

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 695 of 2020
With
R/CRIMINAL CONFIRMATION CASE NO. 2 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

Approved for Reporting	Yes	No

RAMESHBHAI BACHUBHAI VAIDHUKIYA
 Versus
 STATE OF GUJARAT & ANR.

Appearance:

MS URVASHI MEHTA FOR ASHWINI K MEHTA(9400) for the Appellant(s)
 No. 1

NOTICE SERVED for the Opponent(s)/Respondent(s) No. 2

MR BHARGAV PANDYA, APP for the Opponent(s)/Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 06/02/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. The death reference has come up before this Court for confirmation of a Death Sentence awarded to the appellant – sole accused – Ramesh Bachubhai Vadhukiya, by judgment dated 17.03.2020, passed in Special POCSO (Atro) Case No.28 of 2018, whereby, the Additional Sessions Court at Rajkot, has convicted the appellant accused for the following offences and sentenced as tabulated hereinunder:

Conviction under Section	Punishment	Fine	In default of fine
302 of IPC	Death Sentence	Rs.5,000/-	RI for 2 years
376(f)(n) of IPC	Death Sentence	Rs.5,000/-	RI for 2 years
363 of IPC	RI for 7 years	Rs.1,000/-	RI for 1 year

2. The appellant herein has also questioned the legality and correctness of the judgment of conviction and order of death sentence by preferring conviction appeal (Criminal Appeal No.695 of 2020).

3. The prosecution case, in nutshell, is that,

The appellant accused Ramesh Bachubhai was tried and prosecuted for the offence of rape and murder allegedly committed on 3 years old child. The child was kidnapped and then, taken to a secluded place of City Rajkot and to satisfy the lust of the accused, she was sexually abused and due to her screaming, the accused smashed her head with the floor and then, thrashed her face and head with the stone. The incident occurred on 09.02.2018 in the noon hours. The parents of the victim were labourers and when they were busy with their labour work, the accused secretly kidnapped the deceased child who was playing nearby the workplace and then, she was taken by the accused at the old I.I.T Hostel, PTC Ground at Rajkot and the building was in a dilapidated condition and taking advantage of the situation, the child was sexually abused and then, killed by the accused. The parents were in search of the child and in the

evening, they lodged a complaint with Thorada Police Station, Rajkot against the unknown person for kidnapping their child. At relevant time, the child had wear yellow frock and leggings and plastic bangles on her hands. On 11.02.2018, the dead body of the child was found and accordingly, the post-mortem on her body being conducted by PW.7 – Dr. Pratik Varu and according to his opinion, the cause of death was multiple injuries on the head and face and there was a sign of recent genital penetration. The necessary blood samples and samples for DNA Profile being taken from the body of the deceased child. The I.O. took visit the place of occurrence and prepared a spot panchnama (Exh.33) and seized and recovered: (i) a quilt in red cover with blood stains marks; (ii) yellow frock; (iii) leggings; (iv) pieces of shirt; (v) pieces of plastic broken bangles; (vi) juite bag and (vii) stones with blood stain marks.

According to prosecution case, the accused after committing the offence, had left the place and purchased a cigarette from the pan shop, owned by PW.13 – Ashraf Harun and the pan shop owner noticed bloodstains on the pant of the accused and when the explanation sought by the pan shop owner about how the blood stains came on the pant, the accused-appellant replied to the query that, there was an accident. After leaving the pan shop, the accused, came to be arrested by the Kuwadava Police, Rajkot, in another offence of murder and the said offence, his clothes marked with blood stains had been seized by the Kuwadava Police. (Kuwadava Police Station CR No.I-19 of 2018 for the

offence punishable under Sections 302 and 394 of the Indian Penal Code).

In the present case, the I.O. (PW.14) sought custody of the accused on the basis of transfer warrant and he came to be arrested on 15.02.2018. The I.O. took the accused on the offence site and the accused reconstructed the manner of offence and panchnama to this effect being drawn. The parents of the child belongs to SC Community, as a result, the investigation was handed over to PW.12 – Bharat Chaudhari. The I.O. during the investigation, recorded the statements of the witnesses, referred the accused for medical examination and DNA Profiling, the I.O. referred the witnesses to the Judicial Magistrate for recording their statements under Section 164 of the Cr.P.C. and the videography of recording of the statement of the pan shop owner being done. The I.O. seized and recovered the clothes of the accused and sent the seized articles including the blood samples etc. for DNA Profiling to the FSL, Gandhinagar and after receiving the positive report involving the accused in the offence, the I.O. filed the chargesheet for the offences as referred above.

4. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions at Rajkot Sessions Court.
5. The Sessions Court, Rajkot framed the charges against the

appellant. The accused – appellant, in his statement, did not have admitted the charge and claimed to be tried.

6. The prosecution, in order to prove the charge, adduced the following oral and documentary evidence in support of its case.

Oral evidence

PW 1 – Exh.15	Mukeshbhai Harjibhai Jijariya, panch witness
PW 2 – Exh.17	Vijuben Vijaybhai Rathod, panch witness
PW 3 – Exh.18	Bhagatsingh Girdharibhai Vaghela, panch witness
PW 4 – Exh.20	Tusharbhai Rameshbhai Makwana, panch witness
PW 5 – Exh.21	Pareshbhai Babulal Chavda
PW 6 – Exh.25	Dhavalbhai Haribhai Kotadiya, panch witness
PW 7 – Exh.27	Denishbhai Shaileshbhai Pipadiya, panch witness
PW 8 – Exh.28	Jagdishbhai Maganbhai Makwana, panch witness
PW 9 – Exh.30	Devrajbhai Lakhubhai Chavda, panch witness
PW 10 – Exh.31	Mukeshbhai Khimjibhai Chavda, panch witness
PW 11 – Exh.33	Rameshbhai Karsanbhai Rathod, panch witness
PW 12 – Exh.34	Dharmeshbhai Bhojabhai Singhav, panch witness
PW 13 – Exh.36	Sagar Rameshbhai Makwana, panch witness
PW 14 – Exh.38	Dharmeshbhai Kishorbhai Trivedi, panch witness
PW 15 – Exh.40	Narshibhai Raghubhai Dharjiya, panch witness
PW 16 – Exh.41	Ajaybhai Dilipbhai Tairaiya, panch witness
PW 17 – Exh.43	Abdulkadir Moijbhai Sadikot
PW 18 – Exh.44	Amarbhai Yunusbhai@ Yusufbhai Vanak
PW 19 – Exh.49	Praladhsingh Maheshbhai Dodiya, panch witness
PW 20 – Exh.50	Moijbhai Hatimbhai Sadikot, Complainant

PW 21 – Exh.59	Batulben Yusufbhai Vanak
PW 22 – Exh.60	Yusufbhai Taherbhai Vanak
PW 23 – Exh.62	Yunusbhai Alakha Bukera
PW 24 – Exh.66	Dr. Raghurajsingh Dhirubha Vaghela
PW 25 – Exh.73	Ashwinkumar Rupajibhai Modiya, IO

Documentary evidence

Exh.16	Inquest Panchnama
Exh.19	Panchnama of place of offence
Exh.22	Report of place of offence
Exh.23	Report of place of offence
Exh.26	Panchnama of clothes recovered of deceased
Exh.29	Panchnama of clothes recovered of accused
Exh.32	Panchnama
Exh.35	Panchnama
Exh.39	Panchnama
Exh.42	Demonstration panchnama
Exh.51	Complaint
Exh.64	Auto Rickshaw RC book copy
Exh.65	Order for release of mudammal
Exh.67	PM Yadi
Exh.68	PM report
Exh.69	Short report
Exh.70	Mudammal report yadi
Exh.71	Histopathology Rajkot Lab report

Exh.74	Order for investigation
Exh.75	Forwarding of articles Yadi
Exh.76	Receipt of articles by FSL
Exh.77	Forwarding of articles Yadi
Exh.78	Receipt of articles by FSL
Exh.79	Receipt of articles
Exh.81	Closing pursis

7. After closure of the prosecution evidence, the statement of the appellant – accused under Section 313 of the Cr.P.C., was recorded, to which, he stated that, he was falsely implicated in the offence. He is innocent. He has not committed any offence. He does not know the caste of the complainant.

Trial Court Finding:

8. After hearing the parties and upon appreciation of the material evidence, the appellant accused held guilty for the offence of rape and murder and for both the offences, the trial court awarded a death sentence and while recording the sentence, it was observed in para-26 of the impugned judgment that, the offence is heinous in nature and the victim aged about 3 years was defenseless and prior to the offence, the accused has committed another offence of murder and having regard to the mitigating circumstances, the case would fall in the category of rarest of rare case. The trial Court mainly relied upon the circumstances namely (i) evidence of pan shop owner (PW.13) Ashraf Dal and (ii) evidence of Forensic Science including the DNA Analysis

Report.

