

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad
v.**

State of Uttarakhand

(Criminal Appeal No(s). 3955-3956 of 2025)

10 September 2025

[Vikram Nath, Sanjay Karol and Sandeep Mehta,* JJ.]

Issue for Consideration

Whether the conviction of the appellants, as recorded by the trial Court and affirmed by the High Court, deserves to be upheld or whether they are entitled to acquittal.

Headnotes[†]

Circumstantial evidence – Protection of Children from Sexual Offences Act, 2012 – ss.3 r/w 4, 5 r/w 6, 7 r/w 8 – Penal Code, 1860 – ss.376A, 363, 212, 120-B and 201 – Case of the prosecution that the deceased-minor girl was raped and sodomised and the accused-appellants were seen in close proximity to her shortly before she went missing from a wedding function and was later found dead – Prosecution relied upon motive of lust; the last seen theory and the alleged scientific evidence – Appellant No.1 was convicted u/ss.376A, IPC and ss.16, 17 3 r/w 4-7, POCSO Act and ss.363, and 201, IPC and was awarded death sentence – While, the appellant No.2 was convicted additionally u/s.212, IPC also and was sentenced accordingly – Guilt of the appellants, if was proved beyond reasonable doubt:

Held: 1.1 No – The prosecution failed to prove the guilt of the appellants beyond a reasonable doubt – In cases resting on circumstantial evidence, every link in the chain must be firmly and conclusively established, leaving no room for doubt – Where two views are possible, the one favourable to the accused must be adopted. [Paras 53, 56]

1.2 As regards ‘motive’, the prosecution has merely alleged that the appellants were driven by lust – However, no independent or credible evidence has been adduced to substantiate such a motive – A bald assertion without corroboration cannot by itself form a safe basis for conviction. [Para 52]

* Author

Supreme Court Reports

1.3 The 'last seen theory' relied upon by the prosecution suffers from serious infirmities – The prosecution has failed to prove the proximity of time and place so as to shift the burden onto the accused – The entire prosecution case linking the accused-appellants to the crime through the 'last seen theory' rests upon the belated introduction of interested witnesses after the body was recovered, upon the information given by 'NC' (deceased victim's cousin) – Despite being a close relative who first disclosed the situs of the victim girl's dead body, he was never examined or interrogated by the investigating officers – This omission is of grave significance. [Paras 31, 32, 52]

1.4 The utter failure of the Investigating Officer to question him so as to find out the source of his knowledge about the dead body of the victim girl depicts gravely tainted and suspicious actions of the Investigating agencies – The Investigating Officer's failure to record a statement of 'NC' during the investigation and the omission of the prosecution to present him for deposition at the trial deprived the Court of the most vital link in the chain of circumstances – This intentional and calculated omission not only undermines the 'last seen theory' but also causes serious prejudice, as it deprives the Court and the defence of the opportunity to test whether the knowledge of 'NC' was innocent or otherwise – In the absence of this crucial testimony, the last seen circumstance collapses completely – Non-examination of 'NC' compels the Court to draw an adverse inference against the prosecution. [Para 32]

1.5 Furthermore, the scientific evidence also is itself riddled with deficiencies – The alleged theory of DNA found on the body of the victim girl matching with the DNA of appellant No. 1, is *ex facie* doubtful and unworthy of credence – Also, the prosecution's claim that the appellant No.1's location was traced through mobile surveillance is falsified by its own record, as the call detail records were procured much later and no evidence exists to link the appellant No.1 with the sim numbers in question – Likewise, the omission to examine crucial witnesses, including the subscribers of the relevant mobile numbers and most importantly 'NC' further weakens the case of the prosecution. [Para 52]

2.1 Thus, the prosecution has failed to prove motive, the last seen theory stands contradicted, and the alleged scientific evidence is marred by inconsistencies and serious loopholes – It is wholly unsafe to uphold a conviction, much less the extreme penalty of death – Since the prosecution failed to establish the chain of circumstances against appellant No.1, the very foundation of the case against

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

appellant No. 2 is also destroyed as the same rests primarily on the alleged extra-judicial confession of accused-appellant No.1 *inter alia* stating that upon seeing the victim girl coming out of the wedding Pandal, he and his companions (appellant No.2 and the other accused) minds got vitiated by lust and thus decided to engage in carnal acts – Thus, the prosecution has failed to prove the charges against appellant No. 2 also, beyond a reasonable doubt and his conviction also cannot be sustained. [Paras 38, 53, 55]

2.2 Impugned common judgment passed by the Division Bench of the High Court and the judgment of the Trial Court are set aside – Appellants acquitted. [Paras 57, 58]

Criminal Law – Award of death penalty – Duty of courts:

Held: Trial Courts, as well as High Courts, are required to exercise the highest degree of circumspection before awarding the death penalty – The irreversible nature of capital punishment demands that it be imposed only in the “rarest of rare” cases and only when the prosecution has led unimpeachable, cogent, and convincing evidence that excludes every hypothesis of innocence – Even the slightest doubt or infirmity in the prosecution’s case must weigh against the imposition of such a sentence – Any hasty or mechanical application of the death penalty, without ensuring the highest standards of proof and procedural fairness, not only undermines the rule of law but risks the gravest miscarriage of justice by extinguishing a human life irretrievably – It is the duty of courts to consider mitigating circumstances and conduct a detailed sentence hearing before awarding the death penalty – Therefore, unless the prosecution’s evidence forms an unbroken and reliable chain of circumstances pointing only to the guilt of the accused, the extreme penalty cannot be justified. [Para 54]

Evidence – Scientific/forensic evidence – DNA evidence – Reliance upon, when not justified – Circumstances surrounding the arrest of appellant No. 1 also examined, as the credibility of the DNA samples collected by the IOs was directly dependent upon the legality and authenticity of the arrest and subsequent seizure proceedings:

Held: On facts, in view of the various contradictions, omissions, and investigative lapses, the entire procedure of arrest and search of the person of the appellant No. 1 by PW-10 is gravely doubtful – The story projected in the evidence of the witness is something

Supreme Court Reports

out of fiction and is *ex facie* unbelievable – Thus, there are many suspicious circumstances surrounding the theory of apprehension and arrest of the appellant No.1 – The very theory advanced by the prosecution, that accused was traced based on his mobile location, is false and without foundation – The manner in which the arrest of the appellant No.2 was projected by the prosecution is also seriously dubious – Thus, the very foundation on which the DNA evidence is sought to be projected is gravely compromised, for if the arrest itself was illegal and stage-managed, the process of drawing samples from the accused-appellants cannot be regarded as either voluntary or reliable. [Paras 35, 40, 41, 44, 45]

1.2 Various circumstances, starting from the so-called arrest of the appellant No. 1 from Ludhiana (Punjab) taken cumulatively, give rise to a strong inference of tampering with the forensic samples and planting of semen of the appellant No.1 on the samples, i.e., cervical swab, undershirt, and underwear of the victim girl, so as to establish his involvement in the crime – The entire process of collection and examination of samples and the consequent matching of the DNA is suspicious and wholly unreliable – The DNA report cannot be treated as a reliable piece of evidence – In absence thereof, there is no evidence on record to connect the appellant No.1 with the crime – Also, credentials and qualifications of the Doctor (PW-34), who conducted the DNA examination and issued the DNA Report are also highly doubtful to place him in the category of a DNA expert. [Paras 48, 49]

Circumstantial evidence – Conviction based purely on circumstantial evidence – Golden principles laid down in Sharad Birdhichand Sharda, stated. [Para 10]

Case Law Cited

Manoj & Ors. v. State of Madhya Pradesh [2022] 9 SCR 452 : (2022) SCC OnLine SC 677; *Sharad Birdhichand Sharda v. State of Maharashtra* [1985] 1 SCR 88 : (1984) 4 SCC 116; *Mukesh & Anr. v. State for NCT of Delhi & Ors.* [2017] 6 SCR 1 : (2017) 6 SCC 1; *Bachan Singh v. State of Punjab* (1980) 2 SCC 684; *Machhi Singh v. State of Punjab* [1983] 3 SCR 413 : (1983) 3 SCC 470 – relied on.

List of Acts

Protection of Children from Sexual Offences Act, 2012; Penal Code, 1860; Information Technology Act, 2000.

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

List of Keywords

Rape; Circumstantial evidence; Motive, Last seen theory; Alleged scientific evidence; Tampering with forensic samples; Semen of accused planted; Semen planted on the samples; Cervical swab; Undershirt; Underwear; Chain of circumstances not established; Process of collection and examination of samples suspicious; Matching of the DNA is suspicious; DNA report not reliable; Mobile location; Alleged extra-judicial confession; Theory of apprehension and arrest; Suspicious circumstances; Arrest illegal; Arrest stage-managed, Procedure of arrest and search; Procedure of arrest and search doubtful; Forensic evidence; Forensic samples; Process of drawing samples not reliable; DNA examination; DNA Report; Credentials of the Doctor doubtful; Not a DNA expert; No bloodstains; Jacket; Death penalty; Capital punishment; "Rarest of rare" cases; Highest degree of circumspection; Mitigating circumstances; Pithoragarh; Haldwani; Victim girl; Missing; Wedding function; Wedding Pandal; Lust; Sodomised; Victim girl's hairband; Authenticity of the recovery proceedings doubtful; Alleged recovery manipulated; Guilt not proved beyond reasonable doubt; Acquittal.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No(s). 3955-3956 of 2025

From the Judgment and Order dated 18.10.2019 of the High Court of Uttarakhand at Nainital in CRLR Nos. 1 and 104 of 2016

With

Criminal Appeal No. 3957 of 2025

Appearances for Parties

Advs. for the Appellant:

Ms. Manisha Bhandari, Omkar Shrivastava, Divyadeep Chaturvedi, Ayush Jain, Shashwat Sidhant, Ayush Kumar Dubey, Ms. Ishita Dhaila, Pritish Arya, Saurabh Pandey, Dhruv Chandra, Ms. Manisha Bhandari, Omkar Shrivastava, Divyadeep Chaturvedi, Shashwat Sidhant, Ms. Ishita Dhaila, Rameshwar Prasad Goyal.

Advs. for the Respondent:

Ms. Vanshaja Shukla, Ms. Ankeeta Appanna, Siddhant Yadav, Ajay Bahuguna.

