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Harish Vs. the State

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Court : Delhi

Decided On : Jan-25-2008

Reported in : 147(2008)DLT608

Judge : B.N. Chaturvedi and; G.S. Sistani, JJ.

Acts : Indian Penal Code (IPC) - Sections 201, 302, 376 and 436; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. A No. 470/2003

Appellant : Harish

Respondent : The State

Advocate for Def. : Richa Kapoor, APP.

Advocate for Pet/Ap. : R.P. Kasana, Adv

Disposition : Appeal dismissed

Judgement :

G.S. Sistani, J.

1. The appellant has filed the present appeal against the judgment dated 26.04.2003 as well as the order of sentence dated 02.05.2003 delivered by the Additional Sessions Judge, Delhi in the case FIR No. 702/99, Police Station

Mehrauli, New Delhi whereby the learned Judge has held the appellant guilty for the offence under Sections 302/376/436/201 IPC and awarded the sentence of imprisonment for life and to pay fine of Rs. 20,000/- and in default of payment of fine further RI for two years for the offence under Section 302; awarded the sentence of imprisonment for life and to pay fine of Rs. 20,000/- and in default of payment of fine further RI for two years for the offence under Section 376, awarded RI for seven years and to pay fine of Rs. 10,000/- and in default of payment of fine further RI for one year for the offence under Section 436 IPC; and awarded the sentence of imprisonment for five years and to pay fine of Rs. 5,000/- and in default of payment of fine further RI for six moths for the offence under Section 201 IPC. The sentences were to run concurrently.

2. The brief facts of the case as noticed by learned Additional Sessions Judge in the judgment under challenge are as under:

3. A D.D. Entry No. 8 was recoded in the Police Station Mehrauli, New Delhi on 24.10.1999. The said D.D. Entry was entrusted to Mr.J.S. Joon, in charge of the Police Post who reached the hospital along with Constable Gurmeet Singh. Mr. J.S. Joon obtained MLC pertaining to the appellant-Harish Kumar as well as the deceased Diksha. He also met one Sh. Saurabh Bansal at the hospital and recorded his statement.

4. As per the statement of Sh. Saurabh Bansal, he was a tenant in house No. B-126, First Floor, Freedom Fighters Colony, Neb Sarai, New Delhi and was working as a Computer Engineer in Noida. This witness has deposed that on 24.10.99 he was present in the tenanted premises owned by the father of the deceased and that at about 8:30 a.m. when he was attending to a telephonic call he got smell of the cooking gas. He, thereforee, checked the gas-cylinder in his kitchen but found everything in order. He enquired from the accused/appellant, who was working as a domestic servant with the owner of the house on the ground floor. The accused/appellant replied that everything was all right. This witness has further stated that after about 5/7 minutes when he came out of the toilet he further smelled the leakage of the cooking gas from the window of his kitchen. He could see that there was smoke and fire in the ground floor of the house. He accordingly,

informed his friend and rushed towards the ground floor of the house. On reaching the ground floor, he Along with the others found that entrance door was lying open and the gas-cylinder with the tube was lying in the lobby. There was a leakage of gas and the fire had already broken inasmuch as the tube of the gas-cylinder and other articles lying nearby had caught fire, the son of the landlord was standing near the gas-cylinder and was crying. This witness called out to him and thereafter rushed inside the house to bring him out but when he did not come out, he called the servant, Harish the accused/appellant in a louder voice again and again but there was no response. That, in the meantime, Dr. Anil Safya-PW-1 and other neighbour also reached. The pipe from the gas-cylinder was removed. The elder daughter of Mr.Anil Dawra also came out from the bed room and when she was asked about Diksha she told that Diksha was sleeping in another bed room.

