoes (Ext. 2) and handed them over to the police. The above articles were kept hidden in the MEND of the sugar cane field, which were not otherwise visible from outside. The above articles were hidden in the MEND at the field. The accused stated that these articles were taken out and handed over to police by him. The shoes and chunni were kept in a sealed bundle (Ext. Ka 2). PW 1, Badlu, father of the deceased had also arrived at the scene at the time of recovery, who identified the shoes and chunni of the deceased. The Investigating Officer inspected the site of recovery and prepared the map (Ext. Ka 12).

8. On 17-2-1991 the Investigating Officer recorded the statements of the witnesses of panchanama. He also recorded the statements of the above witnesses, PW 4, Rajpal and PW 6, Dharam Pal. Finally the charge-sheet was submitted on 23-2-1991.

9. Sri D. P. Gairela, Judicial Magistrate, Roorkee, by his order dated 15-5-1991 committed the case to the court of Session under Sections 302/201 and 376, I.P.C.

10. The learned Sessions Judge, after examining the entire materials on record, recorded a finding of guilt against the appellant, as has already been pointed out above.

11. In this case there is no eye-witness. In fact, the prosecution has relied upon a chain of circumstantial evidence. The prosecution has examined PW 1, Badlu,

father of the deceased, author of the first information report, PW 2, Dharam Singh and PW 3, Asha Ram, have been examined by the prosecution, who may be classified as 'witnesses of last seen'. PW 4, Raj Pal and PW 6, Dharam Pal have been examined by prosecution, who may be classified as 'witnesses of recovery'. The prosecution has also examined PW7, Ram Pal and PW 11, Satish Chandra Dohra, who may be classified as 'witnesses of extra-judicial confession'. They are the witnesses before whom the confession was made by the accused Riyasat. The prosecution has also relied upon the evidence of PW 8, Ajai Kumar and PW 12, Jagdish Singh, both Investigating Officers, for proving, amongst others, that the accused, absconded immediately after the occurrence and was arrested later on 14-2-1991. Besides the above witnesses, PW 5, Rameshwar Prasad, Head Moharrir, PW 9, Jai Kumar, Constable, who took the dead body of the deceased for post mortem examination, PW 10, Dr. A. K. Chaturvedi, who conducted the post mortem examination of the deceased, PW 8, Ajai Kumar, S.O., Ist Investigating Officer and PW 12, Jagdish Singh, Second Investigating Officer, who completed the investigation and has filed charge-sheet, were also examined.

12. We have heard Sri Kamal Krishna, Advocate, for the appellant and also learned Government Advocate, Sri Kamal Krishna and learned Government Advocate prepared the case with great ability on facts and also on question of law.

13. Learned counsel for the appellant relied upon a decision reported in 1941 All LJ 416, Queen-Empress v. Hosh Nak. This is a very old decision but was reprinted in the above issue of Allahabad Law Journal on the recommendation made by Sir Tej Bahadur Sapru. In the above case, it has been laid down that four things are essential to prove an offence by the circumstantial evidence.

Firstly : That the circumstance from which the conclusion is drawn, be fully established.

Secondly: That all the facts should be consistent with the hypothesis.

Thirdly : That the circumstances should be of a conclusive nature and tendency.

Fourthly : That the circumstances should, to a moral certainty, actually exclude every hypothesis but the one proposed to be proved

14. Learned counsel for the appellant, thereafter, relied upon heavily on a case reported in : [1974]1SCR266 Khashaba Maruti Shelke v. State of Maharashtra. Para 18 of the above judgment is extracted as under:

'In order to base the conviction of an accused on circumstantial evidence the court must be certain that the circumstantial evidence is of such a character as is consistent only with the guilt of the accused. If, however, the circumstantial evidence admits of any other rational explanation, in such an event an element of doubt would creep in and the accused must necessarily have the benefit thereof. The circumstances relied upon should be of a conclusive character and should exclude every hypothesis other than that of the guilt of the accused. 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. The circumstances must show that within all reasonable probability the impugned act must have been done by the accused. If two inferences are possible from the circumstantial evidence, one pointing to the guilt of the accused, and the other, also plausible, that the commission of the crime was the act of some one else, the circumstantial evidence would not warrant the conviction of the accused. In case the circumstantial evidence relied upon by the High Court for maintaining the conviction of the accused for an offence entailing capital punishment does not satisfy the above requirement, an interference would be called for by this court.'

After placing the above judgment learned counsel for the appellant submitted that the circumstantial evidence must be so complete as to exclude every hypothesis other than that of guilt of the accused.

15. Learned counsel for the appellant, thereafter, cites the decision reported in : 1984 CriLJ1738 Sharad Birdhichand Sarda v. State of Maharashtra. The Supreme Court in paragraph 153 of the judgment has described five principles of circumstantial evidence as panchsheel on circumstantial evidence. The five principles have been narrated in para 152 are as under:

(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 CriLJ1783 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 and 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 to leave by reasonable grounds 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.'

16. Learned counsel for the appellant, thereafter relied upon a decision reported in Judgments Today, 1989 (3) SCC 451 : (1989 Cri LJ 2124) (Ashok Kumar Chatterji v. State of M.P.). In the above case in para 30 of the judgment the Supreme Court ruled out as under:

'This appeal arises against the concurrent findings of facts except for the modification of the sentence made by the High Court. There is no direct evidence to prove this case and the conviction is founded solely on circumstantial evidence. This Court in a line of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests :

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) these circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, 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 as explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence (see *Gambhir v. State of Maharashtra* : 1982 CriLJ1243).'

17. Learned counsel for the appellant, thereafter, submitted that no one can be convicted on the basis of mere suspicion. The conduct of the accused must be looked at in its entirety. He has supported his argument upon a decision reported in 1989 (4) JT 223 : (1990 Cri LJ 605) *Pedala Veera Reddy v. State of Andhra Pradesh*. The above points have been reiterated in this case also.

18. Adopting the above principles laid down by the Supreme Court we propose to examine the facts of the present case. The cardinal principle of criminal jurisprudence is that the prosecution shall stand on its own legs and it should prove its case beyond reasonable doubt. Doubt must be of a reasonable man and reasonableness of doubt must be commensurate with the nature of the offence to be investigated. We have also taken into notice the observations of Sabyasachi Mukherji, J., as he then was, in *Gurbachan Singh v. Satpal Singh*, reported in 1989 (4) JT 38 : (1990 Cri LJ 562). The observations are :

'Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent.'

Learned counsel for the appellant discussed before us the circumstances in the present case one by one. He has submitted firstly, the evidence of 'last seen'. PW

1, Badlu, is the father of the deceased Guria. He has clearly stated that on 31-1-1991 he saw his daughter Guria was playing near the temple of the village at about 5.30 p.m. He also stated that he had seen his daughter Guria alive at 5.15 p.m. when she was going out. He has further deposed that on the occasion of Ravi Das Jayanti a procession is always taken out in his village from the temple and it also terminates at the temple after going around the village. PW 2, Dharam Singh, deposed that on 31-1-1991 at about 5.15 evening he was going to market (bazar) from his house and saw the accused Riyasat standing near the temple holding Guria in his lap. He further stated that he had gone away to bazar and returned around 9.30 p.m. and on the next day at about 7.30 a.m. he came to know about the murder of Guria. He admits that he had gone to see the dead body of Guria. Her dead body was lying in the sugar cane field of Makkhan. He further stated that on the same day his statement was recorded by the police at the place of occurrence. In his cross-examination he has submitted that accused Riyasat was a resident of Ibrahimpur, Police Station Jwalapur, district Haridwar. Riyasat was working on the saw machine of Gulzar in the village. He was working there for about 1-2 months. PW 2 Dharam Singh, also said that there was 'Qamiz' and 'Salwar' on the dead body of Guria. There was no shoe or chappal on tier feet. He further submitted that during night he had no meeting with Badlu (PW 1). The Investigating Officer was already present on the sugar cane field before he reached there. He further added that he had reached the sugar cane field in the morning or about 8-8.30. He admitted that he belonged to the community of Badlu (PW 1) and he was a neighbour of PW 1 Badlu. He denied the suggestions that he has not. seen the accused carrying Guria in his lap and that he was giving false evidence at the instance of PW 1, Badlu.