Supreme Court Reports

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Heard.
2. Leave granted.
3. The present appeals by special leave are preferred on behalf of appellant No. 1-Akhtar Ali *alias* Ali Akhtar *alias* Shamim *alias* Raja Ustad¹ and appellant No. 2-Prem Pal Verma², assailing the common judgment dated 18th October 2019, passed by the Division Bench of the High Court of Uttarakhand at Nainital³ in Criminal Appeals⁴, partially upholding the conviction and sentence awarded to the appellants by the Special Judge (POCSO)/ Fast Track Court/ Additional District & Sessions Judge, Haldwani, District Nainital⁵ *vide* judgment and order of sentence dated 11th March, 2016 in Session Trial Case⁶, whereby accused-appellant No.1-Akhtar Ali was convicted for the offences punishable under Sections 376A, 363, and 201 of the Indian Penal Code, 1860⁷; under Section 3 read with Section 4, Section 5 read with Section 6 and Section 7 read with Section 8 of the Protection of Children from Sexual Offences Act, 2012⁸; and Section 66C of the Information Technology Act, 2000⁹. Accused-appellant No. 2-Prem Pal Verma was convicted under Sections 212 of the IPC and Section 66C of the IT Act; however, he was acquitted of the charges under Sections 363, 201, 120-B, 376A of the IPC and Sections 16/17 read with Sections 4, 5, 6, 7 of the POCSO Act. The accused-appellants were sentenced as under:

1 Hereinafter, being referred to as 'accused-appellant No.1-Akhtar Ali'; appellant in Criminal Appeals @ SLP(Crl.) No(s). 14-15 of 2020.

2 Hereinafter, being referred to as 'accused-appellant No.2-Prem Pal Verma'; appellant in Criminal Appeal @ SLP(Crl.) No(s). 6573 of 2020.

3 Hereinafter, being referred to as 'High Court'.

4 Criminal Appeal No. 104 of 2016 along with Criminal Reference No.1. of 2016 and others.

5 Hereinafter, being referred to as 'the trial Court'.

6 Session Trial No. 09 of 2015.

7 Hereinafter, being referred to as 'the IPC.'

8 Hereinafter, being referred to as 'the POCSO Act.'

9 Hereinafter, being referred to as 'IT Act'.

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

| Accused/ appellant | Provision under which convicted | Sentence awarded by the trial Court | The High Court |
|--|---|--|---------------------------|
| Accused- Appellant No. 1 - Akhtar Ali | Section 376A of the IPC; and Sections 16 and 17 read with Sections 4, 5, 6, and 7 of the POCSO Act. | Death Sentence | Affirmed |
| | Section 363 of the IPC | Rigorous imprisonment for seven years and a fine of Rs.5000/- and in default of payment of fine, simple imprisonment for a further period of one month. | Affirmed |
| | Section 201 of the IPC | Rigorous imprisonment for seven years and a fine of Rs.5000/- and in default of payment of fine, simple imprisonment for a further period of one month. | Affirmed. |
| | Section 66C of the IT Act | Rigorous imprisonment for three years and a fine of Rs.20,000/- and in default of payment of fine, simple imprisonment for a further period of two months. | Acquitted |
| | Section 120B of the IPC | Acquitted. | Acquitted |
| Accused- Appellant No. 2 Prem Pal Verma | Section 212 of the IPC | Rigorous imprisonment for seven years and a fine of Rs.10,000/- and in default of payment of fine, simple imprisonment for a further period of one month. | Affirmed |
| | Section 66C of the IT Act | Rigorous imprisonment for three years and a fine of Rs.20,000/- and in default of payment of fine, simple imprisonment for a further period of two months. | Acquitted |
| | Sections 363, 201, 120-B, 376A of the IPC; and Sections 16, 17 read with Sections 4, 5, 6, and 7 of the POCSO Act. | Acquitted. | Affirmed |
| Accused- Junior Masih alias Foxy | Section 212 of the IPC; Section 66 of the IT Act; and Sections 16, 17 read with Sections 4, 5, 6, and 7 of the POCSO Act. | Acquitted | Affirmed. |

Supreme Court Reports

4. Briefly stated, the case of the prosecution, giving rise to the present appeals, is as under:
 - 4.1 On 21st November, 2014, at 11:30 am, the victim's father (PW-1) lodged a report¹⁰ under Section 365 of the IPC, at Kathgodam Police Station, alleging *inter alia* that he and his family had travelled from Pithoragarh to Haldwani to attend the wedding of a relative which was to be solemnized at *Sheeshmahal* in Ramlila Maidan, Kathgodam, on 20th November, 2014. During the said ceremony at around 07:45 pm, his daughter, Ms. K, along with other children, was playing in the *pandal* (venue). When Ms. K was called for a group photograph, she could not be found and appeared to have gone missing. Ishwar Singh Sah (PW-36), an attendee at the function, telephonically registered a missing complaint with Constable Subodh Sharma (PW-4) about Ms. K's disappearance. Subodh Sharma (PW-4) recorded the information in the Police Station's General Diary Report No. 51¹¹ and alerted on-duty officers to try and locate the informant's daughter, Ms. K. The Police officials questioned the people who attended the wedding and the individuals in nearby vehicles and searched the area, but the child, Ms. K, was nowhere to be found.
 - 4.2 Four days later, i.e., on 25th November, 2014, Rajesh Kumar Yadav (PW-6), Station House Officer, received a phone call from an individual, named Nikhil Chand (cousin of the informant's daughter, Ms. K), who informed that the dead body of the victim girl was lying near *Gaula* River in the Forest in front of *Sheeshmahal*. Based on the said information, Sub-Inspector Shanti Kumar Gangwar (PW-5), along with Constables Mamta Arya, Devki Bisht, Subodh Sharma (PW-4) and Suresh Chandra, proceeded to the said location and found the dead body of a small girl, which was identified and confirmed to be that of the informant's daughter, Ms. K, by the public present at the location, as well as by her relatives. Sub-Inspector Suman Pant (PW-3) prepared the *panchayatnama*¹² of the body, which was then sent

10 Case Crime No. 73 of 2014. The same is Exhibited as Exhibit Ka-1.

11 Exhibit Ka-17.

12 Exhibit Ka-9.

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

for autopsy. Dr. C.P. Bhaisora (PW-7) conducted post-mortem examination and found that all the organs of the victim girl were pale with early signs of putrefaction. He opined that the cause of death was shock and haemorrhage resulting from injuries to the vaginal and perianal region caused by sexual assault and blunt force trauma, which were sufficient to cause death in the ordinary course of nature. Consequently, offences under Sections 363, 376, 302, and 201 of the IPC and Section 4 of the POCSO Act were added to Case Crime No. 73 of 2014.

- 4.3 On 25th November, 2014, the investigation of the case was assigned¹³ to Vipin Chandra Pant (PW-40), the Investigating Officer. During the investigation, it was found that on the evening of 20th November, 2014, the nearby shopkeeper, i.e., Kishan Singh Bora (PW-16), Bal Krishan (PW-19), and Shahadat Ali (PW-20) saw the accused-appellant No. 2-Prem Pal Verma, who is a driver by profession, drinking liquor with another person. Both were seen buying chocolates and toffees from a nearby shop. Further inquiries revealed that Shankar Dutt Padalia (PW-18), owner of a Dumper, which operated in the *Gaula* River, had employed a man from Bihar on the recommendation of the accused-appellant No. 2-Prem Pal Verma. The investigating agency obtained the mobile phone number of this unidentified person from Shankar Dutt Padalia (PW-18) and placed it under surveillance. Similarly, the accused-appellant No. 2-Prem Pal Verma's mobile number was retrieved from his employer, Manish Gaur @ Mannu Gaur (PW-39) and was also placed under surveillance.
- 4.4 Two teams from the Special Task Force (STF) were formed to uncover the details of the crime. One team, led by Sub-Inspector Yogesh Kumar Chand (PW-10), proceeded to Ludhiana (Punjab), based on call detail records of the suspected numbers, while another team, led by Sub-Inspector Naresh Chauhan, headed to Champaran (Bihar) and Delhi. On 27th November, 2014, at around 11:00 am, the team led by Sub-Inspector Yogesh Kumar Chand (PW-10) traced the location of one suspected mobile number to Guru Amardas Colony in Ludhiana (Punjab). They

13 Vide Order No. 03 of 2014.

Supreme Court Reports

then began searching for the user of the mobile phone and eventually detained the suspect at *Sethi* Market, who identified himself as Akhtar Ali, i.e., accused-appellant No. 1. During a personal search, the police recovered a railway ticket from Haldwani to Delhi, an identity card, and a mobile phone from the possession of accused-appellant No. 1-Akhtar Ali. The team also claimed to have recovered the blanket used in the alleged crime from the possession of accused-appellant No. 1-Akhtar Ali, who was formally arrested and then was taken to the Police Station, Kathgodam, Haldwani on 28th November, 2014. Upon arrival, the Investigating Officer, Vipin Chandra Pant (PW-10), interrogated accused-appellant No.1-Akhtar Ali, who confessed that accused-appellant No.2-Prem Pal Verma and a Junior Masih *alias* Foxy¹⁴, were his accomplices and were also involved in the crime. He admitted that his friend, accused-appellant No.2-Prem Pal Verma, had helped him secure a job as a dumper driver with Shankar Datt Padalia (PW-18) of *Sheeshmahal*, Kathgodam. On 20th November, 2014, accused-appellant No.1-Akhtar Ali, accused-appellant No.2-Prem Pal Verma, and Junior Masih *alias* Foxy, consumed *whisky* (alcohol) together. Around 07:30 pm, a young girl came out of the wedding *Pandal* (venue). All three threatened the victim girl with a *Tamancha* (a country-made pistol), took her to a nearby forest, wrapped her in a blanket, and committed sexual assault on her. When the girl became unconscious, they abandoned her body, after covering it with leaves, and left the scene. The accused-appellant No. 1-Akhtar Ali, purportedly led the police to the crime scene and recovered the victim girl's hairband. A seizure memo¹⁵ was prepared as proof of the same.

- 4.5 On 28th November, 2014, Sub-Inspector Shanti Kumar Gangwar (PW-5) and his team arrested the accused-appellant No. 2-Prem Pal Verma, and accused No. 3-Junior Masih *alias* Foxy.
- 4.6 After recording the statements of witnesses and concluding the investigation, the Officer-in-charge of the police station proceeded to file a charge sheet against all three accused

¹⁴ Accused No. 3 in Session Trial No. 09 of 2015.

¹⁵ Exhibit Ka-16.

