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**(2023) 11 AHC CK 0028**

**Allahabad High Court**

**Case No:** Criminal Appeal No. - 2755, 2899 Of 2003

Arvind Kumar And Another

APPELLANT

Vs

State Of U.P.

RESPONDENT

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**Date of Decision:** Nov. 8, 2023

**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 161, 313, 437A
- Indian Penal Code, 1860 - Section 34, 302, 376, 376(2)(g)

**Hon'ble Judges:** Ashwani Kumar Mishra, J; Syed Aftab Husain Rizvi, J

**Bench:** Division Bench

**Advocate:** Udai Karan Saxena, Sanjeev Kumar Singh

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**Judgement**

S.A.H. Rizvi J

1. The present appeals have been filed on behalf of accused-appellants- Arvind Kumar, Surjeet, and Babloo, who have been convicted by judgment and order dated 30.05.2003 passed by Additional Sessions Judge/ F.T.C. First, Jalaun in Session Trial No.77 of 2000 (State of U.P. vs. Arvind Kumar and others) arising out of Case Crime No.337 of 1999, under Sections 376(2)(g) and 302/34 I.P.C., Police Station- Kuthond, District- Jalaun and sentenced the appellants to 10 years rigorous imprisonment & fine of Rs.5000/- under Section 376(2)(g) and life imprisonment & fine of Rs.5000/- under Section 302/34 I.P.C. All the sentences are to run concurrently. Both the appeals are against the common judgment and order, hence being decided by a common order.

2. The F.I.R. of this case was lodged on 30.11.1999 at 19:45 P.M., under Section 376/302 I.P.C. against Surjeet, Arvind Kumar, Babloo, and Raj Kishore on the written information alleging therein that on 30.11.1999, the 13-year-old daughter of informant had gone to collect the grass with Ram Prasad, Babu, and Pramod Kumar. At about 5 P.M., the informant came near the Arhar field of Brij Bhushan Tiwari to collect the grass cut by his father where he heard the screams of his daughter from

the Arhar field. On hearing the screams, the informant, his father, Babu, and Pramod Kumar entered the Arhar field. They saw Surjeet, Arvind, Babloo and Raj Kishore were strangulating her daughter by tying her neck with a bed-sheet. On exhortation, the accused ran away. When the informant reached near the victim, she had died. The accused have also committed sexual assault on her because her private part was bleeding and semen spots were present on the clothes. On hearing the noise, several villagers came to the spot. The informant leaving his family members and other villagers beside the dead body, came to the police station to lodge the F.I.R.

3. Inspector Harendra Singh- P.W.-8, took up the investigation. He reached the spot, conducted the inquest proceedings on the dead body, prepared related papers, and sent the body for postmortem examination. One cotton bed sheet, two torn pieces of kurta sleeve and one dupatta of the victim, and one slipper alleged to be of accused Raj Kishore @ Guthali were collected from the spot and separate memos were prepared. The Investigating Officer also inspected the place of occurrence and prepared the site plan. He arrested the accused persons and at the pointing out of the accused Raj Kishore one slipper of his right foot, which he was allegedly wearing at the time of the incident was recovered from the Arhar field of Brij Bhushan.

4. Further investigation was conducted by Inspector Ram Naresh Singh, he sent the material of the case for forensic examination, collected the medical reports and made it part of the investigation, recorded the statements of witnesses, and after concluding the investigation submitted the charge-sheet.

5. The case was committed to the Court of Sessions. Charges under Section 376(2)(g) I.P.C. and Section 302 read with Section 34 I.P.C. were framed against appellants-accused, namely, Surjeet, Arvind Kumar, Babloo, Raj Kishore @ Guthali. All the accused denied the charges and claimed trial.

6. Prosecution has produced eight witnesses (P.W.-1 to P.W.-8), who have proved 16 prosecution papers from Ext. Ka-1 to Ext. Ka-16.

