IN THE HIGH COURT OF JHARKHAND AT RANCHI
Death Reference No.01 of 2025

[Against the Judgment of conviction dated 09.01.2025 and Order of sentence dated 10.01.2025 passed by learned Additional and Sessions Judge-I-cum-Special Judge (POCSO Act), Lohardaga, in Special POCSO Case No.09/2023]

The State of Jharkhand **... ... Appellants**

Versus

Indar Oraon, son of Laxman Oraon, aged about 25 years, resident of Village-Areya, P.O. Kisko, P.S. Bagru, District-Lohardaga, Jharkhand. **... ... Respondent**

With

Criminal Appeal (DB) No.847 of 2025

Indar Oraon, son of Laxman Oraon, aged about 25 years, resident of Village-Areya, P.O. Kisko, P.S. Bagru, District-Lohardaga, Jharkhand. **... ... Appellant**

Versus

The State of Jharkhand **... ... Respondent**

P R E S E N T

HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

.....

[Death Reference No.01/2025]

For the Appellant : Mr. Pankaj Kumar, P.P.
: Ms. Sharda Kumari, A.C. to P.P.
For the Respondent : Mr. Mahesh Tewari, Advocate

[Cr. Appeal (DB) No.847/2025]

For the Appellant : Mr. Kumar Vaibhav, Amicus Curiae
For the Respondent : Mr. Pankaj Kumar, P.P.
: Ms. Sharda Kumari, A.C. to P.P.

.....

C.A.V. on 05.12.2025 **Pronounced on 06/01/2026**

Per Sujit Narayan Prasad, J.

1. Heard learned counsel for the appellant, facing the death sentence, and learned counsel for the State, in the death reference.

2. As this death reference and the instant appeal arise out of the common Judgment of conviction and Order of sentence, they were heard together and are being disposed of by this common Judgment.

3. This death reference and the connected Criminal Appeal arise out of the impugned Judgment of conviction dated 09.01.2025 and Order of sentence dated 10.01.2025 passed by learned Additional and Sessions Judge-I-cum-Special Judge (POCSO Act), Lohardaga, in Special POCSO Case No.09/2023 whereby, the sole appellant Indar Oraon has been found guilty and convicted for the offences under Sections 302 of the Indian Penal Code and Section 6 of the POCSO Act.

Upon hearing on the point of sentence, the appellant Indar Oraon has been sentenced to the capital punishment of death, for the offence under Section 302 of the Indian Penal Code, directing him to be hanged by neck till his death. He has further been sentenced to R.I. of Life imprisonment (remainder of natural life) and fine of Rs. 25,000/- (Twenty Five Thousand) for offence u/s 6 POCSO Act. In the event of default of payment of fine, he shall undergo S.I. of One month.

Aggrieved by the said Judgment of Conviction and Order of sentence, the appellant has preferred the present appeal, whereas the death reference is made by the learned Trial

Court for confirmation of the death sentence imposed upon the sole appellant, namely Indar Oraon.

Factual Matrix

4. This Court, before proceeding to examine the legality and propriety of the judgment of conviction and order of sentence, deems it fit and proper to refer the background of institution of prosecution case. The prosecution story in brief as per the allegation made in the First Information Report reads hereunder as :-

The case of the prosecution is that on 24.12.2022 at 3.00 O'clock the informant alongwith her younger daughter (victim/deceased aged about 5 years) visited towards roof of Anganbari for getting the paddy crop parched.

In the meanwhile, her daughter rushed out from there and started playing with other children. Accused Indar Oraon aged about 25 years visited there and offered 5 rupees to each children and on the other hand her daughter was offered 50 rupees by the accused Indar Oraon.

Accused Indar Oraon wandered alongwith her daughter. At 4.35 O'clock when she returned home, her daughter was found to be missing. She inquired whereabout of her daughter from Indar Oraon accused.

She on suspicion apprehended accused but accused Indar Oraon strove hard to stifle her in the court yard of Fuldeo.

In the meanwhile, Sukhmaniya Oraon and Heeramuni Oraon rushed there and informed her that her daughter was lying dead. Then Indar Oraon started fleeing from the spot but he was apprehended by the people who divulged that he attempted to ravish the victim/deceased behind the house of Tewasi Oraon during which victim/deceased squealed and in the said course he stifled her neck causing her death.

It has been indicted that Indar Oraon killed the victim/deceased when he attempted to ravish her. It has been also alleged that Indar Oraon was having criminal history of killing her grand-mother and in this connection earlier a case was instituted in Bagru Police Station. Thereafter the matter was reported to the Bagru Police Station for institution of F.I.R.

