

STATE OF U. P.

v.

MOHD. IQRAM & ANR.

(Criminal Appeal No. 1693-1694 of 2005)

JUNE 13, 2011

[DR. B. S. CHAUHAN AND SWATANTER KUMAR, JJ.]

Penal Code, 1860:

s.302/34 – Murder – Circumstantial evidence – Shrieks of victim heard in the night by police party on general patrolling – Three persons seen scaling down the wall near the room of victim – Two of them (accused) apprehended – Accused led the police and witnesses to the room of victim where she was found lying unconscious – She died in hospital – Accused totally strangers to the area – Medical evidence that death could be caused by strangulation by hands – Conviction by trial court – Acquittal by High Court – HELD: Circumstantial evidence is so strong that it points unmistakably to the guilt of accused and incapable of any other hypothesis – Accused were identified as the persons scaling down the wall and apprehended upon immediate chase – High Court erred in holding that the finding of identification was doubtful – Findings recorded by High Court are perverse being based on irrelevant considerations and inadmissible material – Judgment of High Court set aside and that of trial court restored – Circumstantial evidence – Constitution of India, 1950 – Article 136 – Appeal against acquittal.

Evidence:

Burden of proof – HELD: Once presence of accused at the scene of crime where they were apprehended is established, onus stood shifted on the defence to have

A *brought forth suggestions for their presence there at the dead of night – They were under an obligation to rebut the burden discharged by prosecution – High Court erred in concluding that prosecution had failed to discharge its burden – Penal Code, 1860 – s.302/34.*

B *Code of Criminal Procedure, 1973:*

s.313 – Affording of opportunity to accused to explain incriminating material against him – Conviction of two accused and acquittal of third one by trial court – High Court in the appeal filed by convicts making observations that greater possibility was that the acquitted accused committed the murder after he had forcible sexual intercourse with the victim, and acquitted both the accused – HELD: Court cannot place reliance on incriminating material against accused, unless it is put to him during his examination u/s 313 – This prohibition is mandatory in nature – Besides, the trial court did not frame any charge u/s 376 – Observations in post-mortem report cannot be termed to be substantive piece of evidence when the doctor did not say anything about the same in his statement in court which only is the substantive piece of evidence in law – Evidence – Proving of contents of post-mortem report.

Appeal against Acquittal – HELD: In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse leading to miscarriage of justice, the appellate court should interfere with the order of acquittal – In the instant case, the circumstantial evidence is so strong that it points unmistakably to the guilt of the respondents and is incapable of explanation of any other hypothesis than that of their guilt – Therefore, findings of fact recorded by the High Court are perverse, being based on irrelevant considerations and inadmissible material.

JUDGMENT:

H *Observations by High Court against acquitted person –*

Trial court convicted two accused and acquitted the third one – Convicts filed appeal – High Court acquitting the two accused made observation that it was possible that the accused acquitted by trial court committed the crime – HELD: It was not permissible for the High Court to castigate the person who had been acquitted by the trial court and whose acquittal had not been challenged before it.

Accused-respondents nos. 1 and 2 along with another accused 'SK', were prosecuted for causing the death of the wife of accused 'SK'. The prosecution case was that 'SK' obtained a decree of divorce against his wife 'R' who, as per the decree was permitted to reside in a room with an enclosed open area belonging to 'SK' and was granted maintenance of Rs.150/- per month. 'R' had challenged the decree in an appeal. On 15.5.1980 at about 9 p.m., when the Sub Inspector of Police (PW.6) alongwith the Head Constable (PW.7) and two constables was on general patrolling, they heard shrieks emanating from the house of 'SK' and saw three persons scaling down the wall of the 'Sahan' towards the west of the room under occupation of 'R'. The two accused-respondents nos. 1 and 2 were caught and the third one who managed to escape was named by them as 'SK'. The respondents led the police party to the room of 'R' where she was found lying unconscious. Meanwhile 'PW.3', the brother of 'SK' also reached there and took 'R' to the hospital. The respondents were taken to the Police Station where an FIR was lodged. On receiving the information of the death of 'R' the case was converted into one u/s 302 IPC. The trial court, after taking into consideration the facts that the respondents-accused were strangers to the area, the evidence neither suggested rape nor theft and the death was possible in the medical opinion to have been caused by strangulation with hands, convicted the accused-respondents u/s 302/34 IPC and sentenced them to

A imprisonment for life. On appeal by the respondents, the High Court acquitted them. The High Court, also, made observations that greater possibility was that it was accused 'SK' who strangled 'R' to death after he had forcible sexual intercourse with her.