7. The statements of the accused were recorded under Section 313 Cr.P.C. and incriminating evidence was put to them. They denied the prosecution case. They have also stated that they have been falsely implicated, the informant in collusion with the father of the real culprits and to save them, has lodged a false report. Accused Raj Kishore has also denied the recovery of the slipper at his instance. The accused Surjeet, Arvind, and Babloo have stated that on the date of the incident, they were present at the cremation of Munni Devi, wife of Raj Bahadur, a near relative at the time of the alleged incident. The accused have also produced six witnesses, D.W.-1 to D.W.-6 in their defence.

8. The learned trial Court, after hearing the counsels for both the parties by the impugned judgement and order, has held the appellants-accused guilty and sentenced them as above.

9. The postmortem of the deceased was conducted on 01.12.1999 at 2:30 P.M. by Dr. Y.K. Sharma (P.W.-6). According to the autopsy report, the age of the victim was about 13 years. Her body was average built. Rigor mortis present on both extremities. Postmortem staining was present on the back, buttocks, and thighs. Eyes were closed, mouth half open, froth present in mouth and nostrils. Blood clots present on both sides of the lower part of the vaginal orifice, cyanosis present on the lips, face congested. Following antemortem injuries were on the body:-

(i) ligature mark 26 cm X 2.7 cm all around the neck with marginal ecchymosis, 6 cm below the left ear, 6 cm below the right ear, and 7 cm below the chin;

(ii) multiple abrasions in an area of 8cm X 5cm, on the left side in front of the neck and lateral side of the neck;

On dissection underlying tissue ecchymoses and blood clots were present, the slide of smear taken from the vagina was prepared for the examination. The hymen ruptured and blood clots were present on both sides of the vaginal orifice.

**The Internal Examination:-** Brain and trachea congested. Both lungs were congested. The right chamber of the heart was filled with blood, left chamber was empty. The small intestine was filled with gases, while the large intestine was filled with faecal matter and gases. The pancreas, spleen, and both kidneys were congested, the urinary bladder was empty, and the non-gravid uterus. In the opinion of the autopsy surgeon, the cause of death was asphyxia, as a result of antemortem strangulation. The duration of the death was one day. The postmortem report has been proved as Ext. Ka-10 by Dr. Y.K. Sharma (P.W.-6).

10. The informant P.W.-1, in his examination-in-chief has stated that Surjeet, Babloo, Arvind Kumar, and Raj Kishore who live in his village Panditpur, sexually assaulted her 13-year-old daughter and committed her murder. The incident occurred in the Arhar field of Brij Bhushan Tiwari. He had gone to collect the grass cut by his father from the field. When he reached near the Arhar field of Brij Bhushan Tiwari at about 5 P.M., he heard the screams of his daughter. He along with his father, Babu and Pramod Kumar entered into the field then he saw that Surjeet and Babloo were strangulating her daughter by tying a knot with the bed-sheet and Raj Kishore was lying upon her while Arvind was pressing her mouth with his hands. On exhortation, all the accused ran away. His daughter had died. She was bleeding from her private parts and her clothes had stains of semen. While fleeing from the spot, accused Raj Kishore left his slipper of left foot. On hearing the noise, family members and other villagers came there. Leaving them beside his daughter's dead body, he came to the police station and lodged the report. The witness has proved his signature on the First Information Report Ext. Ka-1. The witness has further stated that the Investigating Officer has recovered scarf (dupatta) and two torn pieces of Kurta sleeves, undergarments, slipper and the hair clip of his daughter, one bedsheet and one slipper of left foot of accused Raj Kishore from the spot and prepared its memos

and got his signatures on it. The witness has further stated that the second slipper of the right foot of accused Raj Kishore was recovered at the pointing out of Raj Kishore from the Arhar field of Brij Bhushan. He was present at the time of recovery. The witness has proved his signature on this recovery memo Ext. Ka-7. The witness has also proved the material exhibits, scarf (dupatta), bedsheet, two torn pieces of kurta sleeves, one slipper of left foot and another slipper of right foot of the accused Raj Kishore as material Exts. 1 to 5.

