Form No: J(1)

IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Rajasekhar Mantha

And

The Hon'ble Justice Anuj Singh

CRIMINAL APPEAL NO. 169 OF 2012

MalayGhosh and Anr.
v.
State of West Bengal.

For the Appellant No.1 : Mr. Faziur Rahaman
Mr.R. Hahaman
Ms. Sampurna Ghosh
Mr. Saptak Naskar
Ms. Sananda Bhattacharjee
Mr. Debendra Nath Saha
Mr. Debraj Porey
Ms. Sukanya Sahoo
Mr. Parichay Pathak
Ms. Joshika Chatterjee
.....Advocates

For the Appellant No.2 : Mr. Sekhar Basu, Ld. Sr. Adv.
Ms. Munmun Tewary
Mr. Gourav Sarkar
.....Advocates

For the State : Mr. Rajendra Banerjee
Mr. Aditya Ratan Tiwari
Mr. Arka Naha
.....Advocates

Hearing concluded on : 17.09.2026

Judgment pronounced on: 14.10.2026

ANUJ SINGH, J:.

1. A six and a half year old child stepped out of her home on an ordinary evening to visit a familiar neighbour. She did not return. What casually began for her parents as a search for their daughter,

ended with a discovery that no parent could bear. Next morning, the child was found dead in a bag under a cotinside the room of the neighbour, whom she fondly called, 'Malay Kaku'. The primary question in this appeal is whether the evidence establishes that the appellants are guilty of murder of the child. The trial Court found the appellants guilty.

2. The present appeal is preferred against the Judgment dated January 30, 2012, and the order of sentence dated January 31, 2012, passed in Sessions Trial No. 54 of 2011 in Sessions Case No. 235 of 2011, corresponding to Ragunathpur Police Station Case No. 64 of 2011, dated July 22, 2011, registered for investigation into the offences punishable under Section 363/302/201/34 of the Indian Penal Code (State of West Bengal v. MalayGhosh and another).

3. By the impugned judgment, the trial court convicted the appellants for commission of offences punishable under Section 302/34 of the Indian Penal Code and, sentenced each of them to suffer rigorous imprisonment for life and to pay a fine of Rs. 10,000/- and in default, to suffer rigorous imprisonment for further one year. For the offencespunishable under Sections 201/34, they were sentenced to rigorous imprisonment for 7 years and to pay a fine of Rs. 2000/- and in default, to suffer further 6 months of rigorous imprisonment. The trial court directed that all the sentences of imprisonment would run concurrently.

I.PROSECUTION CASE

4. Instant case was registered on the basis of a written complaint lodged by one,MathuranathDeogharia, PW-1 at the Raghunathpur Police Station on July 22, 2011. The complainant informed the local Police Station that on July 21, 2011, at about 6.30 pm, his

daughter, namely Tamalika alias Pupun (hereinafter referred to as 'Tamalika'), aged about 6 ½ years, told her mother that she was going to the house of Malay Kaku. Tamalika used to frequently visit the house of Malay Kaku. After about 10 minutes, the wife of PW-1 namely,MitaliDeogharia, being the PW-10, went searching for Tamalika. When she reached the house of the appellants, their room was closed from inside, and Priya Ghosh, the appellant No. 2, informed PW10 that Tamalika did not come to their house. PW10 then inquired about Tamalika in other houses of the compound, but she was nowhere to be found. Hence, she returned to the house of appellants, but was again informed that Tamalika did not come to their house. Soon thereafter, some children/friends of Tamalika told the PW-1 that they had seen Tamalika enter the house of appellant No. 1. On the basis of such complaint, Raghunathpur PS being GDE No. 903 dated July 21, 2011, was recorded.

5. Curiously, the appellants did not come to the complainant's house to inquire about the whereabouts of Tamalika, which created a reasonable suspicion in their minds. After a night long search, the police reached the house of the appellants and inside their room, found the dead body of Tamalika inside a large blue-black bag lying under their cot. Several persons witnessed the recovery of the dead body from the residence of the appellants. Upon such discovery, local people started to assault Malay, but were stopped by the policemen.

6. Raghunathpur Police Station case no. 64 of 2011, dated July 22, 2011 was registered for investigation into the offences punishable under Sections 363/ 302/ 201/ 34 of the Indian Penal Code against the appellants. Upon completion of the investigation, the police submitted Charge Sheet no. 74 of 2011 dated September 24, 2011 under Sections 363/302/201/34 of the Indian Penal Code

against the appellants. Thereafter, the case was committed to the Court of Sessions Judge, Purulia who took cognizance of the offence on September 30, 2011. In the course of the proceeding, charges under Section 302/34 and Sections 201/34 of the Indian Penal Code were framed against both the appellants, who pleaded innocence and claimed to be tried.