5. He further stated that he Along with his friend entered that bed room and found that some clothes were lying on the bed and the same were burning. Accused-Harish was lying unconscious on the bed and on the other side the body of the deceased was also lying on the bed. They all put water in order to extinguish the fire. The accused/appellant did not respond. Then they brought out the deceased Diksha and accused-Harish from the room in the open. Dr. Safaya after seeing them advised that they be taken to the hospital. This witness then brought his car and he lifted the deceased Diksha in his hands and removed her to Safdarjang Hospital. Accused-Harish was also lifted in the same car to the hospital. The car was being driven by his friend while deceased-Diksha was in his lap. They tried to revive the deceased-Diksha but she did not respond. This witness has further stated that he noted that his Kurta-Pajama which he was wearing were soaked in blood when he lifted the deceased-Diksha. Dr. Safaya after observing all this informed him that it was a case of rape also. The accused-Harish was placed in the same ward and this witness saw that Zip of the pant of accused-Harish was open and there were some blood stains. Subsequently, police recorded his statement Ex.PW-3/A which he has fully substantiated in his evidence while deposing in the Court. The deceased-Diksha according to this witness was declared dead by the doctors. He handed over his blood stained Kurta and Pajama to the police. The same were identified by him in the Court as Ex.P1, and Ex.P2. He, thereforee, alleged that the circumstances show that accused-Harish

after committing rape upon said Diksha, has killed her, and that in order to create confusion and suppress the truth, he has put the bedroom on fire.

6. On the statement of Sh. Saurabh Bansal, the IO prepared the Ruka and sent it to the police station for registration of the case. The case of the prosecution is that on 24.10.1999 at about 8.30 am at House No. 126, Freedom Fighter Colony, Neb Sarai, New Delhi, the appellant committed murder of Kumari Diksha, aged about 12 years by causing manual suffocation which was sufficient in the ordinary course to cause death. Also on the aforesaid date, time and place, before murdering Diksha aged about 12 years, the appellant had raped her. After committing rape and murder of Diksha, the appellant caused to remove evidence from the spot intentionally to save himself from legal punishment. The appellant on the said date, time and place committed mischief by setting the room on fire in which the murder and rape was committed by him and set the clothes and other articles lying there on fire with the intention to cause destruction of the said room and the property.

7. In support of its case, the prosecution has examined 24 witnesses. The appellant was also examined under Section 313 of the Cr.P.C. No evidence was led in defense by the appellant herein.

8. It is contended by learned Counsel for the appellant that the impugned judgment dated 26.04.2003 as well as order of sentence dated 02.05.2003, passed by learned Additional Sessions Judge is against the facts and law and, thus, deserves to be set aside. According to him, the Trial Court has not appreciated the facts which were available and, thus, miscarriage of justice has resulted against the appellant.

9. Learned Counsel for the appellant submits that the Trial Court has committed gross error in the judgment as the case of the prosecution is based on circumstantial evidence and there is no eye witness in this case. According to him, the chain of the circumstantial evidence is not complete and the appellant should have been given the benefit of doubt.

10. Counsel further submits that the Trial Court has failed to appreciate the material contradictions in the statement of the prosecution's evidence and has not taken an extremely relevant fact into consideration that in case the appellant had committed the offence, he had chance to run away from the spot which he could avail, however, the appellant was found unconscious at the spot of the incident which fact alone would show that the appellant was not guilty.

11. It has also been contended that all the witnesses are interested witnesses being family members or neighbours and police officials. There is no independent witness and thus the order of conviction cannot be sustained.

12. Per contra it is submitted by learned Counsel for the State that the prosecution has been able to prove their case without any shadow of doubt. Admittedly, the appellant was in the house when parents of the deceased had left, leaving behind their three children. Counsel for the State further submits that on the basis of oral evidence as well as the post mortem report and the MLC, the case against the appellant, which is based on the sequence of events is proved without any shadow of doubt.