11. The witness, in his cross-examination, has stated that when her daughter had gone to collect grass, she had taken the bedsheet with her. She was not having sickle and trowel (khurpi) with her. The witness has denied the suggestions that her daughter had not taken the bedsheet and it did not belong to her. The witness has further stated that his signature was not taken when the bedsheet was sealed but has denied the suggestion that the bed sheet was not sealed before him and it was sealed at the police station. He has further stated that the scarf (dupatta) was wrapped around the waist of her daughter. The witness has described the position of the dead body. He has further stated that there were semen stains on her scarf. The witness has denied the suggestions that the scarf has no semen stains, it has blood stains and the bedsheet is so thick that it cannot be tied around the neck. Witness has further stated that Raj Kishore @ Guthali lives near the house of his father. He had not seen accused Raj Kishore going towards the place of occurrence. He had seen Raj Kishore @ Guthali wearing those slippers before the incident. Witness has denied the suggestion that the slippers do not belong to Raj Kishore @ Guthali and it is not of the size of his feet. Witness has also denied the suggestion that he has forcibly kept the mother of Guthali, after the death of her husband and he frequently visits her house. The witness has further been cross-examined, on the aspect that he has no daughter named ND. The witness has also denied the facts that two days before the incident, an altercation had taken place between him and the accused Raj Kishore. Witness has also denied suggestions that he has tried to establish immoral relations with the mother of Raj Kishore and this incident was witnessed by Laxmi Narayan, the father of Garibe.

12. The witness has further stated that he has one and a half bigha agricultural land. He has no agricultural field near the place of occurrence. At the time of offence, he was doing his agricultural work at Atta village and not at Panditpur village. This year, he is cultivating 16 bigha of grams while the remaining 1/3rd of these fields belong to Vimala Mausi, wife of Ram Kumar Tiwari. Witness has denied the fact that she is related to Brij Narayan, Umakant and Ramakant.

13. The witness has described the crops standing in the field situated near the place of occurrence. The witness has also stated that his father was cutting grass inside the Arhar field at a distance 5 to 6 paces from the chakroad. The witness has also stated that the Arhar crop was damaged, at the place of occurrence, the crop was very dense and other side was not visible. The bed-sheet was wrapped around the

neck of the victim. The slipper of Raj Kishore was lying near the dead body. The torn pieces of kurta sleeves were also lying beside the dead body. It was not blood stained. When he came from the house, his father was cutting the grass. As soon as he reached there, he heard the screams of his daughter. Pramod and Babu were cutting the grass 25 to 30 paces in the South from his father. He saw Pramod and Babu came running on his noise and when he reached near the dead body, they also came there. Shiv Kumar reached there, after the accused ran away from the spot. It took 2 to 4 minutes to reach the spot after hearing the screams. He saw the accused persons running away from the spot. He tried to catch them but Arhar was very dense and he could not catch them. Babu and Pramod do not make any attempt to catch the accused persons as the accused had run away till then. The witness has denied the suggestion that they were not present on the spot and they have not seen any incident. The witness has also denied the suggestion that on the date of the incident Munni Devi the wife of Raj Bahadur has died and Surjeet, Babloo and Arvind were present in her last rites which was performed during 4:30 to 5:30 P.M.

14. Babu P.W.-2 has not supported the prosecution case. The witness has stated that he knows the daughter of the informant and the accused. The daughter of the informant is not alive. He does not know what incident had occurred with her and how she died. Witness has denied that accused persons sexually assaulted the victim and committed her murder. The witness has been declared hostile. Witness in his cross-examination by the defence has stated that Munni Devi, the wife of Raj Bahadur has died on the date of the incident. Her last rites were performed at about 4 P.M. Babloo, Arvind and Surjeet were present in the last rites of Munni Devi.

