STATE OF GUJARAT

v.

KISHANBHAI ETC.

(Criminal Appeal No. 1485 of 2008)

JANUARY 7, 2014

[C.K. PRASAD AND JAGDISH SINGH KHEHAR, JJ.]

PENAL CODE, 1860:

ss.376, 302, 201, 363, 369 and 394 – Rape and murder of a six year old girl – Her legs amputed above ankles and anklets stolen – Circumstantial evidence – Conviction by trial court and sentence of death – Acquittal by High Court giving the accused benefit of doubt – Held: Since the guilt of accused in the instant case is to be based on circumstantial evidence, establishing of a complete chain from the evidence produced by prosecution becomes essential -- High Court has rightly pointed out several missing links in the chain of circumstances leading to failure of prosecution to establish guilt of accused – Further there are several lapses committed by investigating/prosecuting agency – There are several discrepancies and inconsistencies in the evidence produced by prosecution before trial court – Judgment of High Court needs no interference -- Directions given to identify erring officers in the instant case and take appropriate departmental action against them in accordance with law – Investigation – Bombay Police Act 1951 -- s. 135(1) -- Circumstantial evidence.

INVESTIGATION:

Serious lapses in investigation and prosecution of a rape and murder case – In the instant case, there have been serious lapses committed by the investigating and prosecuting agencies and there are deficiencies in the

A *process of establishing the guilt of the accused before the trial court -- The investigating officials and the prosecutors involved in presenting the case, have miserably failed in discharging their duties -- They have been instrumental in denying to serve the cause of justice –*

B

Arrest of accused – Held -- Though accused was acknowledged to be in police station since 9 p.m., he was formally arrested at 6.40 a.m. on the following day – There are inconsistent statements on record in this regard.

C *Entries in Station Diary – Though IO had been apprised about the commission of crime, he left Police Station without making any entry in Station Diary or in any other register, depicting the purpose of his departure.*

D *Panchnama – Held: In the instant case, inquest panchnama was drawn before registration of FIR.*

Identification -- Held: Though the witness had seen the accused for the first time on the date of occurrence, no test identification parade to get the accused identified was
E *conducted.*

EVIDENCE:

Circumstantial evidence -- DNA test – Rape and murder
F *– Held: Advancement in scientific investigation should be taken recourse to – In the instant case, investigating agency ought to have sought DNA profiling of the blood samples, which would have given a clear picture.*

F.I.R.:

G

Delay in registering the FIR – Held: In the instant case, not only is the delay of seven hours in registration of complaint unexplained, but the same is also rendered extremely suspicious.

H

ADMINISTRATION OF CRIMINAL JUSTICE:

Faulty investigation and deficient prosecution -- Directions given to State Governments to examine all orders of acquittal and record reasons for the failure of each prosecution case -- A standing committee of senior officers of the police and prosecution departments should be vested with this responsibility -- Home Department of every State Government will incorporate in its existing training programmes for investigation/prosecution officials course-content drawn in light of instant judgment.

Respondent no.1 was prosecuted for committing offences punishable u/ss 363, 369, 376, 394, 302 and 201, IPC and s. 135(1) of Bombay Police Act, on the allegations that he abducted a six year old girl, raped and killed her. It was also alleged that the accused chopped off her feet just above ankles and took away her anklets. The trial court convicted and sentenced the accused to death. However, the High Court noticing several missing links in the chain of circumstances, allowed his appeal and acquitted him giving him benefit of doubt.

Dismissing the appeal, the Court

HELD: 1.1. Since the guilt of the accused in the instant case is to be based on circumstantial evidence, establishing of a complete chain from the evidence produced by the prosecution becomes essential. The serious lapses committed by the investigating and prosecuting agencies and the deficiencies during the course of investigation and prosecution, in the instant case, are as follows:

(a) According to the prosecution story after having removed the anklets from victim's feet, the accused had taken them to a Jeweller's shop and pledged them for a sum of Rs. 1,000/-. The jeweller had gone

A to the police station with the anklets on his own, after having read the news. The lapse of the prosecution on account of not producing the jeweller as prosecution witness, resulted in a missing link in the chain of events. [para 11(a)] [221-B-D, E-F, G-H]

B (b) The prosecution story discloses that the jeweller had executed a receipt with the accused, who put his thumb mark thereon, depicting the pledging of the anklets for a sum of Rs.1,000/-. The prosecution took no steps to compare the thumb impression on the C receipt, with that of the accused-respondent. [para 11(b)] [222-B-C, C-D, E-F]

(c) It is also the case of the prosecution, that when the accused was apprehended, a sum of Rs.940/- D was recovered from his possession. However, he ought to have been in possession of at least Rs.1,000/- i.e., the amount given to him by the jeweller when he pledged the anklets at his shop, even if it is assumed that he had no money with him when he E had pawned the anklets. [para 11(c)] [223-C-D]

(d) In order to prove the prosecution case that the victim was raped, the doctor, who had medically examined the accused and had been cited as a witness before the trial court, was not examined as F a prosecution witness. [para 11(d)] [223-G-H]

(e) Even the report/certificate given by the medical officer relating to the medical examination of the accused was not produced by the prosecution G before the trial court. His evidence could have established, whether or not accused had committed rape on victim. [para 11(e)] [224-A-C]

(f) The accused could have been medically examined within a period of 24 hours of the occurrence. The H

prosecution case does not show whether or not such action was taken. [para 11(f)] [224-E-F]

(g) When the accused was arrested, there were several injuries on his person. He was sent to Civil Hospital for his medical examination. Neither the doctor who had examined him was produced as a prosecution witness, nor was the report/certificate given by the medical officer disclosing the details of his observations/findings was placed on record. The importance of nature of the injuries suffered by the accused emerges from the fact, that both the accused and the victim had the same blood group "B +ve". The investigating agency ought to have sought DNA profiling of the blood samples, which would have given a clear picture whether or not the blood of the victim was, in fact on the clothes of the accused-respondent. Additionally, DNA profiling of the blood found on the knife used in the commission of the crime, would have uncontrovertibly determined whether or not the said knife had been used for severing the legs of the victim, to remove her anklets. [11(g)] [225-B, D-E, G; 226-F-H]

(h) It is also apparent from the complaint submitted by PW 2, that he had been informed by one 'KG', that he had seen the accused taking away the victim. In such an event, the proof of the fact of the accused having abducted the victim and her last seen with accused could have only been substantiated through the statement of 'KG'. [para 11(h)] [227-B-C]

(i) A green blood stained "dupatta" was recovered from the person of the victim, which neither belonged to the victim nor to the accused. The presence of the green "dupatta", has also not been explained. [para 11(i)] [227-F-H]

A (j) PW6 is said to have seen the accused-respondent for the first time when the latter approached his "lari" to purchase a "dabeli" on 27.2.2003. Therefore, it was imperative for the investigating agency to hold a test identification parade in order to determine whether
B PW6, had correctly identified the accused-respondent, as the person who had come to his "lari" to purchase a "dabeli" on 27.2.2003 and also whether he was the same person, who had stolen a knife from his "lari" on 27.2.2003. [para 11(j)] [228-C-D]

C (k) All the prosecution witnesses have been equivocal about the fact that the deceased went missing at about 6:00 p.m., i.e., the time when she was last seen in the company of the accused, and thereafter the search party met the accused at 8:00 pm. Within the
D period of these two hours the accused is alleged to have visited different places and committed several acts. However, no sketch map indicating the distance between different places was prepared, which would have helped the court to determine all that was
E alleged in the prosecution version of the incident. [para 11(k)] [229-C-D; 230-F-G, H; 231-A]

1.2. Discrepancies found in the evidence produced by the prosecution before the trial court are as follows:

F (a) The post mortem report states that injuries on the genitals of deceased were post mortem in nature. It is not possible to contemplate that the legs of the deceased were cut whilst she was in her senses. It does not appear humanly possible for even the most
G perverted person, to have committed rape on a child, who had been killed by causing injuries on head and other parts of body, and after her feet had been severed from her legs. The prosecution in the instant case apparently projected a version including an act
H of rape, which is impossible to accept on the

touchstone of logic and common sense. [para 12(a)] [231-B, F-H; 232-A]

(b) The evidence produced by the prosecution also reveals that pubic hair of the accused had been examined in the Forensic Science Laboratory. The FSL report does not support the prosecution case of rape by the accused. This would prima facie exculpate him from the offence of rape. [para 12(b)] [232-B and D]

(c) According to the testimony of the complainant PW2, the accused was wearing a white shirt at the time of occurrence. It is, therefore, when a white shirt was found covering the dead body of the victim, he had identified the same as the shirt which the accused was wearing, before the offence was committed. From the prosecution story, as it emerged from the statements of different witnesses, it is apparent that PW2 had had no occasion to have seen the accused, wearing the said white shirt. [para 12(c)] [232-E-G]

(d) The T-shirt worn by accused at the time of his arrest was a white one, but PW-2 in his complaint has mentioned that the accused was wearing a black T-shirt at the time of his detention. Thus, narration in this regard made by the complainant PW2 was absolutely incorrect and contrary to the factual position and, as such, his deposition does not appear to be fair and honest. [para 12(d)] [233-B-D]

(e) From the statements of PW2 and PW5, it is apparent that the accused was detained by the police informally around 9:00 p.m. on 27.2.2003. However, his arrest was shown at 6.40 a.m. on 28.3.2003. The detention of the accused from 9:00 pm on 27.2.2003 to 6.40 a.m. on 28.2.2003, shows that the prosecution

A has not presented the case in the manner the events unfolded to the investigating agencies. [para 12(e)] [233-G-H; 234-B-C]

(f) The inquest panchnama besides mentioning the amputation of the legs of the victim above her ankles, also records that the silver anklets worn by the victim were missing. In this behalf, it would also be relevant to mention, that even though the inquest panchnama was drawn at 00.30 a.m. on 28.2.2003, the complaint resulting in the registration of the first information report was lodged by PW2 at 3:05 a.m. on 28.02.2003. It is strange, that the inquest panchnama should be drawn before the registration of the first information report. It is also strange as to how, while drawing the inquest panchnama, the panchas of the same could have recorded that after amputation of the victim's legs, her silver anklets had been taken away by the offender, as there was no occasion for the panchas to have known, that the deceased used to wear silver anklets. [para 12(f)] [234-C-F]

