[2025] 8 S.C.R. 2108 : 2025 INSC 1042

Putai
v.
State of Uttar Pradesh

(Criminal Appeal No(s). 36-37 of 2019)

26 August 2025

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

Issue for Consideration

The accused-appellants were convicted for the offences punishable u/ss.376(2)(g), 201 and 302 of Penal Code, 1860. The High Court dismissed the appeals against conviction preferred by the accused-appellants.

Headnotes†

Penal Code, 1860 – ss.376(2)(g), 201 and 302 – Allegation against the accused-appellants that they raped and murdered a minor girl – Trial Court convicted the accused-appellants for the offences punishable u/ss.376(2)(g), 201 and 302 of Penal Code, 1860 – Accused no.1 was sentenced rigorous life imprisonment u/s.376(2)(g) of IPC; seven years rigorous imprisonment u/s.201 of IPC and death penalty u/s.302 of IPC – Accused no.2 was sentenced rigorous life imprisonment u/s.376(2)(g) of IPC; seven years rigorous imprisonment u/s.201 of IPC and rigorous life imprisonment u/s.302 of IPC – The High Court answered the death reference in the affirmative, confirming the death penalty awarded to accused no.1 and dismissed the appeals against conviction preferred by the accused-appellants – Correctness:

Held: 1. It is a settled tenet of criminal jurisprudence that in a case based purely on circumstantial evidence, the prosecution must prove its case beyond reasonable doubt – The incriminating circumstances must be such which point exclusively to the guilt of the accused and are inconsistent with his innocence or the guilt of anyone else – In the instant case, the evidence on the record has fallen woefully short of proving the guilt of the accused-appellants by clinching evidence which can be termed as proving the case beyond all manner of doubt – Hence, appellants are acquitted by giving them the benefit of doubt. [Paras 78-80]

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* Author

2. A fact emerging from the statement of PW-1 is that he did not mention that the underwear of the child victim was found in the field of accused no.1 – The only fact in deposition of PW-1 which is alleged as incriminating against accused no.1, was the narrative that his wife (PW-2) saw accused no.1 washing his hands and face and going into his house – This Court finds that there is nothing unnatural or unusual in this conduct of accused no.1 as it is natural to carry out these ablutions upon returning from work etc. – Further, accused no.1 has given an explanation in his s.313 CrPC statement that his parents were ill and were hospitalized on the date of the incident – In this background, the fact that accused no.1 was seen by PW-2 rushing into his house, changing clothes and going away cannot be treated to be a suspicious conduct or a fact which inculpates him in the crime. [Paras 28, 30, 35]

3. So far as the accused no. 2 is concerned, the theory set forth by the prosecution, that the comb used by accused no. 2 was recovered from the field and that the sniffer dog, after sniffing the said comb, led the police team to the house of the accused no. 2 is also shrouded in a cloud of doubt – As there is a significant contradiction regarding the colour of the comb which was recovered by the police – Admittedly, there was no special feature in the recovered comb which was an ordinary plastic comb – Further, the procedure pertaining to the exercise of the sniffer dog and failure to prepare any contemporary document for the search by the dog squad makes the entire procedure doubtful – Hence, the theory propounded by the prosecution that the comb found at the spot, was of accused no. 2 falls flat to the ground and is unworthy of credence. [Paras 36-39]

4. The aspect regarding the recovery of the underwear of the child victim from the field of accused no.1 is concerned, the same seems to be a planted recovery and a creation by the Investigating Officer (PW-9) intended to give succor to the prosecution case – The fact regarding the presence of the underwear would definitely have been mentioned in the complaint (Exhibit K-1) filed by (PW 1) to the police – Omission of the fact is far too significant to be overlooked. [Para 43]

5. PW-7, being the medical jurist did not give any opinion regarding the cause of death of the child victim – She claimed to have taken two vaginal swabs and two vaginal smear slides, which were sent

for examination of spermatozoa and gonococci – PW-7 did not state that the vaginal swabs and the slides were sealed – She did not even mention the date on which these vital forensic materials were handed over for onward transmission – The witness (PW-8-doctor) stated that he collected part of scalp hair with skin for DNA, a piece of sternum bone and eight slides of smear and swabs – Not a single document pertaining to this procedure was proved by the witness – Hence, the entire procedure of collecting forensic samples becomes doubtful. [Paras 49, 51, 52]

6. As per the version of the Investigating Officer (PW-9), he had immediately sealed the comb at the spot – Therefore, the same could not have been available for the sniffer dogs to smell – Evidence of PW-9 is that the personal articles of the child victim, *i.e.*, the frock and the underwear which he seized were never forwarded to the FSL – The very fact that the Investigating Officer (PW-9) did not consider it essential to send the articles to the FSL gives rise to a strong suspicion that the recovery of these articles was a planted recovery. [Paras 55, 56]

7. The DNA reports are totally inadmissible in evidence – There is a total lack of evidence regarding the chain of custody of the blood samples – There is a grave discrepancy in the evidence of the two medical jurists, *i.e.*, PW-7 and PW-8 regarding the number of slides prepared for DNA examination – The conclusions in the first DNA report and the supplementary DNA report are in stark contradiction. [Para 65]

8. The material objects including the clothes of the child victim were exhibited in the evidence of PW-9, but the same were not shown to the parents, *i.e.*, PW-1 and PW-2 for identification when they stepped into the witness box – Hence, a doubt is created as to whether the articles so recovered were actually of the child victim or not – The prosecution has given no explanation whatsoever as to why the clothes of the child victim were not forwarded to the FSL for forensic examination. [Paras 67, 68]

9. In conclusion, there is no hesitation in holding that other than the allegation that the child victim's *chappals*, underwear and the water canister were found in the field which was cultivated by accused no.1, the prosecution has failed to lead any credible evidence whatsoever which can be considered to be incriminating the accused-appellants for the crime in question. [Para 77]

Putai v. State of Uttar Pradesh

Evidence – Circumstantial Evidence – Distance between 'may be proved' and 'must be proved':

Held: The distance between 'may be proved' and 'must be proved' is small but has to be travelled before the prosecution can seek conviction of the accused in a case based purely on circumstantial evidence. [Para 69]

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Evidence Act, 1872; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Evidence; Circumstantial evidence; May be proved and must be proved; Incriminating circumstances; Forensic examination; Credible evidence; DNA report; Plantation of articles; Recovery of articles; Procedure of collecting samples; Benefit of doubt; Beyond reasonable doubt; Rigorous punishment; Death penalty; FSL; Inquest report.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No(s). 36-37 of 2019

From the Judgment and Order dated 11.10.2018 of the High Court of Judicature at Allahabad, Lucknow Bench in CCN No. 3 and CRLA No. 444 of 2014

With

Criminal Appeal No. 154 of 2025

Appearances for Parties

Advs. for the Appellant:
Shadan Farasat, Sr. Adv., Ms. Shreya Rastogi, Ms. Manasa Ramakrishna, Abhishek Babbar, Mangesh Naik, Kabir Dixit, Varinder Kumar Sharma, R. D. Rathore, S. K. Bandyopadhyay, Dhruva Kumar, Rajiv Agnihotri, Jeevan R. Patil.