7. The prosecution examined as many as 24 witnesses in support of the prosecution case. Including PW1, the deceased's father, 11 witnesses were examined who saw the recovery of the dead body from the appellant's room, namely, PW2, PW3, PW4, PW5, PW6, PW8, PW10, PW12, PW15, and PW20. Significantly, PW7, the child's friend, was examined as the witness who saw the deceased enter the house of the appellant. The post mortem was conducted by Dr. Amal Nath, PW17, who stated that the death was caused by asphyxia caused by strangulation/throttling and was antemortem and homicidal in nature.

8. The defense examined no witness.

II.ORAL EVIDENCE

9. PW-1,MathuranathDeogharia, the father of the victim and the de facto complainant, deposed that he resided as a tenant with his family in a rented house at Raghunathpur. Both the appellants were also tenants under the landlord,HaradhanGarain. He stated that on July 21, 2011, his daughter went to the house of the appellants after her tuition and did not return. Mitali Deogharia, mother of the victim, went over to the accused person's house in search of the daughter and found the door bolted from inside. Upon calling Priya Ghosh, the appellant No. 2, she replied that she was changing her dress and Tamalika was not there. PW1 deposed that despite the frantic searches, with the involvement of

neighbours, and the fire brigade searching the pond (doba) in their campus, the child could not be found. Thereafter, announcements were made through mikes, and the family decided to guard the campus overnight so that none of the residents could leave. Since the appellants did not come back to ask about the missing girl, it raised a suspicion in everyone's mind. PW1 deposed that early next morning, the appellants tried to flee the compound, but were intercepted by Mithu Pathak, PW 4 and others who stopped them. Raghunathpur PS was informed about the incident. Police arrived at the campus for search. Police directed the appellant no. 1 to go and unlock his house. The Police party, PW1, and a few other neighbours entered the house of the appellants, and ultimately a blue-black bag was found under the appellants cot, containing the dead body of the child covered under pieces of thermocol. Seeing this, the neighbours got enraged and assaulted the appellant No. 1. The police intervened and took the bag with the body of the victim, along with the appellants, to the police station. PW 6, PW7, PW 8, and PW 10 have also supported the evidence and have deposed about the victim's disappearance.

10. PW-10, the mother of the victim, in her deposition gave a detailed description of the incident. She desposedthat Tamalika was 6½ years old and attended nursery school, and that she went for private tuitions daily. After returning, she usually went out to play, and how much she was attracted to the aquarium, dolls, and mobile phones at the house of the appellants, which drew her there frequently. She deposed that Tamalika went to the house of the appellants after informing her. She deposed that after 10-15 minutes when she knocked on the house of Appellant No. 2, she, from inside, stated that Tamalika had not come. She narrated how searches were done throughout the campus, through fire brigade. She stated that Appellant No. 1 himself accompanied and took PW-1 to the railway station on the pretext of searching the child. She

deposed about the appellants attempting to flee away from the campus in the early hours of the next morning, and how the dead body of the child was recovered in her presence. She identified her daughter's wearing apparel, slippers, the bag, and a locket with black cord. She also exhibited her statement under Section 164 CrPC, recorded on August 11, 2011, which was marked as Exhibit 10.

11. PW4, Mithu Patak is the sister of PW-10. She deposed that she was informed about the fact that the child went missing and that she immediately rushed to the house of the complainant. She specifically deposed that, in the early dawn of July 22, 2011, the appellants tried to flee the campus, and that she personally intercepted them. After which the police was informed, and the appellants were brought to the police station. She also stated that she was present when the house of the appellants was searched and the body of the deceased was recovered from the bag under the cot. She exhibited her statement under Section 164 CrPC dated August 11, 2011.

12. PW6, Susmita Sarkar, also a resident of the same campus and whose room was adjacent to PW1's home, deposed that she overheard Tamalika telling her mother that she was going to the house of the appellants on the evening of July 21, 2011. She also deposed about the attempts made by the PW10, the mother of the victim, about the appellant no. 2 telling PW10 that she was changing her dress and the night long search. She also deposed about the attempt of the appellants to run away from the campus in the early morning of July 22, 2011, and how the appellants were intercepted by PW4 and about the subsequent police search, which led to recovery of the dead body. She was examined under Section 164 CrPC, and her statement was marked Exhibit 7.

13. PW7, Lata Garain, is a child witness aged about 10 years. She was examined after the Court examined her competence to depose. She deposed that Tamalika was her dear friend. She deposed that on the evening of July 21, 2011, while she was playing in the compound, she saw Tamalika enter the house of the appellants after she came back from her private tuition. She further deposed that her dead body was recovered the next day from the house of the appellants and identified both the accused. She also exhibited her statement under Section 164 CrPC, which was marked as Exhibit 8.