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

persons. The accused-appellant No. 1-Akhtar Ali was charge-sheeted under Sections 363, 376, 302, 201, and 120-B of the IPC, along with Sections 4, 5, and 6 of the POCSO Act, and Section 66(C) of the IT Act. The accused-appellant No. 2-Prem Pal Verma was charge-sheeted under Sections 363, 376, 302, 201, 120-B, and 212 of the IPC, along with Sections 4, 5, and 6 of the POCSO Act and Section 66(C) of the IT Act. Junior Masih *alias* Foxy was charge-sheeted under Section 212 of the IPC and Section 66(C) of the IT Act. On 27th January, 2015, the trial Court took cognizance of the offences and provided the accused persons copies of the documents relied upon by the prosecution in compliance with the provisions of Section 207 of the Code of Criminal Procedure, 1973.¹⁶

- 4.7 The trial Court then proceeded to frame charges against all the charge-sheeted accused persons for the above offences, who abjured their guilt and claimed trial. The prosecution examined 40 witnesses, exhibited 87 documents, and 27 material objects to prove its case and establish the guilt of the accused persons. The accused persons were questioned under Section 313 of the CrPC and were confronted with the circumstances appearing against them in the prosecution case, which they denied and claimed to be innocent.
- 4.8 After hearing the parties and evaluating the evidence, the trial Court, *vide* its judgment dated 11th March, 2016, held that the prosecution had successfully established its case beyond a reasonable doubt and, therefore, convicted the accused-appellant No. 1-Akhtar Ali, and accused-appellant No. 2-Prem Pal Verma, as noted above.¹⁷ The trial Court acquitted the accused No. 3-Junior Masih *alias* Foxy, on the ground of insufficient evidence against him. *Vide* an order, passed on the same day, the accused-appellants were sentenced in the terms indicated above.¹⁸
- 4.9 Aggrieved by their conviction and sentences, accused-appellant No. 1-Akhtar Ali, and accused-appellant No. 2-Prem Pal Verma,

¹⁶ Hereinafter, referred to as the 'CrPC'.

¹⁷ *Supra*, Para No.3.

¹⁸ *Ibid*.

Supreme Court Reports

preferred an appeal¹⁹ under Section 374(2) CrPC to the High Court. The informant/father (PW-1) of the victim girl also filed a criminal appeal²⁰ against the acquittal of Junior Masih *alias* Foxy, as well as against the acquittal of Prem Pal Verma and Akhtar Ali for certain offences.²¹ The State also filed two identical appeals²² against the acquittal of Junior Masih *alias* Foxy, as well as against the acquittal of accused-appellant No.1-Akhtar Ali and accused-appellant No. 2-Prem Pal Verma, for certain offences.²³ A Criminal Reference²⁴ was forwarded by the trial Court to the High Court under Section 366 of CrPC, for confirmation of the death sentence awarded to accused-appellant No. 1-Akhtar Ali. The High Court, *vide* the common impugned judgment dated 18th October, 2019, upheld the conviction and sentences awarded to accused-appellant No. 1-Akhtar Ali, and accused-appellant No. 2-Prem Pal Verma for the offences punishable under the IPC and POCSO Act. However, both were acquitted of the charge under Section 66C of the IT Act. Consequently, the High Court dismissed the appeals filed by the father of the victim girl (PW-1) and the State and upheld the acquittal of the accused-Junior Masih *alias* Foxy and the partial acquittal of the accused-appellants. In Criminal Reference, the High Court also upheld the death sentence awarded to the accused-appellant No. 1-Akhtar Ali.²⁵

The impugned common judgment of the High Court dated 18th October 2019, is subjected to challenge by the accused-appellants in these appeals by special leave.

Submissions on behalf of the appellants: -

5. Ms. Manisha Bhandari, learned counsel for the accused-appellants, submitted that the entire prosecution case is based on circumstantial evidence, the chain of which remains incomplete and shattered as

19 Criminal Appeal No. 104 of 2016.

20 Criminal Appeal No. 318 of 2016.

21 *Supra*, Para No. 3.

22 Government Appeals No. 7 and 8 of 2017.

23 *Supra*, Para No. 3.

24 Criminal Reference No. 1 of 2016.

25 *Supra*, Para No. 3.

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

the material evidence has been fabricated, and gotten up witnesses were deliberately introduced by the prosecution, to bolster its case. Learned counsel for the accused-appellants advanced the following pertinent submissions to urge that the conviction of the accused-appellants as recorded by the trial Court and affirmed by the High Court is unsustainable on the face of the record: -

- 5.1. That the prosecution's case has, from the very beginning, been inconsistent and self-contradictory. The original version of the prosecution alleged that the victim girl, Ms. K, was kidnapped at gunpoint by the accused-appellants on the evening of 20th November 2014, and was taken to a secluded forest area, where she was subjected to brutal sexual assault. However, during the course of the investigation, the Investigating Officer, Vipin Chandra Pant (PW-40) admitted that no firearm was ever recovered and even conceded that the accused-appellant No. 1-Akhtar Ali, himself, in his extra-judicial confession, denied the use of any weapon. The prosecution, in order to fill this glaring lacuna, abruptly substituted its earlier story with a new version that the victim girl, Ms. K, was lured away by the accused-appellant with sweets and toffees. Such a fundamental and unexplained departure from the original prosecution narrative cannot be brushed aside, and it goes to the root of the case, demonstrating that the evidence has been tailored to suit the needs of the prosecution.
- 5.2. That the prosecution failed to examine one of the most material witnesses, namely, the cousin of the victim girl, Nikhil Chand. It is borne out from the record that Nikhil Chand was the first person who telephonically informed the Superintendent of Police, Rajesh Kumar (PW-6) about the location of the dead body of the victim girl in the *Gaula* River forest. It is also reflected in the case diary that Nikhil Chand had claimed to have seen the victim near a dumper on the date of the incident. In such circumstances, Nikhil was the only person who had knowledge both of the victim, Ms. K's, last known movements and of the exact location of her dead body, which could not be found despite the fervent efforts of the other relatives and a number of police teams. Despite this, he was neither interrogated during the investigation nor examined during the trial. The prosecution offered no explanation for this grave omission.

Supreme Court Reports

The deliberate exclusion to examine such a pivotal witness, whose testimony could have either confirmed or demolished the prosecution's version, casts a deep shadow over the fairness of the investigation and trial, warranting raising of an adverse inference against the prosecution.

- 5.3. That the manner of recovery of the victim girl's body itself is shrouded in serious doubt. The record shows that immediately after the disappearance of the girl child on the evening of 20th November 2014, an extensive search was conducted by the police and local residents in and around the wedding venue, the Gas *Godam* area, and the banks of the *Gaula* River. The efforts to search continued for several days without yielding any results. Yet, on 25th November 2014, the body was suddenly discovered mere 800 steps away from the venue by none other than the victim's cousin, Nikhil Chand. This circumstance is highly suspicious, for it is inconceivable that despite repeated searches, the police could not locate the body which was lying in such close proximity, only for it to be fortuitously found by the very relative whose own conduct remains under grave doubt compounded by the medical evidence demonstrating that injuries on the dead body of the victim girl were concentrated on the left side of the body suggestive of dragging, which gives rise to a grave doubt that the situs of the crime was shifted, and that the body was planted at the spot later shown. The shifting of the situs irretrievably demolishes the chain of incriminating circumstances.
- 5.4. That the condition of the crime scene was wholly inconsistent with the prosecution's allegation of repeated sexual assault on the victim girl by three fully grown men. According to the prosecution, the victim was raped and sodomised and then left in the bushes after being covered with leaves. However, the police did not find any bloodstains or signs of struggle at the alleged crime scene, although the post-mortem clearly records that the death was due to excessive bleeding, which occurred within minutes of the assault. The total absence of blood stains on the ground at or around the site renders the prosecution's version implausible. Equally unexplained is the forensic finding that blood was detected only on the red jacket found on the dead body, but not on the blanket or the ground. Such discrepancies

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

believe the story that the crime was committed there and suggest that the crime scene was staged.

- 5.5. That the alleged recovery of a hair-band at the instance of the accused-appellant No.1-Akhtar Ali, is another circumstance that cannot be believed. The FIR itself mentions that the victim girl had a boy-cut hairstyle, and no reference to any hairband was ever made at the initial stage. The recovery memo is riddled with irregularities. It bears overwriting of the time of recovery, does not mention the date, and has no independent witnesses. Even the trial Court and the High Court expressed doubt regarding this recovery. The improbability of the accused-appellant No. 1-Akhtar Ali, recalling the precise spot where such a trivial item was discarded days earlier, in a dense jungle, adds to the suspicion of the so-called recovery, which is thus nothing but planted evidence.
- 5.6. That the arrest of the accused-appellant No.1-Akhtar Ali, from Ludhiana on 27th November 2014, is also surrounded by grave doubt. The prosecution relies upon a “secret source” who, without any prior familiarity with the accused’s appearance, is alleged to have identified him in a crowded city. No *Ravanagi* or *Aamad* entry of the arresting team was made at the local police station at Ludhiana. The only local officer, Inspector K.R. Pandey, who could have corroborated the arrest and prepared the site map of the arrest, was withheld from the witness box. The *Naksha Najri* of the place of arrest was curiously prepared much later, on 6th January, 2015, by the Investigating Officer himself, who was not even part of the team that allegedly apprehended the accused-appellant No. 1-Akhtar Ali. To make matters worse, the photograph of the accused-appellant No. 1-Akhtar Ali, was published in the newspapers on 28th November, 2014, even though the prosecution claims he was produced at Haldwani, only that very morning. These circumstances leave no room for doubt that the accused-appellant No. 1-Akhtar Ali had, in fact, been picked up earlier from Haldwani (Uttarakhand) and falsely shown as arrested in Ludhiana (Punjab). The purpose of this fabricated exercise was clearly to justify the collection of samples and to facilitate the planting of DNA material of the accused-appellant No. 1-Akhtar Ali, on the forensic samples collected from the victim girl’s body.