Advs. for the Respondent:
Shaurya Sahay, Aditya Kumar, Ms. Ruchil Raj.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Heard.

2. *Vide* judgment of conviction and order of sentence dated 14th March, 2014 and 19th March, 2014, passed by the learned Additional Sessions Judge, Court No. 13, Lucknow[1], in Sessions Case No. 61 of 2013, the accused-appellants were convicted for the offences punishable under Sections 376(2)(g), 201 and 302 of Indian Penal Code, 1860[2] and were sentenced in the terms below: -

Accused	Section(s)	Sentence awarded
Accused No. 1-Putai[3]	• 376(2)(g) IPC	• **Rigorous life imprisonment** along with a fine of Rs 40,000/- and in default to undergo an additional one year of rigorous imprisonment.
	• 201 IPC	• **Seven years rigorous imprisonment** along with a fine of Rs 20,000/- and in default to undergo an additional 6 months of rigorous imprisonment.
	• 302 IPC	• **Death penalty** along with a fine of Rs 60,000/- and in default to undergo an additional one and a half year of rigorous imprisonment.

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

2 Hereinafter, being referred to as the 'IPC'

3 Appellant in Criminal Appeal Nos. 36-37 of 2019.

Accused No. 2-Dileep[4]	• 376(2)(G) IPC	• **Rigorous life imprisonment** along with a fine of Rs 40,000/- and in default to undergo an additional 1 year of rigorous imprisonment.
	• 201 IPC	• **7 years rigorous imprisonment** along with a fine of Rs 20,000/- and in default to undergo an additional 6 months of rigorous imprisonment.
	• 302 IPC	• **Rigorous life imprisonment** along with a fine of Rs 60,000/- and in default to undergo an additional one and a half year of rigorous imprisonment.

3. The trial Court made a reference[5] to the High Court of Judicature at Allahabad[6] for confirmation of the death sentence awarded to accused No.1-Putai under Section 366 of the Code of Criminal Procedure, 1973[7]. The accused-appellants also preferred separate appeals[8] for assailing their conviction and the sentences awarded to them by the trial Court. The High Court answered the death reference in the affirmative, confirming the death penalty awarded to accused No.1-Putai and dismissed the appeals against conviction preferred by the accused-appellants *vide* judgment dated 11th October, 2018, which is subject matter of challenge in these appeals by special leave.

4 Appellant in Criminal Appeal No. 154 of 2025.

5 Capital Sentence No. 3 of 2014.

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

7 Hereinafter, being referred to as 'CrPC'.

8 Accused No.1-Putai preferred Criminal Appeal No. 444 of 2014 and accused No.2-Dileep preferred Crl. Appeal No. 597 of 2014.

Brief facts: -

4. The facts in nutshell necessary and essential for disposal of these appeals are noted hereinbelow.

5. Mst. S, minor daughter[9] (aged about 12 years) of Munna (PW-1) and Smt. Chandravati (PW-2) had gone out to attend the call of nature in the late evening of 4th September, 2012. When the girl did not return, the parents got alarmed and a search operation was launched, but to no avail.

6. In the morning of 5th September, 2012, the child victim's *chappals*, water canister, underwear and blood stains were seen spread around in Bhaktisharan's field which was under cultivation of accused No.1-Putai. The denuded dead body of the child victim was found lying amidst the rice crop growing in Harikrishna Sharma's field. Munna (PW-1), the father of the child victim submitted a complaint[10] to the Inspector of Police on 5th September, 2012 at around 08:30 AM alleging that some unknown persons had committed rape and thereafter, murdered his minor daughter. Based on the same, an FIR bearing Case Crime No. 318 of 2012[11] came to be registered at Police Station Mohanlalganj, Lucknow for the offences punishable under Sections 302, 201 and 376 of IPC.

7. The investigation commenced and was assigned to Sub-Inspector Narad Muni Singh (PW-9)[12]. He inspected the crime scene; prepared the rough site map[13] and *vide* seizure memo[14] collected the following articles from the fields of Bhaktisharan and Harikrishna which were taken on rent for cultivation by accused No.1-Putai and Radheyshyam Maurya respectively: -

   i. Plain soil.

   ii. Blood-stained soil.

   iii. Blood-stained grass.

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9 Hereinafter, being referred to as 'child victim'.

10 Exhibit K-1.

11 Exhibit K-5

12 Hereinafter, referred to as the 'Investigating Officer (PW-9)'

13 Exhibit K-8.

14 Exhibit K-7.

iv. A pair of pink *hawaai chappals*.

v. Blue colour undergarment.

vi. A water canister.

vii. A sky-blue colour frock.

viii. A small male comb.

8. All these articles were seized and sealed in three separate packets. As per the rough site map, the dead body of the child victim was found in the field of Harikrishna Sharma whereas, the *chappals*, water canister, and underwear of the child-victim were found in the field of Bhaktisharan. A brick road passed between the aforesaid two fields.

9. The prosecution claims that the dog squad was called to the place of occurrence. The sniffer dog sniffed the small male comb and led the police team to the house of accused No. 2-Dileep.

10. The inquest report of the dead body of the child victim was prepared[15] which was then subjected to post mortem by a Medical Board of which, Dr. Geeta Chaudhary (PW-7), Dr. Akhilesh Chandra (PW-8) and Dr. Anant Prakash Mishra were members.

11. The medical board conducted autopsy and issued the postmortem reports[16] opining that the child victim had been subjected to grave violence and sexual assault and died as a result of asphyxia due to strangulation. As many as nine *ante mortem* injuries were noticed on the child victim's body including numerous on her nether regions.