9. Evidence adduced by the prosecution :

We would like to have a cursory look at the evidence adduced by the prosecution through its witnesses :

- (1) **Dr. Pratik Varu (PW.7):** This witness being a Tutor at Medical College, Rajkot, conducted the Postmortem on the body of the deceased child on 11.02.2018. The witness noticed the following external injuries and internal injuries on the body of the deceased:

External injuries:

- (i) Body is in state of decomposition, emitting foul smell. Postmortem Lividity cannot be opined due to changes of decomposition. Greenish discoloration and marbling of skin and blisters of decomposition are present over the body, at places. Abdomen is distended due to accumulation of gases of decomposition. Bunch of yellowish eggs of flies are present over the body, at places.
- (ii) Features are identifiable. Both eyes are closed, both cornea are hazy, pupils can't be seen. Mouth is semi open. Tongue lies inside the oral cavity. Rest as mentioned in injury no. 1 to 4, serial no.17.
- (iii) Clotted blood is present over both palms and face, at places.
- (iv) Reddish coloured contusion, deep up to muscles of size 4 X 2 cm is present over the lower part of labia majora and labia minora. Multiple reddish small contusions, deep up to muscles are present over both labia minora, at places. Posterior commissure and posterior part of perineum are ruptured. Hymen is torn at 6 o'clock position. Margins of ruptured parts are reddish in colour, irregular, contused and inflamed and shows clotted blood. Greyish-white sticky paste like material, appears to be semen is present in vagina.
- (v) All four limbs are extended in usual manner.
- (vi) (1) Lacerated wound of size 3 X 0.5 cm is obliquely present over

right side of forehead, upper end of which is inner, 2 cm right to midline and 1.5 cm above right eyebrow.

2) Lacerated wound of size 1 X 1cm is present over left cheek, 2 cm below left eye and 2.5 cm left to the nose.

Margins of both lacerated irregular, contused and shows clotted blood.

Lacerated wounds are deep up to underlying bones.

(3) Contusion of size 8 X 7 cm is vertically present over left cheek, lower nose, outer surface of both lips of mouth and upper part of chin.

(4) Contusion of size 5 X 3 cm is vertically present over left cheek, 2 cm below left eye and 1 cm left to injury no. 3.

(5) Abraded contusion of size 5 x 0.5 cm is vertically present over front of right arm, 3 cm below shoulder tip.

(6) Abraded contusion of size 5 X 5 cm is present over front of right forearm, just below elbow joint.

(7) Abraded contusion of size 4 X 0.5 cm is vertically present over front of right forearm, 1.5 cm below injury no. 6.

(8) Abraded contusion of size 3 X 3 cm is present over front of right wrist, 3 cm below injury no. 7.

(9) Abraded contusion of size 3 X 0.5 cm is transversely present over back of right wrist.

(10) Abraded contusions, 2 in numbers of size 4 X 0.5 cm and 2 X 0.5 cm, parallel and 1cm apart from each other are present transversely over back of left elbow.

(11) Contusion of size 7 X 3 cm is vertically present over lateral aspect of left lower arm, elbow and upper forearm, 8 cm below left shoulder tip.

(12) Multiple abraded contusions of size varying from 0.5 X 0.5 cm to 3 X 0.5 cm are present in area of 20 X 20 cm over back of chest and abdomen, 15 cm below occipital protuberance.

(13) Contusion of size 10X5 cm is vertically present over front of lower part of left knee and upper leg.

(14) Contusion of size 7X cm is vertically present over front of lower part of right knee and upper leg.

All contusions and abraded contusions are reddish in colour.

All contusions are deep up to underlying bones. No any scab present over abraded contusions. All abraded contusions are deep up to underlying muscles.

Internal Injuries :

- (i) Underlayer of scalp of scalp shows extravasation of blood in parieto-occipital region.
- (ii) Linear fracture of size 11 cm is transversely present over right parietal bone, starting from sagittal suture, 16 cm behind glabella.
- (iii) Dura mater is intact. Diffuse subdural subarachnoid and intracerebral haemorrhage are present in right parieto-occipito-temporal region of brain. Brain is soft and decomposing.

According to opinion of the doctor PW.7, the cause of death was shock and hemorrhage on account of injuries found on head and face caused by the blunt object and there was an evidence of recent genital penetration and time of death could be 36 to 72 hours prior to the post-mortem examination. At the time of post-mortem, the vaginal and anal swabs for detection of semen were being taken by the doctor and handed over to the police. The doctor had also obtained a sample for DNA Profile as sought by the police.

In the cross-examination, the witness PW.7 has stated that, he did not have found any abrasion injuries on the private part of the child. The doctor has denied to the suggestion made by the defense that the injuries mentioned in the P.M. Report could have possible if the child fell from 10 to 15 feet height.

- (2) **Jagdishbhai Makwana (PW.11):** This witness had been cited as a panch witness to prove the arrest panchnama of the accused in another offence registered with Kuwadava Road Police

Station and according to panchnama (Exh.62), the Kuwadava Road Police Station arrested the appellant-accused for the offence of murder and robbery. However, the witness did not have supported to the case of prosecution and he has been declared hostile.