Supreme Court Reports

- 5.7. That the DNA report, on which the conviction of the accused-appellant No.1-Akhtar Ali primarily rests, is neither consistent nor reliable. The prosecution claims that the semen of the accused-appellant No. 1-Akhtar Ali matched the cervical swab, undershirt, and underwear of the deceased. However, the same semen was conspicuously absent in the cervical smear prepared from the very same source, as well as in the vaginal swab, vaginal wash, and the shirt worn by the victim girl. Such selective presence of semen of the accused-appellant No. 1-Akhtar Ali is inexplicable unless the samples were tampered with and the fluids/blood of the accused-appellants were planted onto the same. The defence case that semen was forcibly obtained from the accused-appellant No. 1-Akhtar Ali after his illegal detention much before 27th November, 2014, and planted on certain exhibits, is fully supported and corroborated by these anomalies. Further, although the prosecution's case was of gang rape by three individuals, the semen of the other two alleged perpetrators was not detected on any forensic exhibit, which wholly demolishes the allegation of collective assault. The chain of custody of the exhibits is equally suspect: there is no record of where the samples were kept between 26th November 2014 and 27th November 2014, discrepancies exist in the forwarding letters, and several key documents bear no specimen seals at the time of seizure and sampling. Such glaring lapses make the scientific/forensic evidence inadmissible and incapable of sustaining a conviction, much less the imposition of the death penalty.
- 5.8. That the trial Court erred in sentencing the accused-appellant No.1-Akhtar Ali, and passing the conviction order, awarding the death penalty, on the very same date. It was urged that the trial Court made no effort whatsoever to consider the aggravating and mitigating circumstances before awarding the death penalty. Reliance was placed on the case of ***Manoj & Ors. v. State of Madhya Pradesh***²⁶, wherein it has been categorically held that before imposing a sentence of death, the Court is duty-bound to conduct a careful and meaningful evaluation of both aggravating and mitigating factors, including the possibility of reform and

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

rehabilitation of the accused. The omission of the trial Court to undertake this exercise vitiates the sentencing process and renders the award of the death penalty unsustainable in law.

On these grounds, learned counsel appearing for the accused-appellants implored the Court to accept the appeals, set aside the impugned judgments, and acquit the accused-appellants of the charges levelled against them.

Submission on behalf of the Respondent/State: -

6. *Per contra*, Ms. Vanshaja Shukla, learned counsel appearing for the respondent-State, vehemently and fervently opposed the submissions advanced on behalf of the accused-appellants and advanced the following pertinent submissions imploring this Court to dismiss the appeals: -
 - 6.1. That the arrest of accused-appellant No.1-Akhtar Ali was based on meticulous mobile surveillance and investigative findings, as evidenced by multiple prosecution witnesses. Yogesh Kumar Chand (PW-10), head of the Special Task Force, testified that accused-appellant No.1-Akhtar Ali had been missing from the crime scene since the date of the incident, prompting the investigation officer to place his mobile number (75xxxxxx90) under surveillance. The Call Details Records ('CDR') confirmed that on 20th November, 2014, and 21st November, 2014, his cellphone was active within the tower range of the crime scene. Furthermore, another number operating from the same device (both numbers having IMEI Nos. 911352501735790 and 911352501735780) traced his location to Ludhiana, where he was apprehended by Yogesh Kumar Chand (PW-10) and his team. The testimony of Amar Chand Sharma (PW-11), Radhey Shyam Shukla (PW-26), and Arun Kumar (PW-27) corroborates the same, affirming the accuracy of the mobile location tracking. Additionally, Ravindra Kumar Yadav (PW-35), in charge of the Special Operations Group, confirmed that the accused-appellant No.1-Akhtar Ali, was identified through surveillance. These findings unequivocally establish that the arrest of the accused-appellant No.1-Akhtar Ali, was lawful and based on concrete evidence, which is corroborated by the testimonies of the prosecution witnesses.

Supreme Court Reports

- 6.2. That the recovery of the victim-girl's dead body and subsequent observations made in post-mortem examination provide irrefutable evidence of a brutal sexual assault and murder. Sabir Ali (PW-29), who was tending to his horses in the forest, was the first to locate the deceased's body and immediately informed the local residents near Ram Leela Ground, *Sheeshmahal*, establishing the discovery as spontaneous and untainted. Moreover, Suman Pant (PW-3), Sub-Inspector, identified the dead body and conducted the inquest proceedings, noting visible injuries to the vaginal region, indicating that the victim girl was subjected to sexual violence before being done to death. The post-mortem examination further corroborates this conclusion, which was proved by Dr. C.P. Bhaisora (PW-7), i.e., the Medical jurist, who conducted an autopsy upon the victim girl's dead body. The post-mortem examination conclusively notes that the cause of death was shock and haemorrhage due to injuries inflicted on the vaginal and perianal region associated with grave sexual assault, caused by blunt force impact, and that these injuries were sufficient in the ordinary course of nature to cause death. This medical evidence not only confirms the horrific nature of the crime but also aligns with the prosecution's case that the victim girl was subjected to forcible sexual assault and brutal violence, thereby directly implicating the accused-appellants for the heinous and premeditated crime.
- 6.3. That the scientific and DNA evidence conclusively establishes the involvement of accused-appellant No.1-Akhtar Ali, in the crime, leaving no room for doubt. Dr. Sanjeev Kharkwal (PW-13), a Senior Medical Officer at District Hospital, Nainital, collected the blood samples of all the accused persons on 30th November, 2014 and ensured that the said samples were properly sealed and documented before being handed over to Constable Ashutosh Kumar (PW-15), who deposited them at the Forensic Science Laboratory (FSL), Dehradun, on 2nd December, 2014. The forensic analysis conducted by Dr. Manoj Kumar Agarwal (PW-34) at FSL Dehradun resulted in a DNA profiling report²⁷ that unequivocally confirmed the presence of human semen on

27 DNA Report dated 12th December, 2014 (Exhibit Ka-75) and DNA Report dated 15th December, 2014 (Exhibit Ka-76)

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

the cervical swab, undershirt, and underwear of the victim girl. Crucially, the profile of the DNA extracted from these exhibits was an exact match with the DNA profile obtained from the blood sample of accused-appellant No.1-Akhtar Ali, conclusively proving his physical involvement in the crime. This scientific evidence, which is objective and beyond human manipulation, serves as the strongest link connecting the accused-appellant No.1-Akhtar Ali to the sexual assault and murder of the victim girl, Ms. K. The DNA report²⁸ provides irrefutable affirmation of accused-appellant No.1-Akhtar Ali's role in this heinous crime, strengthening the prosecution's case beyond the pale of doubt.

- 6.4. That the conduct of the accused-appellant No.1-Akhtar Ali before and after the incident supports the prosecution's case and conclusively establishes his involvement in the crime. Prior to the victim's disappearance, multiple witnesses, including Kishan Singh Bora (PW-16), Balkrishna (PW-19), and Sahadat Ali Hasan (PW-20), saw accused-appellant No.1-Akhtar Ali near the location of the crime, corroborating that he was in the vicinity at the relevant time. Vipin Chandra Pant (PW-40), the Investigating Officer (IO), further confirmed this through the site plan, which aligns with the testimony of these witnesses. Additionally, two minor girls who were with the victim girl at the time were offered toffees by accused-appellant No.1-Akhtar Ali, and accused-appellant No.2-Prem Pal Verma, suggesting a deliberate attempt to lure away the victim; however, the families of these children did not allow them to testify due to societal ramifications. The accused-appellant No.1-Akhtar Ali's suspicious conduct in absconding following the crime further fortifies the prosecution's case.
- 6.5. That the site plan prepared by Vipin Chandra Pant (PW-40) establishes that the victim girl was kidnapped from about 800 steps away from where her body was later found. Several witnesses, viz., Veer Bahadur Chand (PW-23, victim's uncle), Deepak Sharma (PW-25), and Manoj Singh Dewri (PW-31), saw accused-appellant No.1-Akhtar Ali near a dumper (No. 8711)

Supreme Court Reports

parked close to the crime scene. Shankar Dutt Padalia (PW-18), the dumper owner, confirmed that accused-appellant No.1-Akhtar Ali was employed as a driver on 20th November, 2014, but disappeared soon after the crime. His sudden disappearance, as testified by Hariom Sharma (PW-24) (a railway employee), who stated that accused-appellant No.1-Akhtar Ali boarded a train from Haldwani on 21st November, 2014, and fled to Ludhiana, further points to accused-appellant No.1-Akhtar Ali's guilty state of mind. The CCTV footage handed over by Subhash Singh (PW-21), Assistant General Manager, IDBI Bank, was reviewed by the Investigating Officer, Vipin Chandra Pant (PW-40), confirming that accused-appellant No.1-Akhtar Ali and accused-appellant No.2-Prem Pal Verma, entered the bank together on 21st November, 2014 at 02:04 pm, just after the crime. Thus, the chain of circumstances, as noted by the trial Court and High Court, is complete, leaving no room of doubt about the involvement of the accused-appellants in the crime. The ocular testimonies, scientific/forensic (i.e., DNA examination) evidence, findings of post-mortem examination, and the accused persons' conduct before and after the incident collectively establish a consistent and unbroken sequence linking accused-appellant No. 1-Akhtar Ali and accused-appellant No. 2-Prem Pal Verma to the crime. Proximity of the accused-appellants to the victim girl during the wedding function, suspicious absconding, and corroborative forensic evidence decisively point to the guilt of accused-appellant No.1-Akhtar Ali.

On these grounds, the learned counsel for the respondent-State contended that the present appeals should be dismissed, as both Courts below have applied the law to the facts on record correctly and reached the only possible conclusion pointing towards the guilt of the accused-appellants.

Discussion: -

7. We have given our thoughtful consideration to the submissions advanced at the bar and have carefully scanned the record with the assistance of learned counsel representing the accused-appellants and the learned counsel appearing for the respondent-State. We have also analysed and evaluated the evidence available on record.

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

8. In order to appreciate whether the conviction of the accused-appellants, as recorded by the trial Court and affirmed by the High Court, deserves to be upheld or whether the appeals merit acceptance, thereby entitling the accused-appellants to acquittal, it is necessary to examine the evidence in greater detail.
9. There is no dispute that the case of the prosecution is based purely on circumstantial evidence in the form of motive, the theory of last seen together, and scientific/forensic evidence, since no witness claims to have seen the alleged incident wherein the victim girl was subjected to sexual assault and violence. The fact that the death of the victim girl, Ms. K, was homicidal in nature was duly proved by the medical evidence on record. Dr. C.P. Bhaisora (PW-7), who conducted the examination, proved the post-mortem report²⁹ wherein multiple injuries were noted on the dead body of the victim girl, particularly on the vaginal and perianal regions. He opined that the cause of death of the victim girl was shock and haemorrhage as a result of the injuries caused by sexual assault and blunt force trauma, which were sufficient in the ordinary course of nature to cause death. Thus, there is no doubt on the aspect that the death of Ms. K was homicidal in nature.
10. It is a well-established principle of criminal jurisprudence that a conviction may be based purely on circumstantial evidence, provided that such evidence is deemed credible and trustworthy. In cases based purely on circumstantial evidence, it is imperative to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutably to the accused person's guilt. The chain of incriminating circumstances must be conclusive and should exclude any hypothesis other than the guilt of the accused. In other words, from the chain of incriminating circumstances, no reasonable doubt can be entertained about the accused person's innocence, demonstrating that it was the accused and none other who committed the offence. The law with regard to conviction based on circumstantial evidence has been crystallised by this Court in the case of **Sharad Birdhichand Sharda v. State of Maharashtra**³⁰, wherein the following golden principles, governing cases based on circumstantial evidence, were laid down:

29 Exhibit No. Ka24.

30 (1984) 4 SCC 116.