15. Pramod P.W.-3 has also not supported the prosecution case. The witness has stated that the incident has occurred in the field of Brij Bhushan at village Panditpur. He could not tell how the victim had died. He knows the accused Surjeet, Babloo, Arvind and Rajesh @ Guthli. He had not seen these accused persons sexually assaulting and committing murder of the victim on 30.11.1999 at 5 P.M. This witness has also been declared hostile on the prayer made by the prosecution. In cross-examination by the prosecution, the witness has denied his statement recorded under Section 161 Cr.P.C. and has also denied the prosecution version as suggested. In cross-examination by the defence, the witness has stated that he reached the place of occurrence at about 7 P.M. and saw the dead body of the victim, which was lying inside the Arhar field 10 paces from the boundary. The witness has also stated that in the family of Surjeet, Babloo and Arvind, the death of the wife of Raj Bahadur has occurred. Raj Bahadur is brother of the accused persons and in the last rites Babloo, Arvind and Surjeet were present till 5:15 P.M. The place of last rites is 2 Kms from the place of occurrence.

16. Ram Prasad P.W.-4 is the father of the informant. The witness in his examination-in-chief, has stated that the incident is of 30.11.1999 at about 5:15 P.M.

He had gone to collect fodder from the field of Brij Bhushan. Pramod, Babu and her grand daughter had also gone with him at about 3:15 P.M. The victim was picking the greenery from the Arhar field which is used as fodder for the goats. He was at the boundary of the field, Babu and Pramod were collecting fodder at some distance from him. At that time his son came there to collect the grass. He was cutting the grass and his son was collecting it. From the Arhar field, screams were heard. On hearing the screams, they all ran towards the Arhar field. His son was on the front. When he reached near the victim, he found her dead. He could not see who was present beside the victim. The witness has specifically stated that when he reached near the dead body of the victim, all the four accused persons were not there. Witness has further stated that the victim was bleeding from her private parts, however, he had not seen the accused, sexually assaulting her and committing her murder. This witness has been declared hostile by the prosecution. In the cross-examination by the prosecution, the witness has denied his statement under Section 161 Cr.P.C. The witness has further stated that when screams were heard, his son was 10 paces from him. As soon as he heard the scream, he ran towards it. Although, he could not understand that the screams were of her granddaughter, who had come with him and was picking fodder in the Arhar field, he ran towards it. He was picking the fodder 20 paces from the victim. The witness has denied the suggestions given by the prosecution. In the cross-examination by the defence, the witness has denied the suggestions that the informant has only one daughter, namely, Asha Devi and no other daughter in the name of the victim.

17. ASI, Baijnath Singh, P.W.-5 is the chik and GD writer, the witness has proved these documents as Ext. Ka-8 and Ka-9.

18. Inspector Shailendra Singh, P.W.-8, is the Investigating Officer. The witness has stated that on 30.11.1999, he started investigation of this case, he went on the spot and conducted inquest proceedings. The witness has proved the inquest report and related papers as Ext. Ka-2 and Ka-12 to ka-15. The witness has further stated that he also collected one bed-sheet, one slipper and another slipper of the accused, one kurta and dupatta of the victim from the spot and prepared its memos. The witness has proved these memos as Ext. Ka-3 to ka-7. He also conducted the spot inspection and prepared the site plan Ext. Ka-16. The witness has further stated that he arrested the accused persons and recorded their statements. At the pointing out of accused Raj Kishore, he recovered one slipper of accused from the field of Brij Bhushan and prepared its memo. The witness has clarified that the statement made above of collecting two slippers from the spot is due to inadvertence. He has stated that memo Ext. Ka 6 was prepared on 30.11.1999 while Ext. Ka 7 was prepared on 01.12.1999 . Witness has also proved the material exhibits, bed-sheet, dupatta, both the slippers and torn pieces of kurta sleeves of the victim as material Exts.1 to 7.

