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Delivered on:- 23.07.2026  
A.F.R.



**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**CRIMINAL APPEAL No.372 of 2018**

Neerajpal

.....Appellant

Versus

State of U.P.

.....Respondents(s)

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|---------------------------|---|------------------------------------------------------------------------------------------------------------------------|
| Counsel for Appellant(s)  | : | Krishna Kumar Singh, Ankit Kumar Trivedi, Anuj Dayal, Manisha Trivedi, Mohammad Salim Khan, Rajat Pratap Singh, Smriti |
| Counsel for Respondent(s) | : | S.P. Singh, A.G.A.                                                                                                     |

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**Court No. - 9**

**HON'BLE RAJESH SINGH CHAUHAN, J.  
HON'BLE RAJEEV BHARTI, J.**

**(Per: Rajeev Bharti, J)**

1. The instant Criminal Appeal under Section 374(2) Cr.P.C. has been filed against the Judgment and Order dated 16.11.2017, passed by the learned Additional Sessions Judge/Fast Track Court, Hardoi passed in S.T. No.236 of 2012, arising out of Case Crime No.958 of 2011, Police Station- Pihani, District- Hardoi, convicting and sentencing the appellant to undergo life imprisonment under

Section 302 I.P.C. with a fine of Rs.20,000/- and in default of payment of fine to further undergo one year simple imprisonment. The appellant was further convicted and sentenced to undergo imprisonment for ten years with a fine of Rs.5000/- under Section 376 I.P.C. and in default of payment of fine to further undergo six months' simple imprisonment. The appellant was further convicted and sentenced to undergo three years with a fine of Rs.3000/- under Section 201 I.P.C. and in default of payment of fine to further undergo two months' simple imprisonment. All the sentences were ordered to run concurrently. However, co-accused, namely, Pappu @ Chandrapal was acquitted from all the charges by the learned Trial Court.

**Factual matrix of the case**

2. On 30<sup>th</sup> October 2011 at about 2:00 P.M., the deceased, a minor girl aged about 14 years', daughter of the complainant Amar Pal, resident of Village Khijir Nagar, Police Station Pihani, District Hardoi, went to the agricultural field to collect fodder (*chara*). When she did not return home till evening, her father – Amar Pal (P.W.1) along with other villagers, started searching for her. During the search, Pradeep Kumar (P.W.2) and Manoj Kumar (P.W.3) informed the informant that they had last seen the deceased cutting grass in the field of Ram Kumar where the accused Neerajpal and Pappu @ Chandrapal were allegedly roaming nearby.

3. The search party thereafter proceeded towards the place indicated by the said witnesses. Near the sugarcane field of Ram Kumar, they allegedly found a hairband, a pair of slippers belonging to the deceased, a brown colour purse containing the driving licence of accused – Neerajpal and a mobile phone. While continuing the search, they noticed the dupatta of the deceased lying nearby pond. Upon entering the pond, the dead body of the deceased was recovered. It was alleged that after committing rape and murder, the accused persons had concealed the dead body in the pond with an intention to hush up the matter.
4. On the basis of written report, submitted by Amar Pal (P.W.1), Case Crime No.958 of 2011, under Sections 302, 201, 376 I.P.C. was registered at Police Station Pihani, District- Hardoi against accused- Neerajpal and Pappu @ Chandrapal. The Investigating Officer conducted the inquest proceedings, prepared the necessary police papers and sent the dead body for post-mortem. During investigation, the Investigating Officer prepared the site plan, collected the articles allegedly recovered from the place of occurrence and recorded the statements of the witnesses under Section 161 Cr.P.C. The post-mortem examination disclosed ante-mortem injuries on the neck and private parts of the deceased. The cause of death was opined to be asphyxia as a result of throttling. Vaginal smear slides and swabs were collected and preserved for forensic examination.

5. During the course of investigation, accused- Neerajpal and co-accused Pappu @ Chandrapal were arrested on 02.11.2011, it is alleged that on the pointing out of accused- Neerajpal, his pant and slippers were recovered from the sugarcane field. Blood samples of both the accused were thereafter collected for D.N.A. profiling under Section 53-A Cr.P.C. and were forwarded to the Forensic Science Laboratory for examination. After completion of investigation, the Investigating Officer submitted charge sheet against both the accused for offences punishable under Sections 376, 302 and 201 I.P.C. The case being exclusively triable by the Court of Sessions, hence it was committed to the Court of Sessions, where charges were framed against the accused-persons. The accused denied the charges and claimed trial.
6. To establish the case, the prosecution examined twelve witnesses and proved the documentary evidence including the tahrir, chik FIR, recovery memos, inquest report, site plan, post-mortem report, medical evidence, DNA related documents and the report of the Forensic Science Laboratory. Upon submission of the prosecution evidence, the statements of the accused under Section 313 Cr.P.C. were recorded wherein they denied the prosecution allegations, pleaded false implication and asserted that false evidence had been fabricated against them in connivance with the police.
7. After appreciating the oral and documentary evidence on record, the learned Trial Court by judgment and order dated 16.11.2017

convicted the appellant- Neerajpal under Sections 302, 376 and 201 I.P.C. and sentenced him accordingly, while co-accused Pappu @ Chandrapal has been acquitted from the charges on the above mentioned sections. Aggrieved thereby, appellant- Neerajpal preferred the present appeal before this Court.

**Deposition of Prosecution Witnesses and Defence Witnesses**

8. Amar Pal (P.W.1), the informant and father of the deceased, deposed that on 30.10.2011 at about 2:00 P.M., his minor daughter (deceased) had gone to the field situated towards the western side of the village for cutting fodder (*chara*), as she did not return till evening, he along with other villagers started searching for her. During the search, Pradeep Kumar (P.W.2) and Manoj Kumar (P.W.3) informed him that they had seen the accused Neerajpal and Pappu @ Chandrapal near the place where the deceased was cutting fodder. Thereafter, the slippers of the deceased, a purse containing the driving licence of the accused-Neerajpal and one G-9 mobile phone were allegedly recovered from the sugarcane field of Ram Kumar, while the dead body of the deceased was recovered from the nearby pond. He proved the written report -Tahrir (Ext.Ka-1), recovery memo and identified the material exhibits. In his cross-examination, he admitted that he had not himself seen either of the accused with the deceased or committing the offence and that the allegations in the FIR were founded upon the information given by Pradeep Kumar (P.W.2) and Manoj Kumar (P.W.3).