19. The next evidence is of PW 3, Asha Ram. In his examination-in-chief PW 3, Asha Ram, has stated that he knew Guria, deceased, daughter of PW 1, Badlu. He also knew the accused Riyasat, who was present in the Court. PW 3, Asha Ram, further submitted that on 31-1-1991 at about 5.30 p.m., when he was returning from the procession to the village and when he reached in front of the temple he saw accused Riyasat carrying Guria in his lap and was proceeding towards the north. Thereafter, he had gone away to his house. Next day he came to know about the murder of Guria and thereafter he proceeded to see the dead

body of Guria, which was lying in the sugar cane field of Makkhan. The Investigating Officer has recorded his statement there. He also added that accused Riyasat was also working on a saw machine in his village. PW 3, Asha Ram, PW 2, Dharam Singh and PW 1, Badlu, belong to the same village, namely, Larhaura, Police Station Mangalaur, District Haridwar and are Harijan. In the cross-examination it is stated that when he saw the accused holding Guria in his lap, the accused Riyasat was standing at a distance of 20 paces towards north of the gate of the temple. He also submitted that the sugar cane field of Makkhan was at a distance of 40-45 paces from temple on the north. He also admitted that he belonged to the community of PW 1, Badlu, and was his neighbour. He denied the suggestions that he was deposing against the accused as he belongs to the community of PW 1, Badlu and was his neighbour. He expressed his ignorance on the facts whether accused Riyasat was removed from service of Gulzar from the saw machine.

20. We have examined the depositions of PW 1, Badlu, PW 2, Dharam Singh and PW 3, Asha Ram in its entirety along with other evidence on record. No doubt, cross-examination of the witnesses, in the present case, was not up to the mark. In fact, nothing in the cross-examination has been elicited from the above witnesses to discredit them. No doubt, the above witnesses belong to the same community of Harijan but that itself will not be a ground to discredit their testimony. In fact, their evidence has to be examined with great care and cautions. In the present case, there is absolutely no evidence on record to show that Guria was seen anywhere alive after 5.30 p.m. on 31-1-1991. It has also come in evidence that procession on the occasion of Ravi Das Jayanti was a usual yearly feature in the village and, therefore, presence of Guria and other witnesses (Harijans) near the temple, from where the procession started and used to terminate is very natural. Guria, being a girl of tender age, in village, must have gone to see the procession. The witnesses have clearly stated that they had seen accused Riyasat holding Guria in his lap at about 5.30 p.m. and in the absence of any evidence to show that Guria was also seen alive after 5.30 p.m. on 31-1-1991, we have no option but to hold that Guria was last seen by PW 2, Dharam Singh and PW 3, Asha Ram in the lap of accused Riyasat, PW 3, Asha Ram, has also added that accused Riyasat, was carrying Guria towards the north of the temple. The field of

Makkhan is also situated to the north of the temple from where the dead body of Guria was recovered on the next date. PW 1, Badlu, has also stated that Guria was last seen by him leaving the home at 5 p.m. and was present in front of the temple around 5.30 p.m. The witnesses, PW 2, Dharam Singh and PW 3, Asha Ram belonged to the same village and community of PW 1, Badlu, and, therefore, their presence near the temple is very natural and they knew both Guria as well as the accused. It is also noteworthy that there is no enmity between accused Riyasat and PW 1, Badlu, PW 2, Dharam Singh and PW 3, Asha Ram, as such, there is absolutely no question of involving the accused Riyasat in the present case on false pretext. Thus, our conclusion is that both, PW 2, Dharam Singh and PW 3, Asha Ram, are trustworthy witnesses and we accept their testimony to the effect that they had seen the accused holding Guria in his lap. We also hold that the prosecution witness PW 3, Asha Ram, is also wholly trustworthy and we accept that he had also seen the accused Riyasat carrying Guria in his lap moving towards the north of the gate of the temple, i.e. towards the sugar cane field of Makkhan. We also hold that both PW 2, Dharam Singh and PW 3, Asha Ram have seen Guria last time with the accused Riyasat, as stated above, at about 5.30 p.m. near the temple of the village.

21. Learned counsel for the appellant pointed out that the evidence of last seen should not be believed on the basis of the testimony of PW 1, Badlu, PW 2, Dharam Singh, and PW 3, Asha Ram. In view of the finding recorded above we reject this argument. Learned counsel for the appellant, thereafter, submitted that even if Guria was last seen at 5.30 p.m. on 31-1-1991 and she did not return home during night there is no reason for PW 1, Badlu, to show why he did not approach immediately the police in respect of the disappearance of his daughter. This argument of the learned counsel for the appellant is wholly misconceived. It is in the testimony of PW 1, Badlu that he was searching Guria in the village along with his wife and on next date he continued his search when it was revealed to him by one Bina that the dead body of Guria was lying in the sugar cane field of Makkhan. Thus, it is clear that PW 1, Badlu, not only made search of Guria during night but also continued to search his daughter Guria in the early hours of the next day when at about 5 a.m. Bina told him about the dead body of Guria lying in the sugar cane field of Makkhan. It is not out of place to mention here that hardly there is any

cross-examination of PW 1, Badlu, on this point. We find that PW 1, Badlu, was the worried father and was searching his daughter Guria on 31-1-1991 and continued his search in the early morning on the next day then the hard truth was revealed to him by Bina. It is but natural that PW 1, Badlu, would have never thought of any carnal assault on his tender aged girl of about 6 years or consequential murder. It is also natural that unless he was fully satisfied after search that his daughter was lost for good, there was no occasion for him to approach police and lodge any report of kidnapping. In view of the above discussion, we are not inclined to pay any importance to the fact that no first information report was lodged by PW 1, Badlu, in respect of disappearance of his minor daughter on 31-1-1991. Learned counsel for the appellant again vehemently submitted that PW 1, Badlu, PW 2, Dharam Singh and PW 3, Asha Ram, belonged to the same village and also belonged to the same community and were neighbours, as such, their testimony should be thrown out as being interested witnesses. ' We reject this argument of the learned counsel for the appellant. We have examined carefully the statements of the above three witnesses for the prosecution and found that they are wholly reliable and their testimony inspires full confidence and PW 2, Dharam Singh and PW 3, Asha Ram are independent witnesses. Learned counsel for the appellant, thereafter, pointed out some contradictions in the statements of the above witnesses, inter se, but we hold that such contradictions are of minor nature and cannot go to the root of the case, as such, no importance can be attached to it. Learned counsel for the appellant, thereafter, submitted that PW 1, Badlu, should have mentioned the names of PW 2, Dharam Singh and PW 3, Asha Ram, in the first information report as they were not only the neighbours of PW 1, Badlu, but belonged to the same village and had also seen the accused Riyasat holding Guria in his lap. This argument is wholly misconceived. PW 1, Badlu, in the last para of his cross-examination has clearly stated that the fact that Riyasat was holding his daughter in his lap on the last evening, came to his knowledge at about 10 or 11 a.m. after the first information report was lodged by him at the police station. PW 2, Dharam Singh, in his cross-examination added that during night he did not meet Badlu. In view of the above facts, the name of the accused Riyasat could not have been mentioned in the first information report.