B Allowing the appeals filed by the State, the Court

HELD: 1. The observation by the High Court that the weapon used in the offence had not been recovered is totally unwarranted and uncalled for. More so, the nature of the injuries, as per the post mortem report and evidence of the doctor (PW-1), itself reveal that for causing such injuries, no weapon was required. [para 11] [1032-B]

D 2.1. So far as the issue of rape of the deceased prior to her murder by accused 'SK', her ex-husband, is concerned, the trial court has recorded findings of fact on this aspect in the negative. Undoubtedly, the post-mortem report contains such observations, but the doctor (PW.1) has not made any such reference either in his examination-in-chief or cross-examination. Nor had this aspect ever been put to any of the three accused in their statements recorded u/s 313 Cr.P.C. It was not permissible for the High Court to make such observations about the post-mortem report. [para 12] [1032-C-F]

F 2.2. Besides, 'SK' has been acquitted by the trial court. The State did not prefer any appeal against his acquittal. This Court is of the considered opinion that it was not permissible for the High Court to castigate 'SK' with such observations holding him guilty of committing rape and subsequently murdering his ex-wife 'R'. Undoubtedly, the post-mortem report had been proved but that does not mean that each and every content thereof is stood proved or can be held to be admissible, Such observations cannot be termed to be a substantive

piece of evidence. The doctor (PW.1) did not even whisper about the same in his statement made in the court which is the only substantive piece of evidence in law. The post-mortem report had been examined at the time of framing of the charges. The trial court did not frame any charge u/s 376 IPC or s. 376 read with s. 511 IPC. More so, no witness had ever mentioned anything in this respect. Thus, such observations could not be made by the High Court. [para 12] [1032-E-H; 1033-A-C]

State of Bihar and Ors. v. Radha Krishna Singh & Ors., 1983 (2) SCR 808 = AIR 1983 SC 684; and *Madan Mohan Singh v. Rajni Kant* AIR 2010 SC 2933; relied on

3.1. The court cannot place reliance on incriminating material against the accused, unless it is put to him during his examination u/s 313 Cr.P.C. Thus, the High Court committed an error by taking into consideration the inadmissible evidence for the purpose of deciding the criminal appeals and holding the person as guilty who already stood acquitted by the trial court. [para 12] [1032-H; 1033-A-B]

3.2. Section 313 Cr.P.C. is based on the fundamental principle of fairness. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for the incriminatory material appearing against him. Circumstances which were not put to the accused in his examination u/s 313 Cr.P.C. cannot be used against him and have to be excluded from consideration. [para 13] [1033-D-F]

Sharad Birdhichand Sarda v. State of Maharashtra, 1985 (1) SCR 88 = AIR 1984 SC 1622; *State of Maharashtra v. Sukhdeo Singh & Anr.*, 1992 (3) SCR 480 = AIR 1992 SC 2100; and *Paramjeet Singh @ Pamma v. State of*

A *Uttarakhand*, 2010 (11) SCR 1064 =AIR 2011 SC 200;
relied on

B 4.1. So far as the question of the source of light and
identification of the accused is concerned, the
depositions of 'PW.3', 'PW.6', 'PW.7' and 'PW.8' reveal that
there were minimum three torches which had been
flashed simultaneously on the persons who were scaling
down the wall and were being chased by the police as
well as by the local residents including 'PW.8'. In such a
fact-situation, failure of electric supply does not become
fatal. [para 15] [1034-D-E]

D 4.2. 'PW.6' and 'PW.7' have identified the
respondents being the persons who were scaling down
the wall and had been apprehended upon an immediate
chase. Therefore, the High Court erred in recording the
finding that identification was doubtful. [para 15] [1034-
F]