- (3) **Ashrafbhai Harunbhai Dal (PW.13):** This witness is the owner of pan shop and in the Rajkot City, Bhavnagar Road, Ganjiwada, he is running his pan shop in the name of “Santosh Pan”. According to version of the witness, the accused had come to his shop for purchasing cigarette and by leaving the opposite gate of the building, he came to his shop. The witness has stated that, when the accused came to his shop for purchasing cigarette, he asked the accused about the blood stain marks found on his pant for which he relied that, he accidentally fell down and sustained injuries. The witness has further stated that, his statement before the Magistrate came to be recorded. The witness has identified the accused in the court and further stated that, after purchasing the cigarette from his shop, the accused was brought by the police to his shop where in the presence of police, he identified the accused that, he is who had purchased the cigarette from his shop. In the cross-examination, the witness has stated that, since last 20 years he is running his pan shop and during the day, average 100 people might be come for purchasing pan etc. The witness has further stated that, the proceedings of recording of statement under Section 164 was being recorded by video shoot. The witness has denied to the suggestion that the accused had

never come to his shop and at the instance of police, he identified the accused and deposed against him.

- (4) **Naranbhai Nathabhai Chudasama (PW-14)** : This witness had investigated the case, as after the registration of the FIR being a Police Inspector of Thorala Police Station, was entrusted the investigation. He has stated in his examination that, he had sent dead body for postmortem and obtained necessary reports and as a part of investigation, he recorded the statement of the witnesses and sent the seized and recovered articles to the FSL. The witness has further stated that, the investigation being entrusted to the Assistant Police Commissioner, as the complainant belongs to SCST caste. The witness has stated that, he had obtained 3 CDs of CC TV footage from the vicinity of the area, where the incident occurred. In the cross-examination, it is denied by the witness that, the deceased was found with her uncle Nansang and he was not available for 24 hours.
- (5) **Bharatbhai Bijalbhai Rathod (PW-12)** : The witness at relevant time was serving as Assistant Police Commissioner with Rajkot Police Division and after due investigation, he had filed the chargesheet. The witness in his chief-examination, has stated that, he had arrested the accused as per the arrest panchnama Exh.:42. The witness has further stated that, the accused had shown the place of incident and disclosed the facts that how he had executed the offence of rape and murder, which facts being incorporated in reconstruction panchnama Exh.:45. The IO of the

case has further stated that, he had obtained the CCTV footage from the vicinity of the area, where the incident occurred and by way of panchnama Exh. 70, 3 CDs of CC TV footage were being seized and recovered. He has further stated that the clothes of the accused were being seized by way of panchnama Exh. 63. On the aspect of FSL evidence, the witness has stated that after referring the accused to the Medical Officer, he had obtained examination certificate at Exh. 71, and sent the seized articles to the FSL.

In the cross-examination, the IO has stated that at the time of arrest of the accused, he was under the judicial custody of another offence registered with Kuvavada Police Station, Rajkot and the Kuvavada police station, by way of panchnama had seized and recovered the clothes of the accused. The witness has admitted that, so far this offence is concerned, he has not seized clothes of the accused. It was asked to the witness that whether the present offence and offence registered with Kuvavada Police Station would be registered on the same day? The IO has replied that, he cannot answer it without verifying the records. The IO has admitted that, on the question of identity of the accused, he did not have conducted the TI parade of the witnesses for identification. It is denied by the witness that, the accused has been falsely implicated in the crime and despite of insufficient evidence, he has been falsely chargesheeted.

Submissions:

10. We have heard learned counsel Ms. Urvashi Metha appearing for and on behalf of the accused appellant and Mr. Bhargva Pandya, learned Additional Public Prosecutor for the respondent – State.

11. Ms. Urvashi Mehta, learned counsel, while assailing the impugned judgment of conviction and order of death sentence, has urged the following submissions:

(A) In the present case, the prosecution has failed to prove the charge beyond reasonable doubt as it is fundamental principles of criminal jurisprudence that the accused is presumed to be innocent till he is proved to be guilty.