22. There is no enmity of accused with PW 2 or PW 3 Neither they are pocket witnesses of police. Their presence on the scene is free from all doubts. The first information report was lodged even before the statements of PW 2 and PW 3 were recorded by Investigating Officer. Since accused Riyasat was working on the saw machine of Gulzar for last 1 or 2 months, there was absolutely no ground even to suspect the motive of the accused who was holding the deceased Guria in his lap. It was such an ordinary scene which never prompted PW 2 or 3 to lodge any report to police or inform Badlu immediately. Learned counsel for the appellant further submitted that PW 2 Dharam Singh, had admitted that he reached at about 8.30 a.m. on 1-2-1991 when inquest proceeding was going on yet the name of accused Riyasat did not find place in any of the documents. In this view of the matter, the statement of PW 2 Dharam Singh, should be discarded. This argument of the learned counsel for the appellant is without any substance. The argument raised by the learned counsel for the appellant is not at all supported by any requirement of law. Investigating Officer, PW 4, had stated that name of accused did not come to light before completing the Panchanama. After completing the Panchanama PW 4, Investigating Officer recorded statement of Asha Ram and Dharam Singh under Section 161, Cr.P.C. Hence the name of accused could not be found in Panchanama which was filed by Sub-Inspector Saudhan Singh. Learned counsel for the appellant further submitted that question No. 3, under Section 313, Cr.P.C. was not correctly put to the accused Riyasat. We shall discuss the requirement of Section 313, Cr.P.C. at the later stage. We have perused the question mentioned above and we do not find any infirmity in the same. We do not also find that no prejudice has been caused to the accused in explaining the circumstances appearing in the evidence against him.

23. Learned counsel for the appellant submitted that even if the evidence of PW 1, Badlu, PW 2, Dharam Singh and PW 3, Asha Ram, are accepted on the question of 'last seen' that will not be the sole ground for bringing home the guilt against the accused Riyasat.

24. After considering the evidence and the above argument of the learned counsel for the appellant we hold, in view of the facts and circumstances of the present case, that the accused Riyasat cannot be held guilty on the sole evidence, on the

ground of 'last seen'. The fact that Guria was last seen in the lap of the accused Riyasat on 31-1-1991 at about 5.30 p.m. near the temple or Riyasat was carrying her towards the field of Makkhan is not enough to convict the appellant. The evidence on this point can be used as one of the links in the chain of circumstances of this case. In other words, this evidence is nothing but a link in the chain of circumstantial evidence relied upon by the prosecution.

25. Learned counsel for the appellant, thereafter made his submissions on the question of 'extra judicial confession' made by the accused to the witnesses, namely, PW 7, Rampal and PW 11, Satish Kumar Dohra. Before examining the evidence of 'extra judicial confession' it is necessary to point out that an unambiguous confession, if admissible in evidence and free from suspicion, suggesting its falsity, is a valuable piece of evidence which possesses a highly probative force because it emanates directly from the person committing the offence. But in the process of proof of an alleged confession, the Court has to be satisfied that it is voluntary, it does not appear to be the result of inducement, threat or promise and the surrounding circumstances do not indicate that it is inspired by some improper or collateral consideration in suggesting that it may not be true. For this purpose the Court must scrutinise all the relevant factors such as persons to whom confession is made, time and place of making it, the circumstances in which it is made and finally the actual words used.

26. It is true that there is neither any rule of law nor of prudence that evidence furnished by extra judicial confession cannot be relied upon unless corroborated by some other credible evidence. The, courts have considered the evidence of extra judicial confession, a weak piece of evidence. If the evidence about extra judicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of creditability, if it passes the test, the extra-judicial confession can

be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon.

27. We have taken the above view on the basis of the observations made in case reported in : 1985 CriLJ493 State of U.P. v. M.K. Anthony.

28. The above case has laid down the principles for deciding the case based on circumstantial evidence. In the present case, the witnesses, on the question of extrajudicial confession, are P. W. 7, Ram Pal and P.W. 11, Satish Chandra Dohra. P. W. 11, Satish Chandra Dohra stated that on 9-2-1991 when he was at his residence, Ram Pal son of Manglu (P. W. 7) was also sitting with him at about 5 p.m. At that time accused Riyasat said that on 31-3-1991 MERI MATI KHARAB HO GAI THI AUR BADLU HARIJAN KI LARKI KE SAATH SHAAM KO 5 BAJE KUKARM KARKE USKA GALA GHOTKAR MAINE USE MAAR DIYA HAI'. P.W. 11 Satish Chandra Dohra further stated that accused Riyasat also told him that he (Satish Chandra Dohra) was having good relations with the police and he was leader (Neta) of the Harijan community and he should talk to the police for saving his life. Accused Riyasat also said that he thought that he was not seen by anybody but he could not assign any reason how the police came to know about him and the police was after him. Thereafter, P.W. 11, Satish Chandra Dohra, expressed sympathy to the accused Riyasat and told him that after talking to the police he will further speak. Next day, according to P.W. 11, Satish Chandra Dohra, he met Sri Chauhan, S. O., Police Station Mangalaur and told him every fact. In his cross-examination, he further deposed that the statement of P.W. 11, Satish Chandra Dohra, was recorded by the police on the same day when he met Sri Chauhan. He denied the suggestions that statement was recorded on 23-1-1991. In his cross-examination he further stated that before 9-2-1991 also accused Riyasat had come to him several times. He also deposed that at the time when the statement was made by the accused Riyasat, only Ram Pal (P.W. 7) was present there. He also has clearly stated that Ram Pal (P.W. 7) had come to him in respect of an electric connection. He admitted that he belonged to the community of P.W. 1, Badlu. It is also stated in the cross-examination that accused Riyasat, remained

with him for 2-4 minutes and left after making the above confessional statement. The above mentioned statements were made by accused Riyasat to P.W. 11 Satish Chandra Dohra in the presence of P.W. 7 Ram Pal. He denied the suggestion that accused, Riyasat, has not made such a statement as stated above. He further stated that he did not know Gulzar, owner of saw-machine. He denied the suggestion that he was giving false evidence at the instance of Gulzar, owner of saw-machine. He also denied that for the purposes of helping P.W. 1, Badlu, of his community he became the witness for the police.

29. From the above testimony it is clear that P.W. 11, Satish Chandra Dohra, belongs to the Harijan community. He was the leader (Neta) of Harijan community. He had good relationship with the police and the Extra Judicial Confession was made by the accused Riyasat before him in presence of witness Ram Pal (P.W. 7), who corroborated the testimony of P.W. 11, Satish Chandra Dohra on material particulars. Ram Pal (P.W. 7) in his cross-examination has stated that accused had got written his name and address to Satish Chandra Dohra Sahab on a piece of paper. He further stated that that paper was not signed by accused nor his thumb impression was affixed on it. He submitted that his statement was recorded by the police after 2-3 days of the talk at the residence of Dohra. He has stated in his cross-examination that his statement was taken in front of the temple by the Inspector. He also admitted that Satish Chandra Dohra belongs to his Biradri (community). He was a leader and also a vakil. He submitted in his cross-examination that he had approached P.W. 11, Satish Chandra Dohra, in respect of electric connection for his house. He has stated that he had already filled his form for electric connection and had gone to P.W. 11, Satish Chandra Dohra only for his recommendation. The application regarding electric connection was got written by P.W. 11, Satish Chandra Dohra three months before the accused approached Satish Chandra Dohra. He added that he went to Dohra around 5 p.m. and left his house around 5.30 p.m. He did not go to police on the same night when Riyasat made his confessional statement but he gave his statement on the next date. He stated categorically ' ISNE SATISH DOHRA KE PAIR PAKRE AUR KAHA BAHUT GALTI HO GAYEE HAI. MAI 31 TARIKH KO LATAURA GAYA THA. MERI MATI KHARAB HO GAI THI, JULOOS KA DIN THA MAINE WAHAN SE EK LARKI UTHAI AUR MAIN IKH ME GHUS GAYA. WAHAN MAINE US LARKI KE SAATH

BALAT-KAR KIYA AUR PHIR GALA GHOT DIYA.' He denied the suggestion that he had told about it to the Inspector about 10-15 days after the occurrence. He has also denied the suggestion that there was any talk between accused Riyasat and P. W. 11, Satish Chandra Dohra. He also denied the suggestion that he was deposing as he belonged to the community of P.W. 1, Badlu.