E 5.1. Once the prosecution had brought home the
evidence of the presence of the accused at the scene of
the crime, then the onus stood shifted on the defence to
have brought forth suggestions as to what could have
brought them to the spot at that dead of night. The
accused were apprehended and, therefore, they were
under an obligation to rebut this burden discharged by
the prosecution, and having failed to do so, the trial court
was justified in recording its findings on this issue. The
High Court committed an error by concluding that the
prosecution had failed to discharge its burden. Thus, the
judgment proceeds on a surmise that renders it
unsustainable. [para 15] [1034-G-H; 1035-A-B]

H 5.2. It is a settled legal proposition that in exceptional
cases where there are compelling circumstances, and
the judgment under appeal is found to be perverse i.e. the
conclusions of the courts below are contrary to the

evidence on record or its entire approach in dealing with the evidence is patently illegal, leading to miscarriage of justice or its judgment is unreasonable based on erroneous law and facts on the record of the case, the appellate court should interfere with the order of acquittal. While doing so, the appellate court should bear in mind the presumption of innocence of the accused and further that the acquittal by the courts below bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for the interference. [1035-C-E]

Babu v. State of Kerala, 2010 (9) SCR 1039 =2010 (9) SCC 189; *Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra*, (2010) 13 SCC 657; *Brahm Swaroop & Anr. v. State of U.P.*, 2010 (15) SCR 1 =AIR 2011 SC 280; *S. Ganesan v. Rama Raghuraman & Ors.*, (2011) 2 SCC 83; *V.S. Achuthanandan v. R. Balakrishna Pillai & Ors.*, (2011) 3 SCC 317; *State of M.P. v. Ramesh & Anr.*, (2011) 4 SCC 786; *Abrar v. State of U.P.*, (2011) 2 SCC 750; and *Rukia Begum & Ors. v. State of Karnataka*, (2011) 4 SCC 779 - referred to.

5.3. In the instant case, the circumstantial evidence is so strong that it points unmistakably to the guilt of the respondents and is incapable of explanation of any other hypothesis than that of their guilt. Therefore, findings of fact recorded by the High Court are perverse, being based on irrelevant considerations and inadmissible material. The judgment of the High Court is set aside, and that of the trial court is restored. [para 17-18] [1035-H; 1036-A-C]

Case Law Reference:

1985 (1) SCR 88

relied on

para 13

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A	1992 (3) SCR 480	relied on	para 13
	2010 (11) SCR 1064	relied on	para 13
	1983 (2) SCR 808	relied on	para 14
B	AIR 2010 SC 2933	relied on	para 14
	2010 (9) SCR 1039	referred to	para 16
	2010 (15) SCR 1	relied on	para 16
C	(2010) 13 SCC 657	referred to	para 16
	(2011) 2 SCC 83	referred to	para 16
	(2011) 3 SCC 317	referred to	para 16
	(2011) 4 SCC 786	referred to	para 16
D	(2011) 2 SCC 750	referred to	para 16
	(2011) 4 SCC 779	referred to	para 16

CRIMINAL APPEAL JURISDICTION : Criminal Appeal No. 1693-1694 of 2005.

E From the Judgment & Order dated 25.4.2003 of the High Court of Judicature at Allahabad in Criminal Appeal No. 14 and 60 of 1981.

F R.K. Gupta, Rajiv Dubey (for Kamendra Mishra) for the Appellant.

K. Sarada Devi for the Respondents.

The Judgment of the Court was delivered by

G **DR. B.S. CHAUHAN, J.** 1. These appeals have been preferred by the State of U.P. against the judgment and order dated 25.04.2003 passed by the High Court of Judicature at Allahabad in Criminal Appeal Nos. 14 and 60 of 1981, reversing the judgment and order of the Sessions Court dated

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20.12.1980 in Session Trial No. 382 of 1980 passed by the learned District Judge, Saharanpur, by which both the respondents stood convicted under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter called as 'IPC') and had been awarded life imprisonment.

2. The brief resume of the facts as emerging from the FIR and the evidence adduced by the parties is set forth:

(A) One Rashmi, deceased, aged about 30 years had been married to Suresh Kumar (accused, acquitted by the Sessions Court), but her relations with him and her mother in law always remained strained. They had no child. Suresh Kumar obtained a decree of divorce on 30.01.1980 under Section 13 of the Hindu Marriage Act, 1955 and as per the decree, Rashmi, deceased, was permitted to reside in a room with an enclosed open area towards its West, apart from the rest of the house, and she was granted maintenance @ Rs.150/- per month till her life time or remarriage, whichever was earlier. Being aggrieved, Rashmi, deceased, had preferred an appeal against the said decree of divorce dated 30.01.1980 and the same was pending before the District Judge, Saharanpur.

