



2025:CGHC:16336-DB

AFR

## HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 593 of 2020Judgment Reserved on : 03/03/2025Judgment Delivered on : 08/04/2025

- Kavilas, S/o Late Babulal Kunjam, Aged About 32 Years, R/o Village Dihipara Ghathula, Police Station Sihava, District Dhamtari Chhattisgarh.

... Appellant

versus

- State of Chhattisgarh Through Station House Officer, Police Station Sihava, District Dhamtari Chhattisgarh.

... Respondent

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 For Appellant : Mr. Qamrul Aziz, Advocate

 For Respondent : Mr. Devesh G. Kela, P.L.
 

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Hon'ble Smt Justice Rajani Dubey &  
Hon'ble Shri Justice Sachin Singh Rajput

(CAV Judgment)By Rajani Dubey, J

1. This appeal arises out of the judgment of conviction and order of sentence dated 03.03.2020 passed by the Additional Sessions Judge (FTC), Dhamtari, District

Dhamtari (C.G.), in Sessions Trial No.55/2018 convicting the accused/appellant under Sections 302, 376 and 201 of IPC and sentencing him in the manner described as under :-

Conviction	Sentence
Under Section 302 IPC	Imprisonment for life and fine of Rs.500/-, in default of payment of fine additional R.I. for 03 months.
Under Section 376 IPC	R.I. for 7 years and fine of Rs.500/-, in default of payment of fine additional R.I. for 03 months.
Under Section 201 of IPC	R.I. for 7 years and fine of Rs.500/-, in default of payment of fine additional R.I. for 03 months.

2. In the present case, name of the deceased is Ansuiya Bai. On 28.07.2018, the police received an information that the dead body of deceased was lying in her house. On such information, the police personnel proceeded to the spot and saw that deceased Ansuiya Bai was lying dead in her house. On a complaint made by Arvind Yadav, dehati merg No. 0/18 was recorded and the matter was taken for investigation. Inquest on the body of deceased was prepared under Ex.P/10 and dead body of deceased was sent for postmortem examination to Community Health Center, Nagri, where Dr. Suraj Kumar Sahu (PW-16) conducted postmortem examination on the body of deceased and found following injuries/symptoms :-

- i. Whole body was swelled up. Maggots were present.
  - ii. Skin was peeling off from body. Putrification was started. There was no rigor mortis.
  - iii. Face had blue black discoloration, eyes buldge out, nose depressed & blood was coming from nose with frothy fluid. Mouth was open & tongue protruded.
  - iv Nails of all four limbs had cyanosed,
  - v. Abdomen distended, fecal discharge present.
  - vi. Blood was coming from nose and mouth with frothy fluid.
3. The Autopsy Surgeon opined the mode of death to be compression of nose and mouth by any article or by hand and the cause of death was asphyxia. The Autopsy Surgeon has also opined the type of death may be homicidal.
4. During the course of investigation, it was found that on 27.07.2018, the appellant and deceased Ansuiya Bai consumed alcohol in her house and the appellant with bad intention committed sexual intercourse with her. It was also revealed that when the deceased objected the act of the appellant, he pressed nose and mouth of deceased by bed sheet and caused her death. He also took out Rs.1650/- from the purse of deceased and spent it on food and drink and broke the mobile and SIM of deceased & threw the SIM

and battery in the courtyard of Laxminath. Thereafter, the offence under Sections 376, 302 and 201 of IPC was registered against the appellant.

5. After usual investigation, charge sheet was filed before the jurisdictional Court. After filing of charge sheet, the trial Court framed charges under Sections 376, 302 and 201 of IPC against the accused/appellants.
6. So as to hold the accused/appellant guilty, the prosecution examined as many as 21 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.
7. The learned trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para 1 of this judgment. Hence, this appeal.
8. Learned counsel for the appellant submits that there is no eye-witness to the occurrence and the conviction of the accused/appellants is based on circumstantial evidence but none of the circumstances from which the inference of guilt of appellant can be drawn has been proved beyond reasonable doubt and therefore there can be no inference

that it was the appellant who committed the murder. Learned counsel further submits that evidence of so called witnesses to last seen i.e. Sandhya Nag (PW-3), Anjana Chhati (PW-7) and Lalita Bai Markam (PW-9), are not reliable. None of these witnesses has seen the accused/appellant and deceased together. Learned counsel also submits that the witnesses to the memorandum and seizure have turned hostile and not supported the case of the prosecution. The conviction and sentence awarded to the appellant are bad, improper, incorrect and illegal. The learned trial Court did not appreciate oral and documentary evidence in its true perspective and has committed grave error in convicting the appellant. Learned counsel also submits that there is no direct evidence against the appellant to connect him with the crime in question. Therefore, the impugned judgment of conviction and order of sentence is liable to be set aside and the appellant deserves for acquittal.