14. PW2, Arindam Chakraborty, the PW3, Jitendra Deogharia, and PW20, Sheikh Mantu individually deposed that they were present when the police searched the room of the appellants on July 22, 2011. They stated that the appellant No. 1 produced the key, opened the room, and took out the bag lying under the cot. They deposed that the child's body was found inside the bag, covered with pieces of thermocol.

15. PW5,Tumpa Dubey, a co-tenant, deposed about the search for the missing child and subsequent recovery of her body. PW12, Mihir Gope saw the child's mother knocking at the appellant's door on the previous evening. PW14,Ramatosh Pathak deposed that he arrived after learning about the disappearance of the child, and stated that he guarded the compound's gate overnight and confirmed the recovery of the dead body on the next morning.

16. PW-15, Asubrata Sarkar alias Bapi Sarkar, a tenant under HaradhanGarain, deposed that in course of the search of the missing child, the appellant No. 1 himself instructed PW-15 to search the small pond (doba) for Tamalika, which he did without any success. He also witnessed the recovery of the dead body from the house of the appellants and was a seizure witness.

17. PW16, Binoy Kumar Patkhak, the Additional Chief Judicial Magistrate, Raghunathpur recorded the statements under Section 164 CrPC of the appellant No. 2 on July 25, 2011, and the appellant No. 1 on August 23, 2011. He also exhibited the statements under Section 164 CrPC of Mithun Pathak and MitaliDeogharia, recorded on 11th August 2011, marked as Exhibit 20 and Exhibit 21, respectively.

18. PW-17, Dr. Amal Nath, the medical officer attached to Purulia Sadar Hospital, deposed that he conducted the postmortem of the deceased girl on July 22, 2011. He reiterated his findings stating that he found rigor mortis, venous congestion of neck, bluish finger nails, congested eyes, nail bite marks on the neck (1 on the left side, 2 on the right side, 1 upper, 1 lower), faint transverse finger mark above the thyroid on both sides of the neck, mild subcutaneous hematoma on the right side of the neck with an intact hyoid, a congested brain with intracerebral hemorrhage at the base, congested trachea with blood in the tracheal lumen, bilateral moderate hemithorax, congested lungs with hematomas in both lower lobes, congested internal organs (liver, spleen, kidneys). He found no signs of sexual assault or extra external injury on the body of the victim. He finally opined that the cause of the death was asphyxia due to strangulation, antemortem and homicidal in nature.

19. PW-11,HaradhanGarain, the landlord of the appellants, deposed that the victim's family and the appellants' family occupied rooms under him in the same premises. He deposed about the compound and the positions of the rooms. PW-13, Madhu Deogharia, proved her signature on the seizure list relating to seizure of the bag. She deposed that the seizure documents were prepared at the police station.

20. PW18, ASI Subrata Patra, recorded the initial report of the disappearance of the child as GDE entry no. 903 dated July 21, 2011. PW21, ASI Dilip Kumar Nath received the written complaint on July 22, 2011 and registered the formal FIR. PW19, Constable Barimbaran Pan, carried the dead body to the hospital and identified it before the postmortem and subsequently handed over the child's clothing to the police under seizure list.

21. PW9, Ranjit Kumar Halder a photographer, deposed about the six photographs he took of the body of the deceased at the place of occurrence. PW-22, ASI Sourav Kanti Das, proved the seizure of the photographs on September 7, 2011.

22. PW-23, SI Chandrashekhar Pyne, being the investigating officer of the case, gave evidence regarding the place of occurrence, preparing the rough sketch map, conducting the inquest over the body of the deceased, sending the body for postmortem, seizing the thermocol pieces and the cot from which the bag was recovered. He deposed that in view of the commotion at the scene/place of occurrence, he was unable to seize the bag at the place of occurrence. He stated that as the angry mob assaulted the appellant, he declared an unlawful assembly and registered a separate case against 13 persons for the assault. He further deposed that some police officers were also injured. He deposed that he seized the bag, hawai chappal, and thermocol pieces at the police station. He deposed about the arrest of the appellants, recording of their statements, and production of the appellant No. 2 for a voluntary statement under section 164 CrPC on July23, 2011 and the recording of various witnesses under Section 161 CrPC. He specifically deposed that the appellant No. 1, while in police custody, made a disclosure statement which led to the

recovery in the presence of several witnesses of the bag containing the dead body of the victim.

23. PW-24, CI Priyabrata Bakshi, the Circle Inspector of Police, took over the further investigation of the case from July 25, 2011. The said witness deposed about the subsequent stages of investigation, namely examining Mithu Pathak and Ramtosh Pathak. Since MitaliDeogharia could not be examined earlier due to her physical and mental agony and illness following the loss of her only child, he examined Jitendra and Gobindo Devgharia, and later on Lata Garain and HaradhanGarain. He also produced witnesses before Judicial Magistrate for recording statements under section Section 164 CrPC.