19. Inspector Ram Naresh Singh, P.W.-7 is the second Investigating Officer. This witness has stated that on 13.11.1999, he took up the investigation from the

previous Investigating Officer. He sent the case property for forensic examination, collected postmortem report and other reports. After concluding the investigation, he submitted a charge-sheet on 19.02.2000.

20. The defence has also produced Ram Avatar Gupta, Assistant Teacher, Janta Sanatan Dharm Inter college, Kuthond D.W.-1, Baldev Prasad, Headmaster, Junior High School, Madaripur D.W.-2 and Smt. Sashi Srivastava, Incharge Headmaster, Primary School, Panditpur D.W.-3. they have produced the scholar registers of accused Arvind Kumar and Surjeet and also of Asha Devi to prove their age. These witnesses have proved copies of S .R. Register as Ext. Ka-1 to Ka-3.

21. Dilip Kumar Mishra D.W.-4 is the previous Pradhan of village Panditpur. The witness has stated that he was village Pradhan of Panditpur from 1988 to 1999 and at present his wife is Pradhan of the village. He knows about the family of the informant, there is only one daughter of the informant who has died. She was murdered on 30.11.1999. Witness has also stated that N D was the sister of the informant who was married in village Manpura and had died in Punjab. The witness has further stated that on 30.11.1999, Hemlata @ Munni Devi the wife of Raj Bahadur, has died. Accused Surjeet, Arvind and Babloo are from one family and Babloo is the brother of Raj Bahadur while Arvind is maternal nephew (bhanja) and Surjeet is the nephew (bhatija) of Raj Bahadur. In his cross-examination, the witness has stated that when the incident has occurred, his wife was Pradhan. He had heard about the incident. He was not present in the village on the date of the incident. The witness has also stated that he was not present in the last rites of Hemlata @ Munni Devi.

22. Devendra Kumar Dwivedi D.W.-5, is the Village Development Officer, who on the basis of Pariwar Register deposed that there is entry of only one daughter of informant in it. In the family of the informant, the name of N.D. is also recorded but she has been married and now she does not reside with the family of the informant.

23. Ram Avatar, Lekhpal D.W.-6, has stated that he has brought Khasra register with him. At Gata no.241, Khatauni no.52 area 4.675 hectare, is recorded in the name of Brij Bhushan. The witness has further stated that to facilitate the cultivation this field was divided into four parts. In the Fasli year 1407 corresponding to year 1999-2000 in one part towards the North-East crop of Arhar was there, behind it there was pea crop, there was a boundary between the two fields while in the North there was Arhar crop and in the West of it, there was pea crop.

24. The learned counsel for the appellants contended that out of the four witnesses of facts produced by the prosecution, only informant P.W.-1 had supported the prosecution case. The remaining three witnesses, namely, Babu P.W.-2, Pramod P.W.-3 and Ram Prasad P.W.-4, have not supported the prosecution case. The learned counsel further submitted that, in fact, no one has witnessed the incident and accused-appellants have been falsely implicated by the informant due to

ulterior motive, which is evident from his statement of cross-examination in which he has admitted that after the incident, now he is cultivating 16 bigha of lands. It is further contended that the medical evidence does not support the prosecution version. The ligature mark as mentioned in the postmortem could not be caused by bed-sheet because its size is 26 cm X 2.5 cm and this ligature mark can only be caused by a rope or some thin material and not by a bed-sheet, which has a wide diameter if rolled. In support of his arguments, learned counsel relied upon the text of a book "The Essentials of Forensic Medicine and Toxicology" by Dr. K.S. Narayan Reddy and Dr. O.P. Murty. Relevant paragraph is quoted below:-

**"Strong pressure may lacerate the skin or cut into the deeper tissues and cartilages. When a folded cloth has been used, there may be great difference between the appearance of the neck mark and the size of the ligature. A fabric ligature may leave a sharply defined mark. When a broad piece of cloth is tightly stretched, one or more bands appear that are under greater tension than the rest which mark the skin. These marks are usually less well demarcated at the edges than a cord or rope."**