Supreme Court Reports

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

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

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

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

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

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

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

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

(emphasis supplied)

11. Having noted the principles governing a case based purely on circumstantial evidence, we now proceed to discuss the evidence led by the prosecution in order to bring home the charges against the accused-appellants. The prosecution portrayed the following

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

circumstance in its endeavour to establish the charge of murder against the accused-appellants:-

- (i) **“Motive”**, i.e., to say that the accused-appellants harboured an intention to satisfy their lust upon the young girl, Ms. K, and that this depraved motive formed the basis of the brutal assault which ultimately led to her death.
 - (ii) **“Last Seen Theory”**, i.e., to say that the accused-appellants were seen in close proximity to the victim girl, shortly before the time when she went missing, and that in the absence of any plausible explanation from the accused-appellants, the burden lies upon them to account for the fate of the victim girl. The prosecution, therefore, relies on this circumstance as an important link in the chain of events connecting the accused-appellants to the crime.
 - (iii) **Scientific Evidence (including DNA and FSL Reports)**, i.e., to say that the scientific analysis of samples collected from the body and clothes of the victim girl established a match with the DNA profile of the accused-appellant No. 1-Akhtar Ali, thereby providing direct forensic corroboration of his involvement in the offence. The prosecution argues that such evidence, being objective and scientific in nature, lends strong support to its case and completes the chain of circumstances.
12. The entire process of apprehension of the accused-appellants, collection of the forensic material, recovery of the CCTV footage, call details record, and the Caller-ID records has been delineated in the above paragraphs³¹, and thus, the same need not be repeated.
 13. To ascertain whether the alleged ‘motive’ attributed to the accused-appellants has any foundation in fact, it is necessary at the outset to examine the manner in which the accused-appellants were first brought into the ambit of suspicion and investigation. Unless the initial link connecting the accused-appellants with the occurrence is firmly established, the question of ‘motive’ and its probative value cannot be appreciated in its proper perspective. We shall, therefore, first advert to the evidence relied upon by the prosecution to show how the accused-appellants came into the picture and were associated with the alleged crime.

³¹ *Supra* Note, Para No. 4.

Supreme Court Reports

14. The first suspect to be associated in this case was the accused-appellant No.1-Akhtar Ali, against whom suspicion cropped up when the statement of Shankar Datt Padalia (PW-18), the owner of the dumper, came to be recorded. We, therefore, shall first discuss the evidence of the aforesaid Shankar Datt Padalia (PW-18). The witness stated that he was engaged in the work of hauling sand and gravel from the *Gaula* River and used his dumper, bearing registration No. UP02A8711, for the said purpose.
15. Accused-appellant No.1-Akhtar Ali was allegedly introduced to Shankar Datt Padalia (PW-18) by accused-appellant No. 2-Prem Pal Verma, the driver of Manish Gaur @ Mannu Gaur's (PW-39) dumper, on 20th November, 2014. Accused-appellant No. 2-Prem Pal Verma, assured Shankar Datt Padalia (PW-18) that Akhtar Ali knew how to drive a dumper. Since the witness (PW-18) did not have a driver for his dumper at that time, he hired accused-appellant No.1-Akhtar Ali, as a driver and handed over the keys of the dumper to him, without any further verification. At that time, Akhtar Ali was using mobile number 75xxxxxx90, which he shared with Shankar Datt Padalia (PW-18). On the following day, i.e., 21st November, 2014, the accused-appellant No. 1-Akhtar Ali approached Shankar Datt Padalia (PW-18) in the afternoon and told him that he had to take a room on rent and buy some stuff, and required money for this purpose. The witness (PW-18) gave him Rs. 3,000/- and, thereafter, the accused-appellant No. 1-Akhtar Ali did not meet him again. When the witness (PW-18) attempted to contact the accused-appellant No. 1-Akhtar Ali, on his mobile number, the same was found to be switched off. The witness (PW-18) stated that his dumper was parked at Gas *Godam* road near Ramlila Ground, and that the accused-appellant No.1-Akhtar Ali was supposed to sleep in the dumper that night. Since the accused-appellant No.1-Akhtar Ali did not respond to phone calls, the witness (PW-18) went to the dumper on 21st November, 2014, at about 06:00 pm, but found the driver missing. Thereupon, the witness (PW-18) became suspicious that something was wrong. He came to know from some sources that accused-appellant No. 1-Akhtar Ali, and accused-appellant No. 2-Prem Pal Verma, had been seen roaming together on 20th November, 2014.
16. In his cross-examination, Shankar Datt Padalia (PW-18) stated that at the time of the incident, the process of extraction of sand and

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

gravel from the *Gaula* river had not commenced. He further deposed that the police officials recorded his statement 2-3 days after the incident. The witness added that he had been operating dumpers for the extraction of sand and gravel from the *Gaula* river for the last 5-6 years prior to the incident and that he owned two dumpers, which were usually driven by his brothers. However, since one of his brothers had fallen ill, he felt the need for another driver. He admitted that he did not previously know the accused-appellant No. 1-Akhtar Ali. At the same time, he also stated that about two years earlier, accused-appellant No. 1-Akhtar Ali had worked with another person on the *Gaula* Extraction Gate, and therefore, he was acquainted with him from that time. He had seen the accused-appellant No. 1-Akhtar Ali, because he used to drive the vehicle of Manish Gaur @ Mannu Gaur (PW-39). When he engaged the accused-appellant No. 1-Akhtar Ali on 20th November, 2014, he did not give any money for expenses, etc.

17. On a minute perusal of the deposition of Shankar Datt Padalia (PW-18), it emerges that he informed the police for the first time about the engagement of accused-appellant No. 1-Akhtar Ali, for his vehicle, only 2–3 days after the incident. This aspect assumes significance in light of the admission made by the witness that he had also participated in the search for the missing girl on 21st November, 2014. Had there been an *iota* of truth in his version, it is difficult to accept that he would have remained silent about the fact that the driver, he had newly engaged had suddenly gone missing immediately after being employed on 20th November, 2014. Such a fact was far too important to have been ignored altogether.
18. Another significant fact discernible from the statement of Shankar Datt Padalia (PW-18) is that he attempted to identify the accused-appellant No. 1-Akhtar Ali by projecting a theory that the said accused used to drive the vehicle of one Manish Gaur @ Mannu Gaur (PW-39) two years earlier. However, the said Manish Gaur @ Mannu Gaur (PW-39), upon being examined, categorically stated that accused-appellant No. 2-Prem Pal Verma, had been driving his dumper for the last 10–12 years. He did not utter a single word to support the theory that accused-appellant No. 1-Akhtar Ali had ever worked on his vehicle.
19. Thus, we have no hesitation in holding that Shankar Datt Padalia (PW-18) did not know the accused-appellant No. 1-Akhtar Ali, from

Supreme Court Reports

before. It is highly improbable and palpably doubtful that, on the mere recommendation of a driver employed on another person's dumper, Shankar Datt Padalia would so casually entrust an expensive earth-moving vehicle to an unknown person without any verification or assurance. Equally doubtful is the version of the witness that, on the mere asking of accused-appellant No. 1-Akhtar Ali, he gave him a sum of Rs. 3,000/- (Rupees Three Thousand only) on 21st November, 2014. The witness did not notice any suspicious conduct or traces of panic in the demeanour of the accused-appellant No.1-Akhtar Ali when he came to ask for expense money. This conduct is inconsistent with the guilt of the said accused. These fishy circumstances cast a serious doubt on the credibility of the testimony of Shankar Datt Padalia (PW-18). Since the statement of Shankar Datt Padalia (PW-18) was recorded only 2-3 days after the incident, there was initially no material available with the police to raise any suspicion against the accused-appellant No. 1-Akhtar Ali.

20. We are, therefore, of the view that the prosecution utterly failed to attribute any clear or convincing motive to the accused-appellant No. 1-Akhtar Ali. The evidence of Shankar Datt Padalia (PW-18), even if taken at its highest, merely shows that accused-appellant No. 1-Akhtar Ali was a temporary driver who disappeared on the day next to his engagement, which by itself cannot establish the depraved motive alleged by the prosecution.
21. The name of the accused-appellant No. 2-Prem Pal Verma was introduced in the evidence of Manish Gaur @ Mannu Gaur (PW-39), who stated that the said accused had been driving his dumper for the last 10-12 years. Though the witness (PW-39) did not attend the marriage ceremony, he admitted that he participated in the search for the missing child. In his cross-examination, he admitted that there was widespread discontentment over the incident and considerable pressure on the administration to apprehend the culprits. His statement, however, was recorded by the Investigating Officer 8-10 days after the incident. His evidence also shows that the accused-appellant-No. 2-Prem Pal Verma, continued to drive his dumper even after the incident. When the S.O.G. team contacted the witness (PW-39) to ascertain accused-appellant No. 2-Prem Pal Verma's whereabouts, the witness called him to his house and handed him over to the S.O.G. team. On 20th November, 2014, i.e., the date on which the victim girl went missing, accused-appellant

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

No. 2-Prem Pal Verma had parked the dumper, handed over the keys to the witness, and returned to his home. Apparently, therefore, there is nothing in the conduct of accused-appellant No. 2-Prem Pal Verma, to raise suspicion against him.