9. Pradeep Kumar (P.W.2) deposed that while returning from his field along with Manoj Kumar (P.W.3) at about 2 -3 P.M., he had seen the deceased cutting fodder and the accused Neerajpal and Pappu @ Chandrapal roaming nearby. Later, when the deceased could not be traced, he informed the informant about the presence of both the accused near the place of occurrence. During cross-examination, he admitted that the informant was his real uncle. He was subjected to lengthy cross-examination, wherein several omissions and inconsistencies regarding the occurrence, the clothes worn by the deceased and the surrounding circumstances were brought on record.
10. Manoj Kumar (P.W.3) did not support the prosecution case. He categorically stated that he was not present in the village on the date of occurrence, had not seen the deceased or the accused near the field and had never furnished any such information to the informant. He denied this statement regarding under Section 161 Cr.P.C. and was declared hostile by the prosecution.
11. Kamal Kishore (P.W.4) also denied his earlier statement and also denied having witnessed the accused carrying the body of the deceased or throwing it into the pond. He further denied witnessing the alleged recovery of the clothes of accused Neerajpal and stated that his signatures had been obtained on blank papers. He was also declared hostile by the prosecution.

12. Ramasarey (P.W.5), a witness to the recovery memo and inquest proceedings, did not support the prosecution. He denied the alleged recoveries and asserted that his signature had been obtained on blank papers. He further denied having made any statements to the Investigating Officer implicating the accused and was declared hostile.
13. Vijay Kumar (P.W.6), in whose name the Airtel SIM card recovered from the mobile phone was allegedly issued, denied having obtained the SIM card or having handed it over to the accused- Neerajpal. He also denied knowing the accused and was declared hostile by the prosecution.
14. Dr. Amarjeet Singh Ajmani (P.W.7), who conducted the post-mortem examination, found ante-mortem injuries over the neck and extensive injuries on the private parts of the deceased. He opined that the cause of death was asphyxia resulting from ante-mortem strangulation; vaginal swabs and slides were preserved for microscopic examination and D.N.A. analysis. In his cross-examination, he stated that the time of death could also be consistent with the night of 30.10.2011 and admitted that no mud, moss or water hyacinth was found on the body.
15. S.I. Chheda Lal (P.W.8) proved the inquest proceedings and the related documents. He stated that panchnama was prepared and the dead body was sent for post-mortem. During cross-examination,

he admitted that the name of the accused did not find place in the inquest papers and that the panchnama proceedings were conducted at the residence of the informant.

16. Dr. Praveen Kumar (P.W.9) corroborated the evidence of P.W.7 regarding the post-mortem examination and proved the collection of vaginal swabs and blood samples of both accused for D.N.A. profiling. During cross-examination, he admitted that the blood samples had actually been drawn by a Laboratory Technician and also stated that delay in testing could adversely affect the integrity of the samples.
17. S.I. Sarvendra Nath Bargah (P.W.10), the Investigating Officer deposed regarding the registration of the case, inspection of the place of occurrence, preparation of site plans, recovery of the articles from the spot, arrest of both the accused, recovery of clothes at the instance of the accused- Neerajpal, dispatch of exhibits for forensic examination and submission of charge sheet. In cross-examination, he admitted that there was no eye-witness to the occurrence, that the exact place and time of the incident could not be ascertained during investigation and that nothing incriminating was recovered from the accused- Chandrapal. He further admitted that no effort was made to verify the ownership of the recovered clothes or to establish the connection of the recovered mobile phone with accused Neerajpal through independent evidence.



18. S.I. Raghvendra Singh (P.W.11) proved the chik FIR and corresponding general diary entries relating to registration of the case. During cross-examination, he admitted that the special report submitted before the Court of Chief Judicial Magistrate on 09.11.2011 and relevant column regarding dispatch from the police station did not mention the date of dispatch.
19. Kamlesh Kumar (D.W.1), examined in defence, deposed that there existed political rivalry between the families of the informant and accused– Pappu @ Chandrapal, arising out of Block Development Committee Elections. According to him, ever since the said election, relations between the two groups had remained strained, resulting in false implication of the accused due to previous enmity.

**Submissions of learned counsel for the appellant**

20. Learned counsel for the appellant vehemently assailed the judgment and order of conviction, passed by the learned Trial Court, contending that the same is contrary to the evidence available on record and suffers from serious factual as well as legal infirmities. It has been submitted that the prosecution has utterly failed to establish a complete and unbroken chain of circumstances so as to bring the guilt of the appellant beyond all reasonable doubts. The conviction, it was urged, rests mainly on suspicion and conjectures which can never substitute legal proof.

21. It was further submitted that the entire prosecution case hinges upon the evidence of the alleged last seen witness, namely, Pradeep Kumar (P.W.2), who is admittedly a close relative of the informant and, therefore, an interested witness. His testimony, according to the learned counsel, is replete with material contradictions, inconsistencies and improvements, rendering it wholly unreliable. It was argued that the only other alleged last seen witness, Manoj Kumar (P.W.3), did not support the prosecution case and was declared hostile. In the absence of trustworthy corroboration, the testimony of Pradeep Kumar (P.W.2) could not have been made the sole basis for recording conviction. Learned counsel further contended that the alleged recoveries relied upon by the prosecution did not inspire confidence. The recovery witness, namely, Kamal Kishore (P.W.4) and Ramasarey (P.W.5), turned hostile and denied the alleged recoveries. The independent recovery witness was withheld by the prosecution without any explanation. It was submitted that the alleged recovery of the driving licence and mobile phone from the place of occurrence and the subsequent recovery of the clothes at the instance of appellant- Neerajpal were not proved in accordance with law and could not be treated as incriminating circumstances against the appellant.
22. It was next submitted that the prosecution failed to establish any nexus between the recovered mobile phone and the appellant -Neerajpal. Vijay Kumar (P.W.6), in whose name the SIM card

was allegedly issued, completely disowned the prosecution case and was declared hostile. Despite obtaining the call detail records, the Investigating Officer failed to examine any witness or produce any material connecting the mobile phone or SIM card with appellant- Neerajpal. Consequently, the alleged recovery of the mobile phone loses all evidential significance.

23. Learned counsel for the appellant further submitted that the investigation suffers from grave lapses. No eye witnesses to the occurrence were found during investigation. The Investigating Officer himself admitted that the exact place and time of occurrence could not be ascertained. It was also submitted that the FIR was forwarded/produced before the court of the learned Chief Judicial Magistrate after an unexplained delay, the inquest proceedings suffered from material irregularities, and the prosecution failed to establish who had actually recovered the dead body from the pond. These serious lapses, according to the learned counsel, cast a substantial doubt on the fairness of the investigation and the genuineness of the prosecution story. Learned counsel also questioned the evidentiary value of the D.N.A. evidence by submitting that the prosecution failed to prove the chain of custody of the biological samples beyond doubt. It was urged that the blood samples were actually obtained by the Laboratory Technician, who was never examined, and the prosecution failed to establish that the samples remained intact throughout the process. The learned Trial

Court, therefore, erred in placing implicit reliance upon the D.N.A. report without first satisfying itself about the sanctity of the sampling and forwarding procedure.