12. From the statements of various witnesses examined by the Investigating Officer (PW-9), the needle of suspicion turned towards the accused-appellants who were arrested on 7th September, 2012. However, it may be noted that the prosecution did not exhibit the arrest memos of the accused-appellants.

13. The prosecution claims that the blood samples of the accused-appellants were collected under orders of the Court on 26th November, 2012 for the purpose of DNA comparison. The DNA report[17] was received as per which, the comparison did not yield any conclusive

15 Exhibit K-9.

16 Exhibit K-5 and K-6.

17 Exhibit K-14.

results. After conclusion of investigation, chargesheet was laid against the accused-appellants for the offences punishable under Sections 376(2)(g), 201 and 302 IPC. The offences being sessions triable, the case was committed and made over to the Court of Additional Sessions Judge, Court No. 13, Lucknow, for trial where charges were framed for the above offences against the accused-appellants, who abjured their guilt and claimed trial.

14. The prosecution examined as many as 12 witnesses, exhibited 17 documents and 5 material objects to prove its case. The team leader of the dog squad, namely, Tribhuvan Narayan Jaiswal was examined as Court Witness No.1. Statements of the accused-appellants were recorded under Section 313 CrPC, and they were confronted with the allegations as appearing against them in the prosecution case. They denied the same and claimed to be innocent. Three witnesses were examined in defence.

15. Upon hearing the arguments advanced by the Public Prosecutor and the defence counsel and after appreciating the evidence on record, the trial Court proceeded to convict and sentence the accused-appellants as stated *supra*. The reference for confirmation of the death sentence awarded to accused No.1-Putai by the trial Court was answered in affirmative by the High Court, whereas the appeals preferred by the accused-appellants were rejected *vide* common judgment dated 11th October, 2018, passed by the High Court which is assailed in these appeals by special leave.

Submissions on behalf of accused-appellants.

16. Shri. Shadan Farasat, learned senior counsel appearing for the accused No.1-Putai, and Shri Varinder Kumar Sharma, learned counsel representing the accused No. 2-Dileep, vehemently and fervently contended that the conviction of the accused-appellants by the Trial Court, and affirmed by the High Court, is based purely on conjectures and surmises. The prosecution case is totally based on circumstantial evidence and that the prosecution could not lead proper/reliable evidence to establish the complete chain of incriminating circumstances establishing the guilt of the accused-appellants beyond all manner of doubt. The testimony of the prosecution witnesses is full of inherent contradictions and improbabilities and does not inspire confidence.

17. It was further submitted that the prosecution has tried to place reliance on the so-called suspicious conduct of accused No.1-Putai in order to draw an inference regarding his culpable state of mind. As per Shri Farasat, the fact that the accused-appellants was seen behaving abnormally was introduced by way of a sheer improvement because, in the complaint filed by Munna (PW-1), no such allegation was levelled.

18. It was further submitted that the blind reliance placed by the trial Court and the High Court upon the DNA report is absolutely unjustified. The prosecution failed to lead proper evidence to establish the sanctity of the samples from the time of seizure till the time the same reached the Forensic Science Laboratory[18].

19. He further contended that the first DNA report dated 18th January, 2014 did not inculpate the accused-appellants. However, during the pendency of appeals before the High Court, the prosecution produced a supplementary DNA report dated 2nd December, 2014 by way of an affidavit but the same was never put to the accused-appellants under Section 313 CrPC. Furthermore, the expert witness who conducted the DNA profiling and issued the supplementary DNA report was not examined in evidence and hence, the subsequent DNA report is inconsequential and inadmissible in evidence. It was further contended that since the glaring discrepancies in the two reports of DNA profiling have not been explained by the prosecution, the High Court committed grave error in placing reliance on the same.

20. On these grounds, learned counsel representing the accused-appellants, implored the Court to accept the appeals, set aside the impugned judgments passed by the High Court as well as the trial Court and acquit the accused-appellants of the charges levelled against them.

Submissions on behalf of respondent-State

21. *Per contra*, learned counsel representing the respondent-State, vehemently and fervently opposed the submissions advanced by the counsel appearing for the accused-appellants. It was contended

18 Hereinafter, referred to as the 'FSL'

that the material witnesses and the accused-appellants are close neighbours. The material witnesses who hail from a rustic background had no reason whatsoever to falsely implicate the accused-appellants in the case. These witnesses have given natural and truthful evidence regarding the suspicious conduct of the accused-appellants corresponding to the time of the incident. The present case emanates from a gruesome incident wherein the minor daughter of Munna (PW-1) and Smt. Chandravati (PW-2) was raped and murdered in a very brutal manner and thus, trivial inconsistencies in evidence of the witnesses were bound to occur and no advantage thereof can be gained by the accused-appellants. It was submitted that the FIR was lodged without any delay in the morning of the 5th September, 2012, soon after the dead body of the child victim was found and hence, the family members would have been in a deep state of shock. Thus, omission of trivial facts from the FIR cannot be a ground to discard the entire prosecution case.

22. It was further submitted that the underwear and other personal articles i.e., *chappals* and water canister of the child victim were recovered from the field which accused No.1-Putai was admittedly cultivating. Hence, by virtue of Section 106 of the Indian Evidence Act, 1872, the burden would shift on to the accused- appellants to explain the circumstances under which, these gravely incriminating articles, were found in his field.

23. It was further submitted that the prosecution witnesses, i.e., Munna (PW1) and Smt. Chandravati (PW-2) have given convincing evidence to prove the suspicious conduct of the accused-appellants corresponding to the time of the incident. Since, there was no animosity whatsoever between these witnesses and the accused-appellants, there could not have been any reason for them to falsely implicate the accused-appellants for the rape and murder of their minor child. They, therefore, urged that the conviction of the accused-appellants as recorded by the trial Court and affirmed by the High Court is based on *apropos* appreciation of evidence available on record. The impugned judgments are well reasoned and have been rendered after thorough evaluation of evidence. The same do not suffer from any infirmity or perversity and hence, the appeals being devoid of merit should be dismissed.

Analysis: -

24. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgments and material placed on record.