(B) The entire prosecution case hinges upon the circumstantial evidence and there is no direct evidence against the appellant accused. The circumstance of the presence of accused nearby the place of incident, is not proved and established. The evidence of the witness PW-13 Ashraf Dal is got up witness, as on which time and date, the accused had come to his shop for purchasing cigarette has not been deposed by the witness. The witness has not with all certainty stated that the accused came to his shop from which side of offence i.e. from the gate of IIT hostel, Bhavnagar Road, Rajkot. The IO has not conducted any TI parade of the witness, so as to prove the involvement of the accused. Admittedly, at relevant time, the victim was not with the accused. Thus, therefore the evidence of PW-13 is not sufficient to prove that after killing of the deceased, he took exit from the main gate of the IIT building and visit the pan-shop of the witness for

purchasing cigarette. The video recorded statement of the witness under Section 164 is not audible when it was run during the trial proceedings. The CC TV footages of the vicinity of the area does not give any clue the presence of the accused at the pan shop or nearby the place of incident. Therefore, the evidence of PW-13 is not sufficient to infer that the accused after committing the rape, he killed the deceased child.

(C) In the facts of the present case, the accused came to be arrested on the basis of transfer warrant, as at relevant time, he was in police custody of Kuvadava Police Station at Rajkot. He was arrested by the Kuvadava Police in connection with the murder and robbery. The Kuvadava Police, after his arrest seized and recovered his clothes and the same clothes being seized by the Thorala Police Station. Thus, the prosecution has not discharged his burden to prove that, whether the bloodstained found on the clothes had any correlation with the offence of murder and robbery allegedly registered against the accused with Kuvadava Police Station. Therefore, the recovery of clothes are doubtful and prosecution miserably failed to prove that the clothes were being wore by the accused on 09.02.2018, when the alleged incident of rape and murder being occurred.

(D) The DNA evidence, in the facts and circumstances of the case, is unreliable and cannot be a sole basis to record the conviction. The evidence of DNA report has not been proved by examining the scientific officer and merely a production of the report cannot be admitted in evidence by virtue of Section 293 of the Cr.P.C. Relying

on the case of **Rahul Vs. State of Delhi [2023 (1) SCC 83]**, it was submitted that, it is necessary for the prosecution to prove that the techniques of DNA profiling were reliably applied by the experts and therefore, merely given an exhibit to the report, could not prove its contents. In the facts of the present case, the samples relating to the accused and deceased were sent to FSL after long time and they were remained in the police station and therefore, the tempering with the samples collected could not be ruled out.

12. In such circumstances, as referred to above, Ms. Urvashi Metha, learned counsel prayed that the complete chain of events leading to involvement of the appellant has not been established by the prosecution and the findings of the conviction are being recorded on the basis of conjecture and surmises and it is settled law that the suspicion however strong, cannot basis for punishment. Thus, it was prayed that, there being merits in this appeal and the same may be allowed and further requested that the order of conviction and death penalty be set aside and the appellant may be acquitted of the charges of murder and rape.

13. Alternatively, it was submitted that in any event, if this Court after appreciation of the evidence would convince that the appellant accused is the author of the crime, then the death sentence as awarded by taking into account the grave nature of the crime without considering the possibility of the reformation is not sustainable in eye of law as no special reasons being assigned by the Trial Court and therefore, case is not one of the rarest of rare case and the capital

punishment in that view of the matter, is not sustainable in eye of law.

14. Mr. Bharvav Pandya, learned Additional Public Prosecutor for the respondent – State, vehemently opposed the appeal and contended that the Trial Court has not committed any error in holding the accused appellant guilty of the offence. That the identity of the accused is established, as on the date of incident i.e. 09.02.2018, the accused was seen by the pan owner PW-13 and the witness had noticed the blood stain on the clothes of the accused and as per the FSL report, the blood was matched with the blood group of the deceased. Against this, the accused has not offered any explanation and in that view of the matter, the evidence of PW-13 with respect to presence of the accused at the scene of offence is proved and established. The involvement of the accused is proved by medical and forensic evidence and there is no reason to doubt the DNA report. There is no reason for the police authority to implicate the accused in a serious charge of rape and murder. The appellant - accused prior to the incident, had committed murder of one lady for the purpose of robbery and he was arrested in the said crime and his arrest was effected after the incident i.e. 10.02.2018. In such circumstances, the seizure of clothes of the accused in the murder case cannot be doubted.

In such circumstances, learned Additional Public Prosecutor would urge that the prosecution has proved beyond reasonable doubt the charge of the appellant and circumstances as referred above, have been conclusively proved and established and all the circumstances are sufficient to establish the guilt of the accused, as they are forming the

complete chain pointing towards the appellant accused and none else. Thus, therefore, it was urged that there being no merits in the appeal and same may be dismissed.

15. On the alternative submission, the learned Additional Public Prosecutor argued that this is a fit case imposing of capital punishment and the child was defenceless and the manner in which the crime was committed, the imposition of any other punishment would be completely inadequate and would not meet end of justice and therefore, no interference warranted by this Court in the capital punishment.