22. It thus becomes apparent from the testimony of the material prosecution witnesses, Shankar Datt Padalia (PW-18) and Manish Gaur @ Mannu Gaur (PW-39), that the prosecution was unable to lay any convincing foundation so far as motive is concerned. In a case resting purely on circumstantial evidence, the establishment of motive assumes significance, as it forms the psychological link in the chain of circumstances.
23. Having found that the prosecution has failed to establish 'motive', we now turn to examine the next circumstance relied upon, namely the 'last seen theory'. According to the prosecution, the accused-appellants were seen in close proximity to the victim girl shortly before she went missing, and this circumstance is projected as a vital link in the chain of events connecting them with the crime. It is, therefore, necessary to scrutinise the testimony of the witnesses who have spoken regarding the presence of the accused-appellants near the scene of the occurrence and to assess whether such evidence, in the absence of motive, can safely be accepted to fasten guilt upon them.
24. The first witness pressed into service by the prosecution regarding the theory of 'last seen' is Kishan Singh Bora (PW-16), who runs a tea stall in the vicinity of the *Ramlila* Ground. This witness deposed that on the evening of 20th November 2014, at about 7:00-7:30 pm, he had seen the accused-appellants in an inebriated condition purchasing cigarettes and toffees from his stall. While this assertion ostensibly seeks to establish the presence of the accused-appellants near the venue, it is significant that in his cross-examination, the witness (PW-16) admitted that his statement was recorded by the police only on 25th November, 2014, i.e., five days after the disappearance of the victim girl. The unexplained delay in recording his statement, coupled with the fact that the witness did not divulge this vital information to anyone during the period of extensive search operations being conducted from 20th November 2014 onwards, renders his testimony unsafe to be relied upon for establishing the last seen circumstance. Furthermore, the witness doesn't note the presence of any victim girl in proximity to the accused-appellants, thereby negating the 'last seen theory'.

Supreme Court Reports

25. The next witness relied upon by the prosecution is Balkrishna (PW-19), a shopkeeper whose establishment is also located near the *Sheeshmahal*. He too stated that on the same evening, i.e., around 7:00-7:30 pm on 20th November, 2014, he saw the accused-appellants in a drunken state, moving around in the area and making small purchases. However, in cross-examination, the witness (PW-19) admitted that he did not inform anyone, not even the victim's family or the police, about this fact until his statement was formally recorded on 25th November, 2014. Given that by then the body of the victim girl had already been recovered, the possibility of these witnesses being a product of subsequent padding cannot be ruled out. The credibility of the witness (PW-19) is further diminished by his admission that he could not say with certainty whether the accused-appellants were accompanied by the victim girl at that time.
26. Sahadat Ali Hasan (PW-20), another resident of the locality, deposed on similar lines, asserting that he had noticed the accused-appellants in an inebriated state near the *Ramlila* Ground on the contemporaneous evening. His testimony suffers from the same infirmity as that of Kishan Singh Bora (PW-16) and Balkrishna (PW-19), namely that it was introduced only on 25th November 2014, after the recovery of the dead body of the victim girl, Ms. K. The belated introduction of these witnesses, all purporting to speak to the same fact after a lapse of five days, gives rise to a legitimate apprehension that the 'last seen' circumstance was subsequently manufactured to bolster the prosecution's case. Even otherwise, the evidence of these witnesses, taken at its highest, does not indicate that the victim girl was seen in the company of the accused-appellants. At best, it places the accused-appellants in the general vicinity, which by itself is insufficient to sustain the 'last seen theory' in a case of this gravity.
27. This weakness in the prosecution's narrative becomes more pronounced when one turns to the evidence of the key witness, Constable Naushad Ahmed (PW-2), posted at Police Station Kathgodam, whose testimony assumes pivotal importance in the present case. He deposed that on 20th November, 2014, at about 09:10 pm, Ishwar Singh Sah (PW-36) informed Constable Subodh Sharma (PW-4), who was then on sentry duty at the said police station, that a minor girl had gone missing from the marriage function at *Sheeshmahal*, Ramlila Ground. This information was forthwith

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

entered in General Diary No. 51³² at 09:10 pm and was thereafter communicated to the Station House Officer through the R.T. set on the same date. The informant (PW-1), the father of the victim girl, lodged a formal complaint on 21st November, 2014, at 11:30 am regarding the disappearance of his daughter. On the basis of this complaint, Case Crime No. 73 of 2014 was registered under Section 365 IPC against unknown persons.

28. The testimony of Constable Naushad Ahmed (PW-2) further reveals that on 25th November, 2014, while he was on official duty at the police station at about 02:30 pm, Nikhil Chand (cousin brother of the missing girl child) informed the Sub-Inspector Rajesh Yadav (PW-6), Station House Officer from his mobile phone No. 783xxxx001 that the dead body of the victim girl was lying in the forest of *Gaula* river near *Sheeshmahal*, Ramlila Ground. On receiving this information, the Sub-Inspector Shanti Kumar Gangwar (PW-5) along with his companion police officials proceeded to the spot. The entry of this fact was made by the Constable in the general diary³³ of the police station *vide Rapat* No. 26. The witness (PW-2) further stated that the Investigating Officer, Inderjeet Singh (PW-33) returned to the Police Station on 25th November, 2014, after the investigation and deposited two sealed bundles, one containing plain and blood-stained soil and the other containing clothes of the victim. The witness also made a General Diary Entry No. 28³⁴ regarding the departure of the investigating team, which proceeded to arrest the accused-appellant No. 2-Prem Pal Verma, and Junior Masih *alias* Foxy.
29. It is portrayed in the evidence of the witness (PW-2) that both these accused persons were attempting to abscond but were apprehended based on prior secret information regarding their whereabouts. It needs a mention that this version of events, as given out by the witness, is completely contradicted by the evidence of Manish Gaur @ Mannu Gaur (PW-39), as mentioned earlier. In cross-examination, the witness denied the suggestion put forth by the defence regarding the alleged falsity of the theory concerning the arrest of accused-appellant No.2-Prem Pal Verma, and Junior Masih *alias* Foxy.

32 Exhibit Ka-17.

33 Exhibit Ka-3.

34 Exhibit Ka-33.

Supreme Court Reports

30. At this stage, it is relevant to refer to the evidence of Sub-Inspector Rajesh Yadav (PW-6), Station House Officer, who was associated with the process of recovery of the victim's body. He stated that upon receiving the information regarding the missing child on 20th November, 2014, he intimated the Police Station Kathgodam, to deploy all available police forces to search for the missing child. The messages were sent through the control room *via* wireless as well as telephone. The witness (PW-6) further stated that he was engaged in the search for the missing girl on 25th November 2014, and that at approximately 12:30 pm, he was informed by Nikhil Chand (cousin of the victim girl) over phone that the dead body of the victim girl was lying in the forest of the *Gaula* river at *Sheeshmahal*. Upon receiving this information, the witness proceeded to the spot. In the meantime, he informed the Kathgodam Police Station as well as higher police officials. Upon reaching the said spot, he saw the dead body of the victim girl and undertook the requisite investigation, including drawing up the *Panchayatnama*, etc. He also claims to have seized the forensic material from the site. Thus, it is clear as daylight that the first person who shared the precise location of the body was none other than Nikhil Chand (cousin of the victim girl).
31. What emerges, therefore, is that the entire prosecution case linking the accused-appellants to the crime through the 'last seen theory' rests not on any consistent testimony, but upon the belated introduction of interested witnesses after the body was recovered, upon the information given by Nikhil Chand.
32. Despite being a close relative who first disclosed the situs of the victim girl's dead body, Nikhil Chand was never examined or interrogated by the investigating officers. This omission is of grave significance. The utter failure of the Investigating Officer to question Nikhil Chand so as to find out the source of his knowledge about the dead body of the victim girl depicts gravely tainted and suspicious actions of the Investigating agencies. It needs to be noted that the victim girl was not being traced out despite the frantic efforts of numerous police teams, and, therefore, it became imperative to determine the manner in which Nikhil Chand came to know about the place where the dead body of the victim was lying. If at all the Investigating Officer's actions had been *bona fide*, his immediate attention would have focused upon Nikhil Chand to discover the manner in which he gained information about the location of the victim girl's dead body.

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

Had this exercise been undertaken, the Court could have ascertained whether the information stemmed from innocent circumstances or from direct involvement in the events of the fateful night. The Investigating Officer's failure to record a statement of Nikhil Chand during the investigation and the omission of the prosecution to present him for deposition at the trial deprived the Court of the most vital link in the chain of circumstances. This intentional and calculated omission not only undermines the 'last seen theory' but also causes serious prejudice, as it deprives the Court and the defence of the opportunity to test whether the knowledge of Nikhil Chand was innocent or otherwise. In the absence of this crucial testimony, the last seen circumstance must be held to have completely collapsed. Non-examination of Nikhil Chand compels the Court to draw an adverse inference against the prosecution.

33. Despite his pivotal role, neither the trial Court nor the High Court considered it necessary to examine why Nikhil Chand's statement was not recorded or why he was not interrogated, thereby overlooking a material circumstance that directly impacts the credibility of the prosecution's case. The High Court, while noticing that Rajesh Kumar Yadav (PW-6), Station House Officer, had been informed by Nikhil Chand about the recovery, dismissed the contention by opining that such knowledge was "natural" and did not affect the prosecution's case. The trial Court, on its part, proceeded mechanically by merely recording that information was received by the police on 25th November 2014, regarding the body being found near the *Gaula* River, without examining how such information emanated. The omission of both the Courts below, to scrutinize this significant aspect strikes at the root of the prosecution's version of recovery and renders the investigation vulnerable to serious doubt.
34. Having found that the prosecution has failed to establish 'motive' and that the 'last seen theory', we now proceed to examine the third circumstance relied upon by the prosecution, namely, the alleged scientific and forensic evidence. However, before considering the scientific/forensic evidence, it is necessary to examine the circumstances surrounding the arrest of accused-appellant No. 1-Akhtar Ali, for the reason that the credibility of the DNA samples collected by the Investigating Officers is directly dependent upon the legality and authenticity of the arrest and subsequent seizure proceedings. It may be noted that as per the evidence of Dr. Manoj

Supreme Court Reports

Kumar Agarwal (PW-34), the forensic samples from the victim girl's dead body were drawn on 26th November, 2014. The prosecution claims that accused-appellant No.1-Akhtar Ali was apprehended in Ludhiana (Punjab) on 27th November 2014 by Yogesh Chand (PW-10) on the basis of information supplied by a secret informer. However, fervent arguments were advanced by learned counsel appearing on behalf of the accused-appellants, regarding the grave discrepancies in the process of detention and arrest of the accused-appellant No.1-Akhtar Ali, and it was contended that he was illegally detained much prior to his formal arrest, which was shown in documents on 27th November, 2014.