III.DOCUMENTARY EXHIBITS

24. The prosecution has exhibited the written complaint to the police station, the missing person diary entry, the formal FIR, the inquest report, the postmortem report, the sketch map, the seizure lists, photographs of the deceased and the place of occurrence, the statement of witnesses recorded under Section 164 CrPC and the statements of the two appellants under section 164 CrPC. These documents were marked Exhibit Nos. 1, 23, 26, 30, 22, 28 and 29, 9, 11, 13 and 25, 20, 21 and 34 to 36, 16 and 18, and 33, respectively.

IV.MATERIAL EXHIBITS

25. The prosecution exhibitedthe Bag as Material Exhibit I, the cloth and locket as Material Exhibit II, the slippers of the child as Material Exhibit III, the photographs and the negatives as Material Exhibit IV and V, the thermocol pieces as Material Exhibits XIII,

the signatures relating to envelope of the photographs, cot and plywood as Material Exhibits VI and VII.

V.ANALYSIS OF EVIDENCE BY THIS COURT

A.The child's disappearance and entry into the appellantsroom.

26. PW-10,MitaliDeogharia, in her deposition, has stated about the victim leaving the house after returning from private tuition, to play at the house of the appellants. The mother has also deposed how much the victim girl was attracted to the dolls, aquarium, and mobile phones at the residence of the appellants. She stated that on July 21, 2011 at about 6:30 pm, the child left for the house of the appellants. About 15 minutes thereafter, the mother reached the house of the appellants and knocked on the door of the appellants. The appellant No. 2, Priya Ghosh, claimed from inside that Tamalika had not come to their house and that she was changing her clothes. PW-10, in her cross-examination, has given further details of her household routine and specifically denied that the appellant No. 2 was with them throughout the night searching for the child. PW7, Lata Garain, who was aged about 10 years, specifically, deposed before the court that she personally saw Tamalika enter the house of the appellants in the evening. She further confirmed that the dead body of the child was recovered from the house of the appellants the next day. She also exhibited her statements under Section 164 CrPC, and her evidence remained unblemished in the course of the cross-examination.

27. PW7, is a crucial eyewitness, who had last seen the Tamalika entering the house of the appellants. PW6, Susmita Sarkar and PW

8, Rita Saha, residents of the same campus and whose rooms were adjacent to the house of PW1, stated that they had heard Tamalika telling her mother that she was going to the appellants house to play on the fateful evening. Thus, the direct evidence of PW-10 and PW-6, PW-7 and PW-8 completely establishes the disappearance of the child and her entry to the appellant's room.

B.The response of the appellants when inquired about the child.

28. PW-10, further deposed that soon after Tamalika went to the house of the appellants, she reached and knocked on the door of the appellants. The appellant No. 2, Priya Ghosh, did not open the door and, on the pretext that she was changing clothes, the appellant No. 2, further denied that Tamalika had visited their house that evening. PW-10, further deposed how the appellant No. 1 himself led the PW1 to the railway station on the pretext of searching the missing child. He deposed how the dead body of the victim girl was recovered the next morning in the presence of police and neighbours.

29. PW6, in his evidence, has also stated that she heard the appellant No. 1 say that Tamalika had left. The denial of the appellants regarding Tamalika visiting their house was ultimately proved false and unexplained when her dead body was recovered from the same room the next morning.

C.Search of the child and attempt of the appellants to run away.

30. PW1, PW 10, PW3, PW 4, PW 5, PW-6, PW 7, PW 8, PW 11, PW12, PW 14, PW 15, and PW 18 all deposed as to how the search for the missing child was conducted throughout the evening of July 21,

2011 and until the morning of July 22, 2011, when the dead body of the girl was recovered from the room of the appellants. PW4, Mithu Pathak has deposed that on the early dawn of July 22, 2011, the appellants tried to flee the campus, and that PW-4 had personally intercepted them and prevented them from running away.

D.Recovery of the body of the child in the room of the appellants.

31. PW-23, SI Chandrashekhar Pyne deposed that the appellant No. 1 made statements before the police, which led the police to recover the dead body of the child from his home. PW3 has made extensive deposition on how the appellant No. 1 led the police to his room, opened the same by taking out the key of the room from his pocket and drawing the bag lying under the cot.

32. There were several eyewitnesses to the recovery of the dead body from the room of the appellants being, PW1, PW2, PW 3, PW 4, PW 5, PW 6, PW 8, PW10, PW 15 and PW 20. The aforesaid discovery of the dead body happened after a disclosure under Section 27 of the Evidence Act. It is pertinent to mention that the appellants have failed to explain the recovery of the dead body from the room of the appellants.

E.Reason of death

33. PW-17, Dr. Amal Nath is a medical officer attached to Purulia Sadar Hospital. PW-17 has categorically deposed on the cause of death as well as the injury (as stated in paragraph 18 above) that the victim suffered before death.

