

**NON-REPORTABLE**

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.1306 OF 2017

YOGESH

APPELLANT

VERSUS

STATE OF HARYANA

RESPONDENT

WITH

CRIMINAL APPEAL NO.1307 OF 2017

ANUJ

APPELLANT

VERSUS

STATE OF HARYANA

RESPONDENT

AND

CRIMINAL APPEAL NO.1308 OF 2017

PARDEEP

APPELLANT

VERSUS

STATE OF HARYANA

RESPONDENT

**J U D G M E N T**Uday Umesh Lalit, J.

1) These appeals arise out of the common judgment and final order dated 09.10.2013 passed by the High Court of Punjab and Haryana at Chandigarh in

Criminal Appeals No.D-719-DB of 2010, D-713-DB of 2010 and D-735-DB of 2010.

2) Eight persons, namely, Diwan Singh, Anuj, Sumit, Pardeep, Yogesh, Satbir, Parveen and Abhishek were tried in Sessions Case No.6 of 2004/2009 on the file of the Additional Sessions Judge, Jhajjar, Haryana, in connection with crime registered pursuant to FIR No.188 dated 18.08.2004 with Police Station City, Bahadurgarh, Haryana, in respect of the offences punishable under Sections 302/364-A/376/216 read with Section 120-B of the Indian Penal Code, 1860 (“IPC” for short).

3) The crime was registered pursuant to the reporting (Ex.P.11) made by one Manoj Kumar (later examined as PW10 in the trial). The reporting made at 5.45 pm on 18.08.2004 was to the following effect:-

“Sir,

It is submitted that I am Manoj Kumar s/o Rameshwar Singh resident of House No. 650, sector -6. Today i.e. on 18/08/2004 (at noon) about 12.45 P.M my children, who use to study in B.S.M. Public school, were coming back to house, by bus after closing of their school, as my son Neeraj 10 year and daughter xxx<sup>1</sup> 7 years got off from bus near Kothi No.622. then two boys came there on one red colour motor cycle, one of them asked to come here, upon which my daughter xxx went to near motor cycle then the boy sitting on motor cycle forcibly lifted baby and fled away toward the Primary school, while getting her sit in between them on motor cycle, number of motor cycle could not be seen. Hearing the alarm of children we tried to stop them but they fled away, while pushing us. Both of them were of

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<sup>1</sup> Name of the victim is withheld

young age. Out of them its driver had worn black pant, brown shirt and a helmet on his head. Till now we remained in search of girl, legal action be taken.”

4) During the course of investigation, a raid was conducted at the house of accused Diwan Singh, who allegedly disclosed that his son Anuj along with three others had kidnapped the victim and as pressure of the investigation by the police was mounting, the victim was murdered and her dead-body was thrown in the fields of village Paparwat.

5) In the intervening night of 19.08.2004 and 20.08.2004, the body of the deceased was recovered.

6) It is not clear as to when exactly the accused were arrested but it is the case of the prosecution that pursuant to the disclosure statements made by these appellants, the place where the dead body of the victim was lying could be located, and their disclosure statements led to the recovery of certain items like clothing, tiffin box etc. belonging to the victim.

7) The dead body of the victim was subjected to post-mortem, which was conducted by Dr. P.K. Paliwal (later examined as PW4 in the trial). Exhibit P6 – Post-Mortem Report stated as under:-

- “- The body was received naked.
- Scalp hair black 8-10 cm. long and can be peeled off as slight traction.

- Eggs of flies present all over the face and chest.
- Face, chest, abdomen distended.
- Marbling effect present all over the body.
- P.M. blisters present at places.
- External Genitalia swollen.
- Face swollen; Eyes swollen, mouth open, lips apart upper neck visible, tongue protruding under about 1.5 cm.
- Length of body was 3½'.
- Body emitting foul smell.
- Facel matter passed off.
- Hypostasis over the back.

Injuries:-

(i) There was a ligature mark in anterior part of neck, from 1.5 cm. below the left angle of mandible to right mandible. It is 1 cm. in width.

(ii) There were contusion marks on both side of neck, 5cm. below the angle of mandible on right side and 4.5 cm. below the left side measuring 7x3 cm. and 5x3 cm. Respectively.

On section both the injurious were showing ecchymosis in underlying tissues.

(iii) There were multiple contusions of size 0.5 x 0.5 to 1.5 cm. over the lips angles of mouth and chin region, ecchymosis was seen.