24. She further pointed out that the guidelines laid down by Hon'ble the Apex Court in *Attavellai @ Devakar v. State of Tamil Nadu*, reported in 2025 INSC 845, are mandatory in nature and are required to be followed strictly to ensure the integrity and sanctity of the chain of custody of D.N.A. evidence. It is submitted that the Hon'ble Supreme Court, while expressing concern over the absence of a uniform procedure for handling D.N.A. evidence, has issued comprehensive directions to be followed in all cases involving DNA evidence. The relevant paragraphs are reproduced below:-

*“44. This lack of a common procedure to be followed is concerning. As such, we issue the following directions, which shall be followed henceforth, in all cases where DNA Evidence is involved-*

*1. The collection of DNA samples once made after due care and compliance of all necessary procedure including swift and appropriate packaging including a) FIR number and date; b) Section and the statute involved therein; c) details of I.O., Police station; and d) requisite serial number shall be duly documented. The document recording the collection shall have the signatures and designations of the medical professional present, the investigating officer and independent witnesses. Here only we may clarify that the absence of independent witnesses shall not be taken to be compromising to the collection of such evidence, but the*

*efforts made to join such witnesses and the eventual inability to do so shall be duly put down in record.*

*2. The Investigating Officer shall be responsible for the transportation of the DNA evidence to the concerned police station or the hospital concerned, as the case may be. He shall also be responsible for ensuring that the samples so taken reach the concerned forensic science laboratory with dispatch and in any case not later than 48-hours from the time of collection. Should any extraneous circumstance present itself and the 48-hours timeline cannot be complied with, the reason for the delay shall be duly recorded in the case diary. Throughout, the requisite efforts be made to preserve the samples as per the requirement corresponding to the nature of the sample taken.*

*3. In the time that the DNA samples are stored pending trial appeal etc., no package shall be opened, altered or resealed without express authorisation of the Trial Court acting upon a statement of a duly qualified and experienced medical professional to the effect that the same shall not have a negative impact on the sanctity of the evidence and with the Court being assured that such a step is necessary for proper and just outcome of the Investigation/Trial.*

*4. Right from the point of collection to the logical end, i.e., conviction or acquittal of the accused, a Chain of Custody Register shall be maintained wherein each and every movement of the evidence shall be recorded with counter sign at each end thereof stating also the reason therefor. This Chain of Custody Register shall necessarily be appended as part of the Trial Court record. Failure to maintain the same shall render the I.O. responsible for explaining such lapse.*

25. Lastly, it was submitted that the learned Trial Court failed to appreciate the defence evidence in its proper perspective. Kamlesh Kumar (D.W.1) established the existence of previous political rivalry between the family of the informant and the accused, thereby lending support to the defence plea of false implication. It was, therefore, urged that the prosecution having failed to prove its case beyond reasonable doubt, the impugned judgment of conviction and sentence is liable to be set aside and the appellant-Neerajpal deserves to be acquitted of all the charges.

**Submission of learned A.G.A.**

26. Per contra, Sri S.P. Singh, learned A.G.A. appearing for the State supported the impugned judgment and order of conviction and submitted that the learned Trial Court has rightly appreciated the oral as well as documentary evidence available on record and has recorded the conviction upon due consideration of the entire material. It was contended that the findings recorded by the learned Trial Court are based upon cogent evidence and do not suffer from any perversity, illegality or manifest error warranting interference by this Court in exercise of its appellate jurisdiction.
27. Learned A.G.A. submitted that the prosecution has successfully established a complete chain of circumstantial evidence pointing unerringly towards the guilt of the appellant. According to him, the evidence of Pradeep Kumar (P.W.2), who had last seen the appellant in the vicinity of the place where the deceased was cutting

fodder, shortly before her disappearance, constitutes a vital circumstance. Merely because Pradeep Kumar (P.W.2) is a relative of the informant, his testimony cannot be discarded, particularly when it inspires confidence and withstands the test of cross-examination.

28. It was further submitted that the recoveries effected during the course of investigation, namely, the purse containing the driving licence of the appellant- Neerajpal and mobile phone recovered from the place of occurrence and the subsequent recovery of the clothes of appellant- Neerajpal at his pointing out, constitute incriminating circumstances corroborating the prosecution case. These recoveries read conjointly with the medical and forensic evidence, complete the chain of circumstances establishing the complicity of the appellant beyond reasonable doubt.
29. Learned A.G.A. further contended that the post-mortem report clearly establishes that the deceased had been subjected to forcible sexual assault and had died due to ante-mortem strangulation. The D.N.A. evidence also lends scientific corroboration to the prosecution version and was rightly relied upon by the learned Trial Court. It was submitted that there is no material on record to doubt the authenticity or reliability of the forensic evidence.
30. Learned A.G.A. further submitted that even assuming certain omissions or irregularities had occurred during the investigation, the same cannot by themselves constitute a ground for acquittal

when the substantive evidence adduced by the prosecution otherwise inspires confidence. It was argued that defects in investigation cannot eclipse otherwise reliable and trustworthy evidence, nor can they enure to the benefit of the accused where the prosecution has otherwise succeeded in proving its case beyond reasonable doubt. Learned A.G.A., therefore, submitted that the impugned judgment is well reasoned and based upon a proper appreciation of evidence on record. It was accordingly prayed that the appeal being devoid of merit be dismissed and the conviction and sentence awarded by the learned Trial Court be affirmed.

### Analysis

31. We have given our thoughtful consideration to the rival submissions advanced by the learned counsel for the parties and have meticulously perused the entire evidence available on record, including the oral and documentary evidence, the medical and forensic evidence, the impugned judgment and the record of the Trial Court.
32. At the outset, it is apposite to note that the present case is admittedly based entirely on circumstantial evidence, there being no eye-witness to the occurrence. It is equally undisputed that the conviction of the appellant was, presumably, based upon three incriminating circumstances, namely, (i) the evidence relating to the last seen theory; (ii) the recoveries allegedly effected during the course of investigation and (iii) the D.N.A./forensic evidence. The



correctness of the findings recorded by the learned trial court, therefore, has to be examined in the light of the settled principles governing a case resting solely upon circumstantial evidence.

33. It is well settled that, in a case based upon circumstantial evidence, every incriminating circumstance relied upon by the prosecution must be fully established, all such circumstances must form a complete and unbroken chain pointing only towards the guilt of the accused and the chain must be of such a conclusive nature as to exclude every hypothesis consistent with the innocence of the accused. Suspicion, however raised, cannot take the place of legal proof, nor can conviction be founded upon conjectures or surmises. The prosecution must stand on the strength of its own evidence and cannot derive advantage from any witness in the defence.
34. In the present case, the prosecution seeks to establish the guilt of the appellant primarily on the basis of the testimony of Pradeep Kumar (P.W.2), who is sole witness supporting the prosecution on the aspect of the last seen circumstance, inasmuch as Manoj Kumar (P.W.3), who was cited as another witness to the same circumstance, did not support the prosecution case and was declared hostile. Likewise, the prosecution has relied upon the alleged recovery of driving licence and mobile phone from the place of occurrence and the subsequent recovery of the clothes of appellant- Neerajpal, besides placing reliance upon the medical and D.N.A. evidence. Whether these circumstances have been

satisfactorily proved and whether they collectively constitute a complete chain of circumstances is the principal issue requiring determination in the present appeal.