(B) On 15.0.5.1980 at about 9.00 P.M., S.I. Brahm Pal Singh (PW.6) of Police Station Sadar Bazar accompanied by Head Constable Balvir Singh (PW.7) and other two constables was on a routine check-up and general patrolling. On reaching the West of Adarsh School in the close vicinity of the house of Rashmi, deceased, he and his companions heard shrieks emanating from the house of Suresh Kumar accused known as "Jagadhari Walon Ki Kothi". The police party saw three persons scaling down the wall of the Sahan towards West of the room under the occupation of Rashmi, deceased.

(C) On being challenged and flashing of torch light, two of them ran towards North West and the third towards South. On a chase, the present two respondents who were running towards North West, were caught hold by Samay Singh (PW.8)

A and one Sharif who was present there. The other accused who ran towards South, managed to escape. He was named as Suresh Kumar by the present two respondents after they had been apprehended. The respondents led the police party inside the Sahan of the said house. The lock inside the door opening in the Sahan was broken by S.I. Brahm Pal Singh (PW.6) and a woman was seen lying unconscious on the floor in the room on a cot. In the meanwhile, Mahesh Kumar (PW.3), (brother of Suresh Kumar), also came down from the upper storey besides other persons. Mahesh Kumar (PW.3) took Rashmi, deceased, by car to S.B.D. Hospital, Saharanpur. The respondents had been taken to the police station Sadar Bazar where FIR was lodged by S.I. Brahm Pal Singh (PW.6). However, on receiving the information of death of Rashmi, deceased, at about 11.00 P.M. from Mahesh Kumar (PW.3), the case was converted under Section 302 IPC and investigation ensued.

(D) The post-mortem of the dead body was conducted by Dr. G.R. Sharma (PW.1) on 16.05.1980, according to which the deceased was about 30 years of age and had died about 18 hours from the time of conducting post-mortem. The doctor found the following ante-mortem injuries on her person:

(1) Lacerated wound 1 ½ cm x 1 ½ cm x ¼ cm on left eyelid with contusion 7.5 x 2 cm extending from left eyelid to left temple region.

(2) Abrasion 4 x ½ cm on left cheek.

(3) Abrasion 1 ½ cm x ¾ cm on left side neck, 2 cm below angle of mandible.

(4) Abrasion ½ cm x ½ cm with contusion 1 ½ cm x 1 cm on the right side of neck, 4 cm below angle of mandible.

(5) Abrasion 1 ½ cm x 1 cm on back of left shoulder joint top.

- (6) Abrasion 1 cm x 1 cm on back of left elbow joint. A
- (7) Contusion 5 cm x 3 cm on right forearm upper 1/
3rd medial side.
- (8) Contusion 4 cm x 2 cm on back of inner angle of
scapula. B

(E) Suresh Kumar was also arrested on 23.05.1980 and he was kept bapurdah. He was subjected to test identification parade on 6.6.1980 and was identified by S.I. Brahm Pal Singh (PW.6), Head Constable Balvir Singh (PW.7) and Samay Singh (PW.8) besides Babu Ram and Surendra Pal. As all the three accused pleaded not guilty, they were put to trial. The prosecution, in all, examined 13 witnesses. The respondent Mohd. Iqram also examined one Bhugan (DW.1), the Pradhan of village Taharpur in his defence. C

(F) On consideration of the evidence on record, the learned trial court convicted and sentenced the two respondents as mentioned hereinabove, but acquitted Suresh Kumar (husband of deceased Rashmi) giving him benefit of doubt entirely on the premise that he might have been known to the identifying witnesses from before, and he was shown to the witnesses before being put to test identification. D

(G) Being aggrieved, the two respondents filed Criminal Appeal Nos. 14 and 60 of 1981 before the Allahabad High court which have been allowed by the judgment and order dated 25.04.2003. Hence, these appeals. E