13. At this stage, it would be useful to take into consideration the evidence of some of the important witnesses.

14. PW-1, Dr.Anil Safaya deposed that in the Month of October, 1999 at about 10:00 a.m., he was present in his house when he heard noise regarding breaking out of fire in the house belonging to Anil Dawra. He, thereforee, reached there and saw that one room was full of smoke on the ground floor belonging to Anil Dawra and there was smell of LPG also. He further noticed that accused-Harish and Diksha were lying on the bed in an unconscious state that being a doctor his reaction was to remove both of them to the hospital as they might have suffocated due to smoke. Then he contacted the hospital, where he was working and asked them to make necessary preparation. Afterwards, the accused/appellant and said Diksha were taken to Safdarjung Hospital. There he noticed that the clothes of Saurabh were stained with blood as that Saurabh had taken Diksha to the hospital in his lap. The C.M.O. was accordingly informed. The C.M.O examined Diksha in his presence and noticed abrasion on her body. Her under- pant was blood

soaked. That since it was a Medical-legal case the doctor on duty took the charge and this witness left the hospital. In the cross- examination, the defense has attempted to show that as PW-1 was working in the same hospital where appellant and victim were brought for treatment, he had tried to concoct and manipulate a false story against the appellant.

15. PW-2, is the mother of the deceased. She has deposed that the deceased-Diksha was her daughter and was about 12 years. That the accused/appellant was working in their house as a domestic servant for the last about 4 years. She has further stated that on 24.10.99, she Along with her husband had gone to the temple. At that time she had informed her elder daughter Shewta that she was going to the temple. Her daughter Diksha and son Kunal were sleeping in the separate room. She further stated that on that day, her husband had forgotten his mobile phone at home. That after the temple, they went for shopping when they were informed of the occurrence in this case.

16. PW-5, Nitim Mehta was also living as a tenant in the house in question. He has fully corroborated the version of PW-3. Saurabh Bansal in all material particulars.

17. PW-6 is the husband of PW-2 and he has corroborated what has been deposed by his wife PW-2. He also identified the body of the deceased- his daughter Diksha after her post mortem was conducted. His statement in this regard is Ex.PW-6/A. He had also stated that he had noticed the blood stains on the pant of the accused/appellant near Zip and also on the short worn by the deceased-Diksha at that time.

18. PW-7 examined accused-Harish. He prepared the MLC which is Ex.PW-7/A. He observed no external injury on the person of the accused/appellant, however, blood stains were present on the penis of the accused/appellant and the swab and slides were prepared by him and were handed over to the police.

19. PW-8 examined accused/appellant and gave his report which is Ex.PW-8/A. According to the report there was nothing to suggest that the accused/appellant could not perform sexual intercourse.

20. PW-11 examined the deceased-Diksha on 24.10.99 and prepared her report which is Ex.PW-11/A. She observed that there were two linear abrasions present one was on the middle of sternum 2 cm long other just above it to the left of neck. Another abrasion of 3 mm was present just on the left nostril. She observed that the deceased could not be revived and the body was packed and was sent for the post mortem.

21. PW-12, Dr. Chandra Kant conducted the post mortem on the body of the deceased. He sealed the clothes of the deceased in various pullandas and also collected necessary samples and handed over the same after sealing them, to the police along with the sample of his seal. He observed in external examination that there were nail abrasions on the left nostril of the size 0.8 cm x 0.4 cm. There was abrasion on the outer aspect of the left elbow. Abrasion below right ear: abrasion on the outer aspect of the right elbow nail abrasions in the middle of the chest were also observed by him. In the external examination, he found clotted blood in the inner aspect of both the thighs extended up to the vaginal region, the hymen was found torn and lacerated margins at 3,5 and 7 at 9, 12.0' clock position with clotted blood present all over the area. Laceration and tearing of vaginal walls at 5, 9 and 12.0' clock position with clotted blood present. The lacerated hole admitted of four fingers. He further observed that blood had collected under the neck tissues on the right side. He gave time since death of about 27/28 hours and opined the cause of death due to manual suffocation homicidal in nature. The injuries at No. 1 and 5 in the report were caused by nails or pointed object like human nails and injuries at No. 2 and 3 were caused by application of blunt force during dragging. The injuries at sl. No. 7 and 8 which were in the female organs were caused, in his opinion, by penetration of some firm long object. The post mortem report is exhibit PW-12/A and the subsequent certification given by him are contained in Ex.P12-/B.