35. Accordingly, the evidence adduced by the prosecution shall now be examined under the following heads:-

(i) Whether the prosecution has successfully established the “last seen” circumstances.

(ii) Whether the recoveries allegedly effected during investigation inspire confidence and can be treated as incriminating circumstances.

(iii) Whether the medical and D.N.A. evidence conclusively connects the appellant with the commission of the offence.

(iv) Whether the cumulative effect of the proved circumstances constitute a complete chain excluding every hypothesis other than the guilt of the appellant.

**Whether the prosecution has successfully established the “last seen” circumstances**

36. The first and foremost circumstance relied upon by the prosecution is the “last seen theory” which forms the foundation of the prosecution case. The learned Trial Court has substantially found the conviction of the appellant on the testimony of Pradeep Kumar (P.W.2), treating him as a principal witness of the last seen

circumstances. Since the present case relies entirely upon circumstantial evidence, it becomes necessary to examine the credibility and evidentiary value of his testimony with greater care and caution. It is noteworthy that Pradeep Kumar (P.W.2) is the only witness who has supported the prosecution on the aspect of the “last seen” theory as Manoj Kumar (P.W.3) who was cited as another witness to the same circumstance, as completely resiled from the prosecution case and was declared hostile. Thus, the entire prosecution case so far as the “last seen” circumstance is concerned, relies solely upon the testimony of Pradeep Kumar (P.W.2). A careful reading of the evidence of Pradeep Kumar (P.W.2) reveals that he is admittedly the nephew of the informant- Amarpal and the deceased was his cousin, but merely because the witness is related to the deceased, his testimony cannot be discarded solely on that ground. The settled position of law is that the evidence of a related witness is not inadmissible; however, it is required to be scrutinized with greater care and caution. If upon such scrutiny, the testimony is found to be cogent, trustworthy and inspire confidence, it can safely be relied upon. Conversely, where a material contradiction or inherent improbabilities exist, the Court must seek independent corroborations before acting upon such evidence; in this regard, reliance may be placed upon a judgment of Hon’ble Apex Court in the case of **State of U.P. vs. Kishanpal & Ors**, reported in (2008) 16 SCC 73, relevant para are being reproduced below: -

*“18. The plea of defence that it would not be safe to accept the evidence of the eye witnesses who are the close relatives of the deceased, has not been accepted by this Court. There is no such universal rule as to warrant rejection of the evidence of a witness merely because he/she was related to or interested in the parties to either side. In such cases, if the presence of such a witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of the surrounding circumstances and probabilities of the case to be true, it can provide a good and sound basis for conviction of the accused. Where it is shown that there is enmity and the witnesses are near relatives too, the Court has a duty to scrutinize their evidence with great care, caution and circumspection and be very careful too in weighing such evidence. The testimony of related witnesses, if after deep scrutiny, found to be credible cannot be discarded.*

*19. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness, if otherwise the same is found credible. The witness could be a relative but that does not mean his statement should be rejected. In such a case, it is the duty of the Court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested witness.*

*20. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be*

*judged by the court to place credence on the statement. The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. Relationship is not a factor to affect 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. A foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible.*”

*(Emphasis supplied)*

37. Furthermore, it is important to mention that even in the case of an interested witness, the corroboration is done by the rule of prudence, not by the rule of law, as in a similar instance is taken by the Apex court in the case ***Sarwan Singh vs. State of Punjab reported in (1976) 4 SCC 369***, relevant para are being reproduced below: -

*“10. The next argument by learned Counsel for the appellants was that the evidence of the eye-witnesses consisted of partisan evidence and should not, therefore, be relied upon, particularly because the evidence showed that there were two opposing factions in the village - one led by the deceased and the other by the accused. Mr. Hardy, however, fairly conceded that even though the eye-witnesses may have belonged to the group of the deceased there was nothing to show that the two groups were on inimical terms with each other, but he contended that the fact that the witnesses came from one particular group was by itself sufficient to show the interested nature of the evidence. In our opinion this argument is not based on a*

*correct appreciation of the evidence. To begin with, it cannot be said that P.W. 8 Gurdev Singh and P.W. 9 Pal Singh were interested or partisan witnesses. All that the accused have been able to show is that P.W. 8 Gurdev Singh was on visiting terms with the deceased. In villages where population is scanty every villager is usually on visiting terms with another villager, unless there is animus between them. That by itself is not sufficient to label him as being a partisan witness. So far as P.W. 9 Pal Singh is concerned, there is positive evidence to show that he was not at all an interested witness but was a completely independent witness P W. 2 Ajaib Singh the first eye-witness has stated at page 40 of Paner Book No. II that Pal Singh was not on visiting terms with Jit Singh prior to the occurrence. When Mr Hardy drew our attention to this statement he seemed to suggest that the word "not" was printed by mistake and what really was recorded by the Judge was that Pal Singh was on visiting terms with Jit Singh We have, however, perused the original record and we find that the word "not" is present there also. What has happened is that the word "on" after "not" seems to have been inadvertently omitted. But then the sentence read as a whole clearly indicates that Pal Singh was not on visiting terms with Jit Singh. There is no evidence to show that Pal Singh was in any way closely connected or interested in the deceased, apart from the fact that he was a co-villager. In these circumstances, even if the evidence of Ajaib Singh and Gurdev Singh be treated to be interested and partisan, since their evidence is corroborated by the evidence of Pal Singh who is an independent witness. The infirmity from which the evidence of P.W.2 Ajaib Singh and P.W.8 Gurdev Singh suffered disappears. Moreover, it is not the law that the evidence of an interested witness should be equated with that of tainted evidence or*

*that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the Courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the Court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration. Indeed there may be circumstances where only interested evidence may be available and no other, e.g. when an occurrence takes place at mid-night in the house when the only witnesses who could see the occurrence may be the family members. In such cases it would not be proper to insist that the evidence of the family members should be disbelieved merely because of their interestedness. We, however, need not dilate on this point, because assuming as we have said that P.W. 2 Ajaib Singh and P.W.8 Gurdev Singh were interested witnesses, here we have the fact that their evidence has been clearly and consistently corroborated on all points by P.W.9 Pal Singh who is an independent witness and who bore no animus whatsoever against the accused. The learned Additional Sessions Judge has, however, overlooked this important aspect of the case and we find no reason whatsoever to distrust the evidence of Pal Singh even on its intrinsic merit. We have carefully perused the evidence of P.W.2 Ajaib Singh. P.W.8 Gurdev Singh and P.W.9 Pal Singh and we are satisfied that their evidence is creditworthy and there are no strong or cogent reasons why their evidence should be completely discarded.”*

38. In the present case, Pradeep Kumar (P.W.2) was subjected to an extensive cross-examination. A close scrutiny of his disposition

discloses material inconsistencies and improvements on vital aspects of the prosecution case. During one part of his testimony, he stated that the deceased was wearing a *salwar-kurta* when he allegedly saw her cutting fodder, whereas during his subsequent deposition, he expressed his inability to state what the deceased was wearing. Likewise, there are inconsistencies regarding the implements allegedly being used by the deceased for cutting fodder and the surrounding circumstances in which the accused were allegedly seen. These are not minor discrepancies, attributable to lapse of memory, but relate to material facts forming the substratum of the prosecution case.