9. Reliance has been placed on the decisions of Hon'ble Apex Court in the matter of *Chotkau Vs. State of Uttar Pradesh*<sup>1</sup>, *Ravinder Singh @ Kaku Vs. State of Punjab*<sup>2</sup> and *Sahadevan and Another Vs. State of Tamil Nadu*<sup>3</sup>.
10. On the other hand, supporting the impugned judgment it has

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1(2023) 6 SCC 742,

2(2022) 7 SCC 581

3(2012) 6 SCC 403, (2012) 3 SCC (Cri) 146 :2012 SCC OnLine SC 422

been argued by learned State counsel that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same. The learned trial Court minutely appreciated oral and documentary evidence and has rightly convicted the appellant. This appeal being without any merit is liable to be dismissed.

11. We have heard counsel for the parties and perused the material available on record.
12. As per the record of the learned trial Court, the learned trial Court framed charges under Sections 376, 302 and 201 of IPC against the appellant and after appreciation of oral and documentary evidence, the learned trial Court convicted the appellant under Sections 376, 302 and 201 of IPC and sentenced him as described in para 1 of this judgment.
13. As per the dehati merg intimation (Ex.P-24), Arvind Yadav (PW-15) informed that his maternal grand-mother was living alone in village Ghatula. On 28.07.2018 at around 11.00 AM, Bhanbai (PW-14) - Sarpanch of village Ghatula, informed his mother Shikha Archana Yadav (PW-4) over telephone that dead body of his maternal grand-mother is lying dead in the house. After receiving the said information, he along with his mother Shikha Archana Yadav went to the house of deceased where he saw his maternal grand-mother lying dead in the house and one bed sheet was

covered on her. After removing the bed sheet, he saw blood was oozing from her mouth and she was dead.

14. Mukesh Kumar Patel (PW-20), Sub Inspector & Investigating Officer, has stated that on an information by Arvind Yadav (PW-15), he had recorded dehati merg intimation bearing No. 0/18 (Ex.P-24) under Section 174 of Cr.P.C. and issued notice (Ex.P-9) under Section 175 of Cr.P.C. and prepared inquest memo (Ex.P-10) before witnesses. He has also stated that after preparing inquest, he gave notice (Ex.P-32) for postmortem examination of deceased to Community Health Center, Nagri.
15. Dr. Suraj Kumar Sahu (PW-16) is the Autopsy Surgeon who conducted autopsy on the body of deceased and found following injuries/symptoms :-
  - i. Whole body was swelled up. Maggots were present.
  - ii. Skin was peeling off from body. Putrifaction was started. There was no rigor mortis.
  - iii. Face had blue black discoloration, eyes buldge out, nose depressed & blood was coming from nose with frothy fluid. Mouth was open & tongue protruded.
  - iv Nails of all four limbs had cyanosed,
  - v. Abdomen distended, fecal discharge present.
  - vi. Blood was coming from nose and mouth with frothy fluid.

The Autopsy Surgeon opined the mode of death to be compression of nose and mouth by any article or by hand

and the cause of death was asphyxia. The Autopsy Surgeon has also opined the type of death may be homicidal and death was within 24 hours.