F.Two Statements under Section 164 CrPC by the appellants

34. PW16, Binoy Kumar Pathak, the Additional Chief Judicial Magistrate, Raghunathpur deposed as the Magistrate who recorded the statement of Priya Ghosh, the appellant No. 2, on July 25, 2011, and the statement of Malay Ghosh, the appellant No. 1, on August 23, 2011 after the Superintendent, Correctional Home, Purulia was directed to produce him. The Magistrate (PW-16), has deposed and proved that the confessional statements of the accused persons were recorded verbatim in Bengali, read out,explained to, and voluntarily signed by the appellants. The PW-16, has further deposed that such statements were recorded after due caution and segregation. The said statements of the appellants No. 1 and 2 were marked as Exhibits 18 and 16, respectively. It would be evident from the statements made under Section 164 CrPC that both the appellants admitted that the child was murdered inside their room. It is significant to note thatwhile the appellant No. 1 has blamed the appellant No. 2 for murdering Tamalika, the appellant No. 2, in her statement under Section 164 CrPC, has stated that it was the appellant No. 1 who had murdered Tamalika. A joint reading of both these statements made under Section 164 CrPC to the Judicial Magistrate would lead to at least one disputed admitted inference from the aforementioned two statements that Tamalika was murdered inside the room of the appellants.

VI. COMPLETE CHAIN OF CIRCUMSTANCES POINTING TOWARDS THE GUILT OF THE APPELLANTS EXCLUDING EVERY REASONABLE HYPOTHESIS OF INNOCENCE:

35. In order to conclude that the appellants had murdered the victim girl, the circumstantial evidence must be looked into in light of the

five golden principles described as the *panchseel* of proof laid down in ***Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, paragraph 153**. Each incriminating circumstance must be fully established, and such events relied upon by the prosecution must only point towards the guilt of the accused, excluding every reasonable presumption of innocence. These principles were reiterated in***Santosh @ Rajesh @ Gopal v. State of Madhya Pradesh*, 2024 INSC 723**, paragraphs 9 and 10. Accordingly, we shall first examine whether the circumstances relied upon by the prosecution have been proved and thereafter determine whether, taken together, they establish the guilt of each appellant beyond any reasonable doubt.

36. On examination of the facts stated above and proved through a competent witness whose reliability could not be shaken, it is evident that a strong case against the appellant stands conclusively established.

37. PW-11 has proved that the victim's family and the appellants lived in separate rooms in the same premises. PW-10 has deposed that the child was familiar with the appellants and used to frequently visit their room. This makes the visit of the child to the residence of the appellants natural. PW10, whose evidence was corroborated by PW6 and PW8, deposed that the child informed PW-10 that she was going to the house of the appellants. The evidence of PW7 is crucial child witness. She witnessed that the victim child entering the appellants' room. The evidence of PW-7, stood unblemished and firm even during cross-examination. The above evidence establishes the entry of the victim girl inside the house of the appellants on the fateful evening. In considering the evidence of PW-7, being the child witness, we draw inspiration from **Suryanarayana v. State of Karnataka, *(2001) 9 SCC 129, paragraph 5*** where the Supreme Court has held that the evidence

of a child witness must be scrutinized with care to assess its reliability and exclude the possibility of tutoring. The principles were reiterated in***Hari Om Alias Hero v. State of Uttar Pradesh reported in (2021) 4 SCC 345***. In the instant case, PW7' s competence to depose before the trial court was duly tested by the judge. PW-7, deposed that while she was playing in the compound, she saw the victim girl enter the house of the appellants. Her evidence must therefore be looked at with particular reliability in the light of the statements of PW6 and PW10, who heard the child telling her mother that she was going to the house of the appellants. The evidence of PW7 completely establishes the child's entry to the room of the appellants.

38. The entry of the victim girl inside the room of the appellants was soon followed by the mother, PW10, reaching the room of the appellants, who found that the door was bolted from inside. On inquiry, PW10 was told by the Appellant No. 2 that the child had not come. The evidence of PW-10, read with the discovery of the dead body from the said room, establishes that the appellants were hiding the fact that the child was inside the room. The immediate response of the appellants was false and points only towards the culpability of the appellants. There cannot be any other inference. There is no evidence to show that the appellants room had no other entry or exit. In ***Mohd. Firoz v. State of Madhya Pradesh*, (2022) 7 SCC 443**, the Supreme Court has considered the significance of last seen evidence along with the surrounding circumstances, referring also to***Satpal v. State of Haryana*, (2018) 6 SCC 610, paragraph 6.** The aforesaid inference is linked with the proximity of time, possibility of intervening events, and other links proved by the prosecution. In the instant case, the evidence of the child's entry to the appellants' room must be considered with the reply to her mother by the appellant no.2 shortly thereafter, the overnight

search, and the recovery of the dead body from the room the following morning.