39. Another significant circumstance which weakens the prosecution case is that Pradeep Kumar (P.W.2) merely stated that he had seen the appellants roaming near the place where the deceased was cutting fodder. He did not depose that the deceased was in the exclusive company of either of the appellants or that they were seen proceeding together. The expression 'last seen' together supposes proximity of time and place, coupled with circumstances indicating that the deceased was last seen alive in the company of the accused. The evidence of Pradeep Kumar (P.W.2) falls short of satisfying this requirement. At best it establishes the presence of the appellant in the vicinity of the agricultural field, which by itself cannot construe the incriminating circumstances of last seen together. It is equally significant that the informant- Amarpal (P.W.1) admitted in



his cross-examination that he had not himself seen either of the appellant with the deceased nor had he witnessed the occurrence. The FIR was lodged solely on the basis of information allegedly furnished by Pradeep Kumar (P.W.2) and Manoj Kumar (P.W.3). Since Manoj Kumar (P.W.3) had not supported the prosecution, the very foundation of the FIR in so far as the 'last seen' circumstance is concerned, stands materially weakened.

40. The Hon'ble Apex Court has consistently held that the 'last seen' theory is a weak kind of evidence and cannot by itself form the sole basis of conviction unless it is supported by other incriminating circumstances, completing the chain of evidence. The evidentiary value of such a circumstance depends upon the proximity of time between the accused and the deceased being seen together and the recovery of the dead body coupled with reliable corroborative evidence. Where the evidence of 'last seen' witness itself is doubtful or suffers from material contradictions, it would be unsafe to sustain the conviction solely on that basis.

41. In the facts of the present case, we find that the testimony of Pradeep Kumar (P.W.2) does not inspire the daily of components required for sustaining a conviction in a case resting entirely on circumstantial evidence. His testimony suffers from material inconsistencies, lacks independent corroboration and is further weakened by the hostile testimony of Manoj Kumar (P.W.3), who was the only other witness of the alleged 'last seen' circumstances.

Consequently, the prosecution has failed to establish the last seen together circumstances beyond reasonable doubt. Accordingly, the first incriminating circumstance relied upon by the prosecution cannot be held to have been proved with the degree of certainty required in criminal jurisprudence.

**Whether the recoveries allegedly effected during investigation inspire confidence and can be treated as incriminating circumstances**

42. The second circumstance relied upon by the prosecution pertains to the recoveries allegedly effected during the course of investigation. The prosecution seeks to connect the appellants with the crime through two sets of recoveries. (i) The recovery made on 31.10.2011 from the place of occurrence comprising a pair of sleepers of the deceased, a hair band, a purse containing the driving licence of appellant- Neerajpal and a G-9 mobile phone and (ii) the recovery allegedly made on 02.11.2011 at the pointing out of appellant-Neerajpal comprising a pair of pants and a pair of local slippers. According to the prosecution, these recoveries constitute vital incriminating circumstances linking the appellant with the commission of the offence.
43. Having carefully scrutinized the evidence relating to the aforesaid recoveries, we find ourselves unable to concur with the findings recorded by the learned Trial Court.

44. The first recovery was allegedly witnessed by Amarpal (P.W.1), Ramasarey (P.W.5) and one Rambhajan. Significantly, Ramasarey (P.W.5), one of the attesting witnesses, did not support the prosecution and categorically denied that any recovery had been effected in his presence. He further deposed that his signature had been obtained on blank papers and denied having witnessed the seizure of the articles relied upon by the prosecution. He was, therefore, declared hostile.
45. Equally significant is the fact that Rambhajan, who was an independent witness of the alleged recovery, was not examined by the prosecution. No explanation whatsoever has been furnished for withholding this material witness. It is well settled that where independent witnesses to a recovery are available, but are not examined without any plausible explanation, the Court is required to examine the prosecution version with great circumspection, particularly when the remaining witness is an interested witness.
46. Consequently, the only witness supporting the first recovery is Amarpal (P.W.1), who is not only the informant, but also the father of the deceased. Although the testimony of a related witness cannot be discarded solely on account of his relationship where the recovery itself is disputed, and the independent witnesses have been withheld while another recovery witness has turned hostile, prudence demands corroboration from independent evidence, which is conspicuously absent in the present case. The prosecution

has further relied upon the recovery of a G-9 mobile phone allegedly belonging to the appellant – Neerajpal. However, this circumstance also does not withstand judicial scrutiny. The investigation revealed that the SIM card inserted in the said mobile phone was in the name of Vijay Kumar (P.W.6). When examined before the Court, Vijay Kumar (P.W.6) categorically denied having obtained the SIM card in question or having ever handed it over to the appellant-Neerajpal. He further denied even knowing the appellant and was declared hostile by the prosecution.

47. Though the Investigating Officer obtained the call detail records of the mobile phone, no efforts were made to establish that the mobile phone had actually been used by appellant- Neerajpal. Neither were the call detail records analysed, nor were any subscribers, contacts or other independent witnesses examined to connect the appellant with the alleged mobile phone. In the absence of any such evidence, the mere recovery of a mobile phone from the place of occurrence cannot be treated as an incriminating circumstance against the appellant.

48. The prosecution has also relied upon the recovery of the driving licence of the appellant- Neerajpal from the sugarcane field. While the presence of the driving licence at the place of occurrence may undoubtedly have given rise to the suspicion, suspicion, however strong, cannot constitute successful proof. Apart from the testimony of Amarpal (P.W.1), there is no independent evidence establishing

the manner in which the driving licence came to be recovered from the place of occurrence. Furthermore, the defence has seriously questioned this recovery, pointing to glaring contradictions. Amarpal (P.W.1) testified that the Investigating Officer, Sarvendra Nath Bargah (P.W.10), visited the accused's residence on 31.10.2011, the very day the inquest was conducted, and the first recovery was made. In contrast, Sarvendra Nath Bargah (P.W.10) himself stated that he went to the accused's house only on 01.11.2011. This inconsistency becomes crucial because the driving licence and other articles (claimed to be part of the first recovery on dated 31.10.2011) were allegedly recovered near the crime spot. Yet, the record does not disclose whether the Investigating Officer first visited the accused's house and thereafter proceeded to the crime scene, or vice versa. The absence of this sequence renders the recovery highly doubtful. If indeed the Investigating Officer went to the accused's house immediately after the inquest and then claimed recovery near the crime scene, the possibility of planting cannot be ruled out. This unexplained discrepancy undermines the credibility of the recovery and casts serious doubt on its authenticity.