16. The prosecution had seized bloodstained red-white colour bed sheet, one black-yellow colour blanket on which stain like sperm was seen, vaginal slides were prepared and one blue colour underwear on which stain like sperm was seen, were seized and the same were subjected to chemical examination and as per the FSL report (Ex.P-39), sperm was found in blanket, vaginal slides of deceased and underwear.
17. Thus, from the testimony of Autopsy Surgeon (PW-16) and FSL report (Ex.P-39), it is proved that death of deceased was due to compression of nose and mouth and before her death, she was subjected to rape. The learned trial Court also recorded its finding that deceased Anusuiya Bai died homicidal death and before her death she was sexually harassed.
18. The conviction of the appellant is based on circumstantial evidence of last seen by Sandhya Nag (PW-3), Anjana Chhati (PW-7) and Lalita Bai Markam (PW-9).
19. Now, we have to consider whether the learned trial Court was justified in convicting the appellant under Section 376, 302 and 201 of IPC on the basis of evidence of last seen.



20. To sum up this, we have gone through the evidence of Sandhya Nag (PW-3), relative of the deceased. She has stated that on the date of incident, deceased Ansuiya Bai had taken her (this witness) daughter Munmun to her (deceased's) house. She wanted to bath her daughter, therefore, on or around 10.30 AM, she went to the house of deceased to take her daughter Munmun. When she entered the house of deceased, she saw that apart from her daughter, the appellant was also present in the deceased's house and had kept liquor bottle before him then this witness scolded her aunt deceased Ansuiya Bai that if she had to drink liquor then why did she bring her daughter and thereafter she came back to her house with her daughter and got busy in household chores. This witness has also stated that in afternoon when she came out of her house, she saw that the door of house of deceased was locked. Second day she went to field for work and in evening when she came back to her house, she saw the crowd of people in front of the house of deceased and the police personnel had also come and then she came to know from the neighbours that deceased had died. She has also stated that the cops was taking action and she went her house. She has admitted her signature on notice (Ex.P-7) on 'A to A' part.

21. Lalita Bai Markam (PW-9) is the neighbour of deceased. She has stated that deceased had brought cooked food to her house and sat with her after having food. At that relevant time during conversation, she told that she would go to her daughter's house in Bharavan the next morning and slept in her house. The next day in the morning, deceased Ansuiya Bai told her that she will go to her daughter in Bharavan and will keep Rs.2,000 – 3,000/- which she had kept with her (this witness). She gave Rs.3,000/- to the deceased and thereafter she left for the farm. She has also stated that while going to the field she saw that appellant Kavilas was sitting on a chair and Ansuiya Bai was standing there. This witness has also stated that appellant Kavilas used to visit the house of deceased Ansuiya Bai and both used to consume liquor. After seeing the appellant sitting in the Ansuiya Bai's house she went to field. When she came back her house from field, Rajendra Chhati of village Bharvan, who is son-in-law of deceased in relation, ringed her and told to go and see deceased Ansuiya Bai where she is. Thereafter, she went to the house of deceased and saw that the door of her house was locked. Then she told Rajendra Chhati over the phone that the door of Ansuiya Bai's house is locked. This witness has also stated that on the same day when she was cooking, Rajendra Chhati ringed her again

and asked her to go and see where the deceased was. She went and saw that the door of Ansuiya Bai's house was closed. She informed Rajendra about this. The next day she went to the farm. At around 11.00 AM, Rajendra Chhati called her and told that Ansuiya Bai was lying dead in the room. After hearing the news, she came and saw that there was a huge crowd near deceased's house. Her daughter had also arrived. She (this witness) went inside the room with those people and saw that deceased Ansuiya Bai was lying dead in the room. Perfume box, empty purse, mobile were scattered around her. A plastic bottle and two glasses were found at the spot which smelled of alcohol. Blood was coming out from the mouth of the deceased.

22. Anjana Chhati (PW-7) is step daughter of deceased Ansuiya Bai. She has stated that sometime deceased used to visit her house at Bharavan and she also used to visit her house. The deceased had come to her house on 25.07.2018 and next day she returned to village Ghatula. The deceased while going had said that she will again come to Bharavan on 27.07.2018 but she did not come. She has also stated that on 27.07.2018, she had told her husband Rajendra Chhati to have talk on phone with deceased and then she had conversation with deceased. She has also stated that when her husband called the deceased, first he talked to a