39. In course of the unsuccessful search of the lost child, the attempt of Malayto show his concern by taking the father (PW-1) to the railway station for search of the victim, followed by the attempt to flee the compound the next morning, before the appellants were intercepted by PW-4, Mithu Pathak also establishes and corroborates the chain of events.

40. The eventual recovery of the dead body in the room of the appellants was proved by a series of witnesses who described that Malay produced the key, opened the room, and drew out the bag from beneath the cot. This connects the appellants directly with the access to the room, knowledge of the concealed bag's location, and their common statement under section 164 CrPC that the child was murdered inside the room, establishes murder.

41. After the prosecution established the access of the child, her entry to the room of the appellants, her presence inside their room, and eventual recovery of the dead body from the said room demanded a credible explanation from each of the appellants. The appellants had special knowledge about the events that happened inside the room on the fateful evening. Their statement under Section 164 CrPC and their subsequent denial of guilt in the course of examination under Section 313 Cr PC establish that the appellants had absolutely no defence in the matter. They did not attempt to provide any explanation, which is a statutory mandate of Section 106 of the Evidence Act. In ***TrimukhMarotiKirkan v. State of Maharashtra*, (2006) 10 SCC 681, paragraph 15**, the Supreme Court has laid down the evidentiary difficulty that arises when an offence is committed in the secrecy inside a house. The law obliges the inmates of such a house to explain the facts which lie within

their special knowledge. If no such explanation is forthcoming, the inference of guilt stands satisfied. The principle was similarly considered in ***SabitriSamantaray v. State of Odisha*, Criminal Appeal No. 988 of 2017, decided on May 20, 2022, paragraphs 15 and 17 to 19**. The applicability of Section 106 of the Evidence Act has been explained in ***Nagendra Sah v. State of Bihar*(2021) 10 SCC 725 Paragraph 22.** It is evident therefrom that the prosecution must establish the facts from which an incriminating inference may arise, and the accused's failure to explain facts within special knowledge may then result in giving an additional link to the prosecution case. Such failure of the accused in itself does not give that additional link if the prosecution has failed to discharge its initial burden of proof. In the present case, the recovery of Tamalika's body from the appellants' room clearly shifted the onus of proof upon the appellants to explain the circumstances which the appellants failed. A similar factual scenario existed in **Ram Gulam Chaudhary v. State of Bihar, *(2001) 8 SCC 311***, where a boy was seen going inside the room of the accused and was thereafter never seen alive, leading to recovery of his dead body. The court held that once the prosecution had proved that the child went inside the house and never came alive thereafter, the obligation under Section 106 of the Evidence Act obliged the accused to explain the circumstances of such death. Their false denials eventually completed the chain of circumstantial evidence.

42. In view of the aforesaid, the entry of the victim girl into the room of the appellants, continued dominion and/or control of the appellants over the said room, the recovery of the concealed dead body of the victim from the room of the appellant, the evidence of PW17 establishing death by strangulation and homicidal, the evidence of the statement of both the appellants under Section 164 CrPC, appellants blaming on each other for killing the child,

however, both unequivocally admitting that the child was murdered inside the room leaves no iota of doubt that the child was murdered by the appellants.

Cases cited by the appellant's counsel

43. The Appellants' counsel has cited several judgments in order to argue that the evidence placed on record is not sufficient to find the appellants guilty of the offence of murder. It is necessary that each of such cases is discussed.

44. The Ld. Advocate of the Appellants relied on the decision of the Hon'ble Supreme Court in **Nandu Singh v. State of Madhya Pradesh, (2022) 19 SCC 301, paras 9 and 11**, to argue that in cases involving circumstantial evidence, motive is important to complete the chain of events. In that case, the prosecution relied only upon 'last-seen' theory. In the present case, the conviction does not solely rely upon the last seen theory. The prosecution has established an unbreakable chain of events through witnesses, and the sole testimony of PW-7 was not the basis of the conviction. In *Nandu Singh*, the prosecution case suffered from several material deficiencies, unlike the present case. It is now well settled that if a chain of circumstances establishes guilt then the same cannot be weakened just because of absence of motive. **(*See DhananjoyChaterjee v. State of West Bengal, (1994) 2 SCC 220*)**. Thus, Nandu Singh (supra), in our considered view, is not applicable to the present case.

45. The Ld. Advocate of the Appellants then relied on the Hon'ble Supreme Court's decision in **Putai v. State of Uttar Pradesh, 2025 SCC OnLine SC 1827, para 43**, to argue the possibility that the dead body of the child was planted. Putai (supra) is utterly

irrelevant to the facts of the present case as the appellants no. 1 lead the police to his room where the dead body was recovered in presence of several eye witnesses.All of such eye witnesses to recovery have deposed before the trial court. Such fact is also corroborated by their deposition and the statements under Section 164 CrPC statements of multiple witnesses. In Putai (supra), the deceased was found in an open agricultural field. *Putai* has no manner of application in the present case.