49. The suspicion is further strengthened by other irregularities: Pradeep Kumar (P.W.2), the key "last seen" witness, had his statement recorded only after a delay of 7–8 days, despite his importance. It is needless to mention that the investigating officer,

while deposing in court, needs to explain the investigation process step by step; a similar view was taken by Hon'ble the Apex Court in the case of *Subhash Chand vs. the State of Rajasthan*, reported in (2002) 1 SCC 702, where the Apex Court clearly highlighted the importance of the investigating officer adducing evidence in court, explaining step by step how the investigation proceeded. The relevant para is being reproduced below :-

*26. Before parting with the case, we would like to place on record an observation of ours, touching an aspect of the case. There are clueless crimes committed. The factum of a cognizable crime having been committed is known but neither the identity of the accused is disclosed nor is there any indication available of the witnesses who would be able to furnish useful and relevant evidence. Such offences put to test the wits of an investigating officer. A vigilant investigating officer, well-versed with the techniques of the job, is in a position to collect the threads of evidence, finding out the path which leads to the culprit. The ends, which the administration of criminal justice serves, are not achieved merely by catching hold of the culprit. The accusation has to be proved to hilt in a court of law. The evidence of investigating officer given in the court should have a rhythm explaining step by step how the investigation proceeded leading to detection of the offender and collection of evidence against him. This is necessary to exclude the likelihood of any innocent having been picked up and branded as culprit and then the gravity of the offence arousing human sympathy persuading the mind to be carried away by doubtful or dubious circumstances, treating them as of 'beyond doubt' evidentiary value.*

50. In the absence of reliable corroboration and in view of the deficiencies noticed in the recovery proceedings, these circumstances by themselves cannot conclusively establish the involvement of the appellant in the commission of the offence.
51. So far as the second recovery on dated 02.11.2011 of a pant and a pair of slippers allegedly made at the pointing out of appellant- Neerajpal is concerned, the prosecution case suffers from similar infirmities. The alleged recovery witnesses – Manoj Kumar (P.W.3), Kamal Kishore (P.W.4) did not support the prosecution and were declared hostile. They denied witnessing any recovery and asserted that their signatures had been obtained on blank papers. Consequently, the only witness supporting the recovery is once again Amarpal (informant- P.W.1), whose testimony, for the reasons allegedly discussed, requires independent corroboration.
52. Moreover, the Investigating Officer admitted during cross-examination that the recovered clothes and slippers did not bear any distinctive identification marks. Although a tailor's label was stitched on the pants, no investigation was conducted to ascertain for whom the pants had been stitched or whether it belongs to the appellant- Neerajpal. Likewise, no forensic examination was conducted to connect the recovered articles with the crime. These omissions assume significance in a case resting entirely upon satisfactory evidence.

53. The recoveries relied upon by the prosecution suffer from serious evidentiary deficiencies. Material recovery witnesses have either turned hostile or have not been examined. No satisfactory independent corroboration had been adduced, and the prosecution has failed to establish an unbroken chain and unbroken nexus between the recovered articles and the appellant. Consequently, the alleged recoveries cannot be regarded as reliable incriminating circumstances capable of completing the chain of circumstantial evidence. We are, therefore, of the considered view that the prosecution has failed to prove the recoveries in the manner known to law, and the learned Trial Court was not justified in placing implicit reliance upon them for recording the conviction of the appellant.

**Whether the medical and D.N.A. evidence conclusively connects the appellants with the commission of the offence**

54. The next circumstance relied upon by the prosecution is the medical and forensic evidence, particularly, the post-mortem report and the D.N.A. report. There can be no dispute with the proposition that scientific evidence, when duly proved and supported by an unbroken chain of custody, constitutes a valuable piece of evidence. Equally well settled, however, is that such evidence not only establishes the commission of offence but must also conclusively connect the accused with its commission.



55. In the present case, Dr. Amarjeet Singh Ajmani (P.W.7), who conducted the post-mortem examination, found contusions over the neck, fractures on the hyoid bone, lacerations over the genital region and rupture on the hymen. He opined that the deceased had died due to asphyxia as a result of ante-mortem strangulation and that she had been subjected to forcible sexual intercourse prior to her death. Vaginal smear and slides were preserved for forensic examination and D.N.A. profiling. Thus, the medical evidence unequivocally established that the deceased was subjected to sexual assault and homicidal death. However, the crucial question before this Court is not whether rape and murder were committed, but whether the prosecution has succeeded in proving that it was the appellant who committed those offences.
56. Learned A.G.A. for the State has placed reliance upon the decision of Hon'ble the Apex Court in the case(s) of **Sandeep vs. State of U.P., (2012) 6 SCC 107** and **Santosh Kumar Singh vs. State, (2010) 9 SCC 747**.
57. To establish this link, the prosecution relied upon the D.N.A. evidence. Dr. Praveen Kumar (P.W.9) deposed that vaginal swab of the deceased and blood samples of both the accused were collected and forwarded for D.N.A. examination. He proved the relevant documents prepared in this regard. Nevertheless, during cross-examination he admitted that the blood samples had actually been drawn by a laboratory Technician whose name does not find

mention in the report and who was never examined before the Court. He further admitted that delay in testing biological samples could affect their integrity.

58. Furthermore, it is also important to point out that biological samples were collected from the deceased on 31.10.2011, while blood samples from the accused were obtained on 03.11.2011. Both sets of samples were forwarded to the Forensic Science Laboratory (FSL) on 05.11.2011. Thus, the samples remained in the custody of the police authority for approximately five days. However, neither oral testimony nor documentary evidence clarifies where the samples were deposited during this period, specifically whether they were kept in the *Maalkhana* or elsewhere. Surprisingly, the *Maalkhana-in-Charge* was not examined. The evidence on record further reveals that the prosecution has not examined any witness from the Forensic Science Laboratory to establish the manner in which the samples were received, preserved, analysed and examined. Moreover, it is important to place reliance on a decision of Hon'ble the Apex Court in the case of ***Rahul vs. State of Delhi, Ministry of Home Affairs & Anr. reported in (2023) 1 SCC 83.*** While dealing with the issue concerning the evidentiary value of DNA reports, it has been held that D.N.A. profiling reports cannot be admitted in evidence ipso facto under Section 293 Cr.P.C, and it is necessary for the prosecution to prove that the D.N.A. profiling techniques were reliably applied by the expert. The relevant

excerpts from the said judgment are reproduced herein below for the sake of ready reference: -

*“36. The learned Amicus Curiae has also assailed the forensic evidence i.e. the report regarding the D.N.A. profiling dated 18-4-2012 (Ext. P-23/1), giving incriminating findings. She vehemently submitted that apart from the fact that the collection of the samples sent for examination itself was very doubtful, the said forensic evidence was neither scientifically nor legally proved and could not have been used as a circumstance against the appellant accused. The Court finds substance in the said submissions made by the Amicus Curiae. The D.N.A. evidence is in the nature of opinion evidence as envisaged under Section 45 and like any other opinion evidence, its probative value varies from case to case.*