25. The following facts are admitted from the record: -

    i. The child victim went missing on 4th September, 2012 at around 07:00 PM. She had gone out for attending the call of nature and was not found alive thereafter.

    ii. The parents and neighbours conducted a search for the child victim throughout the night, but no clue was forthcoming regarding her whereabouts.

    iii. As per the FIR[19], the denuded dead body of the child victim was found in the field of Harikrishna Sharma whereas, some of her personal articles i.e., *chappals*, water canister and underwear were found in the field of Bhaktisharan. The report is silent regarding any suspicious act/conduct of the accused-appellants which may have been noticed or perceived by any of the prosecution witnesses. Rather, the report does not cast suspicion on anyone.

    iv. Both the accused-appellants were arrested on 7th September, 2012 and their blood samples were drawn on 26th November, 2012, i.e., after a gap of almost two and a half months.

    v. The first DNA examination report dated 18th January, 2014 i.e., Exhibit K-14, remained inconclusive. The prosecution produced a supplementary DNA report dated 2nd December, 2014 during pendency of the appeals before the High Court by way of an affidavit dated 12th April, 2017. However, notably, the first DNA report was totally silent regarding any pending tests or the requirement for re-examination of the samples. The supplementary DNA report was not put to the accused-appellants, and they were denied opportunity to rebut the same.

    vi. The prosecution did not examine the carrier who transmitted the samples from the police station to the FSL. Not a single

19 Exhibit K-2.

document pertaining to safe keeping or transmission of the samples *viz*. *maalkhana* register, *roznamcha* entry, forwarding letter or the receipt issued from the FSL was exhibited or brought on record by the prosecution during the course of the trial.

26. Keeping the above admitted facts in mind, we now proceed to appreciate the evidence of the material prosecution witnesses.

27. Munna (PW-1), the informant, being the father of the child victim, testified that his daughter, Mst. S, informed her mother and went to ease herself in the field at about 07:00 PM. When she did not return for quite some time, the family members got worried and launched a search for her. The child's mother, Smt. Chandravati (PW-2) kept on waiting at the house. She claims to have seen accused No.1-Putai washing his hands and face and going into his house during this period. The search party claims to have seen stains of blood and marks of dragging in the field of Bhaktisharan which was being cultivated by accused No.1-Putai. The *chappals* of the child victim were also found in the same field. Likewise, the water canister which the child victim had taken with herself was also found in a culvert near the field which accused No.1-Putai used to cultivate.

28. A very important fact emerging from the statement of Munna (PW-1) is that he did not mention that the underwear of the child victim was also found in the field of accused No.1-Putai. Furthermore, none of the three incriminating articles, i.e., the *chappals*, the water canister or the underwear were exhibited during the evidence of Munna (PW-1) and Smt. Chandravati (PW-2) being the parents of the child victim. However, the Investigating Officer (PW-9) claims to have recovered the underwear of the child victim from the field which was under cultivation of accused No.1-Putai. We shall consider the import of this discrepancy later.

29. It is also relevant to mention here that Munna (PW-1) did not utter a single word regarding any procedure of using the dog squad to find out the suspect.

30. Thus, the only fact in deposition of Munna (PW-1) which is alleged as incriminating against accused No.1-Putai, was the narrative that his wife, Smt. Chandravati (PW-2) saw accused No.1-Putai washing his hands and face and going into his house. We find that there is nothing unnatural or unusual in this conduct of accused No.1-Putai.

Any labourer or farmer would be naturally inclined to carry out these ablutions upon returning from work and before entering one's home. The actions as stated above are absolutely natural and would not raise any suspicion nor could the same be treated as incriminating conduct on the part of accused No.1-Putai.

31. Smt. Chandravati (PW2) being the mother of the child victim also gave evidence almost on the same lines as that of Munna (PW-1). In addition, she stated that she also went to the field in search of her daughter i.e., the child victim. Later, the efforts to search shifted to the homes of the relatives, but the same proved to be futile. She further alleged that she saw accused No.1-Putai who was looking disgruntled. He entered his house, changed his clothes and went away on his cycle. The witness stated that accused No.1-Putai did not make any enquiry whatsoever regarding the reason for the commotion being caused owing to the child victim having gone missing. This indifference shown by accused No.1-Putai has been treated to be an incriminating conduct by the trial Court as well the High Court on the ground that in the natural course of events, accused No.1-Putai should have got concerned and would definitely have enquired as to why the family members of the child victim were acting in a panic mode.

32. Be that as it may, we find that this version as set out in the evidence of Smt. Chandravati (PW-2) that accused No.1-Putai came rushing and he went inside his house, and changed the clothes, in addition to being an exaggeration/improvement from her previous statement under Section 161 CrPC cannot be considered to be an incriminating circumstance against accused No.1-Putai in isolation.

33. All that can be inferred from the statement of Smt. Chandravati (PW-2) is that accused No.1-Putai came to his house, changed his clothes and went away without demonstrating any interest whatsoever regarding the commotion which was prevailing on account of the child victim having gone missing.

34. To reiterate, there was nothing unusual in the conduct of accused No.1-Putai if he entered into his own house, even in haste, washed his face and hands and then, went away.

35. Accused No. 1-Putai has given an explanation in his Section 313 CrPC statement that his parents were ill and were hospitalized on

the date of the incident. This fact was admitted by Smt. Chandravati (PW-2) in her cross-examination. The accused has taken a specific defence that he was with his parents at the time of the incident. In this background, the fact that accused No.1-Putai was seen by Smt. Chandravati (PW-2) rushing into his house, changing clothes and going away cannot be treated to be a suspicious conduct or a fact which inculpates him in the crime.

36. So far as the accused No. 2-Dileep is concerned, Smt. Chandravati (PW-2) admitted in her cross-examination that accused No. 2-Dileep's house is at a significant distance from her house. The theory set forth by the prosecution, that the comb used by accused No. 2-Dileep was recovered from the field of Harikrishna Sharma, and that the sniffer dog, after sniffing the said comb, led the police team to the house of the accused No. 2-Dileep is also shrouded in a cloud of doubt and unacceptable on the face of record and we have strong reasons for observing so.

37. Firstly, there is a significant contradiction regarding the colour of the comb which was recovered by the police. Munna (PW-1) stated that the comb was of bluish-green color. Gaya Prasad (PW-3) stated that the comb was dirty and light red coloured. Raushan Lal (PW-5) stated that the comb was of sky-blue color. Narad Muni Singh (PW-9) stated that the comb was of green colour. These contrasting versions of the witnesses regarding the colour of the comb make the recovery by itself doubtful.