(iv) The labia were swollen and inflamed. The hymen and vaginal canal showed multiple and regular tears and laceration of size 1 x 0.5 cm. To 3 x 1 cm. Infiltration of blood was seen in tissues:"

The cause of death was reported to be as under:-

“Opinion:- Cause of death is manual strangulation coupled with smothering which was ante-mortem in nature and homicidal in manner. However viscera was preserved for chemical analysis. Injurious over genitalia were indicative of forceful penetration of vagina. Duration between death and postmortem was about two days.”

- 8) After examining viscera of the deceased, the Forensic Science Laboratory Report (Exhibit P8) disclosed the presence of Aluminium Phosphide (Celphos). However, no semen was detected in the vaginal swabs taken from the body of the victim.
- 9) In support of its case, the prosecution examined as many as 20 witnesses.
- 10) PW10 Manoj, the informant and the father of the deceased stated in his examination-in-chief:-

“Stated that on 18.8.2004, my daughter was studying in B.S.M. public School at Bhadurgarh. She was coming after closing of her school at about 12.45 p.m. when she alighted from school bus near Khoti No.622 in Sector-6 Bahadurgarh. My son was also accompanied my daughter age about 10 years. In the meantime, two young boys came on a motor-cycle who called my daughter and after lifting my daughter they fled away from the spot along with my daughter. My son raised alarm after hearing the noise I came out of my house and tried to obstruct the motor cycle and they fled away from the spot along with my daughter. At that time Yogesh was driving the motor cycle and Sumit was pillion rider. Both the accused are present in the court today and both were identified by the complainant. Thereafter, we tried to chaise them up to the community centre where police met with me and I informed to police and I made a complaint to the police, complaint is Ex.P11/A which was made by me

which bears my signature.

He, however, admitted in the cross-examination:-

“I was not knowing the accused prior to the occurrence. I had disclosed the feature of accused to the police. It is incorrect that I am deposing falsely regarding factum of feature being told to the police, witness is confronted with application Ex.P11 in which neither age nor any features, height, colour and features does not mention. I had told the police in my application that accused were wearing Helmet. I came to know about the arrest of accused Sumit on 20.8.2004. In between place of occurrence and my residence there are three residential houses.”

He also stated in the cross-examination:-

“My son Neeraj along with some other boys and one washer man had raised alarm that somebody had taken away xxx. My son Neeraj was in front of my house when I had heard his noise about the fact that xxx had been taken away. I was sitting in my drawing room at that time. The road in front of my house is not so busy road. Vehicles kept on plying again said few vehicle ply on this road. Nothing was in motion neither cooler nor fan was on in the drawing room. I was sitting alone at that time. My wife was also in the house. I had seen the motorcycle for the first time. when this same was in front of my house. I had told the police that motor cycle in question was of red colour. My wife had also followed me when I came out side of my house. Volunteered, motor cycle had already disappeared from the seeing and when she reached there. I had chased the motor cycle on foot up to primary school distance between primary school and my residence approximate 250 yards.

11) Neeraj, brother of the deceased was examined as PW15. The witness however turned hostile and did not support the case of the prosecution. His testimony in examination-in-chief was:-

“I along with my younger sister xxx was coming from the B.S.M. Public School at about 12.45 PM. We came down from the school bus at that time two boys came on a motor cycle of black colour. The driver of motor cycle was wearing a helmet and pillion rider was muffled face. The pillion rider called my sister and took her on their motor cycle and fled away from the spot on motor cycle but could not follow that I could not identify the boys who had taken my sister Pooja. Accused are not those boys who were kidnapped my sister xxx. I do not know anything more about this case.”

12) Uncle of the deceased, namely, Rajiv was examined as PW12, who also turned hostile. In his examination-in-chief, the witness stated:-

“Stated that on 18.8.2004, at about 1.00 PM two boys on a motor cycle had taken away my niece xxx from in front of my home. Accused present in the court are not those persons who had taken my niece xxx.”

The case of the prosecution that he had chased the motorcycle which was used in the kidnapping and that he had reported the number of said motorcycle to the police as put to him in cross-examination conducted by the Public Prosecutor, was denied by the witness.

13) One more material witness examined on behalf of the prosecution was PW19 Chander Gupt, who had recorded the statement of Suresh Washerman and that of Rajiv (PW12) under Section 161 of the Code of Criminal Procedure, 1973. Suresh Washerman was, however, not examined on behalf of the prosecution.

14) The Investigating Officer PW20 deposed regarding the facts concerning recoveries pursuant to the disclosure statements made by the accused.

15) On the strength of the material on record, the Trial Court by its judgment and order dated 13.07.2010 found that (a) the charge under Section 302/120-B/34 IPC was proved against the accused Yogesh, Sumit, Pardeep and Anuj, (b) while the charges under Sections 364-A and 376 IPC were not proved against them (c) rest of the accused were not found guilty of any of the charges levelled against them and hence were acquitted. The trial court awarded sentence of life imprisonment to the convicted accused and imposed sentence of fine of Rs.20,000/- in default whereof the convicted accused were directed to undergo further imprisonment for two years.