37. X X X X X X X

*38. It is true that PW 23 Dr B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ext. PW 23/A, however mere exhibiting a document would not prove its contents. The record shows that all the samples relating to the accused and relating to the deceased were seized by the investigating officer on 14-2-2012 and 16-2-2012; and they were sent to CFSL for examination on 27 2-2012. During this period, they remained in the malkhana of the police station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the trial court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably*

*applied by the expert. In the absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion.”*

*(Emphasis supplied)*

59. Furthermore, the most disturbing aspect of this case is that the expert who conducted the D.N.A. examination was not examined in evidence, and the D.N.A. report was merely exhibited in evidence by the Investigating Officer (PW-10), who undeniably is not connected with the report in any manner. It is important to reproduce the observation of the trial court regarding the DNA report; the relevant lines from the impugned judgment are being produced below: -

*“The investigation officer sent the sample to the forensic science laboratory, and it is clear from the forensic science laboratory report Exhibit A-25 that the source of the biological material present in the swab related to the deceased was found to be the same as that of the blood sample of accused Neerajpal and was not the same as that of the blood sample of accused Pappu alias, Chandrapal. Thus, the court comes to the conclusion that the deceased/victim was raped by the accused Neerajpal.”*

60. We are weighed down by melancholy to see this conclusion and the way the trial court put reliance on the D.N.A. report, without proper application of its judicial mind, when it was seen from the record that the *Maalkahana-in-Charge* was not examined, nor the person

who took the sample to FSL. Also, from perusal of the first D.N.A report, it appears that some biological material present in the swab related to the deceased was found to be the same as that of the blood sample of the accused Neerajpal. Nowhere is it written what this *biological material* was, which is why it was important to examine the D.N.A expert to explain these technical points. And based on these faulty observations, the trial court convicted the accused. This clearly shows a laconic trial procedure, which has led to the failure of a case involving the brutal rape and murder of an innocent girl child. Thus, in such circumstances, non-examination of the FSL expert is fatal for the prosecution's case. Furthermore, this Court is of the considered view that the prosecution's reliance on *Santosh Kumar Singh (supra)* and *Sandeep (supra)* is wholly misconceived and misplaced. In *Santosh Kumar Singh (supra)*, the prosecution had established an unbroken and duly proved chain of custody from the stage of sample collection to its deposit in the *Malkhana* and subsequent transmission to the Forensic Science Laboratory. The *Malkhana* register was produced in evidence to demonstrate the safe custody of the samples, and the D.N.A. expert was also examined to prove the integrity and authenticity of the forensic process. On the other hand, in *Sandeep (supra)*, the prosecution had satisfactorily explained every link in the chain of custody from the collection of the accused's sample until its receipt by the Forensic Science Laboratory. Therefore, both decisions were rendered on a factual foundation where the prosecution had successfully proved

the continuity and sanctity of the samples at every stage. In the present case, however, the prosecution has failed to establish such an unbroken chain of custody or account for the safe handling and transmission of the samples. Consequently, the reliance placed upon the aforesaid decisions is wholly misplaced, as they are clearly distinguishable on facts and do not advance the prosecution's case. Furthermore, the supplementary DNA report dated 11.12.2025, which was produced during the pendency of the appeals before this Court, we cannot accept it for the reason that before it can be accepted, we have to remand it back to the trial court for the recall of the scientific expert, Smt. Madhu Agnihotri, Scientific Officer, Forensic Science Laboratory, Prayagraj, who will prove this report. Once that is done, then the verified exercise for the supplementary questioning under Section 313 Cr.P.C. would take place. But, the question remains same that if we do that it will cause great prejudice to the accused, especially when he had already spent approximately 14 years in jail, as there is a limitation on remitting back to the trial court, the prosecution needs to be mindful in this regarding that there is a limitation for accepting certain evidence, in such situation the prosecution cannot, act on '*my life my rules*' principle. In this regard, it is pertinent here to place reliance on the decision of Hon'ble the Apex Court in the case of **Raj Kumar vs. State (NCT of Delhi)**, (2023) 17 SCC 95. The relevant paras are being reproduced below:-

*“22. The law consistently laid down by this Court can be summarised as under:*

*22.1. It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.*

*22.2. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.*

*22.3. The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.*

*22.4. The failure to put the material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.*

*22.5. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.*

*22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.*

*22.7. In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313CrPC.*

22.8. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.

27. Even assuming that the defect or irregularity was curable, the question is whether today, the appellant-accused can be called upon to explain the said circumstance. More than 27 years have passed since the date of the incident. Considering the passage of time, we are of the view that it will be unjust now at this stage to remit the case to the trial court for recording further statement of the appellant under Section 313CrPC. In the facts of the case, the appellant cannot be called upon to answer something which has transpired 27 years back. There is one more aspect of the matter which persuaded us not to pass an order of remand. The said factor is that the appellant has already undergone incarceration for a period of 10 years and 4 months.”

61. Tested on the anvil of the above-mentioned judgment of the Apex Court, from the record, it appears that the present appellant/accused has served 14 years of incarceration. In such circumstances, if we now remand back to the trial for examination of an expert Witness and further for the 313 CrPC proceedings, it will cause great prejudice to the appellant/accused. Hence, in such a situation, the prosecution cannot place its reliance on the second supplementary D.N.A. report. Likewise, no evidence has been adduced to establish the proper chain of custody of the biological exhibits from the time of their collection till their examination in the laboratory. In a case



where the conviction is sought to be founded substantially upon scientific evidence, strict proof of the integrity of the samples assumes considerable importance.

62. It is equally significant that the prosecution has failed to establish other independent incriminating circumstances connecting the appellants with the offence. As already discussed, the last seen circumstances have not been proved beyond reasonable doubt, and the recoveries relied upon by the prosecution do not inspire confidence. In such a situation, the D.N.A. evidence cannot be considered in isolation so as to sustain the conviction without independent corroboration.
63. The Hon'ble Apex Court has consistently held that D.N.A. evidence is highly reliable scientific proof; its evidentiary value depends upon strict proof of collection, preservation, sealing, transmission and examination of samples. Where doubts arise regarding the integrity of the sampling process or whether the surrounding circumstances failed to corroborate the forensic evidence, the Court is required to evaluate such evidence with due caution. In the present case, while the medical evidence conclusively proves that the deceased was raped and murdered, it does not by itself identify the perpetrators. The forensic evidence also cannot be treated as conclusive in the absence of satisfactory proof regarding the chain of custody and when the other circumstances relied upon by the prosecution failed to inspire

confidence. Consequently, the medical and D.N.A. evidence, though sufficient to establish the nature of the offence, does not conclusively connect the appellant with its commission beyond reasonable doubt. Accordingly, this circumstance also falls short of completing the chain of circumstantial evidence required for sustaining the conviction.