35. We have already concluded that the manner in which the arrest of the accused-appellant No.2-Prem Pal Verma, was projected by the prosecution is seriously dubious.³⁵ We shall now proceed to analyse the evidence of the officials associated with the arrest of the accused-appellant No.1-Akhtar Ali.
36. The accused-appellant No.1-Akhtar Ali was allegedly apprehended from Ludhiana (Punjab) by Yogesh Kumar Chand, Head of the Special Task Force (PW-10). The said witness stated that he was instructed to investigate the said crime on 26th November, 2014. He received secret information to the effect that a person named Raja Ustaad, a resident of Bihar, who used to drive a dumper near the crime scene, had been missing since the incident. His mobile No. 754xxxx390 was traced and found to belong to one Lakshmi, resident of Haridya East Champaran, Bihar. The call details records indicated that the mobile number was in use near the crime scene between 20th November, 2014 and 21st November, 2014, and was connecting with two IMEI Nos. 911352501735790 and 911352501735780. Both the IMEI Nos. were scanned, and another mobile no. 753xxxx910 issued in the name of Md. Iqbal, a resident of West Champaran, Bihar, cropped up and was found to be in operation. The location of the said mobile number was found to be in Ludhiana (Punjab). Accordingly, the witness (PW-10) proceeded to Ludhiana and reached there on 27th November 2014, at around 11:00 am. Efforts were made to locate the mobile user operating the mobile No. 753xxxx910, which was found to be functioning in Guru Amardas Colony, Ludhiana (Punjab).

35 *Supra* Note, Para No. 22.

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

37. The witness (PW-10) further claims that some informants were also engaged to trace out the suspect. One of the informants engaged for that purpose came and apprised the witness (PW-10) that the suspect would come to the shop of Deepu *Bijliwala* (Electrician) in search of work. Based on the said information, surveillance was started at the *Sethi* market, and within five minutes, a man draped in a red-coloured floral blanket was seen coming. The informer identified him as the same individual whom the officers were attempting to locate. The police team approached the said person, who got nervous and attempted to flee, but was surrounded and apprehended at around 05:15 pm. On inquiry, he disclosed his name to be Akhtar Ali (accused-appellant No. 1 herein).
38. On being interrogated, the apprehended suspect, Akhtar Ali, confessed to the crime. It was stated in the confession that upon seeing the victim girl coming out of the wedding *Pandal*, he and his companions (i.e., accused-appellant No.2-Prem Pal Verma and accused-Junior Masih *alias* Foxy) minds got vitiated by lust and thus decided to engage in carnal acts. Accused-appellant No. 2-Prem Pal Verma, used a *tamancha* (a country-made pistol) to scare and kidnap the victim girl. Thereupon, the victim girl was wrapped up in a blanket and was forcibly taken into the bushes near the *Gaula* river, at around 7:30 pm, where all three accused persons repeatedly subjected her to sexual assault. Ultimately, the girl fainted because of profuse bleeding from her genitals. He also confessed that scratches were caused on his thighs in this process. Thereafter, they abandoned the place, leaving the unconscious girl covered with leaves in the bushes. While he came back and slept in the dumper, the other two accused persons (i.e., accused-appellant No. 2-Prem Pal Verma and Junior Masih *alias* Foxy) went back to their homes. Apprehending his discovery in the crime, he absconded to Delhi *via* train, and from there he further went to Ludhiana (Punjab). A mobile handset with two SIM cards, a railway ticket from Haldwani to Delhi dated 21st November, 2014, and an identity card in the name of Shameem, son of Maqsood, were found during the personal search of accused-appellant No. 1-Akhtar Ali. The blanket allegedly used in the incident was also recovered from the possession of the accused-appellant No. 1-Akhtar Ali, and the same was seized and sealed. Likewise, the mobile phone, SIM cards, railway ticket, and ID card were also seized and sealed. The accused-appellant no. 1-Akhtar

Supreme Court Reports

Ali was arrested *vide* memo³⁶ dated 28th November, 2014. Allegedly, the local people refused to stand witness to the whole process, and therefore, Yogesh Kumar Chand (PW-10) associated his companion police officials as the witnesses to the said process.

39. In cross-examination, the witness (PW-10) admitted that the mobile number 753xxxx910 being used by the accused-appellant No. 1-Akhtar Ali was placed in a different handset from the one being used earlier. Both the SIMs were earlier used in different handsets whose location was found to be near the crime scene. The witness (PW-10) further admitted that there was no recording in the General Diary regarding the departure of the police team to Ludhiana on 26th November, 2014. He could not say as to who was investigating the case when he arrived at Haldwani on 26th November, 2014. Before proceeding to Ludhiana, he did not receive any authorisation to arrest the accused-appellant No.1-Akhtar Ali. He admitted that the railway ticket is collected from the passenger by the Railway Officer/T.T. at the station after completion of the journey. Very crucial admissions as appearing in the evidence of the witness (PW-10) in the cross-examination relating to the calls and caller-ID are extracted hereinbelow: -

“13. The information about the location of the above mobile number of Raju Ustad was found in the nearby place at the incident spot on dated 20-11-2014 and 21-11-2014, was made available to me by the technical team on my behest. The information of IMEI 911352501735790 and 11352501735780 of the handset on which the above mobile number was used was also collected by me. I have not received the information as to who was the owner of the handset with the above mentioned IMEI. This information was also compiled by me from the technical team that the above mentioned IMEI number 911352501735780 was used from phone number 7533079910 on dated 20-11-2014 and 21-11-2014. On collecting the information of this mobile number 7533079910, it was found that this number is the allotted number of Aircel Delhi region. On the Customer I.D. of the said number was found to be

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

of Md. Iqbaal S/o Shekh Shabbir c/o Rakesh Khands, Local City Gurgaon, Local State Haryana, Permanent City Champaran, Permanent State Bihar. The above information was made available to me by the technical team only on my behest. No interrogation was made by me from the said Md. Iqbaal in whose name this customer I.D. was.

14. The Investigating Officer of this case came to Dehradun and interrogated me on dated 07-01-2015. I have told the Investigating Officer in my statement that the above information has been obtained by me, but had not told from which source the information was obtained. In the statements given to the Investigating Officer, I have told about this thing that 'I have collected information about this person from the Investigating Officer and other sources'. But now I cannot say that in the above statements from which Investigating Officer I had got the information. It is correct to say that when I attended the proceedings of this case on dated 26-11-2014, who was the investigation officer on that day. I don't know about this."

40. On a plain reading of the evidence of the witness (PW-10), we find many suspicious circumstances surrounding the theory of apprehension and arrest of the accused-appellant No.1-Akhtar Ali. The so-called source who identified the accused-appellant No.1-Akhtar Ali could not have had any idea about him because the accused-appellant No. 1-Akhtar Ali was a resident of Bihar and had gone to Ludhiana (Punjab) for the first time, allegedly in order to escape being caught in the crime. The witness (PW-10) admitted that he had not been authorised by anyone to proceed to Ludhiana (Punjab) to arrest the accused-appellant No.1-Akhtar Ali. There was no note for his departure to Ludhiana in the General Diary maintained at the police station. Moreover, he claimed that local people (including the owner of the shop, in front of whom the accused-appellant No.1-Akhtar Ali was arrested) refused to witness the process of arrest and search of the accused-appellant No. 1-Akhtar Ali, and thus, only his team members were associated in the process.
41. The story regarding the Call Details Records is dubious and suspicious. The Investigating Officer (PW-10) claimed that the location of accused-appellant No. 1-Akhtar Ali, was traced by placing his mobile

Supreme Court Reports

number under surveillance. However, no evidence whatsoever has been brought on record to substantiate this claim. Vishal Pathak, Assistant Nodal Officer (PW-28), categorically deposed that the call detail records of accused-appellant No. 1-Akhtar Ali were applied for and procured only in January 2015, i.e., much after his arrest. Thus, the very theory advanced by the prosecution, that accused-appellant No. 1-Akhtar Ali was traced based on his mobile location, is rendered false and without foundation.

42. The prosecution has further sought to connect accused-appellant No.1-Akhtar Ali with two mobile numbers, 754xxxx390 and 753xxxx910. However, the subscriber details of these numbers reveal that they stood in the names of Lakshmi and Md. Iqbal, respectively. Crucially, neither of these individuals was made to depose by the prosecution. The failure to establish ownership or use of these mobile numbers by the accused-appellant No.1-Akhtar Ali fatally undermines the prosecution's case. In the absence of such proof, there exists no admissible evidence linking accused-appellant No. 1-Akhtar Ali with the said mobile phones numbers.
43. Furthermore, the prosecution has alleged that accused-appellant No. 1-Akhtar Ali, after his arrest, made a disclosure statement to Vipin Chandra Pant (PW-40), pursuant to which the hair band worn by the victim girl was recovered from the forest. However, this alleged recovery is *ex facie* dubious and unworthy of credence and has also been doubted by the Courts below. Allegedly, accused-appellant No. 1-Akhtar Ali, and his companions, driven by lust, were carrying away the victim girl in hot haste at the long hours of the night. It is inconceivable that in such circumstances, accused-appellant No. 1-Akhtar Ali would have paused deliberately to remove a hair band from the victim girl. Even otherwise, the possibility that he would later recall the exact spot in the forest, where he supposedly discarded the hair band, is almost impossible. Moreover, the testimony of Superintendent of Police, Suman Pant (PW-3) would show that the recovery memo of the hair band allegedly prepared by her suffers from serious infirmities. The memo bears no date of preparation, yet it is signed by the police personnel who were allegedly present at the time of recovery, with their signatures bearing the date 28th November 2014. Such discrepancies not only cast grave doubt on the authenticity of the recovery proceedings but also reinforce the inference that the alleged recovery was manipulated to suit the prosecution's narrative.