3. Shri R.K. Gupta, learned counsel appearing on behalf of the State of U.P., has submitted that the High Court committed an error in acquitting the respondents without appreciating the facts on record. The trial court had convicted the respondents on circumstantial evidence making clear cut observations that the chain of circumstances was complete; the said respondents had been arrested from the place of F

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- A occurrence; their presence was not likely to be there as they were not the residents of the area; there had been no theft or dacoity in the area. Rashmi, deceased, was strangled with hands without the aid of any weapon. The High Court ordered acquittal on the basis that no weapon had been recovered and
- B probably Suresh Kumar, who had been acquitted by the trial court had committed the murder after committing rape on the deceased, though the trial court had recorded a finding that there had been no violence with the body of the deceased even prior to her strangulation. The High Court has placed reliance
- C on inadmissible evidence which is not permissible in law. The judgment and order of the High Court is liable to be set aside and the appeals deserve to be allowed.

4. On the contrary, Smt. K. Sarada, learned amicus curiae, has vehemently opposed the appeals contending that the High
- D Court had given cogent reasons while acquitting the respondents. This Court should not interfere with the said order as it is based on proper appreciation of evidence. No motive could be established against the respondents, thus, appeals are liable to be dismissed.

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5. We have considered the rival submissions made by both the learned counsel for the parties and perused the record.

6. As it is a case of acquittal, this Court has to be slow in interfering with the impugned judgment and order and it is
- F permissible to reverse the judgment of acquittal only on settled principles of law. This Court will have to record conclusions that the findings of fact recorded by the High Court are perverse and, for that purpose, it is necessary for us to make reference to the evidence on record very briefly.

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7. Mahesh Kumar (PW.3) is the brother of accused Suresh Kumar, husband of Rashmi, deceased. He had deposed that on 15.5.1980 at about 9.00 P.M., he was on the roof of his house alongwith his another brother. He heard shrieks from the
- H room of Rashmi, deceased. He flashed the light of torch

towards the same and found that 2-3 persons were running away from there. He immediately came down stairs and found that some persons had already gathered there. He found that these two respondents had been apprehended by the police and local persons present there. He had gone alongwith these respondents and police to the room of the deceased and found her lying on the cot. Mukesh Kumar (PW.3) took her to the hospital where she was declared dead. S.I. Brahm Pal Singh (PW.6) has supported the prosecution case by stating that when he was on patrol duty on 15.5.1980 and reached near the place of occurrence, he heard some noise from the residence of Rashmi, deceased. He immediately went towards the said house and found that three persons were scaling down the Western wall of the building. The police party chased them alongwith other persons and apprehended them. Samay Singh (PW.8) and Sharif had also reached there. One person escaped. Constable Balvir Singh (PW.7) who had accompanied S.I. Brahm Pal Singh (PW.6) deposed that they found three persons scaling down the Western wall of the house and police alongwith other persons chased them and apprehended two persons while one escaped. Samay Singh (PW.8) has also made a similar statement supporting the case of the prosecution. Om Prakash Chaudhry, a practicing advocate, had deposed about the strained relationship between accused Suresh Kumar and deceased Rashmi and further deposed that Rashmi, deceased, had told him 2-3 times that she had an apprehension of being killed by Suresh Kumar, accused and his mother in law. The prosecution case stands further supported by Dr. G.R. Sharma (PW.1), who had conducted the post-mortem examination and in the report opined that injuries on the person of Rashmi, deceased, could be caused by strangulation and use of force.

8. After appreciating the aforesaid evidence including the deposition of Bhugan (DW.1), the trial court came to the conclusion that Suresh Kumar, accused, had no motive and his

A identification was also not reliable and acquitted him by giving the benefit of doubt.

9. The respondents were convicted by giving cogent reasons on the basis of the following grounds:

- B . None of the accused persons belonged to the locality or even to the city.
- . No suggestion came to be made from their side as to what could have brought them to the spot at the moment.
- C . They were utter strangers to the area operating under cover of darkness and seen scaling down the wall in a bid to run away.
- D . Upon being taken into custody they took the police party inside the western Sahan and then to the apartment occupied by the deceased.
- . The medical evidence did not suggest that there was rape or anything of the kind attempted on Smt. Rashmi. Nor did the investigation reveal any case of theft.
- E . The purse of the deceased was found intact in the room besides the sum of Rs.107/- and odd. None of the articles was shown to have been taken away. The object behind those who operated inside the room, therefore, could not have other than to kill Smt. Rashmi.
- F .
- G . Death was possible in the medical opinion also, to be caused by strangulation with the hands without the application of any other instrument or weapon.