(g) From the prosecution version (emerging from the evidence recorded before the trial court), it is apparent, that the search party as also the relatives of the victim were aware at about 8:00 p.m. on 27.2.2003 that she had been murdered, with a possibility of her having been raped also, and her silver anklets had been stolen. Still no complaint whatsoever came to be filed on 27.2.2003, despite the close coordination between the search party and the police from 8:00 pm onwards on 27.2.2003 itself. The complaint leading to the filing of the first information was made at about 3:05 a.m. on 28.2.2003. Not only is the delay of seven hours in the registration of the complaint un-explained, but the same is also rendered extremely suspicious, on account of the fact

that the accused is acknowledged to be in police detention since 9:00 p.m. on 27.2.2003 itself. This may be the result of fudging the time and date on which the victim went missing, as also, the time and date on which the body of the victim was discovered resulting in the discovery of the occurrence itself. [para 12(g)] [234-G-H; 235-B-D]

(h) PW13, the Sub Inspector, who had commenced investigation of the crime, acknowledged about informal detention of accused at about 9 P.M. on 27.2.2003. But, in his statement as a witness, he had expressed that for the first time he had seen the accused only on 28.2.2003 at around 5:30 a.m. Whereafter, the accused-respondent was formally arrested at 6.40 a.m. The inconsistency between the statements made by the complainant (PW2) and his father (PW5) on the one hand, and by Sub-Inspector (PW13) on the other, discloses a serious contradiction with respect to the time of detention of the accused. The truth of the matter is that PW 13 did not make any note either in the station diary or in any other register; he did not take any informal complaint from the complainant, even though he had been apprised about the commission of the offence. It is therefore, clear that PW13, had left the police station without making an entry depicting the purpose of his departure. A police officer, investigating a crime of such a heinous nature should not commit such a lapse. All this further adds to the suspicion of the manner in which investigation of the matter was conducted. [para 12(h)] [235-E-H; 236-B-F]

(i) PW6 could identify the shirt worn by the accused-respondent, when he visited his "lari" for a very short period during rush hours for the purchase of a "dabeli", but he could not depose about the sort of shirt which the accused was wearing at the Police

A Station where he remained with the accused for approximately four hours. It is, therefore, apparent that PW6 was deposing far in excess of what he remembered, and/or in excess of what was actually to his knowledge. He appears to be a tutored B witness. This aspect of the matter also renders the testimony of PW6, suspicious. [para 12(i)] [236-G-H; 237-B and E-F]

(j) The investigating agency became aware from the C disclosure statement of the accused tendered on 1.3.2003, that he had procured the weapon of offence by way of theft from the "lari" of PW6. In the ordinary course of investigation, it would have been imperative for the investigating agency to have immediately approached PW6, to record his D statement, but his statement was recorded for the first time on 4.3.2003. No reason is forthcoming why his statement was not recorded either on 1.3.2003, or on the intervening dates before 4.3.2003. The inordinate delay by the investigating agency, in E confirming the version of the accused, in respect of the weapon of the crime, renders the prosecution version suspicious. Such delay would not have taken place in the ordinary course of investigation. This fact too raises a doubt about the correctness of F the prosecution version of the incident. [para 12(j)] [237-G-H; 238-B-D]

1.3. The prosecution case which mainly rests on the testimony of PW2, PW5 and PW6, is unreliable because of the glairing inconsistencies in their statements. The G testimony of the investigating officer PW13 shows fudging and padding, making his deposition untrustworthy. In the absence of direct oral evidence, the prosecution case almost wholly rested on these witnesses. The evidence produced to prove the charges H has been systematically shattered, thereby demolishing

the prosecution version. More than all that is the non-production of evidence which the prosecution has unjustifiably withheld, resulting in dashing all the State efforts to the ground. Therefore, the High Court through the impugned order, rightly considered it just and appropriate to grant the accused-respondent, the benefit of doubt. [para 12] [238-F-H; 239-A]

1.4. Having considered the totality of the facts and circumstances of the case, specially the glaring lapses committed in the investigation and prosecution of the case as also the inconsistencies in the evidence produced by the prosecution, this Court is of the considered view that judgment of acquittal passed by the High Court needs no interference. [para 14] [242-G-H; 243-A and F]

Ram Prasad & Ors. v. State of UP **(1974) 1 SCR 650;** *Takhaji Hiraji v. Thakore Kubersing Camansing & Ors.*, **(2001) 6 SCC 145;** *Laxman Naik v. State of Orissa,* **1994 (2) SCR 94 = (1994) 3 SCC 381,** *State of Maharashtra v. Suresh,* **1999 (5) Suppl. SCR 215 = (2000) 1 SCC 471,** *Amar Singh v. Balwinder Singh* **2003 (1) SCR 754 =2003 (2) SCC 518;** *State Government of NCT Delhi v. Sunil* **2000 (5) Suppl. SCR 144 = (2001) 1 SCC 652;** *Joseph v. State of Kerala,* **(2005) 5 SCC 197;** *State of UP v. Satish* **2005 (2) SCR 1132 = (2005) 3 SCC 114;** *Bishnu Prasad Sinha v State of Assam* **2007 (1) SCR 916 = (2007) 11 SCC 467;** *Aftab Ahmad Anasari v. State of Uttaranchal* **2010 (1) SCR 1027 = (2010) 2 SCC 583;** *Sambhu Das v. State of Assam* **2010 (11) SCR 493 = (2010) 10 SCC 374;** *Haresh Mohandas Rajput v. State of Maharashtra* **2011 (14) SCR 921 = (2011) 12 SCC 56;** *Rajendra Prahladrao Wasnik v. State of Maharashtra* **2012 (2) SCR 225 = (2012) 4 SCC 37 – cited.**

2.1. The investigating officials and the prosecutors involved in presenting the instant case, have miserably failed in discharging their duties. They have been

A instrumental in denying to serve the cause of justice. The misery of the family of the victim has remained unredressed. At the same time, it is necessary not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate B stages. An innocent person does not deserve to suffer the turmoil of a long drawn litigation, spanning over a decade, or more. [para 15 and 17] [243-G; 245-B]

2.2. Just like it is the bounden duty of a court to serve the cause of justice to the victim, so also, it is the C bounden duty of a court to ensure that an innocent person is not subjected to the rigours of criminal prosecution. The situation needs to be remedied. For the said purpose, adherence to a simple procedure could serve the objective. It is, therefore, directed that on the D completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind, and ensure that all shortcomings are rectified, if necessary by requiring further investigation. It should also be ensured, that the evidence gathered during E investigation is truly and faithfully utilized, by confirming that all relevant witnesses and materials for proving the charges are conscientiously presented during the trial of a case. This would achieve two purposes – (1) only persons against whom there is sufficient evidence, will F have to suffer the rigors of criminal prosecution; and (2) in most criminal prosecutions, the agencies concerned will be able to successfully establish the guilt of the accused. [para 18 and 19] [246-B-C and D-F]

2.3. Every acquittal should be understood as a failure G of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which H

would ensure that the cause of justice is served, and would simultaneously ensure the safeguard of interest of those who are innocent. It is, therefore, directed:

(i) The Home Department of every State shall examine all orders of acquittal and record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments should be vested with this responsibility. The consideration at the hands of such committee should be utilized for crystalizing mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/ prosecution officials course-content drawn in the light of the instant judgment. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/ prosecution of the case), and similar other judgments, may also be added to the training programmes. [para 20] [246-G-H; 247-A-C]

(ii) On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. [para 21] [247-G-H]

(iii) The Home Department of every State Government shall formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on

account of sheer negligence or because of culpable lapses, must suffer departmental action. All the Home Secretaries concerned shall ensure compliance. The records of consideration, in compliance with the direction, shall be maintained. [para 21-22] [248-C and E-F]

(iv) The Home Department of the State will identify the erring officers in the instant case, and will take appropriate departmental action against them, as may be considered appropriate, in accordance with law. [para 23] [248-F-G]

Case Law Reference:

(1974) 1 SCR 650	cited	para 12
(2001) 6 SCC 145	cited	para 12
1994 (2) SCR 94	cited	para 12
1999 (5) Suppl. SCR 215	cited	para 12
2003 (1) SCR 754	cited	para 12
2000 (5) Suppl. SCR 144	cited	para 12
(2005) 5 SCC 197	cited	pa ra 12
2005 (2) SCR 1132	cited	para 12
2007 (1) SCR 916	cited	para 12
2010 (1) SCR 1027	cited	para 12
2010 (11) SCR 493	cited	para 12
2011 (14) SCR 921	cited	para 12
2012 (2) SCR 225	cited	para 12

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1485 of 2008.

From the Judgment & Order dated 30.8.2005 of the High Court of Gujarat at Ahmedabad in Crl. Confirmation Case No. 7 of 2004 with Crl. Appeal No. 1549 of 2004.

Vibha Dutta Makhija, Archi Agnihotri, Hemantika Wahi for the Appellant.

Rishi Malhotra for the Respondent.

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1. A complaint was lodged at Navrangpura Police Station, Ahmedabad, alleging the kidnapping/abduction of a six year old girl child Gomi daughter of Keshabhai Mathabhai Solanki and Laliben on 27.2.2003 at around 6:00 p.m. by the accused Kishanbhai son of Velabhai Vanabhai Marwadi. It was alleged, that the accused had enticed Gomi with a "gola" (crushed ice, with sweet flavoured syrup), and thereupon had taken her to Jivi's field, where he raped her. He had murdered her by inflicting injuries on her head and other parts of the body with bricks. In order to steal the "jhanjris" (anklets) worn by her, he had chopped off her feet just above her ankles. The aforesaid complaint was lodged, after the body of the deceased Gomi was found from Jivi's field, at the instance of the accused Kishanbhai. On the receipt of the above complaint, the first information report came to be registered at Navrangpur Police Station, Ahmedabad.