16) The convicted accused, namely, Yogesh, Sumit, Pardeep and Anuj preferred appeals before the High Court challenging their conviction and sentence. No appeal was preferred by the State challenging acquittal of other four accused or against the acquittal of the convicted accused in respect of the charges under Sections 364-A and 376 IPC.

17) All the appeals were considered and disposed of by the High Court by its judgment, which is presently under challenge.

After noting the material evidence on record and while considering the testimony of PW10 Manoj, the High Court observed:-

“... Thus, in the light of this unfortunate course of the trial,



statement of complainant Manoj Kumar PW10 father of the victim attains all the more importance. This witness as PW10 has specifically stated having witnessed the occurrence when he was attracted on hearing the noise and has in no uncertain terms stated that accused Yogesh was driving the motorcycle and Sumeet was on the pillion and had taken away his daughter and in spite of his efforts could not chase them. ...”

Finding the case of the prosecution to have been proved as against the four convicted accused, their conviction and sentence as recorded by the Trial Court was maintained and the appeals were dismissed by the High Court.

18) Out of the four convicted accused, Yogesh, Anuj and Pardeep have preferred the appeals before this Court while Sumit has not preferred any challenge against the rejection of his appeal. It is reported that Sumit was on bail during the pendency of the appeal and after dismissal of his appeal, has gone absconding.

19) We have heard Mr. V.C. Gautam, learned Advocate for the appellants Yogesh and Pardeep and Mr. M.C. Dhingra, learned Advocate for the appellant Anuj. The submissions on behalf of the State have been advanced by MS. Alka Agarwal, learned AAG for the State.

20) The evidence on record discloses that out of three witnesses, who were stated to be the eye-witnesses, two witnesses, viz, PW12 Rajiv and PW15 Neeraj turned hostile and did not support the case of the prosecution. Both these

witnesses are close relations of the victim and there is nothing on record to indicate that they were either put under any pressure or that there was any element of suspicion. Both these witnesses were categorical that the persons who kidnapped the victim were not before the Court in the capacity as the accused.

21) We are thus left with the testimony of PW10 Manoj, the informant and the father of the victim. The reporting made by this witness, based on which the crime was registered neither shows that he was an eye-witness to the occurrence nor does it disclose that the identity of the accused who had kidnapped the victim was in any way known at the stage when the occurrence took place. The statement given by the witness in his cross-examination further discloses that he was sitting inside the house when the incident had occurred and that the shouts of the children and other passers-by had attracted his attention whereafter the witness came out of the house. In the circumstances, it is extremely difficult to accept PW10 to be an eye-witness to the occurrence. The observations made by the High Court while placing reliance on his version, in our view, were totally incorrect.

Thus, all three witnesses who were claimed to be the eye-witnesses to the occurrence and on whose testimonies, reliance was placed by the prosecution, are of no help.

22) We now turn to the other circumstances on record to see whether circumstances on record by themselves are sufficient to bring home the guilt of the accused.

23) The law on the point of circumstantial evidence cases is very clear and as laid down by this Court in *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, the well settled principles are as under:-

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

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

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

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

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

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

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

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

24) Certain salient features of the instant case are:-

(a) Though the post-mortem report discloses that the victim was sexually assaulted, the FSL Report on record does not establish any connection of the accused with the sexual assault on the deceased victim.

(b) The dead body of the victim was found lying in an open field.

(c) The record is again not clear as to when the present appellants were arrested and how and in what manner their disclosure statements led to the recovery of the dead body.

25) There are of course circumstances like recovery of clothing apparel as well as tiffin box etc. belonging to the victim. However, such recoveries by themselves, in the absence of any other material evidence on record pointing towards the guilt of the accused, cannot be termed sufficient to hold that the case was proved beyond reasonable doubt. Not only those circumstances are not conclusive in nature but they also do not form a cogent and consistent chain so as to exclude every other hypothesis except the guilt of the appellants.

26) We, therefore, find ourselves in disagreement with the view taken by the Courts below. In our considered view, the case of the prosecution has not been proved beyond reasonable doubt, and the appellants are entitled to the benefit of

doubt.

27) We, therefore, allow these appeals and set-aside the orders of conviction and sentence recorded against the each appellants. The appellants be set at liberty forthwith, unless their custody is required in connection with any other crime.

.....J.  
[Uday Umesh Lalit]

.....J.  
[Indira Banerjee]

New Delhi;  
April 06, 2021.