38. Secondly, the theory put forth in the evidence of the prosecution witnesses that they had seen accused No. 2-Dileep using the comb and thus they could identify and link the recovered comb to him is absolutely farfetched and unbelievable. Admittedly, there was no special feature in the recovered comb which was an ordinary plastic comb. Thousands of combs of similar design and colour are readily available in the market. Thus, it is impossible to believe that any person could identify the comb to be that of accused No. 2-Dileep simply on seeing him using the same. The emphatic version of the witnesses that the comb belonged to accused No. 2-Dileep is a strong indicator of the fact that the prosecution was hell bent upon implicating the accused No. 2-Dileep in this case by hook or by crook.

39. Lastly, at the cost of repetition, it may be stated that the procedure pertaining to the exercise of the sniffer dog taking the police team

from the place of incident to the house of accused No.2 Dileep was not documented and was sought to be proved in the oral evidence of Tribhuvan Narayan Jaiswal (CW-1). Failure to prepare any contemporary document for the search by the dog squad makes the entire procedure doubtful. Hence, the theory propounded by the prosecution that the comb found at the spot, was of accused No. 2- Dileep falls flat to the ground and is unworthy of credence.

40. The next prosecution witness on which the Courts below placed reliance was Gaya Prasad (PW-3) who is closely related to Munna (PW-1). The witness stated that, on the date of the incident, i.e., 4th September, 2012, he was at his field, which was located at a distance of about half a kilometer from the village. While returning home at around 08:00 PM, he saw accused No.1-Putai moving anxiously. When he reached home, he came to know that the child victim had gone out to ease herself but had not returned back. The parents of the child victim and few others gave him this information. The witness (PW-3) then joined the search for the child victim with the family members. The search continued till 10 o'clock in the night but the child victim was nowhere to be found. The search was resumed the next morning. While searching, they reached the field of accused No.1-Putai and saw a cot lying inside the hut. The witness claims to have seen blood on the ground below the cot. A sickle, a spade, a pillow, a plastic bottle, one underwear and a pair of *chappals* were also seen lying on the floor. A water canister was seen lying at some distance. The witness claims that he was the first to observe all these articles. Little later, the police team also reached the spot. The body of the child victim was located at around 09:00 AM in the field of Harikrishna Sharma which was under cultivation of one Radheyshyam Maurya.

41. Importantly, the witness (PW-3) admitted that accused No.1-Putai used to do farming and was also working in a factory where asbestos sheets used to be manufactured. On some days, he worked in the factory from 03:30 PM to 11:00 PM while on other days, he worked from 11:30 PM to 08:00 AM in the morning. The witness admitted that neither did he see accused No.1-Putai taking away the child victim nor did he see him killing her.

42. What can be culled out from the evidence of this witness is that the incriminating articles which were recovered from the field of accused

No. 1-Putai, had already been seen by the search party before the police arrived at the spot. The said fact assumes importance when we see the complaint (Exhibit K-1) wherein, all that is mentioned is that the *chappals* and water canister of the child victim and some blood stains were seen in the field of Bhaktisharan which was under cultivation of accused No. 1-Putai. There is a total omission of the fact that the underwear of the child victim and other incriminating articles had already been noticed in the same field.

43. If at all, the search party which included the informant Munna (PW-1) and Gaya Prasad (PW-3) had noticed the minute details about the presence of *chappals* and water canister of the child victim and some blood stains, then it is impossible to believe that the presence of the underwear belonging to the child victim in the same field, would have escaped detection. In that eventuality, the fact regarding the presence of the underwear would definitely have been mentioned in the complaint (Exhibit K-1) filed by Munna (PW-1) to the police. Omission of the fact is far too significant to be overlooked. We, therefore, feel that so far as the aspect regarding the recovery of the underwear of the child victim from the field of accused No.1-Putai is concerned, the same seems to be a planted recovery and a creation by the Investigating Officer (PW-9) intended to give succor to the prosecution case.

44. Bablu (PW-4) stated that he used to work as a mason and was residing at a distance of about 100 meters from the house of Munna (PW-1). He came to know on the day of the incident that Munna's (PW-1) daughter was missing. He alleged that on 4th September, 2012, accused No. 2-Dileep came to his house between 08:00 PM to 09:00 PM and asked for a *fawda* (garden spade), but the witness did not accede to the said request. The witness further stated that accused No.1-Putai had taken the field of Bhaktisharan on crop sharing basis.

45. The statement of this witness (PW-4) is hardly of any relevance to the prosecution case. The simple act of asking for a spade by accused No. 2-Dileep cannot be construed to be incriminating in nature. Furthermore, there is a material contradiction in the deposition of the said witness since during the examination-in-chief, the witness stated that he did not give the spade to accused No. 2-Dileep, but in cross-examination, he stated that he gave the *fawda* (garden

spade) to accused No. 2-Dileep which he never received back. This contradiction goes to the root of the matter and makes the testimony of the witness (PW-4) highly doubtful.

46. Raushan Lal (PW-5) stated that in the morning after the incident, the villagers told him that Munna's (PW-1) daughter i.e., the child victim had gone missing at around 7 o'clock on the previous night. The entire village was searching for the child victim in the field of Bhaktisharan which accused No.1-Putai was cultivating. A cot was kept at the staging. There were blood stains on the cot and blood drops were strewn around it. An underwear and a pair of *chappals* were seen lying towards the north of the hut with a sickle and a bottle lying nearby. Near a shrub, a water canister was found. The denuded dead body of the child victim was found near the ridge, in the corner of the paddy field belonging to Harikrishna Sharma and a frock was found lying at some distance from the dead body.

47. The witness (PW-5) further stated that a sky-blue coloured comb was found near the frock and the comb was of accused No. 2-Dileep. The sniffer dog sniffed the comb and went directly to accused No. 2-Dileep's house. He stated that he had himself seen accused No. 2-Dileep combing his hair using that comb. In cross-examination, the witness admitted that many people were searching for the child victim. The dead body of child victim was found in the field of Harikrishna Sharma, at a distance of about 150 feet from the field of accused No. 1-Putai and a brick lane was running between the said two fields. Thus, the evidence of the witness (PW-5) is also insignificant so far as the culpability of accused No.1-Putai in the crime is concerned. Since, we have already discarded the recovery of the comb as being that of accused No. 2-Dileep, the evidence of the witness (PW-5) is of no worth to the prosecution case.

48. Girish Kumar (PW-6) posted as Constable at Police Station Mohanlalganj, Lucknow, was a formal witness who registered the FIR bearing Case Crime No. 318 of 2012 based on the complaint given by Munna (PW-1). Nothing much turns on the statement of the said witness.