2. The prosecution version which emerged consequent upon the completion of the investigation reveals, that the family of the deceased Gomi was distantly related to the family of the accused Kishanbhai. In this behalf it would be pertinent to mention that Baghabhai Naranbhai Solanki was a resident of Gulbai Tekra, in the Navrangpura area of Ahmedabad. He resided there, along with his family. For his livelihood, Baghabhai Naranbhai Solanki was running a shop in the name of Mahakali Pan Centre. The said shop was located near his

A residence. Baghabhai Naranbhai Solanki was running the business of selling "pan and bidi" in his shop. Naranbhai Manabhai Solanki, father of Baghabhai Naranbhai Solanki used to live in the peon's quarters at Ambavadi in Ahmedabad. Modabhai Manabhai Solanki, uncle of Baghabhai Naranbhai
B Solanki, had expired. His son Devabhai's daughter Laliben, was married to Keshabhai Mathabhai Solanki. Keshabhai Mathabhai Solanki and Laliben were residing at Shabamukhiwas, Gulbai Tekra in Ahmedabad. Keshabhai Mathabhai Solanki and Laliben had two children, a daughter
C Gomi aged six years, and a son Himat aged three years. Laliben's sister-in-law (her husband's, elder brother's wife) Fuliben Valabhai was residing near the residence of Keshabhai Mathabhai Solanki and Laliben. Kishanbhai the accused, is the brother of Fuliben, and was residing with her. It is therefore, that the family of the deceased as also the accused, besides being
D distantly related, were acquainted with one another as they were residing close to one another.

3. Insofar as the occurrence is concerned, according to the prosecution, on 27.2.2003 Laliben, niece of Baghabhai, was
E confined to her residence, as she was expecting. At about 6:00 p.m. her daughter Gomi, then aged 6 years, had wandered out of her house. The accused Kishanbhai then aged 19 years, entice her by giving her a "gola". Having enticed her he had carried Gomi to Jivi's field. On the way to Jivi's field, he stole
F a knife with an 8 inch blade from Dineshbhai Karsanbhai Thakore PW6, a "dabeli" (bread/bun, with spiced potato filling) seller. Having taken Gomi to Jivi's field he had raped her. He had then killed her by causing injuries on her head and other parts of the body with bricks. In order to remove the "jhanjris"
G worn by her, he had amputated her legs with the knife stolen by him, from just above her ankles. He had then covered her body with his shirt, and had left Jivi's field. Kishanbhai the accused, then took the anklets stolen by him to Mahavir Jewellers, a shop owned by Premchand Shankerlal. He
H pledged the anklets at the above shop, for a sum of Rs.1,000/

-. The accused Kishanbhai was confronted by Baghabhai and others constituting the search party, whilst he was on his way back to his residence. Kishanbhai, despite stating that he had not taken her away, had informed those searching for Gomi, that she could be at Jivi's field. On the suggestion of Kishanbhai, the search party had gone to Jivi's farm, where they found the body of Gomi.

4. Based on the aforesaid fact situation, confirmed through the investigation carried on by the Police, a charge-sheet was framed against the accused Kishanbhai under Sections 363, 369, 376, 394, 302 and 201 of the Indian Penal Code, and Section 135(1) of the Bombay Police Act. The above charge-sheet was filed before the Metropolitan Magistrate, Ahmedabad. Since the offences involved could be tried only by a Court of Session, the Metropolitan Magistrate, committed the matter to the Court of Session. On 8.3.2004, the Sessions Court to which the matter came to be assigned, for trial, framed charges. Since the accused Kishanbhai denied his involvement in the matter, the court permitted the prosecution to lead evidence.

5. The prosecution examined 14 witnesses. The statement of the accused Kishanbhai was thereafter recorded under Section 313 of the Code of Criminal Procedure. In his above statement, the accused Kishanbhai denied his involvement. Even though an opportunity was afforded to Kishanbhai, he did not lead any evidence in his defence. After examining the evidence produced by the prosecution, the Trial Court vide its judgment dated 18.8.2004, arrived at the conclusion that prosecution had successfully proved its case beyond reasonable doubt. By a separate order dated 18.8.2004 the Trial Court sentenced Kishanbhai to death by hanging, subject to confirmation of the said sentence by the High Court of Gujarat at Ahmedabad (hereinafter referred to as the 'High Court') under Section 366 of the Code of Criminal Procedure.

6. In the above view of the matter, the proceedings

A conducted by the Court of Session, were placed before the High Court at the behest of the State of Gujarat, as Confirmation Case No. 7 of 2004. Independently of the confirmation proceedings, the accused Kishanbhai, aggrieved by the judgment and order of sentence dated 18.8.2004, in B Sessions Case No. 346 of 2003, filed Criminal Appeal No. 1549 of 2004 before the High Court.

7. The criminal appeal filed by the accused Kishanbhai was accepted by the High Court. Kishanbhai was acquitted by giving him the benefit of doubt. The Confirmation Case No. 7 C of 2004 was turned down in view of the judgment of acquittal rendered by the High Court while allowing Criminal Appeal no. 1549 of 2004.

8. Dissatisfied with the order passed by the High Court, D the State of Gujarat approached this Court by filing Petition for Special Leave to Appeal (Crl.) No. 599 of 2006. On 11.9.2008 leave to appeal was granted. Thereupon, the matter came to be registered as Criminal Appeal No. 1485 of 2008.

E 9. Before this Court, learned counsel for the appellant, in order to substantiate the guilt of the accused-respondent Kishanbhai, has tried to project that the prosecution was successful in demonstrating an unbroken chain of circumstances, clearly establishing the culpability of the accused. In fact, the endeavour at the hands of the learned F counsel for the appellant was to project an unbroken chain of circumstances to establish the guilt of the accused. Despite the defects in investigation and the prosecution of the case, as also, the inconsistencies highlighted by the High Court in the evidence produced by the prosecution, learned counsel for the G State expressed confidence, to establish the guilt of the accused-respondent. In this behalf, it is essential to record the various heads under which submissions were advanced at the hands of the learned counsel for the appellant-State. We shall, therefore, briefly summarise all the contentions, and while doing H so, refer to the evidence brought to our notice by the learned

counsel for the appellant, to establish the guilt of the accused-respondent, Kishanbhai. The submissions advanced before us are accordingly being recorded hereunder :

(a) First and foremost, learned counsel for the appellant, in order to connect the accused with the crime under reference, extensively relied upon the evidence produced by the prosecution to show that the accused-respondent Kishanbhai was last seen with the victim. He was seen taking away the victim Gomi. For the above, reliance was placed on the statement of Naranbhai Manabhai Solanki PW5, who had deposed that he had seen the deceased Gomi with the accused-respondent Kishanbhai on 27.2.2003 at around 6:00 p.m. As per his deposition, he had seen Gomi eating a "gola" outside his (the witness's) residence. At the same juncture, he had also seen the accused-respondent Kishanbhai coming from the side of Polytechnic. Kishanbhai, according to the deposition of PW5, had approached Gomi. Thereafter, as per the statement of PW5, the accused had carried away Gomi towards the side of the Polytechnic. In his testimony, Naranbhai Manabhai Solanki PW5, had also stated, that at about 9:00 pm, when he had again seen the accused-respondent Kishanbhai coming from the road leading to the Gulbai Tekra Police Chowki, he was asked, by those who were searching for Gomi, about her whereabouts. The accused was also asked about the whereabouts of Gomi, by Naranbhai Manabhai Solanki PW5 and by the son of PW 5 i.e., by Bababhai Naranbhai Solanki PW2. To the aforesaid queries, according to Naranbhai Manabhai Solanki PW5, the accused-respondent Kishanbhai had stated, that she might be sitting in Jivi's field. In addition to the testimony of Naranbhai Manabhai Solanki PW5, reference was also made to the testimony of Dinesh Karshanbhai Thakore PW6. PW6, during his deposition, had asserted, that the accused-respondent Kishanbhai had come to his "lari" (handcart used by hawkers, to sell their products) for purchasing a "dabeli". It was pointed out by Dinesh Karshanbhai Thakore PW6, that he had noticed the accused

A carrying a child aged about seven years, wearing a red frock. In his statement, he also affirmed that the accused-respondent Kishanbhai, had asked him for a knife but he had declined to give it to him. Thereupon, whilst leaving his "lari", Kishanbhai had stolen a knife from his "lari". It was also pointed out, that
B the knife recovered at the instance of the accused-respondent Kishanbhai, was identified by him as the one stolen from his "lari". According to the learned counsel for the appellant, the last seen evidence referred to above stands duly corroborated by the deposition of Bababhai Naranbhai Solanki PW2, not only
C in his deposition before the Trial Court, but also in the complaint filed by him at the first instance at Navrangpur Police Station, Ahmedabad, immediately after the recovery of the dead body of Gomi from Jivi's field.

(b) Learned counsel for the appellant also laid emphasis
D on the recovery of the weapon of offence, i.e., a blood stained knife, at the instance of none other than the accused-respondent Kishanbhai himself. In order to substantiate the instant aspect of the matter, learned counsel placed reliance on the testimony of Dinesh Karshanbhai Thakore PW6, who deposed that the
E accused had visited his "lari" on the evening of 27.2.2003 for the purchase of a "dabeli". The accused respondent, as noticed earlier, as per the statement of Dinesh Karshanbhai Thakore PW6, was carrying a small girl aged about 7 years. He also deposed, that the accused-respondent had asked him for his
F knife, but upon his refusal, had stolen the same from his "lari". Dinesh Karshanbhai Thakore PW6, had identified the knife which had been recovered at the instance of the accused, as the one stolen by the accused-respondent Kishanbhai from his "lari". Additionally it was submitted, that the accused had led
G the police to Jivi's field, from where he got recovered the murder weapon, i.e., the same knife which he had stolen from the "lari" of Dinesh Karshanbhai Thakore PW6. The above knife had a blade measuring eight inches, including a steel handle of four inches. At the time of recovery of the knife, the same had stains
H of blood. The above knife was recovered by the police on

1.3.2003, in the presence of an independent witness, namely, Rameshbhai Lakhabhai Bhati PW1, who in his deposition clearly narrated, that the knife in question was recovered from Jivi's field, from under some stones at the instance of the accused-respondent Kishanbhai.