22. PW-18 accompanied the IO on 24.10.1999 to Safdarjang Hospital. He took Ruka mark-A to the police station for registration of the case. After registration of the case, he came back to the spot. From the spot IO seized various articles like burnt broom sticks, 1 match box with four sticks in burnt condition. These articles were taken into possession vide memo Ex.PW-18/A. Some burnt clothes lying in

the lobby were taken into possession vide memo Ex.PW-18/B and a white colour handkerchief from the spot was taken into possession vide memo Ex.PW- 18/C. He has proved his signatures on all these memos. He further deposed that one gas cylinder along with regulator was also seized by the IO from the spot. This witness identified the burnt dupatta which was seized from the spot as Ex.P-1, the pant in burnt condition as Ex.P-2, lungi as Ex.P-3, a banyan with burnt patches as Ex.P-4; a nicker in burnt condition as Ex.P-5; blue coloured half burnt cloth as Ex.P-6; pair of burnt sox as Ex.P-7/1-2; a bed sheet in burnt condition as Ex.P-8; a pillow cover with burnt portion as Ex.P-9, regulator with rubber pipe as Ex.P-10; a broom stick as Ex.P-11; the match box containing burnt as well as in tact matches collectively as Ex.P-12. All these articles were recoveed from the spot and were identified by him.

23. We have heard learned Counsel for the parties as well as analysed the evidence which has been led by the prosecution in the case.

24. In a case based on circumstantial evidence in order to sustain the conviction, the evidence must be complete and incapabale of Explanationn. The Court must satisfy itself that the chain of circumstances are complete and the surrounding circumstances fully establish the guilt of the accused/appellant. The law with regard to conviction on the basis of circumstantial evidence has been discussed in detail in a recent decision of the Supreme Court of India in the case of Harishchandra Ladaku Thange v. State of Maharashtra reported at : AIR 2007 SC2957 . It would be useful to reproduce the relevant paras:

8. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the acused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan : 1977 CriLJ639), Eradu v. State of Hyderabad AIR 1956 SC 31, Earaohadrappa v. State of Karnataka , State of U.P. v. Sukhbasi and Ors. : 1985 CriLJ1479 , Balwinder Singh alias Dalbir Singh v. State of Punjab : 1987 CriLJ330) and Ashok Kumar Chaterjee v. State of M.P. : 1989 CriLJ2124). The circumstances from which an inference as to the guilt of the accused is drawn

have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab : AIR 1954 SC621 it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

9. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. : 1996 CriLJ3461 , wherein it has been observed thus:

21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.10. In Padala Veera Reddy v. State of A.P. : AIR 1990 SC79 it was laid down 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) those 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 of Explanationn of any other hypothesis than that of 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.

11. In State of U.P. v. Ashok Kumar Srivastava 1992 Cri. LJ 1104 it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favor of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

12. Sir Alfred Wills in his admirable book 'Wills' Circumstantial Evidence' (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of Explanationn, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

13. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

14. In Hanuman Govind Nargundkar and Anr. v. State of M.P. : 1953 CriLJ129 it was observed thus:

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 be in the first instance be fully established, and all the fact 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.15. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra : 1984 CriLJ1738 . Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a false defense or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(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.

25. Keeping the aforesaid principles in mind, we have carefully examined the evidence and the circumstances appearing in this case.

26. As per the evidence of PW-2 and PW-6 i.e. the mother and the father of the deceased, the appellant was working with them as a domestic servant. In the statement recorded under Section 313 Cr.P.C., the appellant has also admitted the same to be correct. The presence of the appellant stands conclusively established at the time, place and date of the incident based on the evidence of PW-1 Dr. Anil Safaya who was a neighbour. He had heard noises from near the house of Sh. Anil Dawra 'AAG LAG GI AAG LAG GI'. He rushed to the house of

Sh. Anil Dawra and when he entered the house, he saw the appellant as well as the deceased were lying on the bed in unconscious state.