16. We have heard learned counsel for both the parties and perused the case records. In our opinion, the following facts are not in dispute :

(i) On 09.02.2018, at about 11-45 to 12-00 noon, the parents of the child aged about 3 years, were employed as a labourer and their work was going on on Bhavnagar road, Chunara Wada Chawk, Rajkot. While deceased child was playing nearby the place of work, she was secretly kidnapped and abducted and complaint to this effect after exhaustive search of her being registered with Thorala Police Station, Rajkot as being CR. No. I-15 of 2018 for the offence of kidnapping against unknown person.

(ii) The appellant accused after this offence i.e. 09.02.2018, on the next day i.e. on 10.02.2018, came to be arrested, in the offence of murder and robbery by Kuvadava Police Station, Rajkot (I.CR No. 19 of 2018), and was remanded to police custody and his clothes were being recovered and seized in the offence of murder and robbery and

same clothes being shown in the present offence by producing the seizure panchnama of the clothes.

(iii) The prosecution has not examined the scientific officer to prove the DNA analysis report and directly it has been exhibited in the testimony of IO.

(iv) The death of the deceased child aged about 3 years was homicidal and as per the medical evidence, she was subjected to sexual abuse and her dead body found after 2 days of the incident i.e. on 11.02.2018.

17. In the facts of the present case, in order to prove the charge, the prosecution has relied the following circumstances:

(i) On 09.02.2018, in noon hours, the appellant accused after the execution of the offence of rape and murder, took exit from the main gate of dilapidated building and came to the pan shop situated opposite the gate, where, he had purchased cigarette and at that time, PW-13 Ashraf Dal noticed the bloodstain on his pant;

(ii) The appellant accused was roaming nearby the place of incident and his movement was being captured in the CC TV camera installed at the two to three different shops;

(iii) The Forensic Examination Report (DNA analysis), which shows that, the vaginal swabs and other samples matches with the blood group of appellant accused and the bloodstained found on the pant of the appellant accused, matches with the blood group of the deceased

18. Having regard to the evidence on record, the only question that arises for our consideration is as to whether the circumstances as referred forms a chain of events pointing only to the guilt of the accused and none else?

19. Before we proceed with the analysis of the evidence and contentions of the parties, it is necessary to briefly examine the law relating to circumstantial evidence. It is settled position of law that;

“the circumstantial evidence is not direct to the point in issue but consists of evidence of other facts which are closely associated with the facts in issue that taken together, they formed a chain of circumstances from which, the existence of the principal fact can be legally inferred or presumed, the chain must be complete and each fact forming the part of chain must be proved. The circumstances from which, the conclusion of guilt is to be drawn should be in the first instance fully established and thereafter, circumstances taken cumulatively should form a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must further show that in all probabilities the offence must have been committed by the accused (Sharad Birdhichand Sarda Vs. State of Maharashtra , AIR 1984 SC 1622).”

20. The aforesaid principles have been restated in the case of State of U.P. Vs. Ashokkumar Shrivastava (1992 (2) SCC 86). It has been observed in Para-9 that:

“9. This Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very

cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with a hypothesis of guilt. But this is not say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise.”

21. Applying the said principles to the facts of the present case, we may now proceed to examine the circumstances, as relied by the prosecution, would form complete chain pointing only the guilt of the accused and the proved incriminating circumstances are capable of giving rise to inference to the guilt of the appellant accused ?

22. The first circumstances relied upon by the prosecution is that on 09.02.2018, in noon hours, the appellant accused after the execution of the offence of rape and murder, took exit from the main gate of dilapidated building and came to the pan shop situated opposite the gate, where, he had purchased cigarette and at that time, PW-13 Ashraf Dal noticed the blood stain on his pant;

We have carefully examined the evidence of PW:13 – the pan-shop

owner Mr.Ashraf Dal. The witness in his deposition did not have stated that on which date and time, the appellant accused had existed from the gate of IIT Hostel Building, situated in the PTC Ground, Rajkot. The accused after his arrest, was brought to the shop of the witness and police informed him that he is the person, who had come to your shop for purchasing cigarette after the incident. In such circumstances, the witness PW:13 is not witness of truth and his testimony without any corroboration from the independent sources of evidence cannot be relied upon. The I.O. has committed the blunder by showing the accused to the witness PW:13. In such serious offence, it is the duty of the I.O. to hold the identification parade of the witness but reason best known to the I.O., the T.I. parade for the purpose of identification of the appellant was not made during the investigation. Thus, in our opinion, the witness PW:13 before his evidence is recorded in the Trial Court, the factum of the presence of the accused at his panshop being put into mouth of the witness by the police and on that basis, the witness PW:13 is identified the accused in the Court. In such circumstances, the evidence of PW:13 is not sufficient to prove the presence of the accused at his pan-shop and the said circumstances having not been conclusively proved and established that the accused after the incident was found at the shop of PW:13.