**Whether the cumulative effect of the proved circumstances constitute a complete chain excluding every hypothesis other than the guilt of the appellant**

64. Having examined each of the circumstances relied upon by the prosecution independently, it now falls for consideration whether (i) cumulatively they form a complete chain pointing unerringly towards the guilt of the appellant and excluding every hypothesis consistent with his innocence.
65. It is a settled principle of criminal jurisprudence that in a case resting solely on circumstantial evidence, these circumstances relied upon by the prosecution must be firmly established, for such circumstances must be consistent only with the hypothesis of the guilt of the accused, and the chain so formed must be so complete that it leaves no reasonable ground for a conclusion consistent with the innocence of the accused. If any one of the links in the chain is found to be missing or doubtful, the entire prosecution case necessarily fails.

66. In the present case, the prosecution has relied principally upon four circumstances, namely, (i) the alleged last seen circumstances; (ii) the recoveries effected during investigation; (iii) the medial and D.N.A. evidence and (iv) the conduct of the appellant.
67. As already discussed, the last seen circumstances rest solely upon the testimony of Pradeep Kumar (P.W.2), who is an interested witness. His testimony suffers from material contradiction and lacks independent corroboration, particularly when Manoj Kumar (P.W.3), the alleged last seen witness, has not supported the prosecution. Consequently, the first and the most vital link and the chain remains unproved.
68. Similarly, the recoveries relied upon by the prosecution fail to inspire confidence. The material witnesses to the recovery either turned hostile or were withheld without explanation. The prosecution failed to establish any satisfactory nexus between the recovered mobile phone and appellant- Neerajpal. Likewise, the recovery of the driving licence and the subsequent recovery of the clothes do not stand proved beyond reasonable doubt so as to constitute incriminating circumstances against the appellant.
69. The medical evidence undoubtedly establishes that the deceased was subjected to forcible sexual assault and homicidal death by strangulation. However, the medical evidence merely proves the *corpus delicti* and the nature of the offence; it does not identify the offenders. Likewise, although the prosecution has relied upon the

D.N.A. evidence, the deficiencies noticed in providing the chain of custody and absence of reliable corroborative circumstance render it untenable to treat the forensic evidence as conclusively proving the appellant's involvement.

70. Apart from the aforesaid circumstances, the prosecution has failed to establish any motive of such a compelling nature as would lend assurance to the prosecution story. No eye-witness to the occurrence has been produced. The Investigating Officer himself admitted that during investigation, no eye-witness could be found and even the exact place and time of occurrence could not be ascertained. These admissions further weaken the prosecution case. Another circumstance which cannot be overlooked is that the prosecution evidence suffers from material infirmities in the investigation itself, including the unexplained delay in forwarding the first information report to the Magistrate, hostile recovery witnesses, failure to examine a material independent witness and failure to establish an important link in the chain of circumstances. Though every defect in investigation may not necessarily enure to the benefit of the accused, where the prosecution case itself rests exclusively upon circumstantial evidence, such omissions assume considerable significance. Thus, when the entire evidence is appreciated as a whole, it becomes evident that the prosecution has failed to establish a continuous and unbroken chain of

circumstances leading only to the hypothesis of the guilt of the appellant.

71. On the contrary, the evidence leaves room for reasonable doubt and does not exclude every hypothesis consistent with innocence. In the considered opinion of this Court, the learned Trial Court fell into error in evaluating such circumstances in isolation and in treating suspicion as a substitute for proof. The cardinal principle that suspicion, however grave, cannot take the place of legal proof appears to have been overlooked while recording the conviction.
72. Accordingly, we hold that the incriminating effect of the circumstances proved by the prosecution falls short of the standard required for recording conviction in the criminal trial. The prosecution has failed to prove its case beyond reasonable doubt, and the appellant is entitled to the benefit of doubt. The conviction and sentence recorded by the learned Trial Court, therefore, cannot be sustained.
73. Having regard to the totality of the facts and circumstances of the case, we are of the considered view that the prosecution has failed to discharge its burden of proving the guilt of the appellant beyond reasonable doubt. The prosecution has also failed to ensure strict compliance with the mandatory safeguards governing the collection, preservation, transportation and documentation of the D.N.A. samples, thereby compromising the integrity of the chain of custody. In a case resting substantially on scientific evidence, such

lapses strike at the very root of the prosecution case and cannot be treated as mere procedural irregularities. The deficiencies cannot be permitted to be cured at the appellate stage, particularly when such a course would occasion serious prejudice to the appellant, who has already undergone approximately fourteen years of incarceration. In these circumstances, this Court is left with no option but to extend the benefit of doubt to the appellant.

74. Accordingly, the conviction and sentence of the appellant, Neerajpal, cannot be sustained, hence the judgment and order dated 16.11.2017, passed by the learned Additional Sessions Judge/Fast Track Court, Hardoi passed in S.T. No.236 of 2012, arising out of Case Crime No.958 of 2011, under Sections 302, 376 and 201 I.P.C., Police Station- Pihani, District- Hardoi are hereby set aside. The appellant is acquitted of all the charges by extending to him the benefit of doubt. The instant appeal is, accordingly, **allowed**.
75. The accused-appellant, namely, Neerajpal would be released forthwith unless he is wanted in any other case, subject to compliance of Section 437-A Cr.P.C. The amount of fine, if deposited, shall be refunded to the accused.
76. Trial court record along with copy of this judgment and order be transmitted to the court concerned forthwith.
77. Let a copy of this judgment be sent to the Jail Authorities concerned and the court concerned for compliance.

78. Since the issues noticed in the present case are not confined to the facts of this case alone and have wider ramifications for the conduct of criminal investigations and prosecutions involving scientific evidence, we deem it appropriate to direct that a copy of this judgment be forwarded to the Director General of Prosecution, Uttar Pradesh, who shall issue appropriate administrative instructions/circulars to all Public Prosecutors and prosecuting officers in the State to ensure strict compliance with the observations and guidelines contained herein.
79. A copy of this judgment shall also be forwarded to the Director General of Police, Uttar Pradesh, and to the Director, Forensic Science Laboratory, Uttar Pradesh, for ensuring strict adherence to the chain of custody requirements and the directions issued by the Hon'ble Supreme Court in **Attavellai @ Devakar (supra)**.
80. The Senior Registrar of this Court is requested to communicate a copy of this judgment to the aforesaid authorities for information and necessary compliance.
81. Before parting with the matter, we place on record our appreciation for the valuable assistance rendered by Ms. Manisha Trivedi, learned counsel appearing for the appellant, Sri S.P. Singh, learned A.G.A. and Mr. Saurabh Singh, Research Associate.

**(Rajeev Bharti, J.)      (Rajesh Singh Chauhan, J)**

**Order Date:- 23.07.2026**

Anand