27. As per the evidence of PW-3, the appellant was working as a domestic servant with Sh. Anil Dawra. He had enquired from the appellant to check whether the gas cylinder in his house was leaking as there was smell and the appellant had replied that everything was all right in his kitchen. PW-3 had spoken to the appellant around 8.30 in the morning. 5-7 minutes later he found that there was smoke and fire in the ground floor. He informed his friends and when he entered the house he found the appellant was lying on the bed facing his back towards the ceiling and deceased Diksha was lying on the bed as well. Similar evidence has been given by PW-5 who was also a neighbour. From the evidence of PW-1, PW- 3 and PW-5, it is established that there was smoke and fire in the house of Sh. Anil Dawra and when they entered in the house, the deceased and the appellant were lying unconscious on the bed. In the statement of the appellant recorded under Section 313 Cr.P.C., the appellant has not denied that there was an accidental fire due to leakage of gas cylinder's tube. He has also not denied that he was lying unconscious and also that he was later on admitted in the hospital. In the statement under Section 313 Cr.P.C., the appellant has stated that it is correct that when Sh. Saurabh Bansal, PW-3 and Dr. Anil Safaya reached the bed room some clothes were lying on the bed and were burning and the appellant was found on the bed. Even as per the appellant, in the statement recorded under Section 313 of the Cr.P.C., the appellant has not denied that he was working as a domestic servant for about two years at B-126, Freedom Fighters Colony, New Delhi with Smt. Kusum Dawra wife of Sh. Anil Dawra and mother of the deceased Diksha. Thus, it is established that the appellant was at the spot on the date and time when the deceased was raped and thereafter strangulated to death.

28. From the aforesaid evidence two things emerge - firstly on 24.10.1999 at about 8.30 a.m. in the morning the elder daughter Shweta, deceased Diksha and son of Sh. Anil Dawra along with the appellant were in house No. B-126, Freedom Fighters Colony, New Delhi. Secondly, a fire had broken out due to gas leakage from the cylinder. It also emerges that in the room where the deceased Diksha and the appellant were found, some clothes were lying on the bed and the same were

burning.

29. In the evidence of PW-5, it has also been stated that some clothes were lying which were burning. As per the evidence of PW-6, seven photographs were taken of the scene of the crime from different angles, as per the evidence of PW-16, Ct. Brij Bir. The photographs have been exhibited as PW16/1-7 together with their negatives PW16/8-14. PW-16 was not cross-examined by the appellant. We have carefully looked at the photographs and find photographs of some of the clothes which were burning as well as part of the pillow which was also burning besides the sheet on the bed. The fire no doubt originated from the kitchen where the gas was leaking. Mere leakage of gas does not result in a fire unless there is some ignition. It is extremely unusual that from the kitchen where the fire emerged, there could be clothes lying burning on the bed where the deceased was lying as well as where the pillow was burning. This would mean that the pillow where the deceased was lying was set on fire as well as the clothes which were lying on the bed were also set on fire. The act of putting burning clothes on the bed where the deceased who was lying, was done undoubtedly with a motive.

30. PW-7 is a Doctor of Safdarjung Hospital. As per his evidence, the appellant was brought to the hospital by one Sh. Anil Dawra with alleged history of suffocation. The appellant was examined by a junior doctor under his supervision who also prepared MLC, Exhibit PW-7/8.

31. As per the examination, the Doctor found no external injury on the appellant. Blood stains were present on his penis, swab and slides were taken and handed over to police on duty.

32. As per the evidence of PW-8, Dr. Sanjiv Lalwani a Doctor from the AIIMS, in his opinion, there was nothing to suggest that the appellant who was examined by him on 20.10.1999 could not perform sexual intercourse. There is no Explanationn how blood was found on the penis and clothes of the appellant.