30. From the above evidence on record it is clear that P.W. 11, Satish Chandra Dohra, was also a vakil. The question is whether the testimonies of P.W. 7, Ram Pal and P.W. 11, Satish Chandra Dohra, inspire any confidence. No doubt, both P.W. 11, Satish Chandra Dohra and P.W. 7 Ram Pal, are Harijans and, therefore, we propose to examine their evidence with great care and caution. This is a case where a Harijan girl of six years has been done to death after committing rape on her. Therefore, it is but natural that the witnesses of the same community shall be easily available to tell the truth. In the cross-examination nothing could be elicited to discredit their testimonies. Riyasat accused after committing the crime wanted to escape the consequences and with this view he was in search of a person who could be useful to him in escaping from the consequences. He selected P.W. 11, Satish Chandra Dohra, who was an advocate, leader of Harijan community and was close to police. P.W. 11, Satish Chandra Dohra is an influential man of the Harijan Community. Since accused Riyasat had committed the grave offence against a girl of Harijan community he, therefore, must have thought that he could escape from the consequences only with the help of P.W. 11, Satish Chandra Dohra. P.W. 11, Satish Chandra Dohra was nearer to the police and an influential person. Therefore, the accused, Riyasat, must have thought that P.W. 11, Satish Chandra Dohra, will be able to help him in the matter of investigation by the police. It has also come in evidence that P.W. 11, Satish Chandra Dohra, was an advocate and, therefore, also the accused thought that he would be useful and helpful to him in the matter.

30A. On the reasons given above we are of the opinion that the Extra-Judicial Confession made by the accused to P.W. 11, Satish Chandra Dohra, was quite natural and consistent with the background of P.W. 11, Satish Chandra Dohra, narrated above. We, therefore, rely upon the testimony of P. W. 11, Satish Chandra Dohra. We have also scrutinised the evidence of P.W. 7, Rampal, who

also belongs to Harijan community. We have examined his evidence also with great care and caution. We, therefore, do not propose to throw away the testimony of Ram Pal (P.W. 7) merely holding that he belongs to the community of P.W. 1, Badlu Harijan. We, therefore reject the argument of the learned counsel for the appellant to the effect that it was improbable that accused will give statement to P.W. 11. Satish Chandra Dohra, who is the leader of the Harijan community and had good relations with the police. We have already given our reasons above for rejecting this argument. Learned counsel for the appellant further submitted that it was highly improbable that accused will give his confessional statement to P.W. 11, Satish Chandra Dohra, in presence of P.W. 7, Ram Pal, who was a stranger. This argument is not acceptable as Ram Pal (P.W. 7) had already explained in his testimony the details for being present with P.W. 11, Satish Chandra Dohra. He had been there in connection with electric connection and, therefore, his presence before P.W. 11, Satish Chandra Dohra, was quite natural as he was not only a vakil but was also a leader of Harijan community. This argument of the learned counsel for the appellant is devoid of any force. Learned counsel for the appellant has also submitted that in the questions framed under Section 313, Cr. P.C. it was not mentioned that P.W. 11, Satish Chandra Dohra, was a Harijan Neta.

31. Section 313, Cr. P.C. speaks clearly that the purpose of enabling the accused personally to explain any circumstance ' appearing in the evidence against him, the court shall question him generally on the case. We, therefore, reject the aforesaid argument. It is a matter on record that accused Riyasat made Extra Judicial Confession on 9-2-1991 before P.W. 11, Satish Chandra Dohra, and P.W. 7, Ram Pal, and, thereafter, the Investigating Officer recorded their statements. On an information from an informer, the accused, Riyasat, was arrested on 14-2-1991 at about 1 p.m. at bus station of village Larhaura. We, therefore, conclude that the statements of P.W. 7, Rampal, and P.W. 11, Satish Chandra Dohra, are trustworthy and we hold that accused Riyasat made Extra Judicial Confession to P. W. 11, Satish Chandra Dohra, in presence of witness, P.W. 7, Ram Pal. Thus, this confession made before the above two witnesses by the accused Riyasat, is sufficient to record a finding of guilt against accused. The confession mentioned in the statement of P.W. 11, Satish Chandra Dohra is unambiguous in nature and is free from all suspicion. It is corroborated in material particulars by P.W. 7, Rampal.

We do not find it to be suffering from any falsehood. It is also clear that Extra Judicial Confession was made by accused voluntarily by him without any inducement, threat or promise. It is also clear from the circumstances of the case that such voluntary confession made by the accused was not inspired by some improper or collateral consideration suggesting that it may not be true. We have assigned our reason how the confession was made before P.W. 11, Satish Chandra Dohra, specially when he was a leader (Neta) and vakil and a person having good influence with the police.

32. No doubt, P.W. 7, Ram Pal and P.W. 11, Satish Chandra Dohra, were Harijans by caste but nothing has been shown to show that they were in any manner biased against accused Riyasat. Nothing has come on record to show that the above witnesses had any ill-will against accused, Riyasat, for falsely implicating him in the present case. We hold that P.W. 11, Satish Chandra Dohra and P.W. 7, Rampal, are independent witnesses and are fully reliable. Nothing has been brought out by cross-examination that they were either pocket witnesses of the police or inimical to the accused. There is hardly any cross-examination regarding the confession made by accused Riyasat before P.W. 11, Satish Chandra Dohra or P.W. 7, Rampal. The wordings of confession narrated by P.W. 11, Satish Chandra Dohra, or P.W. 7, Rampal, have gone unchallenged. The accused Riyasat had selected P.W. 11, Satish Chandra Dohra, not for making regrets but with the sole purpose of avoiding the consequences for committing the rape and murder of a Harijan girl of six years. There is neither anything on record to suggest that P.W. 11, Satish Chandra Dohra was planted by police. Since, P.W. 11, Satish Chandra Dohra, was leader of Harijan, hence the accused expected that he would successfully be able to influence P.W. 1, Badlu.

33. In view of the facts and circumstances of the present case we, however, do not propose to convict the appellant Riyasat on the sole evidence of Extra Judicial Confession, as discussed above. But we propose to use the same as a link in chain of the circumstances established by the prosecution against the accused, Riyasat.

34. The above circumstance is followed by another circumstance that the appellant absconded after the occurrence and was ultimately arrested on 14-2-1991 at about 1 p.m. at the bus stand of village Larhaura. He was arrested by the Investigating Officer, Jagdish Singh (P.W. 12) on the basis of the information received from an informer. The accused has not been able to explain whereabouts of the deceased Guria after he was last seen in her company by P.W. 2 Dharam Singh and P.W. 3, Asha Ram. No doubt, the abscondance of the accused immediately after the date of murder of Guria points to his culpability. The failure of the accused to explain his disappearance also is a circumstance against him. We have examined the case law on the subject and our conclusive opinion is that abscondance by itself is not conclusive of the guilt or of a guilty conscious. In any case, suspicion however, strong, cannot be substituted for proof. In our opinion, in the context of the present case, abscondance by the accused may be one of the circumstances which may be relied upon for recording a verdict of guilt against the accused.