boy on mobile and then she asked the boy his name and he told her that he is Kavilas and then she asked him to let her talk to her aunt (deceased). When she talked to deceased, she said that she will come to her house by 3 O'clock train. This witness has also stated that during conversation, appellant Kavilas told that her aunt (deceased Ansuiya Bai) has drunk lot, therefore, she will not come. Thereafter, till evening the deceased did not come to village Bharavan. The husband of this witness and herself had called the deceased but her phone was switched off. Thereafter, her husband called Lalita (PW-9) who lived nearby and told her to go the house of deceased and see where she was and Lalita (PW-9) told that the house was locked. This witness has also stated that on 28.07.2018, Shikha Archana Yadav (PW-4), elder sister of this witness, called her and told that deceased was lying dead in the house. Thereafter, she and her husband came to village Ghatula and saw that the deceased was lying dead, her mobile was broken, purse was empty and perfume was lying there. After the incident, police did panchanama proceedings on the spot. Police seized mobile, perfume, purse and carpet on the spot and prepared seizure memo under Ex.P-8.

23. The learned trial Court convicted the appellant on the basis of last seen, memorandum of appellant and consequent

seizure made thereunder. According to the memorandum statement (Ex.P/1) of the appellant, Rs.350/- was recovered from his possession under Ex.P-2, battery of mobile, bend mobile SIM were recovered from the courtyard of Lakhan and seized under Ex.P-4.

24. The witnesses to seizure and memorandum statement namely Birendra Mishra (PW-1), Harish Kumar Yadav (PW-2) have been examined by the prosecution.
25. Birendra Mishra (PW-1) and Harish Kumar Yadav (PW-2) have stated that the police had recorded the memorandum statement of the appellant under Ex.P-1 and recovered some currency note. These witness have admitted their signature on Ex.P-1, P-2, P-3 and P-4 on 'A to A' part. These witness had denied the seizure of mobile made under Ex.P-3. The prosecution has declared these witness hostile and cross-examined him but they denied this suggestion that the appellant had told during inquiry that he took out Rs.2000/- from the purse of deceased, kept deceased's mobile and broke her mobile in the house of Lakhan. They have denied all suggestions of the prosecution. These witnesses have also denied this suggestion that the SIM was recovered at his (appellant's) instance, and the witnesses have admitted this suggestion of defence that when the police were questioning the appellant, they did not listen and signed the

documents as per the instructions of the police.

26. Nand Kumar Nag (PW-5) has stated that when the tractor was not getting started then he called appellant Kavilas and 02-04 other villagers to push his tractor. The tractor started after being pushed and thereafter this witness came to his house. He did not see where did appellant go. This witness has also stated that when he went to the house of deceased to pluck flowers, the door of his house was open and he saw that the lock and key were lying near varanda. Thereafter, he called the deceased by calling 'Bhabhi-Bhabhi' and went to the second room and saw that deceased was not there. He has also stated that when he went to the next room, the deceased was lying face down and a blanket was covered on her. After that he went to the village Sarpanch and after informing him, reached the place of incident. Then the Sarpanch, peon and Dilip Sahu removed the blanket and saw that the deceased was lying dead. Broken mobile was lying near her feet.
27. Sandeep Kumar Nag (PW-6) has also stated that when his tractor was not getting started, he called appellant Kavilas and other people of village to push the tractor. He has also stated that thereafter where did the appellant go, he did not notice.
28. Close scrutiny of statements of all the evidence makes it

clear that there is no conclusive piece of evidence on record showing the involvement of the accused/appellant in commission of offence and his conviction is based on statements of Sandhya Nag (PW-3), Anjana Chhati (PW-7) and Lalita Bai Markam (PW-9), witnesses to last seen. It is well settled position of law that the conviction cannot be recorded against the accused merely on the ground that accused was last seen with the deceased. In other words, conviction cannot be based on the only circumstance of last seen together and normally the Court is required to look for some other corroborative piece of evidence. Most importantly, the theory of last seen comes into play where the time gap, between the point of time when accused and deceased were seen last alive and when the deceased found dead, is so small that possibility of any person other than accused being the perpetrator of crime, becomes impossible. The Supreme Court in the matters of *State of Goa V. Sanjay Thakran*<sup>4</sup>, *Yusuf V. State of West Bengal*<sup>5</sup>, *Anjan Kumar Sharma V. State of Assam*<sup>6</sup>, *Nijam V. State of Rajasthan*<sup>7</sup>, *Kanhaiyalal V. State of Rajasthan*<sup>8</sup> and this Court in the matter of *Smt. Jiteshwari Bai V. State of CG*<sup>9</sup> has held that while basing the conviction on the last seen

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42007 (3) SCC 755  
 5AIR 2011 SC 2283  
 62017 SCC 622  
 7AIR 2015 SC 3430  
 82014 (4) SCC 715  
 92015 (S) SCC 393

theory, it is safer to look for corroboration from other circumstance and evidence adduced by the prosecution.