49. Dr. Geeta Chaudhary (PW-7), being the medical jurist proved the postmortem report (Exhibit K-5 and K-6). However, she did not give any opinion regarding the cause of death of the child victim. A very important fact which emerges from the evidence of the medical jurist

is that she claimed to have taken two vaginal swabs and two vaginal smear slides, which were sent for examination of spermatozoa and gonococci. The significant fact which needs to be noted is that the witness (PW-7) did not state that the vaginal swabs and the slides were sealed. She did not even mention the date on which these vital forensic materials were handed over for onward transmission.

50. Dr. Akhilesh Chandra (PW-8), was one of the members of the medical board which conducted the postmortem examination upon the dead body of the child victim. He stated that the body was brought for postmortem examination by Constable Sunil Singh and Constable Krishna Kumar Dwivedi posted at the Police Station Mohanlalganj. The autopsy was carried out at about 04:15 PM and Dr. Anant Prakash Mishra and Dr. Geeta Chaudhary (PW-7) were the other members of the medical board who took part in the postmortem examination. The medical jurist proved the presence of nine *ante mortem* injuries on the private parts and other body parts of the child victim. He also gave an opinion that the cause of death of the child victim was cardiorespiratory arrest due to asphyxia on account of *ante mortem* strangulation.

51. The witness (PW-8) stated that he collected part of scalp hair with skin for DNA, a piece of sternum bone and eight slides of smear and swabs. He went on to state that these articles were seized, sealed, and handed over to Constable Sunil Singh and Constable Krishna Kumar Dwivedi along with the specimen of seal and other police papers.

52. However, not a single document pertaining to this procedure was proved by the witness (PW-8), nor was any memorandum of sealing or handing over of the forensic material exhibited during his evidence or in the evidence of any other prosecution witness. Hence, the entire procedure of collecting forensic samples becomes doubtful.

53. Narad Muni Singh (PW-9), Sub-Inspector, Police Station Wazirganj, Lucknow, was the first senior police officer to reach the place of the incident upon receiving the information of the crime. When he reached the spot, the villagers who were gathered there informed him that Munna's (PW-1) daughter, i.e., the child victim had gone out for defecation at about 07:00 PM the previous evening and had not returned since then. The villagers told that some blood stains, the *chappals* of the child victim along with an underwear and a water

canister were seen lying in the field of Bhaktisharan which was under cultivation of accused No.1-Putai on crop sharing basis. He was also informed that the body of the child victim had been found in a naked state in the field of Harikrishna Sharma. The father of the child victim was sent to the police station to report the matter. While the police team was conducting the inspection of the crime scene, Constable Uma Shankar came to the spot with the copy of the FIR[20] along with the register of inquest report and other documents. Thereafter, the inquest memo and the site inspection plan were prepared. He proceeded to record the statements of the complainant, i.e., Munna (PW-1) and the other witnesses. The dog squad was summoned for inspection of the place of occurrence. The frock, the underwear, the *chappals*, the water canister of the child victim and a male comb were recovered and seized, and the seizure memo was prepared at the spot. The dead body of the child victim was packed and sent to the KGMC with Constable Sunil Singh, Constable Krishna Kumar Dwivedi and Lady Constable Sandhya Singh. Search was made for the suspects. Three sealed and stamped packets of the *mudamaal* articles were placed in the police *malkhana*. He proved the seizure memo (Exhibit K-7) by which these articles came to be seized.

54. During the evidence of the witness (PW-9), the packets of the sealed articles, i.e., the frock, the underwear, the *chappals*, the water canister, and the comb were opened in the Court and the said material objects were exhibited. The witness further stated that the blood-stained and the plain soil recovered from the place of the incident was sent to the FSL. Subsequently, the witness handed over the investigation of the case to Inspector Yogendra Singh (PW 11). During cross-examination conducted on behalf of accused No. 2-Dileep, the witness (PW-9) stated that the needle of suspicion turned towards accused No. 2-Dileep as the sniffer dog after smelling the comb recovered from the place of occurrence, went up directly to the house of the said accused.

55. We may note that as per the version of the Investigating Officer (PW 9), he had immediately sealed the comb at the spot. Therefore, the same could not have been available for the sniffer dogs to smell. However, the fact remains that nothing in respect of the inspection by

20 FIR bearing Case Crime No. 318 of 2012.

dog squad has been recorded in any of the documents prepared by the Investigating Officer (PW-9) at the crime scene on 5th September, 2012. In cross-examination, the witness also stated that the dead body of the child victim had been located by the public and was lying at a distance of 80 meters from the brick lane, in between the fields of Bhaktisharan and Harikrishna Sharma.

56. A very important fact which emerges from the evidence of Narad Muni Singh (PW-9) is that the personal articles of the child victim, i.e., the frock and the underwear which he seized were never forwarded to the FSL. It is indeed surprising that in a case of such grave nature, the Investigating Officer (PW-9) did not care to forward these crucial articles to the FSL. The scientific analysis of these articles might have provided vital evidence for proving the guilt of the accused-appellants or otherwise. The very fact that the Investigating Officer (PW-9) did not consider it essential to send the articles to the FSL gives rise to a strong suspicion that the recovery of these articles was a planted recovery.

57. Suresh Chandra Mishra (PW-10), Sub-Inspector, Police Station Sigra, Varanasi also accompanied Investigating Officer (PW-9) to the crime scene on 5th September, 2012. He gave evidence almost on same lines as Investigating Officer (PW-9). He was a witness to the inquest proceedings. He sealed and placed the dead body of the child victim in a white cloth bag. Thereafter, the dead body was forwarded to the medical college, i.e., KGMC for postmortem examination with Constable Sunil Singh and Constable Krishna Kumar Dwivedi. Nothing significant was stated by this witness, which can have a bearing on the outcome of the case.

58. Yogendra Singh (PW-11)[21] who was posted as the Inspector and Officer-in-Charge of the Police Station Mohanlalganj stated that he recorded the statements of the witnesses Gaya Prasad (PW-3), Ajai, Anil, Bablu (PW-4), Raushan Lal (PW-5), Khilawan and Munna (PW-1) on 6th September, 2012. The accused-appellants i.e., Putai and Dileep were apprehended on 7th September, 2012 and were interrogated. On 9th September, 2012, statements of some more witnesses were recorded. The witness claims to have prepared a memorandum No. 5

21 Hereinafter, referred to as "Investigating Officer (PW-11)"

and dispatched the blood-stained soil and the slides to the FSL after preparing the documents for forensic examination and obtaining the signatures of the Circle Officer.