46. Reliance is then placed on **Surendra Koli v. State of Uttar Pradesh, 2025 SCC OnLine SC 2384, paras 12, 17 and 18**, to argue that Section 27 of the Evidence Act is not applicable in the present case since the guilt of the appellants has not been proved beyond reasonable doubt. In *Surendra Koli*, the Supreme Court on analysis of facts of that case found that the requirements of Section 27 of Evidence Act was not met due to investigative infirmities, conflict of seizure lists with remand papers, the bones and other articles already becoming known to the public before the alleged discovery. To the contrary, in the present case, there exist no such fault in investigation which can raise any suspicion of the evidence collected. In *Surendra Koli* acquittal was primarily due to investigative lapse and failure of the prosecution to establish the guilt. Since the present case is not based upon mere suspicion or conjecture, the decision in Surendra Koli (supra) is not applicable to the present case.

47. Reliance is also placed on **Vinobhaiv. State of Kerala, 2025 SCC OnLine SC 178, para 8**, to argue that in absence of supporting evidence, mere disclosure evidence is not adequate to direct conviction. In that case, there were material omissions in the statements of the two witnesses, resulting in contradictions. The only incriminating evidence was recovery of knife. The Court held that there must be supporting evidence to sustain conviction apart

from recovery of the weapon. In the present case, there are series of corroborating and supporting evidence regarding the core allegations and there are no material contradictions. Thus, Vinobhai (supra) is not applicable to the present case.

48. The Ld. Advocate of the Appellants then relied on ***Nazim v. State of Uttarakhand, 2025 SCC OnLine SC 2117, paras 30 and 40*** **and** ***Sk. Shanawaz v. State of West Bengal, 2018 SCC OnLine Cal 16830, para 21****,* to contend that in cases of circumstantial evidence, every circumstance must withstand scrutiny and that the last seen theory is weak evidence. In our considered view, the factual position of the present case is different, in sense that there is no such circumstantial evidence which is not properly tested by cross examination that weakens the prosecution case. Reliance is then placed on ***State of Uttar Pradesh v. Wasif Haider, (2019) 2 SCC 303, paras 24 and 25****,* and**Jalikam Khan v. State of U.P., (2021) 13 SCC 716, para 70,** to argue that benefit of doubt be given to the Appellants. In the present case, we do not consider that the appellant deserves any benefit of doubt, as the guilt of the appellants has been established by a chain of events.

49. Omwati v. Mahendra Singh, (1998) 9 SCC 81, para 9 has been cited to contend that if there are material infirmities in oral evidence, no conviction would be ordered based on such contradictory and/or infirm oral evidence. We find that in Omwati, apart from inconsistency in oral evidence, there were fingerprints and bloodstains on weapon which were not checked. There were overwritings on the panchnamas, etc. In Omwati (supra), the prosecution case was demolished during cross-examination there is no factual parity between Omwati and the case at hand, and as such, a reference to the said decision is distinguishable on facts.

50. Reliance is then placed on **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, paras 145 and 153**. Para 153 of that case lays down the "panchsheel" of circumstantial evidence and that such tests have not been satisfied. As discussed above, this court finds that the *panchseel* principles laid down by the Supreme Court stand fully satisfied in the instant case.

51. The circumstances unequivocally suggest that the common intention of both the appellants Nos. 1 and 2, being the husband and wife, was to commit murder of the victim child and conceal her dead body inside the room. They initially intended to hide the fact that the body was lying inside their room, but eventually had no other option but to lead to the recovery of the dead body of the victim. The conviction of both the appellants under Section 302 read with Section 34 of the Indian Penal Code stands proved without any reasonable doubt.

52. In order to prove and sustain a charge under Section 201 IPC the prosecution must establish, firstly, that the offence has been committed, secondly, that the accused has caused disappearance of the evidence regarding the offence so committed or has given false information regarding the same and thirdly, the accused persons did so with the intention of screening the offence or the offender from punishment. See ***Palvinder Kaur v. State of Punjab*, AIR 1952 SC 354** and***Sou. Vijaya @ Baby v. State of Maharashtra*, (2003) 8 SCC 296).**

53. In the case at hand, the offence of murder has been established beyond any reasonable doubt. The subsequent act of the appellants in concealing the dead body of the child was a calculated and/or desperate attempt to hide the dead body from being detected. The following acts of the appellants demonstrate the same. The dead body of the child was hidden inside a

blueblack bag. The same was covered with thermocol, possibly with the sole intent of preventing the odour of the dead body from coming out. The bag was hidden inside the cot of the appellants. The room was locked from inside, and when PW-10 inquired about her child, she was falsely told that the child did not go to the appellant's house. The appellant No. 1 feigned ignorance and diverted the father to the railway station and directed people to look for the child in the pond. And lastly, when both the appellants attempted to run away early morning next day.