33. Deceased was initially medically examined by Dr. Manisha (PW-11). She found the patient to be pulseless. Her findings are as under:

Patient was pulseless, B.P. - not recordable. Pupils bilateral fists dilated not reacting to light. Chest - no respiratory sounds, CVS - no heart sound heard, bleeding per vagina present. Two linear abrasions present present - One on the middle of aternum 2 cm long, other just above aternum to the left of neck. 3 mm abrasions present just to the left of nostril. ICU call sent - I.V. Line started pulse started despite active measures for 20 minutes patient could not be revivedby Doctors on Duty, ICU, Dr. Manoj. Body to be packed and sent to mortuary for post-mortem examination to ascertain cause of death and to rule out sexual assault.

My report is Ex.PW-11/A bearing my signature at point A. xxxxxxxx by defense Counsel.

At the time of examination CMO Dr. M.C. Sharma was present along with Dr. Manoj. The report was prepared by me.

34. The post mortem on the body of the deceased was carried out by Dr. Chandra Kant, PW-12. As per his opinion, the cause of death was due to 'manual suffocation homicidal in nature'.

35. We have also perused in detail the post mortem report, PW-12/A. Relevant portion has also been reproduced above. As per the post mortem report, death was caused due to 'manual suffocation homicidal in nature'. Based on the post mortem report, it was concluded that the deceased had been raped.

36. As per the evidence of PW-18, he had seized various burnt articles from the spot which were taken by him into his possession vide memo Ex.PW-18/A including burnt Dupata Ex.PW-1; Pant in a burnt condition, Ex.P-2; Lungi P-3, Banyan half burnt, P-4; Grey Colour short,P-5; Blue colour half burnt pant, P-6; Two socks half burnt, P-7; half burnt bed sheet, P-8; Pillow cover burnt at one side, P-9; A gas cylinder with pipe - broken at two points, P-10; one broom half burnt, P- 11; and in tact match sticks, P-12.

37. As per the evidence of PW-3, he had taken the deceased as well as the appellant to Safdarjung Hospital. His clothes had stained with blood, as he was carrying the deceased in his lap. According to him, it was noticed that there was

some blood stains clothes worn by the appellant as well.

38. PW-3 in his cross-examination has clearly mentioned that there was blood stains on the clothes of the deceased as well as on the clothes worn by the appellant near their private parts. Blood was also found on the handkerchief and on the Kurta Pajama of the appellant. The CFSL analysis further revealed that semen was detected in the vaginal swab of the deceased and on her underwear. The post mortem report further shows that there was marks of injuries on the person of the deceased on various parts of the body and those injuries caused by human nails which indicates some opposition or struggle by the deceased who was 12 years of age. The medical examination revealed that the hymen of the deceased was torn. It has been conclusively established on the basis of medical evidence that the deceased was sexually abused and raped. Based on the evidence, it is established that there was no other person present in the house of the deceased and, in fact, at the time when the neighbours entered the house, the appellant and the deceased were lying on the same bed.

39. PW-12, Dr. Chandra Kant conducted the post mortem on the body of the deceased. He sealed the clothes of the deceased in various pullandas and also collected necessary samples and handed over the same after sealing them, to the police along with the sample of his seal. The defense preferred not to cross-examine this witness and as such his testimony goes unchallenged. Nothing came in the cross-examination of the witnesses (PW-2 and PW-6) which should create any doubt in the manner of the testimony rendered by them in the Court. Nothing contrary to the version stated by PW-18 in examination-in-chief was contradicted in his cross-examination.

40. The entire chain of events cogently and firmly establishes the guilt of the appellant. We find no force in the submission of the counsel for the appellant that the statements of the witnesses cannot be relied upon as the witnesses being the immediate neighbours of the deceased are interested witnesses. There is no evidence on record to show as to why the neighbours would depose falsely, or wrongly implicate the appellant.