59. In cross-examination, the witness admitted that he was not present at the police station on the date of the incident. He got the information about the incident over mobile phone on 5th September, 2012 at about 02:00 PM. In his absence, Narad Muni Singh (PW-9), Sub-Inspector, had been authorised to conduct the investigation. The witness stated that the Chief Judicial Magistrate, Lucknow passed an order on 26th October, 2012 mandating that the accused-appellants should be summoned for the drawing of the blood samples on the very same day and directed the Chief Medical Officer, Lucknow to make arrangements for collection of the blood samples of the accused-appellants so that the same could be forwarded to the FSL for DNA comparison. He feigned ignorance as to the date and time on which the blood samples of the accused-appellants were actually collected. The witness admitted that charge-sheet was filed without receiving the DNA report because the remand period of 90 days was running out.

60. The most important fact which is seen from the evidence of this witness is that neither he gave out the date on which the blood samples of the accused-appellants were actually collected, nor did he prove any document prepared for carrying out this procedure. Further, it is pertinent to mention that the consent of the accused-appellants was purportedly taken before the drawing of the blood samples, but no document proving such consent, was exhibited in evidence. Hence, we have no hesitation in holding that the prosecution has failed to prove the relevant documentation which should have mandatorily been prepared before collection of the blood samples of the accused-appellants for DNA comparison. Failure to do so makes the entire exercise of collection of the blood samples, farce and frivolous.

61. Dr. Archana Tripathy (PW-12), Deputy Director (Serology), FSL, Lucknow, stepped into the witness box on 18th January, 2014 and proved the DNA report as Exhibit K-14. She stated that the blood samples were received through a special messenger in which, sample bearing Mark (1) (Ext. ES-3) was of accused No.1-Putai and that having Mark (2) (Ext. ES-4) was that of accused No. 2-Dileep. Marks ES-1 and ES-2 was given to the slide and the swab. The witness

opined that male specific allele was found in the Exhibits ES-1 and ES-2. The witness further clarified that the origin of the blood on the soil forwarded by the Investigating Officer (PW-11) could not be determined.

62. In cross-examination, the witness (PW-12) admitted that she received some of the samples in October, 2012 and the remaining samples were received in November, 2012. Then, she altered her version and claimed that first set of samples was received on 1st October, 2012 and second set was received on 26th November, 2012. These sample packets had been sent through Circle Officer, Mohanlalganj, Lucknow. In the first tranche, four sealed and stamped bundles were received, of which two were of blood-stained soil and plain soil and the other envelope contained the slide and the swabs of the child victim collected during the postmortem examination. The second packet received on 26th November, 2012 contained blood samples of the accused-appellants i.e., Putai and Dileep. The DNA report (Exhibit K-14) which the witness (PW-12) proved, makes an interesting reading. On a perusal thereof, it comes to light that male specific allele was found in the slide and the swab, i.e., Exhibits ES-1 and ES-2. No opinion whatsoever was given regarding the blood samples marked as Exhibits ES-3 and ES-4. It was only mentioned that DNA profiles were generated and ideal procedures were applied for the same.

63. Furthermore, the witness (PW-12) did not state in her evidence that any forensic material was preserved for further examination. Surprisingly, during the pendency of the appeal before the High Court, the prosecution placed a supplementary DNA report dated 2nd December, 2014 on record. We are of the view that there was hardly any possibility of any such supplementary DNA report being prepared because in absence of evidence to the contrary, it can be safely be presumed that the specimen samples must have been consumed when the first report, i.e., Exhibit K-14 was prepared. In any event, once the samples were already opened, their sanctity would no longer be secured/preserved for any further analysis.

64. The supplementary DNA report narrates that the material extracted from the slide ES-2 (collected from the victim's dead body) matched with the allele of ES-3, which was the blood sample of accused No.1-Putai. Furthermore, the very same slide ES-2 also gave matching profile with the blood sample marked as ES-4 which belonged to the

accused No. 2-Dileep. Two conclusions drawn in this report were based on the Y-Filer Kit test in respect of the sample of the accused No. 1-Putai, and the other based on the HID Kit test in respect of the sample of the accused No. 2-Dileep.

65. We find the following crucial flaws in the prosecution case which make the DNA reports totally inadmissible in evidence: -

(i) The prosecution failed to lead any evidence whatsoever so as to prove the procedure, date or time of drawing the blood samples of the accused-appellants for the purpose of conducting the DNA comparison. Neither any oral evidence was led to prove this procedure, nor did the prosecution exhibit any document to fortify the same. There is a total lack of evidence regarding the chain of custody of these blood samples.

(ii) As discussed above, there is a grave discrepancy in the evidence of the two medical jurists, i.e., Dr. Geeta Chaudhary (PW-7) and Dr. Akhilesh Chandra (PW-8) regarding the number of slides prepared for DNA examination, when the postmortem examination was conducted. On the one hand, Dr. Geeta Chaudhary (PW-7) stated that she took two vaginal swabs and two vaginal smear slides, whereas, on the other hand, Dr. Akhilesh Chandra (PW-8) stated that he took eight slides of smear and swabs.

(iii) No witness was examined by the prosecution to establish the complete unbroken chain of safe custody of the samples which were purportedly seized/drawn, preserved and then forwarded to scientific experts for DNA comparison.

(iv) Neither the *malkhana* In-charge of the Police Station Mohanlalganj was examined in evidence nor did the prosecution care to examine the official/s who carried the samples to the FSL.

(v) Not a single document pertaining to the transmission of the samples to the FSL was exhibited by the prosecution in its evidence and hence, the DNA report (Exhibit K-14) which is otherwise also inconclusive, cannot be read in evidence.

66. The supplementary DNA report dated 2nd December, 2014, which was produced during pendency of the appeals before the High Court is also inconsequential and inadmissible because neither did the

prosecution bother to recall the scientific expert, Dr. Archana Tripathy (PW-12) to prove this report nor was this report put to the accused-appellants by way of supplementary questioning under Section 313 CrPC. That apart, we have already taken note of the fact that the forensic samples had already been opened/consumed when the first DNA report (Exhibit K-14) was prepared and thus, the sanctity thereof was breached. Hence, there was no possibility whatsoever for preparation of a supplementary DNA report.