35. On the question of abscondance by the accused, we shall hereafter deal with the evidence on record. It has already come in the evidence that the appellant was last seen by P.W.2, Dharam Singh and P.W.3, Asha Ram on 31-1-1991 and the dead body of Guria was recovered on 1-2-1991. The investigation was first conducted by P.W. 8, Ajai Kumar and thereafter by P.W. 12, Jagdish Singh, P.W. 8, Ajai Kumar stated that he made a search and raid of the accused Riyasat in his village Ibrahimpur, which was not successful. Second time he raided Purqazi but the accused could not be apprehended. Thereafter, he left the investigation pending. This part of the statement has not been challenged in the cross-examination. Thereafter, P.W. 12, Jagdish Singh, took over the investigation and on 7-2-1991 he made a search of the accused but he was not found. The Investigating Officer, Jagdish Singh, P.W. 12, arrested the accused on 14-2-1991 at about 1 p.m. at the bus stand of village Larhaura. We have also examined the cross examination part of the deposition made by P.W. 12, Jagdish Singh. It appears that no question in cross-examination was put to him challenging his statement regarding the attempts made by him to arrest the accused, Riyasat, we accept the statements of P.W. 8, Ajai Kumar, S. O. and also P.W. 12, Jagdish Singh, in respect of the fact that after the occurrence they made attempt to search

and arrest the accused Riyasat in vain and on 14-2-1991 the accused was arrested. Thus, it has been established that the appellant was absconding after the date of the occurrence till the date of his arrest. The accused in his statement under Section 313, Cr. P.C. had stated that he was produced before the C. O. Sahab on 7-2-1991 by Pradhan of the village. This statement of the accused is not borne out by any material on record. The statements of the Investigating Officers, as mentioned above, in respect of the raids made by them for arresting the accused have gone unchallenged. Even the case taken by the accused in his statement under Section 313, Cr. P.C. that he has surrendered before the C. O. Sahab, as mentioned above, was not put either to P.W. 8, Ajai Kumar or P. W. 12, Jagdish Singh, Investigating Officers, in the present case. It is established on record that soon after the occurrence the accused, Riyasat, absconded, which is a link in the chain of circumstances to conclude the guilt of the accused, as recorded by the court below. Learned counsel for the appellant urged that the prosecution has not produced any evidence to show that any proceeding was taken against the accused under Section 82/83, Cr.P.C. This argument is wholly misconceived as not a single question on this aspect was put to the Investigating Officers. Once the accused was arrested, as indicated above, on 14-2-1991, there was no question of taking any proceedings under Sections 82/83, Cr. P.C. It was further submitted that no witness was examined by the prosecution when the alleged raids were made by the Investigating Officers, P.W. 8, Ajai Kumar and P.W. 12, Jagdish Singh. This argument is also misconceived in view of the fact that the statement of the Investigating Officers regarding the dates of raids and attempts made to search and apprehend the appellant have gone unchallenged in absence of any cross examination on the point. Learned counsel for the appellant states that incorrect question was put to the accused under Section 313, Cr.P.C. It is again pointed out that the above argument has no legs to stand. In fact, under Section 313, Cr.P.C. only necessary relevant circumstances are to be put to the accused which may be relied upon against him. It is not out of place to mention that the question was put to the accused under Section 313, Cr.P.C. to the effect whether P.W. 8, Ajai Kumar, had gone to his village Ibrahimpur on 1-2-1991 and raided the house of the accused but he was not found there. The reply of the accused is that he had gone out in connection with his work. The raid or search

has not been denied by him. In another question to the accused under Section 313, Cr.P.C. to the effect that P.W. 8, Ajai Kumar on 2-2-1991 raided Purqazi and the accused was not found, the reply of the accused is that he had gone to Muzaffarnagar for some work. This reply also clearly indicate that the raid on 2-2-1991 has not been disputed by the accused. It was also pointedly questioned to the accused under Section 313, Cr. P.C. that P.W. 12, Jagdish Singh, Investigating Officer had raided his place on 7-2-1991 but he has run away from the house. In reply, he stated that he was at Muzaffarnagar. Thus, in reply the accused has taken two conflicting pleas one that on 7-2-1991 he was away to Muzaffarnagar and second that he was produced before the CO. Sahab on 7-2-1991 by Pradhan. In view of the above facts and circumstances we are not inclined to accept the explanation given by the accused in respect of the raid made at his place by P.W. 12, Jagdish Singh on 7-2-1991. The accused had further added in reply to another question under Section 313, Cr.P.C. that the police did not arrest him but he has himself surrendered before the C. O. Sahab. Thus, we conclude that the accused absconded after 31-1-1991 till 14-2-1991 (the date of his arrest). We have no hesitation in stating that the evidence on the question of abscondance of the accused is reliable and it will lend support to other evidence in the present case incriminating him. The plea that accused was at Muzaffarnagar on 7-2-1991 is a plea of alibi and requires strict proof of this fact by the accused, which he has also failed to discharge.

36. Learned counsel for the appellant next argued that the evidence on the question of recovery of shoes and chunni of the deceased should be discarded both on facts and on the question of law. In this context. We may point out the relevant witnesses, namely, P.W. 4, Rajpal, P.W. 6, Dharam Pal, P.W. 1, Badlu and P.W. 12, Jagdish Singh. Investigating Officer. It appears that P.W. 12, Jagdish Singh took over investigation on 7-2-1991 after transfer of Ajai Kumar P.W. 8, first Investigating Officer. P. W. 12, Jagdish Singh, has stated that on 14-2-1991 he arrested accused Riyasat and during interrogation of the accused at the police station, accused Riyasat promised to the police officer to recover the shoes and chunni of the deceased Guria. To be precise and categorical, we quote the relevant portion of the deposition of P.W. 12, Jagdish Singh:

MULZIM KO THANE PAR LAKAR POOCH TACH KIJISME USKE DWARA MRITTKA KI JOOTI TATHA CHUNNI BARAMAD KARANE KA WADA KIYA GAYA.'

Therefore, accused Riyasat was taken out from Hawalat of the Thana and in police custody was taken on a jeep towards the place and at the tri-section (Tiraha) of the road of village Larhaura, the witnesses, P.W. 6, Dharam Pal and P.W. 4, Ram Pal were collected on the way by the police and were told the purposes regarding recovery of articles of the deceased at the instance of the accused. The accused was taken out of the jeep while he was in custody. Thereafter, P. W. 12, Jagdish Singh, deposed:

'MULZIM AAGE AAGE CHALKAR HAM LOGON KO LAXAR ROAD PAR SARA SE UTTAR MEN MAKKHAN KE IKH KE KHET MEN LE GAYA AUR IKH KE KHET ME DAKSHINI POORVI KONE ME KARIB 7 KADAM JAKAR IKH KE MEND SE EK JORI PLASTIC KI JOOTI TATHA EK CHUNNI NIKALKAR DI. UKTA SAMAN IKH KE MEND MEN CHUPA HUWA RAKKHA THA JO BAHAR SE NAZAR NAHI AATA THA.'