25. The learned counsel further contended that the crop of Arhar has great density and height and nothing can be seen inside it and the crop is so hard that if a person goes in it after harvesting, the stubbles of the field can seriously cause injuries in his feet. In the postmortem, except the ligature mark no other external injury, has been noted on the body of the victim which contradicts the prosecution case that the victim was sexually assaulted in the Arhar field. The circumstances of the case indicates that the incident may have occurred at some other place and the body has been thrown in the Arhar field to conceal it. In these circumstances, there is no possibility of anyone witnessing the incident. The learned counsel further contended that the accused have stated in their defence that at the alleged time of the incident, they were present in the last rites of Munni Devi the wife of Raj Bahadur ,their relative. This fact has been admitted by the prosecution witnesses, namely, Babu P.W.-2, Pramod P.W.-3. The village Pradhan Dilip Kumar Mishra D.W.-4 has also supported it. Lastly, it is contended that the P.W.-1 is a chance witness and there are major discrepancies in the prosecution evidence. The statement of P.W.-1 is wholly unreliable. Medical evidence also does not corroborate it. The prosecution has utterly failed to prove its case. The learned trial Court has committed manifest error in relying on the prosecution evidence and holding the appellants-accused guilty. The finding of the lower Court is perverse and illegal and not sustainable.

26. Per contra, the learned AGA contended that the appellants-accused are named in the F.I.R., which has been lodged promptly within three hours of the incident ruling out the possibility of false implication. It is further contended that the informant is an eye-witness of the incident. He was present near the place of occurrence with his father and two other witnesses. On hearing the screams, the informant and other witnesses immediately rushed towards it and saw the incident.



There is no serious discrepancy or contradiction in the statement of the informant P.W.-1. P.W.-4 although has not supported the prosecution version that he saw the accused committing the offence but he has confirmed the presence of the informant at the place of occurrence on the time of the incident. He has also supported the prosecution version that the victim was present in the Arhar field, on the victim's screams, he and other witnesses rushed towards the place of occurrence. So the testimony of P.W.-4 partially supports the prosecution version and this part can be relied on. It is further contended that the autopsy surgeon P.W.-6 in his deposition before the Court has supported the prosecution version and has opined that the ligature mark present on the neck of the victim may be caused if the neck is tied by a bed-sheet and pulled from both the sides, twisting it like a rope. The medical report also supports that the victim was subjected to sexual assault, so oral evidence stands corroborated from the medical evidence. There is no reason to disbelieve the prosecution evidence. The trial Court has correctly appreciated the evidence and finding of guilt returned by the trial Court is just and proper.

27. The prosecution case is based on direct evidence. Four eye-witnesses of the incident P.W.-1 to P.W.-4 have been examined by the prosecution. P.W.2, P.W.-3 and P.W.-4 have not supported the prosecution case and have turned hostile. Babu, P.W.-2 has stated that he did not know what incident had occurred with the victim and how she died. The witness has denied that the accused have committed the offence. The witness has further stated that he did not know about the incident. This witness is related to the informant and the victim, but he has not supported the prosecution version that he has seen the occurrence. Pramod P.W.-3 has also denied that he had seen the accused sexually assaulting and committing murder of the victim. The witness has stated that he did not know under what circumstances the victim had died. Both these witnesses have been cross-examined by the prosecution. In their cross-examination, they have denied their statements as recorded under Section 161 Cr.P.C. There is nothing in their cross-examination, which in any manner supports the prosecution case.

28. P.W.-4 is the father of the informant and grand-father of the victim. This witness has also denied that he had seen the accused persons on the spot, sexually assaulting and committing the murder of his grand-daughter by strangling her. The witness has only supported this part of the prosecution version that at the time of the incident her grand-daughter was collecting fodder in the Arhar field of Brij Bhushan, while he was cutting grass near the place of occurrence. His son (the informant) was also there, collecting the grass and on hearing the screams, they ran towards the field. The witness has further stated that he saw the dead body of his grand daughter.