23. The second circumstances relied by the prosecution is the CCTV footages, of the three business places to prove the presence of the accused in the vicinity of the area of place of the incident. According to the prosecution case, the appellant accused was roaming nearby the place of incident and his movement was being captured in the CCTV

camera installed at the three different business entity. The I.O. of the case obtained CCTV footages from the three business entity viz. Shivdhara Time Factory, Shivam Furniture and Patel Pan-shop and the CD of CCTV footages being seized by way of panchnama at Exh.70 and the same are being part of seized articles. However, the prosecution is silent on three CDs. The CDs were not sent for forensic examination. The CDs were not run before the Trial Court to establish the presence of the accused in the vicinity of the place of the incident. The Trial Court ought to have asked the prosecution to prove the CCTV footages allegedly stored in the three CDs with the certificate as provided under Section 65B of the Indian Evidence Act. In such a serious case, the electronic evidence though available has been ignored by the prosecution. In such circumstances, the reasonable inference would arise that the CCTV footages would not show the presence of the accused in the vicinity of the place of the incident. In that view of the matter, we have no option, but to conclude that the available evidence does not prove and establish that on 09.02.2018, in the noon hours i.e. from 11:30 to 05:00 o'clock, the appellant accused was in the area of place of occurrence and after the incident, he existed the main gate of the building where the incident occurred and took visit to the shop of PW:13 and had purchased the cigarette.

24. The third circumstances connecting the appellant accused in the crime is the forensic science evidence. It is on record that during the postmortem, the doctor took the vaginal swabs and anal swabs along with the blood samples of the deceased for DNA profiling. The P.M. was done on 11.02.2018, as the dead body found after three days of the

incident. On 14.02.2018, the samples were deposited before the Gandhinagar FSL. The appellant accused came to be arrested on 15.02.2018 and on 16.02.2018, he was referred to the Government Hospital at Rajkot for medical examination and for necessary other samples for forensic chemical analyses. It is relevant to note that the prosecution has not examined the doctor of the government hospital to prove the factum of examination of the accused and taking samples from his body like pubic hair, saliva, blood samples, semen and nails. Exh.71 is the carbon copy of the certificate and in the footnote of the certificate, the three samples like pubic hair, saliva and nails being noted by making tickmark whereas the samples of blood and semen there is no tickmark being endorsed by the doctor. In such circumstances, the examination of the medical doctor, who had examined the accused appellant and taking all necessary samples for DNA profiling is necessary with the production of original case records. The DNA report has been given exhibit as Exh.75 in the deposition of the I.O. and to prove the applied methodology for preparation of DNA result, the scientific officer Smt. M.N. Patel, who is the expert of the subject is required to be examined but somehow the prosecution failed to examine the scientific officer and the doctor who had taken the samples for DNA analysis. The DNA report Ex.75 shows that the bloodstain found on the D1 and D2 article which are shirt and pant of the accused matched with the blood group of the deceased. Recently, the Supreme Court, in the case of **Putai Vs. State of Uttar Pradesh (2025 INSC 1042)**, while allowing the conviction appeal for the rape and murder of 12 years old , set aside the conviction on the

ground that where the forensic science, especially DNA profiling is relied upon in a case built solely on circumstantial evidence, the prosecution must establish an unimpeachable chain of custody and call the proper expert witness; failure to do so the scientific result inadmissible and insufficient for conviction. It is further observed by the Supreme Court that modern forensic science is a double edge sword; it can clinch cases but only if every procedure safeguard is honoured and by setting aside the capital conviction for want of a proven chain of custody and proper expert testimony, the clear message being given to investigators, prosecutors and trial courts. On the identical issue for necessary examination of scientific officer to prove the methodology of DNA analysis, the Supreme Court, in the case of **Rahul Vs. State of Delhi (2023 (1) SCC 83)**, has held that the DNA profiling report cannot be admitted in evidence ipso facto by virtue of Section 293 of Cr.P.C. and it is necessary for the prosecution to prove that the techniques of DNA profiling were reliably applied by the expert. Thus, therefore, DNA profiling report in the facts of the present case, cannot be admitted in evidence. We have another reason to discard the report as the accused herein after the said incident, came to be arrested on 10.02.2018, by Kuvadva Road Police Station, Rajkot in connection with murder of one lady. This shows that after the present incident, on the next day, he was arrested by another police station in murder case and during the remand period, his clothes i.e. shirt and pant were seized and recovered by the Kuvadva Police Station for the offence of murder and the panchnama thereof is produced at Exh.63. In the present case, by way of transfer warrant, the