(c) Learned counsel for the appellant, then referred to the medical evidence produced by the prosecution, so as to contend that the wounds inflicted on the person of Gomi, were with the murder weapon, i.e., the knife recovered at the instance of the accused-respondent Kishanbhai. For this, learned counsel placed reliance on the statement of Dr. Saumil Premchandbhai Merchant PW8, who had conducted the post-mortem examination of the deceased Gomi on 28.2.2003. In the post-mortem report, according to learned counsel, mention was made about several incised injuries which could have been inflicted with the knife stolen by the accused-respondent Kishanbhai. In this respect, reference was made to serial No.14 of the post-mortem notes (Exhibit 29) proved by Dr. Saumil Premchandbhai Merchant PW8, clearly indicating, that the injuries caused to the victim which have been referred to at serial No.7, could have been caused with the knife (muddamal Article No.19), i.e., the same knife, which had been recovered at the instance of the accused. Even in the inquest panchnama (Exhibit 14), it was recorded that both legs of the victim Gomi were mutated from just above the ankle with a sharp weapon, with the object of removing the anklets in the feet of the victim Gomi. This document, according to the learned counsel, also indicates the use of a knife in the occurrence under reference.

(d) It was also the submission of the learned counsel for the appellant, that at the time of recovery of the body of the victim from Jivi's field, the same was found to be covered with a shirt with stripes. It was submitted, that the aforesaid shirt was identified as the shirt worn by the accused-respondent Kishanbhai, when he was seen carrying away the victim Gomi, on 27.2.2003. In this behalf, reliance was placed by the learned

A counsel for the appellant, on the testimony of Naranbhai Manabhai Solanki PW5. The above witnesses had identified the shirt as a white shirt with lines. To give credence to the testimony of Naranbhai Manabhai Solanki PW5, learned counsel also pointed out, that when the accused was found B coming from the direction of the police station after the commission of the crime, he was seen wearing a black T-shirt. The statement of Naranbhai Manabhai Solanki PW5, was sought to be corroborated with the statement of Dinesh Karshanbhai Thakore PW6. The accused respondent is stated C to have approached the "lari" of Dinesh Karshanbhai Thakore PW6 for purchasing a "dabeli", and at that juncture, the accused-respondent is stated to have been wearing a white lined shirt, and a green trouser. On the recovery of the shirt and trouser, they were marked as Mudammal Articles 8 and 14 D respectively. Dinesh Karshanbhai Thakore PW6 had identified the shirt, as also, the trouser during the course of his deposition before the Trial Court. The green trouser worn by the accused-respondent was also identified by Bababhai Naranbhai Solanki PW2. Additionally, Bababhai Naranbhai Solanki PW2 deposed that a black colour T-shirt was worn by the accused-respondent E when he was apprehended and brought to the police station. The above articles were also identified by Angha Lalabhai Marwadi PW12 and Naranbhai Lalbhai Desai PW13 who were the panch witnesses at the time of seizure of the abovementioned clothing.

F

(e) It was also the submission of the learned counsel for the appellant, that the report of the forensic science laboratory was sufficient to confirm, that the accused respondent was the one who was involved in the commission of the crime under G reference. In this behalf, it was pointed out that the victim Gomi was shown to have blood group "B+ve". According to the report of the Forensic Science Laboratory, the bricks recovered from the place of occurrence (which had been used in causing injuries on the head and other body parts of the victim), the H panties worn by the deceased victim Gomi, the white shirt

which was found on the body of the victim at the time of its recovery from Jivi's field, the T-shirt and the green trouser worn by the accused respondent Kishanbhai (at the time he was apprehended), and even the weapon of the crime, namely, the knife recovered at the instance of the accused-respondent, were all found with blood stains. The forensic report reveals that the blood stains on all the above articles were of blood group "B+ve". It was, therefore, the submission of the learned counsel for the appellant, that the accused-respondent was unmistakably shown to be connected with the crime under reference.

(f) In order to substantiate the motive of the accused-respondent, learned counsel for the appellant relied upon the statement of the investigating officer Ranchhodji Bhojrajji Chauhan PW14, who had stated in his deposition that the owner of Mahavir Jewellers, i.e., Premchand Shankarlal Mehta had presented himself at the police station. The abovementioned jeweler is stated to have informed the police, that the accused respondent Kishanbhai had pawned the anklets belonging to the victim Gomi with him for a sum of Rs.1,000/-. Insofar as the identification of the anklets is concerned, reference was made to the statement of Keshobhai Madanbhai Solanki PW7, i.e., father of the victim who had identified the anklets marked as Muddamal Article No.18, as belonging to his daughter Gomi, which she was wearing when she had gone missing. Reference was also made to the statement of Jagdishbhai Bhagabhai Marwadi PW11, as also, the panchnama of recovery of the silver anklets which also, according to learned counsel, connects the accused to the crime.

(g) Last but not the least, learned counsel for the appellant invited this Court's attention to the statement tendered by the accused under Section 313 of the Code of Criminal Procedure. During the course of his above testimony, he was confronted with the evidence of the relevant witnesses depicting, that the

A victim Gomi was last seen in his company at 6:00 p.m. on 27.2.2003. He was also confronted with the fact, that he himself had informed the search party, that Gomi may be found at Jivi's field. It is submitted, that the accused-respondent Kishanbhai, who had special knowledge about the whereabouts of the B deceased, was bound to explain and prove when and where he had parted from the company of the victim Gomi. It was submitted that during the course of his deposition under Section 313 of the Code of Criminal Procedure, the accused could not tender any satisfactory explanation.

C Based on the above evidence, it was the submission of the learned counsel for the appellant, that even in the absence of any eye witness account, the prosecution should be held to have been successful in establishing the guilt of the accused-respondent Kishanbhai through circumstantial evidence. The D claim of circumstantial evidence emerging from different witnesses summarized above, according to the learned counsel, leads to one and only one conclusion, namely, that the accused-respondent Kishanbhai alone had committed the criminal acts under reference. It was submitted, that the chain E of circumstantial evidence, was sufficient to establish, that none other than the accused-respondent could have committed the alleged criminal actions. It was also contended, that no link in the chain of circumstantial evidence was missing, so as to render any ambiguity in the matter.

F 10. We have heard the learned counsels for the parties. To determine the controversy arising out of the instant criminal appeal, we shall first endeavour to summarise the conclusions drawn by the High Court under different heads. We have G decided to adopt the above procedure to understand the implications of various aspects of the evidence produced by the prosecution before the Trial Court. This procedure has been adopted by us (even though the same was neither adopted by the Trial Court, or by the High Court) so as to effectively understand, and thereupon, to adequately deal with the H

contentions advanced at the hands of the appellant, before this Court. A

11. We would first of all, like to deal with the lapses committed by the investigating and prosecuting agencies in the process of establishing the guilt of the accused before the Trial Court. It will be relevant to mention that all these lacunae/ deficiencies, during the course of investigation and prosecution, were pointed out by the High Court, in the impugned judgment. These constitute relevant aspects, which are liable to be taken into consideration while examining the evidence relied upon by the prosecution. We have summarised the aforesaid lapses, pointedly to enable us to correctly deal with the submissions advanced at the behest of the State. Since the guilt of the accused in the instant case is to be based on circumstantial evidence, it is essential for us to determine whether or not a complete chain of events stand established from the evidence produced by the prosecution. The above deficiencies and shortcomings are being summarised below: B C D

(a) According to the prosecution story after having removed the anklets from Gomi's feet, the accused Kishanbai had taken the anklets to Mahavir Jewellers, a shop owned by Premchand Shankerlal. He pledged aforesaid anklets with Premchand Shankerlal, for a sum of Rs. 1,000/-. The anklets under reference, were handed over by Premchand Shankerlal to the investing officer on 1.3.2003, in the presence of two panch witnesses. According to the prosecution case, the jeweller had gone to the police station with the anklets on his own, after having read newspaper reports to the effect, that a girl had been raped and murdered and her anklets had been taken away. He had approached the police station under the suspicion, that the anklets pledged with him, might have belonged to the girl mentioned in the newspaper reports. One of the panch witnesses, namely, Jagdishbhai Marwari PW15 had deposed, that above Premchand Shankerlal had identified the accused Kishanbhai, as the very person who had pledged E F G H

A the anklets with him. In this behalf it is relevant to mention, that Premchand Shankerlal was not produced as a prosecution witness. It is important to notice, that the anklets handed over to the Police, were successfully established by the prosecution as the ones worn by the deceased Gomi. The lapse of the
B prosecution on account of not producing Premchand Shankerlal as prosecution witness, according to the High Court, resulted in a missing link in the chain of events which would have established the link of the accused Kishanbhai, with the anklets, and thereby convulsively connecting him with the crime.