54. All the above acts were not passive. Instead, they were deliberate and positive steps to conceal or hide the dead body, misdirect the parents, and conceal their act of murder.

Conclusion and findings of this court

55. The trial court has found that Tamalika entered the room of the appellants and was never seen alive thereafter. After she was last seen entering the house of the appellant, a dead body was recovered the next morning inside a bag hidden inside the bed of the appellant. PW-1, 2, 10, and 20, amongst others, specifically deposed that Malayproduced the key, opened the room, and drew out the bag containing the dead body of the child. The knowledge of the appellant No. 1 regarding the location of the dead body of the child is fully established by direct evidence of eyewitnesses. The recovery of the dead body was pursuant to the statements under Section 27 of the Evidence Act. The above evidence, read with the postmortem doctors' evidence that the death occurred because of strangulation.Further, it is pertinent to note the well-settled position of law that Section 164 CrPC statements are not substantive evidence in itself, and can be used by trial courts for corroboration or contradiction. In the present case as well, the trial court used the Section 164

statements of both the accused persons to corroborate the statements made by the witnesses at the previous stage and come to the conclusion. The statements under Section 164 CrPC made by both the accused admitting the death inside the room, corroborated the other evidence and assisted in completing chain of circumstance tharled the trial court to an irresistible conclusion that the appellants Nos. 1 and 2 jointly committed murder of the victim.

56. It is necessary to emphasise that the conviction of the appellants rests upon the basic chain of circumstances which the prosecution has proved through the witnesses examined before the trial court, each link of which has withstood cross-examination. Firstly, the child, a regular visitor to the appellants' room, told her mother that she was going there, and PW-7 saw her enter the room on the evening of July 21, 2011. Secondly, within a few minutes, PW-10 found the door bolted from inside and was told by the appellant No. 2 that the child had not come, which answer was false. Thirdly, there is no evidence that the appellants room had any other entry or exit and that the same was in the exclusive occupation of the appellants. Fourthly, at dawn the next morning the appellants attempted to leave the compound and were intercepted by PW-4. Fifthly, the appellant No. 1 produced the key, opened the locked room and drew out the bag from beneath the cot, in which the body of the child lay concealed under pieces of thermocol. Sixthly, PW-17 proved that the death was homicidal, caused by asphyxia due to strangulation. Each of these circumstances has been fully established, and taken together they form a chain so complete that it is consistent only with the guilt of the appellants.

57. Against this proved chain, what happened inside the room between the entry of the child in the evening and the recovery of her body the next morning was a fact especially within the knowledge of the appellants. Section 106 of the Evidence Act

required them to explain it. They did not explain whatsoever. They examined no witness, and in their examination under Section 313 CrPC they merely denied the incriminating circumstances put to them. They did not explain how the child came to be inside their room when they had denied her presence, how she came to die there, or how her body came to be packed in a bag beneath their cot. Instead, they gave a false answer to the child's mother, misdirected the search, and attempted to flee. The statements of the appellants under Section 164 CrPC, in which neither of them disputes that the child died inside the room, only establishes the prosecution's case.

58. We therefore hold that both the appellants knowingly and intentionally concealed the dead body of Tamalika to hide or screen their offenceof murder.

59. In the result, we hold that the prosecution has proved the charges under Section 302/34 and Section 201/34 of the Indian Penal Code against both the appellants beyond all reasonable doubt. The chain of circumstances of evidence leading to such a conclusion is complete and does not reasonably substantiate any conclusion other than the guilt of the appellants. Consequently, the judgment of conviction dated January 30, 2012, and the order of sentence dated January 31, 2012, passed by the learned Sessions Judge, Purulia, in Sessions Trial No. 54 of 2011 arising out of Sessions Case No. 235 of 2011, are hereby affirmed in their entirety.

60. Criminal Appeal No. 169 of 2012 is accordingly dismissed.

61. If any of the appellants are currently on bail, their bail bond shall stand forfeited and/or cancelled forthwith. The appellants are directed to surrender before the learned Sessions Judge, Purulia, within a period of 3 weeks from date, to serve out the remaining

period of their sentence,failing which, the learned Sessions Judge shall take immediate steps, including issuing a non-bailable warrant of arrest, to secure custody of the convicts in accordance with law.

62. In the event the appellants/appellant are already in a correctional home, they shall continue to serve their sentence as directed by the trial court. The appellant herein shall be entitled to the set-off under Section 428 CrPC for the period of custody already undergone during investigation or trial of the case.

63. Let a copy of the judgment and order, along with the lower court records, be sent back to the learned Sessions Judge, Purulia, for information and necessary compliance.

64. Urgent certified copy of the judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

I agree,

(Rajasekhar Mantha, J.) **(Anuj Singh, J.)**