41. It has been consistently held by the Apex Court that Courts must be cautious and careful while weighing such evidence given by witnesses who are partisan or interested, but such evidence should not be mechanically discarded. It will be useful to refer to the judgment of Masalte v. State of Uttar Pradesh reported at : [1964]8SCR133 , relevant portion of which is reproduced below:

14. Mr.Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses; Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to, failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

42. Similar view has also been expressed in the case of State of Punjab v. Karnail Singh reported at AIR 2003 S C 3613:

8. We may also observe that the ground that the witnesses being close relatives and consequently being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh and Ors. v. The State of Punjab : [1954]1SCR145 in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was

observed:

We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavored to dispel in 'Rajasthan' : 1952 CriLJ547 . We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.9. Again in Masalti and Ors. v. The State of U.P. : [1964]8SCR133 this Court observed : (pp. 209-210 para 14):

But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.10. To the same effect is the decision in State of Punjab v. Jagbir Singh : 1973 CriLJ1589 and Lehna v. State of Haryana : [2002]1SCR377 . As observed by this Court in State of Rajasthan v. Smt. Kalki and Anr. : 1981 CriLJ1012 , normal discrepancies in evidence are those who ae due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest and truthful a witness may be. Material discrepancies are those who are not normal, and not expected of a normal person. Courts have to lable the category to which a discrepancy may be categorized. While normal discrepancies do so. These aspects were highlighted in Krishna Mochi and Ors. v. State of Bihar etc. : 2002 CriLJ2645 .

43. This view has again been reiterated recently in the case of State of NCT of Delhi v. Rani Kant Sharma and Ors. reported at JT 2007 (3) 501, relevant portion

is reproduced below:

11. In some cases persons may not like to come and depose as witnesses and in some other cases the prosecution may carry the impression that their evidence would not help it as there is likelihood of partisan approach so far as one of the parties is concerned. In such a case mere non-examination would not affect the prosecution version. But at the same time if the relatives or interested witnesses are examined, the court has a duty to analyze the evidence with deeper scrutiny and then come to a conclusion as to whether it has a ring of truth or there is reason for holding that the evidence was biased. Whenever a plea is taken that the witness is partisan or had any hostility towards the accused, foundation for the same has to be laid. If the materials show that there is partisan approach, as indicated above, the court has to analyze the evidence with care and caution. Additionally, the accused persons always have the option of examining the left out persons as defense witnesses.

44. Again in the case of Manoj v. State of Tamil Nadu reported at JT 2007(5) 145.

9. In regard to the interestedness of the witnesses for furthering the prosecution version, relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if a plea of false implication is made. In such cases, the court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.

10. In Dalip Singh and Ors. v. The State of Punjab it has been laid down as under:

A witness is normally to be a considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a

foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rue. Each case must be limited to and be governed by its own facts.11. The above decision has since been followed in Guli Chand and Ors. v. State of Rajasthan in which Vadivelu Thevar v. State of Madras was also relied upon.

45. Applying the aforesaid principles to the facts of the present case, we find that there is nothing to show that PWs-1 to 3 have deposed falsely with a view to shield the real culprit. Further there is nothing to show that their evidence is not credible.

46. The Trial Court has correctly come to the conclusion that the appellant first committed rape upon the deceased and then put an end to the life of the deceased by manually suffocating her and thereafter in order to confuse the situation, he ignited the fire which is evident from the fact that various articles were found partially burnt.

47. The circumstantial evidence in the present case speaks for itself and conclusively points out towards the crime committed by the appellant. The evidence is clear, cogent and reliable and are sufficient to hold the appellant guilty; and nothing has come on record to show any reason for the witnesses to implicate the appellant. Merely because they were neighbours would not mean that their evidence should not be relied upon, when their evidence is trustworthy. We find that the chain of circumstances are complete in order to sustain the conviction of the appellant. The appeal is dismissed accordingly.

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