29. As the above three eye-witnesses have not supported the prosecution version and have turned hostile the only evidence remains is that of the first informant P.W.-1. He claims himself to be the eye-witness of the incident. According to the

prosecution, the incident occurred in the Arhar field of Brij Bhushan. P.W.-1 has stated that he came there to collect the grass cut by his father, so this witness is a chance witness and due to this reason, careful examination of his testimony is required. The witness has stated that at about 5 P.M., when he reached near the Arhar field of Brij Bhushan Tiwari, he heard the screams of his daughter. Hearing this, he with his father, Babu and Pramod Kumar entered into the Arhar field then he saw that Surjeet and Babloo were strangulating his daughter by tying the knot of bed-sheet around her neck, Raj Kishore was lying upon his daughter and Arvind was pressing her mouth. On his exhortation, the accused ran away. When he reached near the victim, she was dead. She was bleeding from her private parts. The witness has further stated that on their noise, family members and other villagers gathered at the place of occurrence.

30. The postmortem report confirms that the victim was subjected to sexual assault and was strangulated to death. One ligature mark and one abrasion were found on the neck. The evidence on record also indicates that the victim has put up resistance and struggled. Her kurta sleeves were torn into pieces and were found near the dead body. So the evidence on record suggests that the incident had not occurred in a moment. It must have happened for a considerable time, while according to the oral testimony of P.W.-1. On hearing the screams, he immediately rushed towards it. But when he reached near the victim, she was already dead. The witness has also stated that on hearing the screams when he entered in the Arhar field then he saw two accused strangulating her daughter with bed-sheet tying it around her neck while one of the accused Raj Kishore @ Guthali was sexually assaulting her, lying upon her and the fourth accused was pressing her mouth. This eye-witness account is not inspiring. It appears highly improbable that at a time when one of the accused was engaged in sexual assault, the other accused were strangulating her tying bed-sheet around her neck. Further the informant P.W.-1 in his deposition has stated that when he reached the Arhar field then he saw that two of the accused were strangulating the victim pulling the bed-sheet tied around her neck, on his exhortation, all the accused ran away from the spot. In such a situation, the bed-sheet should have been found to be tied around the neck. The witness has also stated that the bed-sheet was wrapped around the neck of the victim but at the time of spot inspection the bed sheet was not found tied around the neck, instead it has been found lying at some distance near the dead body which the Investigating Officer has denoted with the letter B in the site plan. In the inquest report Exhibit Ka 2 also there's no description that on the neck of the victim any bed sheet was tied. So there is serious discrepancy in the eye-witness account of P.W.-1. It does not match with other evidence, material and circumstances.

31. The size of the ligature mark is 28 cm X 2.7 cm all around the neck. Although Dr. Y.K. Sharma, P.W.-6, in his examination-in-chief, has supported the prosecution case stating that this ligature mark may be caused if a bed-sheet is tied around the neck and pulled but in his cross examination the witness has stated that considering the

thickness of the bed-sheet, there is remote possibility of such type of ligature mark. The witness has also stated that if the bed-sheet is twisted like a rope then the width of the ligature mark will not be the same.

32. The width of the ligature mark is 2.7 cm and it is of the same size all around the neck. So in the light of the testimony of the Dr. Y.K. Sharma (P.W.-6) strangulation may not have been caused by the bed-sheet as alleged by the informant. It is pertinent to mention here that one dupatta of the victim has also been found near the dead body. The width of the ligature mark indicates that strangulation may have been caused by some thinner article than the bed-sheet. It further doubts the ocular testimony of the first informant P.W.-1, the sole witness who has supported the prosecution case.

33. First informant P.W.-1 being the chance witness, the serious discrepancies of his statement as analysed above, makes his ocular version untrustworthy. From the evidence and other material, it transpires that the first informant has reached the place of occurrence and saw the dead body of her daughter and only on the basis of suspicion, the F.I.R. has been lodged naming the accused persons.