P.W. 12, Jagdish Singh, further deposed that accused Riyasat had himself hidden the above articles, P.W. 12, Jagdish Singh, further said that on 17-2-1991 he had recorded the statements of the witnesses of panchnama. The statement of P.W. 4, Rajpal and P.W. 6, Dharam Pal, were taken by him on 23-2-1991. P.W. 12, Jagdish Singh, also clarified that after taking down the statement of P.W. 11, Satish Chandra Dohra, he took necessary steps for arresting the accused and for that reason the statement of witness P.W. 4, Rajpal, was recorded on 23-2-1991. This explanation has been given by P.W. 12, Jagdish Singh, in his cross examination. P.W. 4, Raj-pal, in his deposition has stated that on 14-2-1991 at about 3 p.m. he was sitting on the crossing near police out-post of village Larhaura when Inspector along with accused had come. The Inspector was accompanied by some constables. These witnesses corroborated the statements of P.W. 12, Jagdish Singh, on material points. P.W. 1, Badlu identified the chunni and shoes (Ext. 1 and Ext. 2) of the deceased Guria. P.W. 4, Raj pal, also identified the shoes and chunni which was taken out by the accused and identified the articles

belonging to deceased Guria as he had seen her wearing since she was staying near his house. In his cross examination P.W. 4, Rajpal, clearly stated that chunni and shoes were not visible in the MEND from out-side. The accused had to thrust his hands within the MEND and then could take out the chunni and shoes. He deposed the distance between the place where he was sitting and sugar cane field from where chunni and shoes were recovered was about 50-60 paces. He also said that the MEND of the sugar cane field was about 14-15 paces from the road. He also stated that sugar cane crop was standing in the field. The other witness Dharm Pal (P.W. 6) stated that he knew P.W. 1, Badlu, and also his daughter Guria. This witness has stated that on 14-2-1991 at about 3 p.m. he and Rajpal (P.W. 4) were standing near the crossing (Chauraha) of the chauki in village Larhaura. He also stated that the Inspector along with some constables and accused came and told him that accused Riyasat wanted to make recovery of some of the articles and requested them to accompany as witnesses. Thereafter, he accompanied the Inspector. He has further stated that he (Rajpal, P.W. 4) and the Inspector started together. Accused Riyasat was going ahead and took them into the sugar cane field of Makkhan from where the accused took out a chunni and a pair of shoes which he had seen Guria wearing on 31-1-1991. He also stated that the distance between the sugar cane field of Makkhan and the place where he was standing is about 50-60 paces from the crossing of the road. The field of Makkhan is situated in the north of the field. The distance between the MEND of the sugarcane field and the road is about 14-15 paces. In his cross examination P. W. 6, Dharam Pal has further stated that the distance from where the dead body of Guria was recovered and the MEND of the sugarcane field was 2-3 paces. No doubt, there were some contradictions pointed out in the statements P.W. 4, Rajpal, P.W. 6, Dharam Pal and P.W. 12, Jagdish Singh but they are of minor nature and do not touch the root of the case. We are of the opinion that the contradictions are natural and the above statements cannot be discredited on the basis of such minor contradictions. The basic facts, that accused in police custody gave the information to the P.W. 12, Jagdish Singh, Investigating Officer for recovering the pair of shoes and chunni of Guria from the place pointed out by accused and the subsequent recovery of articles of deceased from the place by the accused in custody confirming the earlier information given by the accused to

the police have been fully established with the aid of the witnesses mentioned above, namely, P.W. 4, Rajpal, P.W. 6, Dharam Pal and P.W. 12, Jagdish Singh. The recovery memo is also on record as Ext. Ka 2. This Fard Ext. Ka- 2 has been signed by P.W. 1 Badlu, P.W. 4, Rajpal and P.W. 6, Dharam Pal. Some minor contradiction in the statement of P.W. 1, Badlu will not render the above Fard non-existence or unreliable. P.W. 1, Badlu, father of the deceased Guria, has stated in reply to a question put by the court that he was present at the spot on 14-2-1991 when accused had taken out from the MEND of the sugar-cane field of Makkhan a pair of shoes and chunni of the deceased. He had also identified the shoes and chunni belonging to his daughter Guria.

37. Before appreciating the evidence on record it is necessary to point out the provisions of Section 27 of the Evidence Act, which runs as under:

'Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer so much of such information, whether it amounts to a confession or not; as relates distinctly to the fact thereby; discovered may be proved.'

It is clear from the reading of Section 27 of the Evidence Act that this section is based on doctrine of confirmation by subsequent facts. That doctrine is that where, in consequence of a confession otherwise inadmissible, search is made and facts are discovered is a guarantee that the confession made was true. But only that portion of the information can be proved which relates distinctly or strictly to the facts discovered. In the decision reported in : 1955 CriLJ196 Ram Kishan Mithan Lal Sharma v. State of Bombay, it is clearly laid down that Section 27 of the Evidence Act is an exception to the rules enacted in Sections 25 and 26 of the Act which provide that no confession made to a police officer shall be proved against a person accused of an offence and that no confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. Where, however, any fact is discovered in consequence of information received from a person accused of any offence. In the custody of a police officer, that part of the information as relates distinctly to the fact thereby discovered can be proved whether it amounts

to a confession or not.

38. In AIR 1947 PC 67: (48 Cri LJ 533) (Pulukuri Kattaya v. Emperor) it has been laid down:

'The condition necessary to bring Section 27 into operation is that the discovery of a fact must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence, but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.'

In a case reported in : 1972 CriLJ1 Delhi Administration v. Balkrishan, it has been held that Section 27 of the Evidence Act is by way of a proviso to Sections 25 and 26 and a statement by way of confession made in police custody which distinctly relates to the fact discovered is admissible is evidence against the accused.

39. No doubt, Section 27 of the Evidence Act has frequently been misused by the police against an accused. Court should be, therefore, vigilant about the application of the above provisions. The protection afforded by the provisions under Sections 25 and 26 of the Evidence Act is sought to be withdrawn by the police by taking resort to the provisions of Section 27 of the Evidence Act. In the present case, the Investigating Officer himself is the police officer before whom the alleged information was given by the accused regarding the discovery of the shoes and chunni and, therefore, it is for the court to examine his testimony with great care and caution. The validity of the provisions of Section 27 of the Evidence Act has been upheld by the Supreme Court.

40. Referring to the evidence and other materials on record, in the present case, on this point, it is clear that the accused while in custody informed the police that he would recover the shoes and chunni of the deceased. Acting on the basis of the above information, the police took the accused, in his custody, to the place pointed out by him. They were also accompanied by the recovery witnesses, P.W. 4,

Rajpal and P.W. 6, Dharam Pal. Thereafter, the accused in presence of the witnesses, P. W. 4, Rajpal, P.W. 6, Dharam Pal, P.W. 12, Jagdish Singh and others took out the shoes and chunni of the deceased by pushing his hands in the MEND of the sugarcane field of Makkhan and handed them over by taking them out from the MEND. These facts were witnessed by P.W. 4, Rajpal and P.W. 6, Dharampal, as indicated above. It is clear that recovery was certainly not made from the open place but from the MEND where shoes and chunni were kept hidden by the accused and the articles recovered were not otherwise visible from outside. This recovery of shoes and chunni is in confirmation with the prior information given by the accused to P.W. 12, Jagdish Singh during his interrogation, Thus, this part of the evidence regarding the discovery of shoes and chunni is admissible in law and has been proved by the prosecution beyond all reasonable doubt. P.W. 4, Rajpal and P.W. 6, Dharam Pal, have been cross examination but nothing has come out in their cross examination for discrediting their evidence. We do not find that P.W. 4, Rajpal and P.W. 6, Dharampal, were otherwise tutored by the Investigating Officer, P.W. 12, Jagdish Singh. No doubt, P.W. 6, Dharam Pal has stated that the distance from where the dead body of the deceased was recovered and the distance from where the chunni and shoes were taken out by the accused Riyasat is about 2-3 paces but that will not make any difference as recovery of the shoes and chunni cannot be said to have been made from an open place. It has come in evidence that shoes and chunni which were kept hidden in the MEND in the sugarcane field of Makkhan by the accused were not visible from outside. The distance of 2-3 paces cannot be taken with geometrical precision and villagers are often not accurate in their estimate about the distance. In this view of the matter, we have no hesitation in accepting the evidence on this point under Section 27 of the Evidence Act.