67. As is apparent, the conclusions in the first DNA report and the supplementary DNA report are in stark contradiction. Hence, it was essential for the prosecution to summon the expert concerned for reconciling the grave discrepancy in the two DNA reports. Having failed to do so, the prosecution cannot be permitted to place reliance on the subsequent DNA report to the prejudice of the accused-appellants.

68. The material objects including the clothes of the child victim were exhibited in the evidence of Narad Muni Singh (PW-9), but the same were not shown to the parents, i.e., Munna (PW-1) and Chandravati (PW-2) for identification when they stepped into the witness box. Hence, a doubt is created as to whether the articles so recovered were actually of the child victim or not. The prosecution has given no explanation whatsoever as to why the clothes of the child victim were not forwarded to the FSL for forensic examination.

69. Even if it is assumed that some of these material objects were found in the field of the accused No.1-Putai, that by itself cannot be considered to be an incriminating circumstance so strong that even taken in isolation, the same would prove the guilt of the accused No.1-Putai beyond reasonable doubt. The distance between 'may be proved' and 'must be proved' is small but has to be travelled before the prosecution can seek conviction of the accused in a case based purely on circumstantial evidence. The fields where the material objects allegedly belonging to the child victim and her dead body were found is open and accessible to all and sundry and hence, the prosecution would have to rule out the possibility of anyone other than the accused-appellants having committed the ghastly act for it to succeed and to bring home the charges against the said accused persons.

70. As per the prosecution case, the dead body of the child victim was found in the field of Harikrishna Sharma whereas, the material

objects *viz*. *chappals*, water canister and underwear were found in the field of accused No.1-Putai. These facts may give rise to a strong suspicion that the child victim might have been assaulted in the field of accused No.1 Putai, but that by itself would not be sufficient to establish that it was the accused No. 1-Putai and none else who committed the ghastly crime.

71. At the cost of repetition, it may be stated that the fact that Smt. Chandravati (PW-2), mother of the child victim, claims to have seen the accused No.1-Putai coming to his house, washing his face, changing his clothes and going away cannot be considered to be an incriminating circumstance. In addition, thereto, it is apparent that this version of Smt. Chandravati (PW-2) is an exaggeration. Had there been an *iota* of truth in her story, then this fact would have definitely been incorporated in the complaint filed by her husband i.e., Munna (PW-1).

72. Furthermore, had there been any substance in the aforesaid allegation, then the Investigating Officers would have definitely made an extensive search of the house of the accused-appellants to search for incriminating evidence. Evidently, no such effort was made by the Investigating Officers, which again establishes that the theory put forth in the evidence of Smt. Chandravati (PW-2) is an exaggeration and nothing beyond that. The failure of the Investigating Officers to search the house of the accused-appellants is another circumstance which adds to our suspicion regarding the credibility of the Investigating Officer's actions, more particularly, in respect of the alleged recoveries.

73. We feel that the present case is yet another classic example of lackluster and shabby investigation and so also laconic trial procedure which has led to the failure of a case involving brutal rape and murder of an innocent girl child.

74. The Investigating Officers did not care to examine anyone from the neighbouring fields where the dead body of the child victim was found. The incident took place in the beginning of September, 2012 and the time of the incident was between 07:00 PM to 08:00 PM. In the beginning of the month of September, darkness would fall somewhere around 07:00 PM only. Thus, had the accused-appellants indulged in such a ghastly act with the child victim, then their act would not have gone unnoticed by the persons residing in

the locality. However, not a single person from the neighbourhood was examined by the Investigating Officers which creates a doubt on the *bonafides* of their actions.

75. At the cost of repetition, it may be mentioned that no document pertaining to collection of the blood samples from the accused-appellants was produced and exhibited in evidence, thereby, rendering the DNA reports to be a piece of trash paper. The prosecution failed to lead any credible evidence for proving the chain of custody of the forensic samples allegedly collected during investigation and hence on this ground alone, the DNA reports pale into insignificance. The first DNA report was inconclusive, and supplementary DNA report dated 2nd December, 2014 was tendered in evidence by the prosecution during the pendency of appeals before the High Court along with an affidavit dated 12th April, 2017 of one Rajiv Paliwal, then Deputy Director, FSL, Lucknow. We may note that Rajiv Paliwal was not connected with the issuance of the DNA report in any manner and hence, he could not have been the relevant witness to prove the same. That apart, the DNA report could not have been proved through an affidavit. Section 293 of CrPC (Section 329 of BNSS, 2023[22]) makes it amply clear that only evidence of formal nature can be given on affidavits. The DNA report is substantive piece of evidence and hence, the same could not have been tendered in evidence through an affidavit and that too of an officer who was not connected with the procedure in any manner.

76. If at all, the prosecution was desirous of relying upon the supplementary DNA report, it was under obligation to recall and re-examine on oath the scientific expert, Dr. Archana Tripathy (PW-12), who issued the same. Failure of the prosecution to do so is fatal to its case.

77. In conclusion, we have no hesitation in holding that other than the allegation that the child victim's *chappals*, underwear and the water canister were found in the field which was cultivated by accused No. 1-Putai, the prosecution has failed to lead any credible evidence whatsoever which can be considered to be incriminating the accused-appellants for the crime in question, what to say, of evidence which is capable of proving the guilt of the accused-appellants beyond all manner of doubt.

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78. We are conscious that the case involves a gruesome act of rape and brutal murder of a tender girl child aged 12 years. However, it is a settled tenet of criminal jurisprudence that in a case based purely on circumstantial evidence, the prosecution must prove its case beyond reasonable doubt. The incriminating circumstances must be such which point exclusively to the guilt of the accused and are inconsistent with his innocence or the guilt of anyone else.

79. Having considered and analyzed the evidence available on record minutely, we feel that the prosecution has fallen woefully short of proving the guilt of the accused-appellants by clinching evidence which can be termed as proving the case beyond all manner of doubt.

80. Hence, we are left with no option but to acquit the appellants by giving them the benefit of doubt.

81. The appeals thus succeed and are hereby allowed. The impugned judgment dated 11th October, 2018 passed by the High Court and judgment of conviction and order of sentence dated 14th March, 2014 and 19th March, 2014, passed by the trial Court are hereby quashed and set aside.

82. The appellants, Putai and Dileep are acquitted of the charges. They are in custody and shall be released from prison forthwith, if not wanted in any other case.

83. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Ankit Gyan