On the written report of informant, this case was instituted vide Bagru P.S. Case No. 33/2022 dated 24.12.2022 for the offences u/s 302, 376(2)(f) of I.P.C. and Section 6 POCSO Act.

5. After investigation Police submitted charge-sheet against the accused /appellant for the offences U/s 302, 376(2)(f) I.P.C. and Section 6 POCSO Act.

6. On 23.02.2023, cognizance was taken against accused/appellant for the offences U/s 302, 376(2)(f) IPC and Section 6 POCSO Act.

7. Accordingly, charges U/s 376(2)(f), 302 IPC and Section 6 POCSO Act were framed against the appellant which was read and explained to him to which he pleaded not guilty and claimed to be tried.

8. In order to establish charges levelled against accused person, prosecution examined altogether 17 witnesses which are as follows:

PW-1	Mehrani Orain
PW-2	Sukhmaniya Oraon
PW-3	Rajmuni Oraon
PW-4	Mrs. X (Informant)
PW-5	Bipasa Oraon
PW-6	Khushboo Kumari
PW-7	Bablu Oraon
PW-8	Sudhir Oraon
PW-9	Priti Oraon
PW-10	Sunil Oraon
PW-11	Biyas Sahu
PW-12	Sulendra Sahu
PW-13	Dr. Anand Kumar
PW-14	Dr. Ajay Kumar Bhagat
PW-15	Kiran Pandit
PW-16	Vishwajit Kumar Singh (I.O.)
PW-17	Pankaj Kumar Sharma (I.O.)

9. The Defence has not examined any witness in support of his case.

10. The trial Court, after recording the evidence of witnesses, examination-in-chief and cross-examination, recorded the statement of the accused/appellant found the charges levelled against the appellant proved beyond all reasonable doubts.

11. Accordingly, the appellant had been found guilty and convicted for the offence punishable under Section 302 of the Indian Penal Code and Section 6 of the POCSO Act.

12. The aforesaid order of conviction and sentence is subject matter of instant appeal.

Submission of the learned counsel for the appellant:

13. Learned counsel for the appellant has submitted that the impugned Judgment of conviction and Order of sentence passed by the trial court cannot be sustained in the eyes of law.

14. The following grounds have been taken by the learned counsel for the appellant in assailing the impugned judgment of conviction: -

(i) The impugned judgment of conviction and sentence has been passed mechanically and without appreciating the evidence available on record and without taking into consideration the

evidences in its right perspective, thereby arriving at erroneous conclusion.

(ii) The impugned judgment is not sustainable either on facts or in the eyes of law and is fit to be set aside as the same has been passed on conjectures, surmises and suspicion.

(iii) The learned Trial Court has failed to appreciate the fact that the version of PW-1-Mehrani Orain and PW-2-Sukhmaniya Oraon did not inculpate the Appellant with certainty and did not prove the case of the prosecution beyond reasonable doubt.

(iv) The learned Trial Court has failed to appreciate that PW-3- Rajmuni Oraon was merely a witness who had seen the dead body and she is not the witness of alleged occurrence. Further, the PW-3's version of seizure also casts a serious doubt on the factum of seizure.

(v) The learned Trial Court has failed to appreciate that there was improvement in the deposition of the PW-4- informant in the trial as compared to her version in the FIR thereby casting a serious doubt on her testimony.

(vi) Learned Trial Court has failed to appreciate that the evidence of PW-5 Bipasa Oraon, PW-6 Khushboo Kumari and PW-9 Priti Oraon were

merely of the nature of 'last seen' and did not further the case of the prosecution as regard the alleged occurrence. Further, the learned Trial Court did not record proper satisfaction that these witnesses being child witnesses were competent to understand the facts and circumstances of the matter.

(vii) The learned Trial Court has failed to appreciate that the purported confession made by the Appellant before the PW-7 Bablu Oraon was made in 'Sadri' language which the witness has expressed inability to understand in his cross-examination and hence the entire prosecution version of Appellant's extra-judicial confession stood demolished.

(viii) The learned Trial Court has failed to appreciate that the PW-8 has specifically stated in his cross-examination that he had not witness the alleged occurrence as he was at his home.

(ix) The learned Trial Court has failed to appreciate that the evidence of the PW-10, 11 and 12 was in the nature of hearsay and hence did not further the case of the prosecution.

(x) The learned Trial Court has failed to appreciate that the prosecution had failed to examine Prof.