29. The Hon'ble Apex Court in the matter of ***Ravinder Singh*** (*supra*) held in paras 10, 11, 13, 18, 23 and 24 as under :-

*“10. The conviction of A-2 is based only upon circumstantial evidence. Hence, in order to sustain a conviction, it is imperative that the chain of circumstances is complete, cogent and coherent. This Court has consistently held in a long line of cases [see Hukam Singh V. State of Rajasthan<sup>2</sup>; Eradu V. State of Hyderabad<sup>3</sup>; Earabhadrapa V. State of Karnataka<sup>4</sup>; State of U.P. V. Sukhbas<sup>5</sup>; Balwinder Singh V. State of Punjab<sup>6</sup>; and Ashok Kumar Chatterjee V. State of M.P.<sup>7</sup>] 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 accused. 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.*

*10.1 In Bhagat Ram V. State of Punjab<sup>8</sup>, 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 negate the innocence of the accused and bring the offence home beyond any reasonable doubt.*



10.2 We may also make a reference to a decision of this Court in *C. Chenga Reddy V. State of A.P.*<sup>9</sup>, wherein it has been observed that :  
(Scc pp 206-07, Para 21)

“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.”

(emphasis supplied)

11. Upon thorough application of the above settled law on the facts of the present case, we hold that the circumstantial evidence against the present appellant i.e. A-2 does not conclusively establish the guilt of A-2 in committing the murder of the deceased children. The last seen theory, the arrest of the accused, the recovery of material objects and the call details produced, do not conclusively complete the chain of evidence and do not establish the fact that A-2 committed the murder of the children of PW5. Additionally, the argument of the respondent that the call details produced relating to the phone used by A-1 and A-2 have established that they shared an intimate relationship and that this relationship became the root cause of offence is also unworthy of acceptance.

12. xxxx

13. *When a conviction is based solely on circumstantial evidence, such evidence and the chain of circumstances must be conclusive enough to sustain a conviction. In the present case, the learned counsel for the appellant has argued that conviction of A-2 could not just be upheld solely on the ground that the prosecution has established a motive via the call records. However, we hold that not only is such conviction not possible on the present scattered and incoherent pieces of evidence, but that the prosecution has not even established the motive of the crime beyond reasonable doubt.*

14. *xxx*

15. *xxx*

16. *xxx*

17. *xxx*

18. *In a case where the conviction is solely based on circumstantial evidence, such inconsistencies in the testimonies of the important witnesses cannot be ignored to uphold the conviction of A-2, especially in light of the fact that the High Court has already erred in extrapolating the facts to infer a dubious conclusion regarding the existence of a motive that is rooted in conjectures and probabilities.*

19. *xxx*

20. *xxx*

21. *xxx*

22. *In light of the above, the electronic evidence produced before the High Court should have been in accordance with the statute and*

*should have complied with the certification requirement, for it to be admissible in the court of law. As rightly stated above, oral evidence in the place of such certificate, as is the case in the present matter, cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law.*

*23. To conclude, the tripod stand of motive, last seen theory and recovery, that supported the conviction of A-2 according to the High Court, is found to be non-conclusive and the evidence supporting the conviction of A-2 is marred with inconsistencies and contradictions, thereby making it impossible to sustain a conviction solely on such circumstantial evidence.*

30. In the light of above, in the present case, according to evidence of PW-3 and PW-9, they saw the appellant with deceased at around 10.30 AM and after that Sandhya Nag (PW-3) saw that the door of the deceased was locked. Lalita Bai Markam (PW-9) has also stated that when she was going to field to work then she saw the appellant with deceased. Further, PW-9 has stated at evening time when Rajendra Chhati (PW-8), son-in-law of the deceased, had ringed her then she went to the house of deceased but the house was locked. When the evidence of these witnesses examined with the dehati merg intimation (Ex.P-24), this Court finds that the deceased was found dead on