41. Learned counsel for the appellant urged that there was no mention about the shoes and chunni of the deceased Guria in the first information report. We again cannot fail to notice that the first information report was lodged by P.W. 1, Badlu, who had found his daughter, aged about 6 years, murdered. Under that situation it is not expected that he will give all details regarding the shoes and chunni in the first information report. The first information report is not an encyclopaedia but it is a version of the complainant at the earliest point of time. The basic fact that Guria

was murdered was given in the first information report and also such facts which P.W. 1, Badlu, could locate on seeing the dead body. Under these circumstances, omission to mention about the shoes and chunni of the deceased in the first information report is not fatal. The minor contradictions pointed out by the learned counsel for the appellant in respect of the statements made by P.W. 4, Rajpal and P.W. 6, Dharam Pal, in the witness box and also the statements made under Section 161, Cr. P.C. are not fatal as such discrepancies are bound to occur in their statements. Learned counsel for the appellant has also pointed out that the recovery of the shoes and chunni were made at a distance of 2-3 paces from the place where the dead body was recovered as such, chunni and shoes could normally be seen by the person present at the place of the occurrence on 1-2-1991 when the dead body was recovered. In view of the facts and circumstances narrated above, this argument of the learned counsel for the appellant is not sustainable. The recovery was not made from that place but was made from the MEND of the sugar-cane field where the articles were kept hidden and not visible. Learned counsel for the appellant also pointed out some contradictions regarding the sealing of the bundle. To our mind, no capital can be made out of such contradictions which do not affect the merit and substratum of the prosecution case. We fully rely on the discussion and findings of the Court below on this point.

42. Learned counsel for the appellant, thereafter, raised a serious argument regarding the nature of questions put to the accused, under Section 313, Cr. P.C. The questions put to the accused, it was submitted, were not complete or in accordance with law. In substance, learned counsel for the appellant submitted that the questions should have been more clear giving the correct facts that during the investigation the accused had promised to the Investigating Officer to recover the shoes and chunni of the deceased.

43. We have perused the provisions of Section 313, Cr. P.C. and as such we are of the opinion that it is duty of this Court to find out whether the circumstances put to the accused under Section 313, Cr. P.C. was intelligible to him and whether he could answer the same after understanding the same and whether the question has caused any prejudice to the accused. It is a matter of law that the circumstances appearing in evidence against the accused have to be put generally

to the accused for the purposes of enabling the accused to explain such circumstances. This is a mandatory duty of the Court. In the present case, the accused did answer the question without pointing out by any difficulty or ambiguity. The accused understood the question and answered the same. We are of the opinion that no prejudice has been caused to the accused for not mentioning the premise made by accused in custody to the Investigating Officer during interrogation. We have examined the entire statement recorded under Section 313, Cr. P.C. The question put to the accused is as under :

'SAKCHYA MEN AAYA HAI KI USI DIN TUMKO THANA KI HAWALAT SE NIKALKAR HIRASAT ME HI TUMHA-RE BATAYE HUE BAY AN KO DH ARAM-PAL VA RAJPAL SAKSHIGAN KI UPASTHITI MEN LEJAYA CAYA JAHAN TUMNE AAGE AAGE CHAL-KAR SARAK KE UTTAR MEN MAK-KHAN KE IKH KE KHET MEN DAK-SHINI POORVIKONEY SE KARIB SAAT QADAM ANDAR JAKAR IKH KE MEND MEN SE EK JOR1 FLASTIC KI JOOTI PRADARSH-2 VA CHUNN1 PRA-DARSH-1 NIKLKAR DI JO TUMNE VAHAN CHIPAKAR RAKKHI THI KYA KAHNA HAI?'

In : [1963]3SCR489 Jai Dev and Hari Singh v. State of Punjab it has been held that the examination of the accused person under Section 342, Cr. P.C. (old) is intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under Section 342, the Court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the court should put to the accused person detailed questions which may amount to his cross examination. The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity. It is obvious that no general rule can be laid down in regard to the manner in which the

accused person should be examined under Section 342. Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of Section 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which may amount to the cross examination of the accused persons.

44. From the above decision it is clear that the question should only give the circumstances and not the details, which may otherwise amount to cross examination of the accused. In the same volume in a case : [1964]3SCR297 The State of Andhra Pradesh v. Cheemalapati Ganeswara Rao the Supreme Court has held and expressed similar view that the accused should not be put involved questions embracing a number of matters.

45. Learned counsel for the appellant has also relied upon the decisions reported in : [1951]2SCR729 , : AIR 1953 SC468 and : 1955 CriLJ1644 , Learned counsel for the appellant further urged that the alleged information, given by the accused while he was in custody of the Investigating Officer, P.W. 12, Jagdish Singh, regarding the shoes and chunni, was not reduced into a 'Fard' of confession. This plea is rejected as no 'Fard' is required to be prepared in respect of the information given to the police officer in accordance with the provisions of Section 27 of the Evidence Act.

46. After carefully examining the materials on record we accept the evidence of recovery in the case, as discussed above. No doubt, mere recovery in pursuance of Section 27 of the Evidence Act is not a clinching proof for holding the accused guilty. However, there is no doubt that it is good piece of evidence which may be relied upon as a link in the chain of circumstances in the present case for holding the guilt.

47. From the above facts it is clear that P.W. 1, Badlu father of the deceased Guria has stated and proved that on 31-1-1991 the deceased was last seen by him at his residence at 5 p.m. The procession of Ravi Das Jayanti was an annual feature in his village. This procession was taken out from the temple of the village and after going round the village it also used to terminate near the temple. It is a fact of

common knowledge that Ravi Das Jayanti is observed by the Harijans. Under the circumstances the deceased, Guria had also gone to play near the temple. It is also common in village life that small children are usually attracted by such procession. P.W. 2 Dharam Singh and P.W. 3, Asha Ram were Harijan and were present near the temple and as such, their presence was quite natural, P.W. 1, Badlu, P.W. 2, Dharam Singh and P.W. 3, Asha Ram and the deceased, Guria, belong to the Harijan community and, therefore, there was no difficulty for P.W. 2, Dharam Singh and P.W. 3, Asha Ram to identify Guria in front of the temple. They deposed that they saw accused Riyasat carrying the deceased, Guria, aged about 6 years in his lap. In fact, P.W. 3, Asha Ram, saw that accused was carrying away Guria in his lap to the north of the gate of the temple, i.e. towards the sugar-cane field of Makkhan. It is true that P.W. 2, Dharam Singh and P.W. 3, Asha Ram did not attach any importance to the fact that accused Riyasat was holding in his lap a small girl of six years. They could have never apprehended that accused Riyasat had some evil design. Under the circumstances they even did not disclose this fact to anybody till the death of Guria and till their statements were recorded by the Investigating Officer. It is only after the murder of Guria they spoke about the fact that they had seen accused Riyasat holding Guria in his lap a day before in front of the temple. There was absolutely no enmity between accused, Riyasat and P.W. 2, Dharam Singh or P.W. 3, Asha Ram. The evidence of P.W. 2, Dharam Singh and P.W. 3, Asha Ram, is quite natural and has been relied upon by us. The dead body of Guria was recovered from the sugar-cane field of Makkhan on 1-2-1991. The recovery of the dead body has been fully established beyond shadow of all reasonable doubt. It has been clearly established that Guria was raped and, thereafter, she was murdered. The post mortem examination has been proved by the doctor. Thus, the prosecution has established that the deceased Guria was last seen on 31-1-1991 at about 5.30 p.m. near the temple in the lap of accused Riyasat by P.W. 2, Dharam Singh and P.W. 3, Asha Ram. P.W. 3, Asha Ram, also saw accused Riyasat carrying away the deceased towards the sugar-cane field of Makkhan and, thereafter, on the next day, i.e. 1-2-1991, the dead body of the deceased Guria was ultimately recovered from the field of Makkhan. There is no material on record to show that the deceased Guria was seen alive anywhere after 5.30 p.m. on 31-1-1991 and the dead body was recovered in the morning of