Dr. Chandrashekhar Prasad under whose supervision the post-mortem of the deceased was conducted, as specifically deposed by PW-13 in his cross-examination.

(xi) The learned Trial Court has failed to appreciate that the PW-15 Kiran Pandit in her cross-examination has specifically stated that the inquest report does not specifically state that the dead body was found from near the house of Tewasi Oraon.

(xii) The learned Trial Court has failed to appreciate the fact that there is no eye witness to the alleged occurrence and that the prosecution failed to examine several material witnesses in order to unearth the truth of the matter.

(xiii) The learned Trial Court has failed to take into consideration that the prosecution was unable to establish the time of death of the deceased with precision thereby casting a serious doubt on the entire case of the prosecution.

(xiv) The learned Trial Court has failed to take into consideration that the forensic report completely negated the involvement of the Appellant in the alleged crime since there was no DNA match of the Appellant with any of the seized materials.

(xv) The learned Trial Court has failed to take into consideration that the case was of circumstantial evidence however none of the chain of circumstances were complete so as to give rise to an irrefutable inference that the alleged crime has been committed by the Appellant.

(xvi) The learned Trial Court has failed to take into consideration that the last-seen version put forth by the prosecution was extremely faint and could not be construed as incriminating material against the Appellant.

(xvii) The learned Trial Court has failed to take into consideration that the medical and forensic evidence did not corroborate the prosecution case.

(xviii) The learned Trial Court has failed to take into consideration that the extra-judicial confession of the Appellant was not at all corroborated by any other evidence led by the prosecution.

(xix) The learned Trial Court has miserably failed to take into consideration that there are several inconsistencies, improvement and contradictions in the evidence of prosecution witnesses, which cast a serious doubt on the entire case of the prosecution.

(xx) The learned Trial Court has failed to properly appreciate the statement of the Appellants recorded u/s 351 of the BNSS.

(xxi) The prosecution has not been able to prove the charges leveled against the accused persons beyond shadow of all reasonable doubt.

(xxii) The prosecution has failed to establish any motive of the Appellant for committing the alleged offence.

(xxiii) The learned Trial Court has failed to take into consideration that the entire investigation was conducted in hot-haste by the police.

(xxiv) The learned Trial Court has failed to take into consideration the principle that if offence is proved by circumstantial evidence ordinarily death penalty should not be awarded and no 'special reason' has been recorded by the learned court below which makes awarding of death penalty imperative.

(xxv) The learned Trial Court has failed to apply and balance aggravating circumstances with mitigating circumstances while awarding death penalty to the Appellant and has also failed to take into consideration that the Appellant is a young person.

(xxvi) The learned Trial Court has failed to take into consideration that even if it is held that the prosecution has been able to prove its case beyond

reasonable doubt, still the instant case is not 'rarest of rare case warranting imposition of death penalty.

(xxvii) The learned Trial Court has miserably failed to record a finding that the Appellant was beyond any reforms and that the death penalty was the only option in the facts and circumstances of the case and that alternative option of a lesser punishment is unquestionably foreclosed.

(xxviii) Learned counsel, accordingly, submitted that there being only circumstantial evidence against the accused and there being no eyewitness to the occurrence of rape, murder or concealing the dead body, it was a fit case, in which, the appellant ought to have been given at least the benefits of doubt.

15. The learned counsel for the appellant, based upon the aforesaid grounds, has submitted that, therefore, it is a case where the judgment of conviction and order of sentence is fit to be interfered with.

Submission of the learned counsel/P.P for the state:

16. Per contra, Mr. Pankaj Kumar, learned Public Prosecutor appearing for the State, has submitted by taking the following grounds in defending the impugned judgment:

(i) Learned counsel for the State submitted that the case in hand relates to brutal murder of the victim girl after commission of rape upon her by the accused in extremely brutal, gruesome and diabolical manner, and the case comes within the category of rarest of rare cases, and as such it is a fit case in which the death sentence awarded to the accused by the Trial Court below be confirmed, irrespective of his age, family background or lack of criminal antecedents, which cannot be considered as mitigating circumstances

(ii) Learned State counsel while supporting the death reference, has placed reliance upon the decisions of the Hon'ble Apex Court in **Bachan Singh Vs. State of Punjab**, reported in ***(1980) 2 SCC 684*** and **Machi Singh & Ors. Vs. State of Punjab**, reported in ***(1983) 3 SCC 470***, giving the necessary guidelines for awarding the death sentence, and submitted that in **Machi Singh's** case *(supra),* it has been held that when the victim of murder is *an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder,* the case comes within the rarest of the rare category, and it is a fit case for imposing the death sentence.