10. The High Court after appreciating the evidence acquitted the respondents on the basis of the following findings:

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(I) The simple fact of their running in the lane at that moment could not be sufficient to fasten the guilt on their heads. There is no corroboration of any independent witness that the accused had scaled down the Western wall of the house. A

(II) The deceased was a continuous source of trouble to her husband Suresh Kumar. She was not reconciled to the divorce granted in favour of her husband and she had challenged the same before the appellate court and her husband had also been burdened with the liability to pay maintenance to her till her life time. Further observations made by the Court read as under: B C

"The post-mortem report shows that seminal fluid was found in her vaginal part and several ante-mortem injuries had also been inflicted on her. The autopsy indicated as if she was subject to forcible intercourse also before her death. The greater possibility is that it was her husband who cut short her life after inflicting several injuries on her and strangulating her, but before doing that he even had forcible sexual intercourse with her exhibiting sadistic tendency. He did her to death this way, removing the thorn from his way for all times to come. After committing the crime, he managed the vanishing trick from the scene. The said feature is that the case was given a different profile relating to him, not coming up to the standard required to find him guilty." D E F

(III) There was no electric supply at the relevant time. Thus, identification of the accused while scaling down the wall becomes doubtful. G

(IV) The weapon used in the offence had not been recovered.

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A 11. In the aforesaid fact-situation, the case requires very close scrutiny.

B Dr. G.R. Sharma (PW.1) had deposed that the injuries could be caused by strangulation by hands. Thus, the question of recovering any weapon as mentioned by the High Court, is totally unwarranted and uncalled for. More so, nature of the injuries itself reveal that for causing such injuries, no weapon was required. Non-use of weapon cannot be illogical, keeping in view the findings recorded in the post mortem report.

C 12. So far as the issue of rape of the deceased prior to her murder by Suresh Kumar, accused, her ex-husband, is concerned, the trial court has recorded findings of fact on this aspect in the negative. Undoubtedly, post-mortem report contains such observations, but Dr. G.R. Sharma (PW.1) has not made any such reference either in his examination-in-chief or cross-examination. Nor this aspect had ever been put to either of the three accused in their statements recorded under Section 313 of Code of Criminal Procedure, 1973 (hereinafter called 'Cr.P.C.'). We fail to understand as under what circumstances it was permissible for the High Court to make such observations about the post-mortem report. Accused Suresh Kumar has been acquitted by the trial court. The State, for reasons best known to it, did not prefer any appeal against the said order of acquittal. We are of the considered opinion that it was not permissible for the High Court to castigate the accused Suresh Kumar with such observations holding him guilty of committing rape and subsequently murder of his ex-wife Rashmi. Undoubtedly, the post-mortem report had been proved but that does not mean that each and every content thereof is stood proved or can be held to be admissible. Such observations cannot be termed to be a substantive piece of evidence. Dr. G.R. Sharma (PW.1) did not even whisper about the same in his statement made in the court which is the only substantive piece of evidence in law. The court cannot place reliance on incriminating material against the accused, unless

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it is put to him during his examination under Section 313 Cr.P.C. Thus, the High Court committed an error by taking into consideration the inadmissible evidence for the purpose of deciding the criminal appeals and holding the person guilty who had already been acquitted by the trial court. The post-mortem report had been examined at the time of framing of the charges. The trial court did not frame any charge under Section 376 IPC or Section 376 read with Section 511 IPC. More so, no witness had ever mentioned anything in this respect. Thus, it is beyond any stretch of imagination of any person, how such observations could be made by the High Court.