34. Another evidence produced by the prosecution is recovery of slipper of right foot of accused Raj Kishore, on his pointing out from the field of Brij Bhushan Tiwari. According to prosecution the other slipper of the left foot, however, was found on the spot by the Investigating Officer during spot inspection. The recovery memo is Ext. Ka-7. The witnesses of recovery are the informant, one Shiv Kumar, and police personnel. Shiv Kumar has not been examined. The informant is an interested witness. There is no independent witness of the recovery. No time of this recovery has been mentioned in the recovery memo. The Investigating Officer, Shailendra Singh P.W.-8 in his examination-in-chief has stated that both the slippers were recovered from the spot. But later on, he corrected himself and stated that the above statement is due to inadvertence and actually the second slipper was recovered at the pointing out of the accused Raj Kishore @ Guthali. So, this evidence is also not reliable. Further this evidence is concerned with the accused Raj Kishore @ Guthali who has died and his appeal has abated.

35. There is also other discrepancy in the prosecution evidence. Informant P.W.-1 has stated that no blood was found from the place of occurrence, while Investigating Officer Shailendra Kumar P.W.-8 has stated that he has collected bloodstained and plain soil from the place of occurrence. Correcting himself, the witness has again stated that he collected only plain soil from the place of occurrence as the deceased was not bleeding. The witness has also accepted that he has not prepared any memo of collecting soil from the spot. The above statement of the Investigating Officer stands contradicted from the FSL report. In FSL report at Serial No.6, soil (blood stained) and soil (plain) are mentioned.

36. The appellants-accused have taken specific defence that on the date of incident Munni Devi wife of Raj Bahadur has died and the appellants Surjeet and Babloo are related with Raj Bahadur. The appellants-accused were present in the cremation of Munni Devi, which was held in the evening (between 4 to 5:30 P.M.), the time of the incident as alleged by the prosecution. Informant P.W.-1 has accepted this fact that Raj Bahadur lives in his village and accused Babloo is his cousin. But the witness has feigned ignorance about the fact that someone of the family of the accused has died on the fateful day. He has also denied that Surjeet, Babloo and Arvind are of one family and Munni Devi is the wife of Raj Bahadur, aunt of Surjeet and maternal aunt (mami) of Arvind. Babu P.W.-2, who is relative of the informant and other prosecution witness Pramod P.W.-3, in their cross-examination by the defence have admitted this fact that Munni Devi wife of Raj Bahadur has died on the date of the incident and the accused persons were present in her cremation which was conducted in the evening.

37. From the analysis of evidence on record, it is clear that the sole testimony of informant P.W.-1, who is a chance witness, is not inspiring and trustworthy. There are serious discrepancies, which makes it highly doubtful that he has seen the occurrence. No doubt that the victim has been sexually assaulted and was strangled to death but it is not proved that appellants-accused are the real culprits and they have committed the offence. Their false implication on the basis of suspicion or with ulterior motive cannot be ruled out. There is no sufficient evidence on record to prove the prosecution case beyond reasonable doubt.

38. We have gone through the judgement of the learned trial Court. The learned trial Court has placed reliance on the ocular testimony of informant P.W.1 without appreciating it in right perspective. The learned trial Court had failed to notice the serious discrepancies in the ocular testimony of informant P.W.-1, who is also a chance witness and has erred in relying on it. The finding of guilt returned by the trial Court on the basis of his testimony is not sustainable.

39. The conviction of the appellants-accused for offences under Sections 376(2)(g) and Sections 302 read with Section 34 I.P.C. and sentences imposed upon them by the trial Court are hereby set aside. The appellants-accused are acquitted from all the charges. They are on bail. They need not surrender, subject to compliance of Section 437A Cr.P.C. within four weeks.

40. Copy of this judgement and order along with Lower Court Records be transmitted to the trial Court immediately for necessary compliance.