C

(b) The prosecution story further discloses, that Premchand Shankerlal the owner of Mahavir Jewellers, had executed a receipt with the accused Kishanbhai, depicting the pledging of the anklets for a sum of Rs.1,000/-. The aforesaid receipt was placed on record of the Trial Court as exhibit 52. The above
D receipt according to Premchand Shankerlal, was thumb marked by the accused Kishanbhai. Even though the receipt indicates the name of the person who had pledged the anklets as Rajubhai, the same could clearly be a false name given by the person who pledged the anklets. Certainly, there could be
E no mistake in the identity of the thumb mark affixed on the said receipt. The prosecution could have easily established the identity of the pledger, by comparing the thumb impression on the receipt (exhibit 52), with the thumb impression of the accused-respondent Kishanbhai. This was however not done.
F The lapse committed by the prosecution in not producing Premchand Shankerlal as a witness, could have easily been overcome by proving the identity of the person who had pledged the anklets, by identifying the thumb impression on the receipt (exhibit 52), in accordance with law. In case the thumb
G impression turned out to be that of the accused Kishanbhai, he would be unmistakably linked with the crime. In case it was found not to be the thumb impression of the accused Kishanbhai, his innocence could also have been inferred. According to the High Court this important lapse in proving the

H

prosecution case before the Trial Court, had resulted in a major obstacle in establishing the guilt/innocence of the accused. A

(c) It is also the case of the prosecution, that when the accused Kishanbhai was apprehended, a sum of Rs.940/- was recovered from his possession. According to the prosecution story the accused Kishanbhai had pledged the anklets at Mahavir Jewellers with Premchand Shankerlal for a sum of Rs. 1,000/-. In order to link the money recovered from his possession at the time of his detention, it was imperative for the prosecution to establish how and why a sum of Rs.940/- only, was recovered from the possession of the accused Kishanbhai. He ought to have been in possession of at least Rs.1,000/- i.e., the amount given to him by Premchand Shankerlal when he pledged the anklets at his shop, even if it is assumed that he had no money with him when he had pawned the anklets. This important link having not been established by the prosecution, breaks the chain of events necessary to establish the guilt of the accused Kishanbhai, and constitutes a serious lapse in the prosecution evidence. B C D

(d) It is apparent from the prosecution story, that the victim Gomi was raped. In establishing the factum of the rape the prosecution had relied upon the note prepared at the time of conducting the post-mortem examination of the deceased Gomi. The same inter alia reveals, that dry blood was present over the labia, and deep laceration of subcutaneous tissues was present on the left margin of the vaginal opening, just above the posterior commission. The hymen was also found ruptured at 3 and 6,O' clock. It is therefore, that the accused was deputed for being subjected to medical examination, during the course of investigation. For the above purpose he was examined by Dr. P.D. Shah. In fact Dr. P.D. Shah was a cited witness before the Trial Court. Despite the above Dr. P.D. Shah was not examined as a prosecution witness. Clearly a vital link in a chain of events, to establish the rape of the victim Gomi came to be broken consequent upon by the non-examination of Dr. P.D. Shah as a prosecution witness. E F G H

A (e) The High Court has also noticed, that even the report/ certificate given by the medical officer relating to the medical examination of the accused Kishanbhai was not produced by the prosecution before the Trial Court. It is apparent, that the lapse in not producing Dr. P.D. Shah as a prosecution witness, B may have been overcome if the report prepared by him (after examining the accused Kishanbhai) was placed on the record of the Trial Court, after being proved in accordance with law. The action of prosecution in not producing the aforesaid report before the Trial Court, was another serious lapse in proving the C case before the Trial Court. This had also resulted a missing vital link, in the chain of events which could have established, whether or not accused Kishanbhai had committed rape on victim Gomi.

(f) The High Court having noticed the injuries suffered by D Gomi, a six year old girl child on her genitals, had expressed the view, that the same would have resulted in reciprocal injuries to the male organ of the person who had committed rape on her. It was pointed out, that if the accused Kishanbhai had been sent for medical examination the testimony or the report of the E medical officer would have revealed the presence of smegma around the corona-glandis, which would have either established innocence or guilt of the accused, specially if the accused had been medically examined within 24 hours. In the instant case the sequence of the events reveal, that the occurrence had been F committed between 6:00 p.m. to 8:00 p.m. on 27.2.2003. At the time of recovery of the body of deceased Gomi from Jivi's field, at about 9:00 pm, it came to be believed that she had been subjected to rape. The accused Kishanbhai was shown to have been formerly arrested at 6:40 a.m. on 28.2.2003 (even G if the inference drawn by the High Court, that the accused Kishanbhai was in police custody since 9:00 p.m. on 27.2.2003 itself, is ignored). The accused could have been medically examined within a period of 24 hours of the occurrence. The prosecution case does not show whether or not such action was H taken. This lapse in the investigation of the case, had also

resulted the omission of a vital link in the chain of events which would have unquestionably established the guilt of the accused Kishanbhai of having committed rape (or possibly his innocence). A

(g) It needs to be noticed, that when the accused Kishanbhai was arrested, there were several injuries on his person. The said injuries were also depicted in his arrest panchnama. At 7:15 am on 28.2.2003, the accused Kishanbhai filed a first information report alleging, that he was beaten by some of the relatives of the victim Gomi, as also, by some unknown persons accompanying the search party, under the suspicion/belief, that he was responsible for the occurrence. In the above first information report, the accused Kishanbhai had also depicted the nature of injuries suffered by him. The statement of the investigating officer Ranchodji Bhojrajji Chauhan PW14 reveals, that the accused Kishanbhai had been sent to Civil Hospital, Ahmedabad, for his medical examination. Neither the doctor who had examined the accused was produced as a prosecution witness, nor the report/certificate given by the medical officer disclosing the details of his observations/findings was placed on record. This evidence was vital for the success of the prosecution case. According to the High Court, blood of group "B +ve" was found on the clothes of the accused Kishanbhai. The important question to be determined thereupon was, whether it was his own blood or blood of the victim Gomi. The statement of the medical officer who had examined the accused Kishabhai, when he was sent for medical examination to Civil Hospital, Ahmedabad, would have disclose whether or not accused Kishanbhai had any bleeding injuries. The importance of nature of the injuries suffered by the accused Kishanbhai emerges from the fact, that both the accused Kishanbhai and the victim Gomi had the same blood group "B +ve". An inference could have only been drawn that the blood on his clothes was that of the victim, in case it was established that the accused-respondent Kishanbhai had not suffered any bleeding injuries, and B C D E F G H

A therefore, the possibility of his own blood being on his clothes was ruled out. This important link in the chain of events is also missing from the evidence produced by the prosecution, and constitutes a serious lapse in the investigation/prosecution of the case.

B

In view of the above factual position, the High Court made the following observations "Looking to the advancement in the field of medical science, the investigating agency should not have stopped at this stage. Though ABO system of blood grouping is one of the most important system, which is being C normally used for distinguishing blood of different persons, there are about 19 genetically determined blood grouping systems known to the present day science, and it is also known that there are about 200 different blood groups, which have been identified by the modern scientific methods (Source: Mc-Graw-Hill D Encyclopedia of Science and Technology, Vol.2). Had such an effort been made by the prosecution, the outcome of the said effort would have helped a lot to the trial Court in ascertaining whether the accused had in fact visited the scene of offence." This also constitutes a glaring lapse in the investigation of the E crime under reference.

There has now been a great advancement in scientific investigation on the instant aspect of the matter. The investigating agency ought to have sought DNA profiling of the F blood samples, which would have given a clear picture whether or not the blood of the victim Gomi was, in fact on the clothes of the accused-respondent Kishanbhai. This scientific investigation would have unquestionably determined whether or not the accused-respondent was linked with the crime. G Additionally, DNA profiling of the blood found on the knife used in the commission of the crime (which the accused-respondent, Kishanbhai had allegedly stolen from Dinesh Karshanbhai Thakore PW6), would have uncontrovertibly determined, whether or not the said knife had been used for severing the legs of the victim Gomi, to remove her anklets. In spite of so H

much advancement in the field of forensic science, the investigating agency seriously erred in carrying out an effective investigation to genuinely determine the culpability of the accused-respondent Kishanbhai. A

(h) It is also apparent from the complaint submitted by Bababhai Naranbhai Solanki PW 2, that he had been informed by one Kalabhai Ganeshbhai, that he had seen the accused Kishanbhai taking away Gomi. In such an event, the proof of the fact of the accused-respondent having abducted Gomi could have only been substantiated, through the statement of Kalabhai Ganeshbhai who had allegedly actually seen the accused Kishanbhai taking her away. According to the High Court, for the reasons best known to it, the prosecution did not produce Kalabhai Ganeshbhai as a witness. Even though according to the High Court the above-mentioned Kalabhai Ganeshbhai was a resident in one of the peon quarters, and was also a government servant, the absence of the evidence of the above factual position, results in a deficiency in the confirmation of a factual position of substantial importance, from the chain of events necessary for establishing the last seen evidence. B C D E

(i) It is also apparent, that there is no dispute about the recovery of a green blood stained "dupatta", from the person of the victim. The green blood stained "dupatta" (veil) was found by the medical officer while conducting the post-mortem examination on Gomi. The existence of the green "dupatta" was also duly mentioned in the post-mortem report. According to the High Court, none of the prosecution witnesses had referred to the factum of the victim having worn a green "dupatta". According to the prosecution evidence, the deceased was wearing a red frock and panties, whereas, the accused was wearing a full sleeve white shirt and green trousers. According to the High Court, if neither the victim nor the accused had a green "dupatta", a question would arise, as to how the green blood stained "dupatta" was found on the dead body of the F G H

A victim. Even leading to the inference of the presence of a third party at the time of occurrence. The above omission in not explaining the presence of the green "dupatta", has also been taken by the High Court, as a glaring omission at the hands of the prosecution in the process of investigation/prosecution of
B the charges levelled against the accused Kishanbhai.

(j) While deposing before the Trial Court, Dinesh Karshanbhai Thakore PW6, affirmed that the accused-respondent Kishanbhai had approached his "lari" for the first time to purchase a "dabeli" on 27.2.2003. It is, therefore,
C apparent that Dinesh Karshanbhai Thakore PW6 had not known the accused-respondent before 27.2.2003. In the above view of the matter, it was imperative for the investigating agency to hold a test identification parade in order to determine whether Dinesh Karshanbhai Thakore PW6, had correctly identified the
D accused-respondent, as the person who had come to his "lari" to purchase a "dabeli" on 27.2.2003. And also whether he was the same person, who had stolen a knife from his "lari" on 27.2.2003. This is also a serious deficiency in the investigation/ prosecution of the case.

E

(k) Bababhai Naranbhai Solanki PW2, the complainant in the present case, during the course of his examination-in-chief, observed as under :

F "This incident was occurred on 27/2/2003, on that day Lilaben came to my house for pregnancy. On the day of the incident at 6.00 o clock in the evening I came to know that Gomiben the daughter of Lilaben is not found. Therefore, all our relatives have started searching her. We went to the quarter of my father, and inquired about the
G Gomiben, my father told that I saw Gomiben with Lalis Sister in law brother Kisan, he gave ice cream to Gomi. Therefore, we have searched in the quarters and other places. At around 8.00 o clock in the night kishan was coming from police Station, we have started asking him,
H at that time along with me Shri Jagabhai Molabhai,

Mohanbhai Molabhai, Hirabhai were present. This police Chawky means Gulbai Tekra Police Chawky. He told me that I have left her at Jivivala Field. Therefore, we went at the Jivivala Field, at around 8.00 or 9.00 o clock, we went there and we found Gomiben in dead conditions, she had a several injuries on her head and other parts of the body. She was being raped."