13. No matter how weak or scanty the prosecution evidence is in regard to certain incriminating material, it is the duty of the Court to examine the accused and seek his explanation on incriminating material that has surfaced against him. Section 313 Cr.P.C. is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Therefore, the court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory material appearing against him. Circumstances which were not put to the accused in his examination under Section 313 Cr.P.C. cannot be used against him and have to be excluded from consideration. (Vide: *Sharad Birdhichand Sarda v. State of Maharashtra*, AIR 1984 SC 1622; *State of Maharashtra v. Sukhdeo Singh & Anr.*, AIR 1992 SC 2100; and *Paramjeet Singh @ Pamma v. State of Uttarakhand*, AIR 2011 SC 200)

14. In *State of Bihar and Ors. v. Radha Krishna Singh & Ors.*, AIR 1983 SC 684, this Court dealt with the issue of prohibitive value of the contents of an admitted document and held as under :-

A “Admissibility of a document is one thing and its probative value quite another-these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight of its probative value may be nil.....”

B (See also: *Madan Mohan Singh v. Rajni Kant*, AIR 2010 SC 2933)

C Thus, even if the post mortem report revealed any sexual assault on the deceased victim, such contents are not admissible, in spite of the fact that the post mortem report had been exhibited and proved by Dr. G.R. Sharma (PW.1), in view of the facts mentioned hereinabove.

D 15. So far as the question of the source of light and identification of the accused are concerned, the depositions of Mahesh Kumar (PW.3), brother of Suresh Kumar-accused, Brahm Pal Singh, S.I. (PW.6), Balvir Singh (PW.7) and Samay Singh (PW.8) reveal that there were minimum three torches which had been flashed simultaneously on the persons who were scaling down the wall and were being chased by the police as well as by the local residents including Samay Singh (PW.8). In such a fact-situation, failure of electric supply does not become fatal.

F Brahm Pal Singh (PW.6) and Balvir Singh (PW.7) have identified the respondents being the persons who were scaling down the wall and had been apprehended upon an immediate chase. Therefore, the High Court erred in recording the finding that identification was doubtful.

G Once the prosecution had brought home the evidence of the presence of the accused at the scene of the crime, then the onus stood shifted on the defence to have brought forth suggestions as to what could have brought them to the spot at that dead of night. The accused were apprehended and therefore, they were under an obligation to rebut this burden

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discharged by the prosecution, and having failed to do so, the trial court was justified in recording its findings on this issue. The High Court committed an error by concluding that the prosecution had failed to discharge its burden. Thus, the judgment proceeds on a surmise that renders it unsustainable.

The trial court did not find evidence of Bhugan (DW.1), examined by Mohd. Iqram, one of the respondents, worth acceptance.

16. The High Court did not even make any reference to him. It is a settled legal proposition that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse i.e. the conclusions of the courts below are contrary to the evidence on record or its entire approach in dealing with the evidence is patently illegal, leading to miscarriage of justice or its judgment is unreasonable based on erroneous law and facts on the record of the case, the appellate court should interfere with the order of acquittal. While doing so, the appellate court should bear in mind the presumption of innocence of the accused and further that the acquittal by the courts below bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

(See : *Babu v. State of Kerala*, (2010) (9) SCC 189; *Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra*, (2010) 13 SCC 657; *Brahm Swaroop & Anr. v. State of U.P.*, AIR 2011 SC 280; *S. Ganesan v. Rama Raghuraman & Ors.*, (2011) 2 SCC 83; *V.S. Achuthanandan v. R. Balakrishna Pillai & Ors.*, (2011) 3 SCC 317; *State of M.P. v. Ramesh & Anr.*, (2011) 4 SCC 786; *Abrar v. State of U.P.*, (2011) 2 SCC 750; and *Rukia Begum & Ors. v. State of Karnataka*, (2011) 4 SCC 779).

17. In the instant case, the circumstantial evidence is so strong that it points unmistakably to the guilt of the respondents

A and is incapable of explanation of any other hypothesis that of their guilt. Therefore, findings of fact recorded by the High Court are perverse, being based on irrelevant considerations and inadmissible material.

B 18. In view of the above, the appeals succeed and are allowed. The judgment and order of the High Court dated 25.04.2003 is hereby set aside. The judgment and order of the trial court dated 20.12.1980 in Sessions Trial No.382 of 1980 is restored. A copy of the order be sent to the Chief Judicial Magistrate, Saharanpur to ensure that the respondents be apprehended and sent to jail for serving out the unserved part of the sentence awarded by the trial court.

C

R.P.

Appeals allowed.