appellant accused came to be arrested on 15.02.2018. the I.O. of the present case, obtained the copy of the panchnama of seizure of clothes allegedly drawn by Kuvadva Police Station. In such circumstances, how the seized clothes came in the hands of Thorada Police Station, Rajkot and how the clothes had been sent to the FSL, that facts have not been proved and established. Thus, we find a serious legal lacuna on the aspect of admissibility of the evidence of forensic science as the clothes on which the bloodstained found were not seized in the present case and if it is so, then, how the clothes being seized and collected by the I.O. in the present case, that required to be explained by the prosecution. In absence of such clarification and admissibnle evidence on the part of the seizure of the clothes, the sole evidence of DNA report Exh.75 cannot be a ground to convict the accused appellant.

25. On the basis of the above discussions, we are of the opinion that the nature of circumstantial evidence as relied by the prosecution are not so conclusive that the accused appellant can be convicted for the alleged crime. It is settled legal position of law that, the suspicions howsoever strong, cannot substitute the proof and conviction is not permissible only on the basis of suspicion. On this aspect, we may profitably refer the case of **Sujit Biswas Vs State of Assam (AIR 2013 SC 3817)**. In Para-6 of the judgment, it was observed as under:

“6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that ‘may be’ proved, and something that ‘will be proved’. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance

between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant Govind Nargundkar v. State of M.P.,(1952) 2 SCC 71, State v. Mahender Singh Dahiya (2011) 3 SCC 109 and Ramesh Harijan v. State of U.P. (2012) 5 SCC 777."

26. Mr.Bhargav Pandya, learned Additional Public Prosecutor has emphasized on the evidence of reconstruction panchnama of the incident. The I.O. has not deposed about the voluntary statement made by the accused pointing out the sequence of incident as incorporated in the reconstruction of panchnama Exh.45. The panchas have also not clearly stated the contents of the panchnama. It is settled position of law that the evidence of reconstruction of the incident only relevant so

as to prove the conduct of the accused under Section 8 of the Evidence Act. In the present case, the I.O. did not have stated the contents of the panchnama in his testimony. In such circumstances, the confession of the offence before the police by way of reconstruction panchnama certainly is hit by Sections 25 and 26 of the Evidence Act. In such circumstances, the contention advanced by Mr.Pandya, learned APP has no merits and cannot be accepted.

27. It is the contention raised by learned Additional Public Prosecutor that the accused appellant brutally killed the deceased and committed rape upon her, and therefore, he would not be required to be extended any benefit of doubt and lacuna on the part of the Investigating Officer. We are conscious about the nature of offence and the manner in which, child was killed and abused sexually. However, it is one of the fundamental jurisprudence that the accused is presumed to be innocent till his prove to be guilty. In the facts of the present case, as discussed hereinabove, the chain of circumstances, is not complete and circumstances relied upon by the prosecution have not been conclusive in nature pointing towards the guilt of the accused and non-else. In such serious offence, the investigating agency of the case had not diligently undertaken the investigation. This is not the case of defective investigation, but the core evidence collected by the I.O. is not credible and consistent and the lapses are not minor or peripheral, but it goes to the root of the prosecution case and create a doubt about the truthfulness of the prosecution case. It is also settled legal position of law that the conviction must be based on reliable, legally admissible evidence. Recently, in the case of **Surendra Koli Vs. State of U.P.**

(2025 LawSuit 1479), while acquitting the accused, the Supreme Court has observed that criminal law does not permit conviction on conjectures or on a hunch and when the prosecution failed to prove the charge through admissible and reliable evidence, the only lawful outcome is to set aside the conviction even in a case of involving horrific crimes.

28. In view of the above discussions, we are of the considered opinion that the prosecution failed to prove all necessary circumstances by reliable and clinch evidence which would constitute a complete chain of events without any gap, pointing to the guilt of the accused. The prosecution failed to prove the charge against the appellant accused by adducing reliable and truthful evidence beyond reasonable doubt. As a result, the appellant accused is acquitted of all the charges.

29. Accordingly, the criminal appeal i.e. Criminal Appeal No.695 of 2020 filed by the appellant accused is **allowed**. The judgment of conviction dated 17.03.2020 and order of death sentence passed by the Additional Session Judge, at Rajkot in POCSO (Atrocity) Case No.28 of 2018 is set aside. In view of the setting aside of the conviction and death sentence, the Confirmation Case No.2 of 2020 stands **disposed of**. The appellant is in jail. He should be released forthwith unless his custody is necessary in any other case. Registry shall send the R & P to the concerned Court henceforth.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

Rakesh