1-2-1991. It has also been proved that on receiving the information from one Bina at about 5 a.m. on 1-2-1991 P.W. 1, Badlu, went to the field of Makkhan and found the body of his six years old daughter lying dead. It is also established that soon thereafter P.W. 1 Badlu got the first information report scribed by one Kunwar Lal and lodged the same at the police station On 1-2-1991 at 7.15 a.m. promptly. It is also established that P.W. 8, Ajai Kumar first Investigating Officer, without delay recorded the statements of P.W. 1, Badlu and P.W. 5, Rameshwar Prasad, Head Moharrir and proceeded to the sugar-cane field of Makkhan and found the dead body, in question, lying there. After completing all formalities the dead body was sent for post mortem examination, which was conducted by P.W. 10, Dr. A. K. Chaturvedi. Dr. A. K. Chaturvedi, P.W. 10, has proved that Guria was raped and murdered. The cause of death was assigned in the post mortem examination report as asphyxia due to throttling. We may recall from the above facts that Guria was lying dead with her back on the ground and her neck was tied up by her own 'Salwar', which resulted in killing her by throttling. The prosecution has also succeeded in establishing that immediately after recording that statements of P.W.1, Badlu, P.W. 2, Dharam Singh and P.W. 3, Asha Ram (witnesses of last seen) the search was made for arresting the accused Riyasat but he could not be found or apprehended even by several attempts made by the police. The accused Riyasat was ultimately arrested on 14-2-1991. It has also been proved that before his arrest on 14-2-1991 the accused on 9-2-1991 made extra judicial confession before P.W. 11, Satish Chandra Dehra, in presence of P.W. 7, Ram Pal. We have relied upon the testimony of the above witnesses, P.W. 7, Ram Pal and P.W. 11, Satish Chandra Dohra. We have given elaborate reasons for accepting the statements made by P.W. 7, Ram Pal and P.W. 11, Satish Chandra Dohra. We further held that P.W. 7. Ram Pal and P.W. 11. Satish Chandra Dohra, are independent witnesses and they had no enmity with the accused Riyasat. We are satisfied that accused Riyasat made extra judicial confession before the above witnesses. It is also, established that after the arrest of the accused on 14-2-1991, during his interrogation, the accused gave information to the second Investigating Officer P.W. 12, Jagdish Singh, that he could discover the shoes and chunni of the deceased. Following the information the shoes and chunni were recovered at the instance of and on the pointing out of the accused from the mend sugar-cane field

of Makkhan. The prosecution has also established that the recovery was made not from the open place but the recovery of the articles was made from inside the mend of the sugar-cane field of Makkhan. It is also clear from the evidence that accused had pushed his hand in the mend for taking out the shoes and chunni. It is also established that shoes and chunni were not visible from outside. The witnesses of recovery are also held reliable. The articles were also identified by P.W. 1, Badlu, father of the deceased. Most of the witnesses, relied upon by the prosecution, in the present case, are quite independent, although, they belong to the same community. No infirmity has been shown by the defence in their testimony and as such their evidence inspires confidence. It is also established that they had no enmity with the accused Riyasat, neither there is any reason for them to have falsely implicated the accused Riyasat. The prosecution has, thus, fully established the Extra-Judicial confession made by the accused, Riyasat and also the recovery of shoes and chunni at the instance of the accused from the MEND of sugar-cane field of Makkhan. The prosecution has also established that the accused, Riyasat, after the incident was absconding. The prosecution has also established that the deceased, Guria, was last seen in the company of the accused Riyasat. It has also been pointed out that accused was stated that he was in Muzaffarnagar on 7-2-1991 when the last raid was made by the Investigating Officer. This plea, certainly, in the nature of alibi, has not been established by the defence. However, we have scrutinised the evidence of the witnesses with great care and caution and we find all of them to be independent. Most of their statements have gone unchallenged in the cross-examination. The investigation was conducted with all fairness. After examining the above evidence we are of the opinion that the prosecution has established beyond reasonable doubt the case against accused by circumstantial evidence. The prosecution has also succeeded in eliminating the hypothesis of innocence of the accused. Thus, by establishing the entire, chain of circumstances against the appellant, the offence against the accused is fully made out under Sections 302, 376 and 201, I.P.C. There is not a single circumstance established in this case from which it can be inferred that the accused is entitled to any benefit of doubt.: The fact that Guria was raped and then; murdered is not disputed. The accused has committed a most heinous crime by murdering a tender aged girl of six years after committing rape on her and,

therefore, the accused deserves nothing but condemnation. We have examined the judgment of the court below and we fully approve and uphold the findings against the accused on the basis of the circumstances pointed out therein. To be precise, we affirm the findings recorded against the accused by the court below. We also fully agree with the chain of circumstances relied upon by the court below and uphold the conviction of the appellant under Sections 302, 376 and 201, I.P.C. we hold that on 31-1-1991 the accused, Riyasat, had lifted the deceased Guria from the vicinity of the aforesaid temple and committed rape on her in the sugar-cane field on Makkhan for satisfying his lust and thereafter committed her murder by strangulating her with her own 'Salwar'. The accused had hidden the shoes and chunni of the deceased inside the MEND of the sugar-cane field and, therefore, he is guilty under Section 302, 376, I.P.C. and also under Section 201, I.P.C.

47A. Upholding the conviction of the appellant, Riyasat under Sections 302, 376 and 201, I.P.C, we proceed to consider the question of death sentence awarded to him by the court below under Section 302, I.P.C. We, however, maintain the sentence awarded to the appellant under Sections 376 and 201, I.P.C.

48. The appellant has committed a heinous crime. He had lifted the child Guria in his lap and with a view to commit rape she was taken to the sugar-cane field of Makkhan where he satisfied his lust on the six years old girl and thereafter committed her murder. The age of the appellant was 26 years on 25-9-1991, when his statement was recorded under Section 313, Cr. P.C. It appears that under some fit of passion, he committed the rape on the girl of six years, for which his sentence of ten years R.I. awarded by the court below is being maintained.

49. After raping, the appellant committed the murder. This act of murder is not a premeditated, planned or determined action of the accused. The act of murder followed by sheer nervousness or fear to be exposed by the deceased. The accused is a young man and after committing rape on Guria lost his own possession and in that sickening state of mind he killed her. This is an act which lends towards a kind of insanity. In a case of murder/ normal sentence is life imprisonment and in exceptional case for the reasons to be recorded in the judgment, the sentence of death can also be awarded. After examining the pres

and cons of the case, we feel that ends of justice, in this case, shall be met by awarding the sentence of life imprisonment instead of death sentence to the appellant. The appellant may suffer life term and he will not have any future chance of repeating the offence.

50. In the result, we uphold the conviction of the appellant, Riyasat, under Sections 302, 376 and 201, I.P.C. We, however, set aside the death sentence awarded to the appellant, Riyasat, by the court below under Section 302, I.P.C. and instead sentence him to life imprisonment under Section 302, I.P.C. We are further maintaining the sentence of 10 years R.I. and one year's R. I. under Sections 376 and 201, I.P.C. respectively. The appellant is in jail and shall serve out concurrently the sentences awarded to him as indicated above. The appeal by Riyasat, (Criminal Appeal No. 2224 of 1991) is dismissed subject to above modification in respect of sentence under Section 302, I.P.C.

51. In view of the above order the Criminal Reference No. 6 of 1991, made by the court below, for confirmation of death sentence awarded to the appellant is rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com