From the above statement, it is apparent that Gomi was found missing for the first time at 6:00 pm. The search for her began immediately thereafter. The search party met the accused-respondent Kishanbhai coming from the side of the police station at 8:00 p.m. All the prosecution witnesses have been equivocal about the fact that Gomi went missing at about 6:00 p.m., i.e., the time when she was last seen in the company of the accused-respondent Kishanbhai, and thereafter, the search party met Kishanbhai at 8:00 pm. In order to give credence to the prosecution version, it was imperative to establish that it was possible for the accused-respondent Kishanbhai, after having taken Gomi at 6:00 p.m., to have stopped at the "lari" of Dinesh Karshanbhai Thakore PW6, purchased a "dabeli" from him. Thereupon, to have had time to steal his knife, the accused-respondent proceeded on with Gomi to Jivi's field. There ought to have been enough time for him thereafter to have raped her, then assaulted her with bricks on her head and other parts of the body leading to her death, and finally to cut her legs just above her ankles, to remove her anklets. He should thereupon have also had time to hide the knife used in the commission of the crime, under the stones. And thereafter further time, to have taken the anklets to Mahavir Jewellers so as to pawn the same with Premchand Shankarlal Mehta, as also, time to execute a receipt in token thereof. Over and above the above, he ought have had time, to visit his residence so as to able to wear a fresh shirt i.e., the shirt which he was wearing when he was detained. After all that, he should have had time to cover the area from Jivi's field to Premchand Shankarlal Mehta's shop and further on from the above shop

A to his residence and finally from his residence till the place where he was detained. It is difficult to appreciate how all the activities depicted in the prosecution story, could have been carried out from 6:00 p.m. on 27.2.2003 to 8:00 p.m. on the same day, i.e., all in all within a period of two hours. It is in the B above context that the cross-examination of Naranbhai Manabhai Solanki PW5, assume significance. Relevant extract from his cross-examination is being reproduced hereunder :

> "It is true that the accused was coming from police Chawky at around 8.00 or 8.30 p.m. as I was not wearing the watch C I cannot say the exact time. It is true that it takes 15 to 20 minutes to go to Panjrapole from my quarters, and it will take 30 to 35 minutes to go to the field of JIVI. It is true that it will taken half an hour to come to the Office of BSNL through Jivi's Field and C.N. Vidhayalaya. It is true that D from the Jivis field towards Panjrapole and through Panjrapole main road towards BSNL office, by walking it will take 40 minutes. It is true that both the roads are public roads, and many people are passing through this road."

E (emphasis is ours)

Whether or not the above sequence of events could have taken place in the time referred to above, would have been easily overcome if the prosecution had placed on record a sketch map providing details with regard to the distance F between different places. In that event, it would have become possible to determine whether the activities at different places, projected through the prosecution version of the incident were possible. In the absence of any knowledge about the distance between the residence of the victim Gomi as well as that of the G accused from the Polytechnic or from Jivi's field; it would be impossible to ascertain the questions which emerge from the cross-examination of Naranbhai Manabhai Solanki PW5. Had a sketch map been prepared or details with regard to the distance been given, the courts concerned would have been H able to determine all that was alleged in the prosecution version

of the incident. This deficiency in the prosecution evidence, must be construed as a serious infirmity in the matter.

12. We would now like to deal with the discrepancies found in the evidence produced by the prosecution before the Trial Court. We would also simultaneously summarise the effect of defences adopted on behalf of the accused-respondent Kishanbhai. These aspects of the matter are also being summerised hereunder, so as to enable us to effectively deal with the submissions advanced at the behest of the State. These aspects of the matter are liable to be taken into consideration, to determine whether or not, a complete chain of events stands proved to establish the guilt of the accused-respondent. The above considerations are summarized hereunder:

(a) The post mortem report relied upon by the prosecution leaves no room for any doubt that injuries on the genitals of Gomi were post mortem in nature. The question which arises for consideration is whether the injuries under reference had been inflicted on the victim first, and thereupon, rape was committed on the victim. It is natural to assume, that the first act of aggression by the person who had committed assault on Gomi, was by inflicting injuries on her head and other parts of the body, only thereafter the legs just above the ankles, would have been cut (with the object of removing her anklets). It is not possible for us to contemplate that the legs of the deceased were cut whilst she was in her senses, is incomprehensible and therefore, most unlikely. Now, the question to be considered is, whether it was humanly possible for even the most perverted person, to have committed rape on a child, who had been killed by causing injuries on head and other parts of body, and after her feet had been severed from her legs. We would have no hesitation by responding in the negative. The prosecution in the instant case apparently projected a version including an act of rape, which is

A impossible to accept on the touchstone of logic and common sense.

(b) The evidence produced by the prosecution also reveals, that pubic hair of the accused-respondent Kishanbhai, had been examined by the scientific officer of the Forensic Science Laboratory. The report submitted by the Forensic Science Laboratory (Exhibit 48) reveals, that there was neither any semen nor any blood on the pubic hair of the accused. Reference to the possibility of there being blood on the public hair of the accused-respondent Kishanbhai emerges from the fact, that the post mortem report of the deceased revealed, that there was blood on the vagina of the deceased. Whilst accusing the respondent-Kishanbhai of the offence under Section 376 of the Indian Penal Code, it was imperative for the prosecution to have kept in its mind the aforesaid aspects of the matter. Absence of semen or blood from the pubic hair of the accused-respondent, would prima facie exculpate him from the offence of rape.

(c) According to the testimony of the complainant Bababhai Naranbhai Solanki PW2, the accused-respondent Kishanbhai was wearing a white shirt at the time of occurrence. It is, therefore, when a white shirt was found covering the dead body of the victim Gomi, he had identified the same as the shirt which the accused-respondent Kishanbhai was wearing, before the offence was committed. From the prosecution story, as it emerged from the statements of different witnesses, it is apparent that Bababhai Naranbhai Solanki PW2, had had no occasion to have seen the accused-respondent Kishanbhai, wearing the said white shirt. When Bababhai Naranbhai Solanki PW2, was questioned as to how he knew that the accused-respondent was wearing a white shirt, when he first saw the shirt covering the dead body of the victim, his response was, that he had been told about that by his father Naranbhai Manabhai Solanki PW5. In the above view of the matter, the question arises whether the testimony of Bababhai, Naranbhai

Solanki PW2 about the shirt referred to above was truthful. And whether his testimony can be described as fair and honest. A

(d) Additionally when the accused–respondent Kishanbhai was arrested, the T-shirt worn by him, was taken from him by recording a panchnama. The said T-shirt is available on the record of the Trial Court as Exhibit-39. It is not a matter of dispute that the T-shirt (Exhibit 39), worn by the accused-respondent, Kishanbhai at the time of his arrest, is actually a white T-shirt with a trident design on it. But, as per the narration recorded by Bababhai Naranbhai PW2, contained in the complaint which constituted the basis of registering the first information, it is mentioned that the accused-respondent Kishanbhai was wearing a black T-shirt at the time of his detention. It is apparent from the factual position noticed hereinabove, that the factual position expressed by the complainant Bababhai Naranbhai Solanki PW2 was absolutely incorrect, and contrary to the factual position. In the above view of the matter, a question would arise, whether the deposition of Bababhai Naranbhai Solanki PW2 was fair and honest. B C D

(e) According to the prosecution version of the incident, the search party met the accused-respondent Kishanbhai at about 8:00 p.m. The said party had thereupon proceeded to Jivi's field, from where the dead body of the victim was recovered. According to Naranbhai Manabhai Solanki PW5, after finding the dead body, he had proceeded to the police station. At the police station, he had requested the police personnel to visit the site of occurrence. Simultaneously, Naranbhai Manabhai Solanki PW5 had stated, that when enquiries were being made from Kishanbhai, police personnel had taken away the accused-respondent. According to the testimony of Naranbhai Manabhai Solanki PW5, therefore, at the most, the accused-respondent must be deemed to have been taken into police custody from about 9:00 p.m. on 27.2.2003. It is apparent, that the occurrence had come to the knowledge of a large number of persons constituting the search E F G H

A party, when the victim's body was found on Jivi's field. Even before that, the accused-respondent was already in police custody. As if, the police had already concluded on the guilt of Kishanbhai, even before the recovery of Gomi's body from Jivi's farm. Despite the above, the arrest of the accused-respondent
B Kishanbhai was shown at 6.40 a.m. on 28.3.2003. The detention of the accused-respondent Kishanbhai from 9:00 pm on 27.2.2003 to 6.40 a.m. on 28.2.2003, shows that the prosecution has not presented the case in the manner the events unfolded to the investigating agencies.

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(f) It also needs to be noticed, that the inquest panchnama besides mentioning the amputation of the legs of the victim above her ankles, also records, that the silver anklets worn by Gomi were missing. In this behalf, it would also be relevant to mention, that even though the inquest panchnama was drawn
D at 0030 a.m. on 28.2.2003, the complaint resulting in the registration of the first information report was lodged by Bababhai Naranbhai Solanki PW2 at 3:05 a.m. on 28.02.2003. It is strange, that the inquest panchnama should be drawn before the registration of the first information report. It is also
E strange as to how, while drawing the inquest panchnama, the panchas of the same could have recorded, that after amputation of the victim's legs, her silver anklets had been taken away by the offender. There was no occasion for the panchas to have known, that Gomi used to wear silver anklets.
F Accordingly, there was no occasion for them to have recorded that the silver anklets usually worn by Gomi had been taken away by the offender.