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

44. In the backdrop of the aforesaid contradictions, omissions, and investigative lapses, the entire procedure of arrest and search of the person of the accused-appellant No. 1-Akhtar Ali by Yogesh Kumar Chand (PW-10) comes under a grave cloud of doubt. The story which has been projected in the evidence of the witness is something out of fiction and is *ex facie* unbelievable.
45. In these circumstances, the very foundation on which the DNA evidence is sought to be projected stands gravely compromised, for if the arrest itself was illegal and stage-managed, the process of drawing samples from the accused-appellants cannot be regarded as either voluntary or reliable. The prosecution, however, urges that the scientific reports demonstrate a conclusive match for the DNA of accused-appellant No. 1-Akhtar Ali with the forensic material collected from the dead body of the victim girl. It is, therefore, necessary to examine the trustworthiness and credibility of the scientific/forensic evidence. While we examine the scientific/forensic evidence, it is imperative to remain conscious of the very stark feature of the scientific evidence in the form of DNA profiling and its matching report, which bears directly on the adjudication of the matter. This Court, in the case of **Mukesh & Anr. v. State for NCT of Delhi & Ors**³⁷, while discussing the statutory and evidentiary significance of DNA profiling in criminal trials, observed as follows: -

“216. DNA technology as a part of Forensic Science and scientific discipline not only provides guidance to investigation but also supplies the court accrued information about the tending features of identification of criminals. The recent advancement in modern biological research has regularised Forensic Science resulting in radical help in the administration of justice. In our country also like several other developed and developing countries, DNA evidence is being increasingly relied upon by courts. After the amendment in the Criminal Procedure Code by the insertion of Section 53-A by Act 25 of 2005, DNA profiling has now become a part of the statutory scheme. Section 53-A relates to the examination of a person accused of rape by a medical practitioner.

xxx

Supreme Court Reports

457. DNA evidence is now a predominant forensic technique for identifying criminals when biological tissues are left at the scene of crime or for identifying the source of blood found on any articles or clothes, etc. recovered from the accused or from the witnesses. DNA testing on samples such as saliva, skin, blood, hair or semen not only helps to convict the accused but also serves to exonerate. The sophisticated technology of DNA fingerprinting makes it possible to obtain conclusive results. Section 53-A CrPC is added by the Code of Criminal Procedure (Amendment) Act, 2005. It provides for a detailed medical examination of accused for an offence of rape or attempt to commit rape by the registered medical practitioners employed in a hospital run by the Government or by a local authority or in the absence of such a practitioner within the radius of 16 km from the place where the offence has been committed by any other registered medical practitioner.”

46. The prosecution, as well as the Courts below in the impugned judgments, placed implicit reliance on the DNA evidence to conclude the guilt of the accused-appellant No.1-Akhtar Ali. The prosecution came out with a categoric case that the victim girl was subjected to rape by all three assailants, i.e., accused-appellant No.1-Akhtar Ali, accused-appellant No. 2-Prem Pal Verma, and the co-accused, Junior Masih *alias* Foxy. In the forensic examination, only the DNA profile of the accused-appellant No.1-Akhtar Ali, was found to be matching with that of the cervical swab of the victim girl. It does not require rocket science to understand that during a penetrative sexual assault, the semen would ordinarily be first deposited in the vaginal tract and thereafter reach the cervix. That is a simple conclusion to be drawn from the structural anatomy of a female *Homo Sapien*. The total lack of traces of semen in the vaginal samples makes the presence of DNA of the accused-appellant No.1-Akhtar Ali, in the cervical swab suspicious. Further, there is a glaring inconsistency in the prosecution's case. While semen was allegedly found in the cervical swab of the victim girl, no semen was detected on the glass slides prepared from the cervical smear of the victim girl. It is inconceivable that semen was found in the swab but was completely absent in the smear slides, since both the samples were collected simultaneously from the same anatomical site in the cervix of the

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

dead body of the victim girl. The presence in one and absence in the other defies scientific probability and undermines the credibility of the prosecution's reliance on the DNA report. Such an inconsistency strongly suggests that the presence of DNA of accused-appellant No. 1-Akhtar Ali in the cervical swab was engineered by the prosecution, pointing towards the possibility that the sample was tampered with or planted by the prosecution to falsely implicate the accused-appellant No. 1-Akhtar Ali.

47. The Medical Jurist, Dr. C.P. Bhaisora (PW-7) opined that the cause of death of the victim girl was excessive bleeding and that the death must have ensued within a few minutes of the assault. In this background, the jacket found on the body of the victim girl could not have remained untouched and would definitely have received blood stains. However, the FSL report³⁸ does not report the presence of blood or semen of any of the accused-appellants on the said jacket.
48. These circumstances, starting from the so-called arrest of accused-appellant No. 1-Akhtar Ali from Ludhiana (Punjab) taken cumulatively, are sufficient to give rise to a strong inference of tampering with the forensic samples and planting of semen of the accused-appellant No.1-Akhtar Ali on these samples, i.e., cervical swab, undershirt, and underwear of the victim girl, so as to establish his involvement in the crime. In our opinion, the entire process of collection and examination of samples and the consequent matching of the DNA becomes suspicious and wholly unreliable. We are thus convinced that the DNA report³⁹ cannot be treated as a reliable piece of evidence. Once the said document is eschewed from consideration, there remains no evidence whatsoever on record of the case so as to connect the accused-appellant No.1-Akhtar Ali with the crime.
49. There is yet another reason to discard the DNA report. The credentials and qualifications of Dr. Manoj Kumar Agarwal (PW-34), who conducted the DNA examination and issued the DNA Report⁴⁰, are highly doubtful to place him in the category of a DNA expert. The said witness admitted in his cross-examination that his qualifications are M.Sc. in Botany and Ph.D., which apparently do not equip him

38 Exhibit Ka-15 and Exhibit Ka-16.

39 Exhibit Ka-75.

40 *Ibid.*

Supreme Court Reports

with expertise in the field of human DNA profiling, which is neither a core subject nor an ancillary subject in Botany. The witness (PW-34) denied the suggestion of the defence that human DNA is not part of the subject of Botany.

50. As per the dictionary meaning, 'botany' subject deals with the scientific study of the physiology, structure, genetics, ecology, distribution, classification, and economic importance of "plants". It has nothing to do with DNA profiling, particularly that of human beings. Upon examining the curriculum structure of the Chaudhary Charan Singh University, Meerut, (as available on its website) from where the witness obtained his degrees in M.Sc. (Botany) and Ph.D., it can be discerned that the available curriculum does not provide any specific focus on human DNA profiling. The witness (PW-34) did not claim to have undertaken any other specialised course in DNA profiling. Thus, the very qualifications of a witness as a DNA expert are under grave doubt. However, we are not discarding the DNA report solely on this ground, as there are several other factors, discussed above, which convince us that the same is unreliable.

Conclusion: -

51. Having considered the evidence in its entirety and bearing in mind the principles governing cases resting purely on circumstantial evidence, we are of the opinion that the prosecution has failed to establish the complete and unbroken chain of circumstances necessary to bring home the guilt of the accused-appellants.
52. Firstly, as regards 'motive', the prosecution has merely alleged that the accused-appellants were driven by lust. However, no independent or credible evidence has been adduced to substantiate such a motive. A bald assertion without corroboration cannot by itself form a safe basis for conviction. Secondly, the 'last seen theory' relied upon by the prosecution suffers from serious infirmities. The prosecution has failed to prove the proximity of time and place so as to shift the burden onto the accused. Thirdly, the scientific evidence is itself riddled with deficiencies. The alleged theory of DNA found on the body of the victim girl matching with the DNA of accused-appellant No. 1-Akhtar Ali, is *ex facie* doubtful and unworthy of credence. The prosecution's claim that the accused-appellant No.1-Akhtar Ali's location was traced through mobile surveillance is falsified by its own record, as the call detail records were procured much later and no

**Akhtar Ali @ Ali Akhtar @ Shamim @ Raja Ustad v.
State of Uttarakhand**

evidence exists to link the accused-appellant No.1-Ahktar Ali, with the sim numbers in question. Likewise, the omission to examine crucial witnesses, including the subscribers of the relevant mobile numbers and most importantly Nikhil Chand, who first informed the police about the location of the dead body of the victim girl, further weakens the case of the prosecution.

53. It must be borne in mind that the present case involves the imposition of the ultimate punishment of death. The law is well settled that in cases resting on circumstantial evidence, every link in the chain must be firmly and conclusively established, leaving no room for doubt. Where two views are possible, the one favourable to the accused must be adopted. In the instant case, the prosecution has failed to prove motive, the last seen theory stands contradicted, and the alleged scientific evidence is marred by inconsistencies and serious loopholes. In such circumstances, it would be wholly unsafe to uphold a conviction, much less the extreme penalty of death.
54. Trial Courts, as well as High Courts, are required to exercise the highest degree of circumspection before awarding the death penalty. The irreversible nature of capital punishment demands that it be imposed only in the “rarest of rare” cases, as held by this Court in **Bachan Singh v. State of Punjab**⁴¹, and **Machhi Singh v. State of Punjab**⁴², and only when the prosecution has led unimpeachable, cogent, and convincing evidence that excludes every hypothesis of innocence. Even the slightest doubt or infirmity in the prosecution’s case must weigh against the imposition of such a sentence. Any hasty or mechanical application of the death penalty, without ensuring the highest standards of proof and procedural fairness, not only undermines the rule of law but risks the gravest miscarriage of justice by extinguishing a human life irretrievably. In **Manoj & Ors. v. State of Madhya Pradesh** (*supra*), this Court emphasised the duty of courts to consider mitigating circumstances and conduct a detailed sentence hearing before awarding the death penalty. Therefore, unless the prosecution’s evidence forms an unbroken and reliable chain of circumstances pointing only to the guilt of the accused, the extreme penalty cannot be justified.

41 (1980) 2 SCC 684.

42 (1983) 3 SCC 470.

Supreme Court Reports

55. Since the prosecution has failed to establish the chain of circumstances against accused-appellant No.1-Akhtar Ali, the very foundation of the case against accused-appellant No. 2-Prem Pal Verma is also destroyed. The prosecution itself rested its case against accused-appellant No. 2-Prem Pal Verma, primarily on the alleged extra-judicial confession of accused-appellant No.1-Akhtar Ali. Once the prosecution's version against accused-appellant No.1-Akhtar Ali is disbelieved, the derivative case sought to be built against accused-appellant No. 2-Prem Pal Verma loses all credibility. Consequently, the prosecution has failed to prove the charges against accused-appellant No. 2-Prem Pal Verma, beyond a reasonable doubt, and his conviction cannot be sustained.
56. Given the above infirmities, the so-called links in the chain of circumstances stand broken. The prosecution has, therefore, failed to prove the guilt of the accused-appellants beyond a reasonable doubt.
57. The impugned common judgment dated 18th October, 2019, passed by the Division Bench of the High Court of Uttarakhand at Nainital in Criminal Reference No. 1 of 2016 and Criminal Appeal No. 104 of 2016 and the judgment dated 11th March, 2016 passed by the Special Judge (POCSO)/ Fast Track Court/ Additional District & Sessions Judge, Haldwani, District Nainital in Session Trial No. 09 of 2015, do not stand to scrutiny and the same are hereby set aside.
58. The accused-appellants are acquitted of all charges. They shall be released forthwith, if not required in any other case. Bail bonds are discharged.
59. The appeals are, accordingly, allowed.
60. Pending Applications, if any, shall stand disposed of.

Result of the case: Appeals allowed.