28.07.2018 at about 10.00 AM. The evidence of aforesaid witnesses makes it crystal clear that they had seen the appellant with deceased on 27.07.2018 and next day i.e on 28.07.2018 at around 10.00 AM, the deceased was found dead. There is a huge gap (one day) between the last seen and death of deceased and the possibility of third person coming in between the period cannot be excluded and PW-3 and PW-9 cannot be treated as witnesses to last seen. It is also clear from the spot map (Ex.P-17), that lock and key were lying on the spot. It is not the case of the prosecution that key was seized from the possession of the appellant and it is also not proved by the prosecution that SIM recovered vide seizure memo Ex.P-3, was the SIM of deceased's phone. Santosh Mishra (PW-21), Investigating Officer, had written a letter (Ex.P-43) to IDEA mobile company and produced call details under Ex.P-44 to P-45 but to prove the call details, the prosecution has not examined any officer of the mobile company. That apart, the prosecution has also failed to prove this fact that recovered SIM was belonged to deceased's mobile and as per the spot map, the broken mobile was also seized from the spot under Ex.P-8. Furthermore, according to the evidence of PW-7, her husband called the deceased over mobile phone and had conversation with the appellant on the date of incident

but merely on the ground of conversation with the appellant on the date of incident is not sufficient to hold him guilty in absence of any substantive piece of evidence. The evidence of seeing appellant with deceased on the date of incident is not very conclusive in nature and merely on the basis of evidence of PW/3, PW/7, and PW/9, it cannot be said with certainty that it is the appellant who has committed murder of the deceased. We are not very much impressed by the evidence of these witnesses for the reason that they (PW/3 and PW/9) have simply stated that they saw the appellant with deceased and there is huge time gap between the last seen and death of deceased. Thus, these witnesses cannot be treated as a witness of last seen. The learned trial Court only on this ground that one day prior to the incident, the appellant was seen with the deceased and he did not offer any plausible explanation that when he parted the company of appellant, convicted the appellant but the name of appellant does not find place either in dehati merg intimation (Ex.P-24) or FIR (Ex.P-34). The date of lodging an FIR is 31.07.2018 and the police recorded the statement of witnesses namely Shikha Archana Yadav (PW-4) on 09.10.2018, Sandeep Kumar Nag (PW-6) on 25.08.2018, Lalita Markam (PW-9) on 08.10.2018, Ram Bai (PW-10) on 21.09.2018 and Lakhan Chandravanshi (PW-13) on

21.09.2018, which makes it crystal clear that theory of last seen came into play after one month of recording of FIR. Therefore, the finding of the trial Court accepting testimony of these witnesses for the purpose of last seen is not justified. Furthermore, though the facts involved in the case and the evidence on record give rise to the suspicion about the involvement of the accused/appellant in the crime in question, but in a series of cases it has been held by the Apex Court that howsoever strong the needle of suspicion moves, it cannot take the place of the evidence. One such judgment of the Apex Court dealing with this fact is *Commissioner of Police, Delhi & Others V. Jai Bhagwan*<sup>10</sup>.

31. The Supreme Court in the matters of *Sattatiya @ Satish Rajanna Kartalla V. State of Maharashtra, (2008) 3SCC 210* and *Sharad Birdhichand Sarda V. State of Maharashtra [(1984) 4 SCC 116]* has held that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave

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<sup>10</sup> 2011 (6) SCC 376

any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.

32. Thus, considering the quality of evidence collected by the prosecution, this Court is of the opinion that conviction of the accused/appellant under Sections 302, 376 and 201 IPC is not based on due appreciation of the evidence available on record and that being so he is entitled for benefit of doubt. Consequently, the judgment impugned convicting the accused/appellant under Sections 302, 376 and 201 IPC is set aside and he is hereby acquitted of the charges levelled against him. The appellant is already on bail. His bail bonds shall remain operative for a period of six months in view of Section 481 of BNSS.
33. Appeal is thus allowed.

**Sd/-**

**(Rajani Dubey)**  
**JUDGE**

**Sd/-**

**(Sachin Singh Rajput)**  
**JUDGE**