(g) From the prosecution version (emerging from the
G evidence recorded before the Trial Court), it is apparent, that the search party, as also, the relatives of the victim were aware at about 8:00 p.m. on 27.2.2003 that Gomi had been murdered, with a possibility of her having been raped also, and her silver anklets had been stolen. Despite the above, no complaint whatsoever came to be filed in connection with the above
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occurrence at the police station on 27.2.2003, despite the close coordination between the search party and the police from 8:00 pm onwards no 27.2.2003 itself. The complaint leading to the filing of the first information was made at about 3:05 a.m. on 28.2.2003. Not only is the delay of seven hours in the registration of the complaint ununderstandable, but the same is also rendered extremely suspicious, on the account of the fact that the accused-respondent Kishanbhai is acknowledged to be in police detention since 9:00 p.m. on 27.2.2003 itself. This may be the result of fudging the time and date at which the victim Gomi went missing, as also, the time and date on which the body of the victim was discovered resulting in the discovery of the occurrence itself. The question which arises for consideration is, whether the investigation agency adopted the usual practice of padding so as to depict the occurrence in a manner different from the actual occurrence. A question also arises as to why it was necessary for the investigating agency to adopt the above practice, despite the fact that it was depicted as an open and shut case.

(h) As noticed above, that from the statements of Bababhai Naranbhai Solanki PW2 and Naranbhai Manabhai Solanki PW5, it is apparent that the accused was detained by the police informally around 9:00 p.m. on 27.2.2003. It is also essential to notice, that an acknowledgement was made to the above effect even by Sub Inspector Naranbhai Lalbhai Desai PW13, who had commenced investigation of the crime under reference. It is apparent that when Bababhai Naranbhai Solanki PW2, had contacted him with details about the offence under reference, he had not recorded any entry in the station diary before leaving the police station. This constitutes a serious lapse in itself. In his cross-examination, he had affirmed that he was taken by Bababhai Naranbhai Solanki PW2, i.e., the complainant to the scene of occurrence. Having gone to the scene of occurrence, and having made on the spot investigation, he acknowledged having returned to the police station. In his statement, he accepted, that when he had returned to the police

A station after visiting the site of occurrence, the accused-respondent Kishanbhai was already present at the police station. When questioned, he could not tender any explanation, as to how the accused-respondent Kishanbhai had come to the police station. In his statement as a witness, he had expressed, B that for the first time he had seen the accused-respondent Kishanbhai only on 28.2.2003 at around 5:30 a.m. Whereafter, the accused-respondent was formally arrested at 6.40 a.m. The inconsistency between the statements made by the complainant (Bababhai Naranbhai Solanki PW2) and his father (Naranbhai C Manabhai Solanki PW5) on the one hand, and by Sub-Inspector Naranbhai Lalbhai Desai PW13 on the other, discloses a serious contradiction with respect to the time of the detention of the accused-respondent Kishanbhai. It needs to be noticed, that it was an aberration for Naranbhai Lalbhai Desai PW13, D to have left the police station without making an entry in the station diary. Why should a police officer, investigating a crime of such a heinous nature, commit such a lapse? The fact that he did so, is not a matter of dispute. The truth of the matter is, that Naranbhai Lalbhai Desai PW13, did not make any note either in the station diary or in any other register; he did not take E any informal complaint from the complainant, even though he had been apprised about the commission of an offence. It is therefore clear that Naranbhai Lalbhai Desai PW13, had left the police station without making an entry depicting the purpose of his departure. All this further adds to the suspicion of the F manner in which investigation of the matter was conducted.

(i) So far as the statement of Dinesh Karshanbhai Thakore PW6 is concerned, he had supported the prosecution story by deposing, that the accused had visited his "lari" with a small G child, about seven years old. He had further asserted, that the accused-respondent Kishanbhai had purchased a "dabeli" from him. He had also testified that the accused –respondent had asked for a knife but he had refused to give it to him because, at the time when the accused-respondent had visited the "lari", H there were several customers waiting for purchasing "dabelis".

He further confirmed, that the accused-respondent had stolen a knife, used by him for cutting vegetables from his "lari". Another important aspect of the matter, out of the statement of Dinesh Karshanbhai Thakore PW6 is, that he identified the shirt that the accused-respondent Kishanbhai was wearing, at the time when he had visited his "lari" for purchasing a "dabeli" on 27.2.2003. He had also identified the red frock which the victim was wearing at the said juncture. Additionally, he identified the knife which the accused-respondent Kishanbhai had stolen from his "lari". The statement of Dinesh Karshanbhai Thakore PW6 was considered to be untrustworthy by the High Court, primarily for the reason that he could identify the shirt worn by the accused-respondent; Kishanbhai when he had approached his "lari" for the purchase of a "dabeli", at which juncture, the accused-respondent Kishanbhai may have remained at the "lari" at the most for 10 to 15 minutes, when there was a rush of customers. As against the above, he had remained with the accused-respondent Kishanbhai at Navrangpur Police Station, Ahmedabad, for approximately four hours. During the course of his cross-examination, he could not depose about the sort of shirt which the accused respondent was wearing, at the Navrangpur Police Station, Ahmedabad. It is, therefore, apparent that Dinesh Karshanbhai Thakore PW6 was deposing far in excess of what he remembered, and/or in excess of what was actually to his knowledge. He appears to be a tutored witness. This aspect of the matter also renders the testimony of Dinesh Karshanbhai Thakore PW6, suspicious.

(j) There is yet another aspect of the controversy relating to Dinesh Karshanbhai Thakore PW6. The investigating agency became aware from the disclosure statement of the accused-respondent Kishanbhai tendered on 1.3.2003, that he had procured the weapon of offence by way of theft from the "lari" of Dinesh Karshanbhai Thakore PW6. The above knife was recovered at the instance of the accused-respondent Kishanbhai on 1.3.2003, in the presence of panch witnesses. In the above view of the matter, in the ordinary course of

A investigation, it would have been imperative for the investigating agency to have immediately approached Dinesh Karshanbhai Thakore PW6, to record his statement. His statement was extremely important for the simple reason, that it would have connected the accused with the weapon with which the crime B had been committed, as also with the victim. Despite the above, the investigating agency recorded the statement of Dinesh Karshanbhai Thakore PW6, for the first time on 4.3.2003. No reason is forthcoming why his statement was not recorded either on 1.3.2003, or on the intervening dates before C 4.3.2003. The inordinate delay by the investigating agency, in confirming the version of the accused-respondent, in respect of the weapon of the crime, renders the prosecution version suspicious. Such delay would not have taken place in the ordinary course of investigation. If there were good reasons for the delay, they ought to have been made known to the Trial D Court by way of reliable evidence. This fact too raises a doubt about the correctness of the prosecution version of the incident.

The above discrepancies in the prosecution version, were duly noticed by the High Court. These constitute some of the E glaring instances recorded in the impugned order. Other instances of contradiction were also noticed in the impugned order. It is not necessary for us to record all of them, since the above instances themselves are sufficient to draw some vitally important inferences. Some of the inferences drawn from the F above, are being noticed below. The prosecution's case which mainly rests on the testimony of Bababhai Naranbhai Solanki PW2, Naranbhai Manabhai Solanki PW5 and Dinesh Karshanbhai Thakore PW6, is unreliable because of the glairing inconsistencies in their statements. The testimony of G the investigating officer Naranbhai Lalbhai Desai PW13 shows fudging and padding, making his deposition untrustworthy. In the absence of direct oral evidence, the prosecution case almost wholly rested on the above mentioned witnesses. It is for the above reasons, that the High Court through the

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impugned order, considered it just and appropriate to grant the accused-respondent Kishanbhai, the benefit of doubt. A

13. Learned counsel for the appellant, in order to support the submissions advanced before this Court in the present criminal appeal (which have been recorded in paragraph 9 hereinabove), with judicial precedent, placed reliance on a number of judgments rendered by this Court. We shall now summarise hereunder, the judgment relied upon, as also, the submissions of the learned counsel on the basis thereof: B

(a) Referring to the judgment rendered by this Court in *Ram Prasad & Ors. v. State of UP,* (1974) 1 SCR 650, it was asserted at the hands of the learned counsel for the appellant, that non-examination of some of the eye-witnesses would not introduce a fatal infirmity to the prosecution case, specially when conviction could be based on evidence produced by the prosecution. C D

(b) Reference was also made to *Takhaji Hiraji v. Thakore Kubersing Camansing & Ors.,* (2001) 6 SCC 145, and it was pointed out, that this Court has ruled that in cases where witnesses already examined were reliable, and the testimony coming from the mouth was unimpeachable, a court could safely act upon the same uninfluenced by the factum of non-examination of other witnesses. Yet again the conclusion was, that reliable evidence should be available, to determine the culpability of an accused, and in the above view of the matter it would be irrelevant whether some others who could have deposed on the facts in issue had not been examined. E F

(c) Based on the judgment rendered in *Laxman Naik v. State of Orissa,* (1994) 3 SCC 381, it was submitted, that in a case relating to a seven year old child, who had been raped and murdered by her own uncle; relying upon incriminating evidence and testimony of witnesses, it came to be held that when circumstances form a complete chain of incidents, then the same is sufficient to establish, that the accused is the G H

A perpetrator of the crime and conviction can be based on the complete chain of circumstantial evidence.

(d) Based on the judgment in *State of Maharashtra v. Suresh,* (2000) 1 SCC 471, where four years' girl child was a victim of rape and murder, it was contended, that this Court had held that it was open to a court to presume that the accused knew about the incriminating material or dead body due to his involvement in the alleged offence. When he discloses the location of such incriminating material without disclosing the manner in which he came to know of the same, the Court would presume that the accused knew about the incriminating material.

(e) Relying on the judgment in *Amar Singh v. Balwinder Singh,* 2003 (2) SCC 518, it was contended, that where the prosecution case is fully established by the testimony of witnesses which stood corroborated by medical evidence, any failure or omission of the investigating officer could not be treated as sufficient to render the prosecution case doubtful or unworthy of belief. This determination leads to the same inference, namely, when reliable evidence to prove the guilt of an accused is available, lapses in investigation would not result in grant of the benefit of doubt to an accused.

(f) Referring to *State Government of NCT Delhi v. Sunil,* (2001) 1 SCC 652, it was asserted, that in a case where a child of four years was brutally raped and murdered and incriminating articles were recovered on the basis of the statement of the accused, the same could not be discarded on the technical ground that no independent witness was examined.

(g) Referring to the judgment in *Joseph v. State of Kerala,* (2005) 5 SCC 197, wherein, according to the learned counsel, it was held that where the circumstances proved form themselves into a complete chain unerringly pointing to the guilt of the appellant, then the same can be the basis of the conviction of the accused. This, according to learned counsel,

represents the manner of proving the guilt of an accused based on circumstantial evidence. A

(h) Based on the judgment in *State of UP v. Satish* (2005) 3 SCC 114, it was contended that it could not be laid down as a rule of universal application that if there is any delay in examination of a particular witness, the prosecution version becomes suspect. Therefore, the facts surrounding the delay ought to be considered in every case to determine whether or not the testimony is rendered suspicious. B

(i) Relying on the judgment in *Bishnu Prasad Sinha v State of Assam,* (2007) 11 SCC 467, it was submitted, that in the above case where a child of 7-8 years was a victim of rape and murder, the grounds that the investigation was done in an improper manner did not render the entire prosecution case to be false. Namely, where reliable evidence is available, the same would determine the guilt of an accused. C D

(j) Referring to the judgment in *Aftab Ahmad Anasari v. State of Uttaranchal,* (2010) 2 SCC 583, it was asserted, that where a child of five years was a victim of rape and murder and the accused disclosed the location of the crime as also of the incriminating articles, the said disclosure was admissible and would constitute a complete chain in the circumstances. Further, according to the learned counsel, it was held that the inquest panchnama may not contain every detail and the absence of some details would not affect the veracity of the deposition made by witnesses. Needless to mention, that absence of vital links in the claim of circumstantial evidence would result in the exoneration of the accused. E F

(k) Reliance was placed on *Sambhu Das v. State of Assam,* (2010) 10 SCC 374, so as to contend, that any discrepancy occurring in the inquest report or the post mortem report could neither be fatal nor be termed as a suspicious circumstance as would warrant a benefit to the accused and the resultant dismissal of the prosecution case. Needless to G H

A add, that there should be sufficient independent evidence to establish the guilt of the accused.

(l) Based on the judgment in *Haresh Mohandas Rajput v. State of Maharashtra,* (2011) 12 SCC 56, it was contended, that in a case of murder and rape of a ten year old child, it was B found that where the circumstances taken cumulatively led to the conclusion of guilt and no alternative explanation is given by the accused, the conviction ought to be upheld This case reiterates that in a case based on circumstantial evidence the evidence should be such as would point to the inference of guilt C of the accused alone and none others.

(m) Relying on *Rajendra PrahladraoWasnik v. State of Maharashtra,* (2012) 4 SCC 37, it was submitted that where a three years old child was a victim of rape and murder by the D accused who lured her under the pretext of buying biscuits, circumstances showed the manner in which the trust/belief/ relationship was violated resulting in affirming the death penalty imposed on the accused.

E 14. We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the appellant, which have been duly noticed in paragraph 9 hereinabove. It is also relevant for us to record, that the learned counsel for the appellant did not advance a single submission in addition to the contentions we have noticed in paragraph 9 F above. The submissions advanced at the hands of the learned counsel for the appellant, were sought to be supported by judgments rendered by this Court, all of which have been referred to in paragraph 13 above. The submissions advanced at the hands of the learned counsel for the appellant, based on G each of the judgments cited, have also been recorded by us in the said paragraph. Having considered the totality of the facts and circumstances of this case, specially the glaring lapses committed in the investigation and prosecution of the case (recorded in paragraph 11 of the instant judgment), as also the H inconsistencies in the evidence produced by the prosecution

(summarized in paragraph 12 hereinabove), we are of the considered view, that each one of the submissions advanced at the hands of the learned counsel for the appellant is meritless. For the circumstantial evidence produced by the prosecution, primary reliance has been placed on the statements of Bababhai Naranbhai Solanki PW2, Naranbhai Manabhai Solanki PW5, and Dinesh Karshanbhai Thakore PW6. By demonstrating inconsistencies and infirmities in the statements of the above witnesses, their statements have also been rendered suspicious and accordingly unreliable. There is also a serious impression of fudging and padding at the hands of the agencies involved. As a matter of fact, the lack of truthfulness of the statements of witnesses has been demonstrated by means of simple logic emerging from the factual position expressed through different prosecution witnesses (summarized in paragraphs 11 and 12 above). The evidence produced to prove the charges, has been systematically shattered, thereby demolishing the prosecution version. More than all that, is the non production of evidence which the prosecution has unjustifiably withheld, resulting in dashing all the States efforts to the ground. It is not necessary for us to record our detailed determination on the submissions advanced at the hands of the learned counsel for the appellant, for such reasons clearly emerge from the factual position noticed in paragraphs 11 and 12 hereinabove. Recording of reasons all over again, would just be a matter of repetition. In view of the above, we find no merit in this appeal and the same is accordingly dismissed.

15. The investigating officials and the prosecutors involved in presenting this case, have miserably failed in discharging their duties. They have been instrumental in denying to serve the cause of justice. The misery of the family of the victim Gomi has remained unredressed. The perpetrators of a horrendous crime, involving extremely ruthless and savage treatment to the victim, have remained unpunished. A heartless and merciless criminal, who has committed an extremely heinous crime, has

A gone scot-free. He must be walking around in Ahmedabad, or some other city/town in India, with his head held high. A criminal on the move. Fearless and fearsome. Fearless now, because he could not be administered the punishment, he ought to have suffered. And fearsome, on account of his having remained B unaffected by the brutal crime committed by him. His actions now, know of no barriers. He could be expected to act in an unfathomable savage manner, uncomprehendable to a sane mind.

C 16. As we discharge our responsibility in deciding the instant criminal appeal, we proceed to apply principles of law, and draw inferences. For, that is our job. We are trained, not to be swayed by mercy or compassion. We are trained to adjudicate without taking sides, and without being mindful of the consequences. We are required to adjudicate on the basis D of well drawn parameters. We have done all that. Despite thereof, we feel crestfallen, heartbroken and sorrowful. We could not serve the cause of justice, to an innocent child. We could not even serve the cause of justice, to her immediate family. The members of the family of Gomi must never have stopped E cursing themselves, for not adequately protecting their child from a prowler, who had snatched an opportunity to brutalise her, during their lapse in attentiveness. And if the prosecution version about motive is correct, the crime was committed for a mere consideration of Rs.1,000/-.

F 17. Every time there is an acquittal, the consequences are just the same, as have been noticed hereinabove. The purpose of justice has not been achieved. There is also another side to be taken into consideration. We have declared the accused-G respondent innocent, by upholding the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams. If he has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the H

accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long drawn litigation, spanning over a decade, or more. The expenses incurred by an accused in his defence can dry up all his financial resources – ancestral or personal. Criminal litigation could also ordinarily involve financial borrowings. An accused can be expected to be under a financial debt, by the time his ordeal is over.

18. Numerous petitions are filed before this Court, praying for anticipatory bail (under Section 438 of the Code of Criminal Procedure) at the behest of persons apprehending arrest, or for bail (under Section 439 of the Code of Criminal Procedure) at the behest of persons already under detention. In a large number of such petitions, the main contention is of false implication. Likewise, many petitions seeking quashing of criminal proceeding (filed under Section 482 of the Code of Criminal Procedure) come up for hearing day after day, wherein also, the main contention is of fraudulent entanglement/ involvement. In matters where prayers for anticipatory bail or for bail made under Sections 438 and 439 are denied, or where a quashing petition filed under Section 482 of the Code of Criminal Procedure is declined, the person concerned may have to suffer periods of incarceration for different lengths of time. They suffer captivity and confinement most of the times (at least where they are accused of serious offences), till the culmination of their trial. In case of their conviction, they would continue in confinement during the appellate stages also, and in matters which reach the Supreme Court, till the disposal of their appeals by this Court. By the time they are acquitted at the appellate stage, they may have undergone long years of custody. When acquitted by this Court, they may have suffered imprisonment of 10 years, or more. When they are acquitted

A (by the trial or the appellate court), no one returns to them; what was wrongfully taken away from them. The system responsible for the administration of justice, is responsible for having deprived them of their lives, equivalent to the period of their detention. It is not untrue, that for all the wrong reasons, innocent B persons are subjected to suffer the ignominy of criminal prosecution and to suffer shame and humiliation. Just like it is the bounden duty of a court to serve the cause of justice to the victim, so also, it is the bounden duty of a court to ensure that an innocent person is not subjected to the rigours of criminal C prosecution.

19. The situation referred to above needs to be remedied. For the said purpose, adherence to a simple procedure could serve the objective. We accordingly direct, that on the completion of the investigation in a criminal case, the D prosecuting agency should apply its independent mind, and require all shortcomings to be rectified, if necessary by requiring further investigation. It should also be ensured, that the evidence gathered during investigation is truly and faithfully utilized, by confirming that all relevant witnesses and materials E for proving the charges are conscientiously presented during the trial of a case. This would achieve two purposes. Only persons against whom there is sufficient evidence, will have to suffer the rigors of criminal prosecution. By following the above procedure, in most criminal prosecutions, the concerned F agencies will be able to successfully establish the guilt of the accused.

20. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. G Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance H

of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for crystalizing mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/ prosecution officials course- content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/ prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.

21. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the

A consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel B compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/ C prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of D investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.

22. A copy of the instant judgment shall be transmitted by the Registry of this Court, to the Home Secretaries of all State E Governments and Union Territories, within one week. All the concerned Home Secretaries, shall ensure compliance of the directions recorded above. The records of consideration, in compliance with the above direction, shall be maintained.

F 23. We hope and trust the Home Department of the State of Gujarat, will identify the erring officers in the instant case, and will take appropriate departmental action against them, as may be considered appropriate, in accordance with law.

24. The instant criminal appeal is accordingly disposed of.

G

R.P. Appeal dismissed.