(iii) Learned counsel has further placed reliance upon the decision of the Hon'ble Apex Court in **Bantu Vs. State of U.P.,** reported in ***(2008) 11 SCC 113***, which related to the rape and murder of a child, aged about five years, wherein the Apex Court held that the case fell within the category of rarest of rare cases, affirming the death sentence.

(iv) Similarly, in **Shivaji Vs. State of Maharashtra**, reported in ***(2008) 15 SCC 269***, which related to rape and murder of a child aged about nine years, it was held that the plea that in cases of circumstantial evidence, the death sentence should not be awarded, is without any logic. This case was also found to be falling within the category of rarest of rare cases, and the death sentence to the accused was affirmed.

(v) Again in **Purushottam Dashrath Borate Vs. State of Maharashtra**, reported in ***AIR 2015 SC 2170***, the Supreme Court, in a case related to gang rape and murder of a married woman, re-iterated the need of imposing just punishment upon the accused, holding that the undue sympathy shown to the accused shall do more harm. It was also held that the age of the accused or his family background or lack of criminal antecedents,

cannot alone be considered as mitigating circumstances. The death sentence was affirmed by the Hon'ble Apex Court, upon the accused in spite of his young age.

17. Learned counsel for the State, based upon the aforesaid pronouncements, has submitted that the impugned judgement needs no interference.

Response of the learned counsel for the appellant

18. Learned counsel appearing for the appellant, in response, has submitted that simply because the case relates to rape and murder of a child, it does not come under the category of rarest of rare cases.

19. Learned counsel for the appellant, in support of his contention, has placed reliance upon the decisions of the Supreme Court in **Sebastian Vs. State of Kerela**, reported in ***(2010) 1 SCC 58***, **Ram Deo Prasad Vs. State of Bihar**, reported in ***(2013) 7 SCC 725*****, Tattu Lodhi Vs. State of M.P.,** reported in ***(2016) 9 SCC 675***, and in all these cases, the child aged between 2 to 7 years were murdered after committing rape upon them but the Hon'ble Supreme Court, in the facts of these cases, held that they do not come within the category of rarest of rare cases, and the death sentence awarded by the Trial Court, and confirmed by the High Court, were commuted to life imprisonment.

20. Learned counsel has also placed reliance upon the decision of **Rameshbhai Chandubhai Rathod (2) Vs. State of Gujarat**, reported in ***(2011) 2 SCC 764***, which also related to rape and murder of a child by the guard of the building. The Hon'ble Supreme Court laid down the law that it was obligatory upon the Trial Court to have given the finding as to a possible rehabilitation and reformation and the possibility that the accused could still be a useful member of the society, in case, he was given a chance to do so, and in absence of such finding, the death sentence awarded by the Trial Court and confirmed by the High Court, was commuted to the sentence for whole life, but subject to any remission or commutation of sentence by the State Government for good and social reasons.

21. Placing reliance on these decisions, learned counsel submitted that the present case also, does not come within the purview of rarest of rare cases, and it is a fit case in which the death sentence passed by the Trial Court below be set aside for the offence under Section 302 of the Indian Penal Code.

22. It has also been submitted that the Trial Court has not given any finding as to a possible rehabilitation and reformation of the accused/appellant and in absence of such finding, the death sentence awarded by the Trial Court cannot be sustained in the eyes of law.

Analysis

23. We have heard learned counsel for the parties and appreciated their arguments.

24. The issues which require consideration based upon the argument advanced on behalf of the parties are –

(i) whether prosecution has been able to prove charges levelled against accused person/appellant beyond all reasonable doubt or not

(ii) Whether the case in hand comes under the purview of rarest of rare cases?

(iii) Whether there is no alternative but to impose death sentence in the facts and circumstances of the case?

25. Since all the issues are interlinked and, as such, all are being taken up together for its consideration. But, before considering the same, background of the initiation of the case right from the day of institution of F.I.R. and evidence led on behalf of the prosecution and the statement recorded under Section 313 Cr.P.C. need to be referred herein :-

The case of the prosecution is that on 24.12.2022 at 3.00 O'clock the informant alongwith her younger daughter (victim/deceased aged about 5 years) visited towards roof of Anganbari for getting the paddy crop parched.

In the meanwhile, her daughter rushed out from there and started playing with other children. Accused Indar Oraon aged about 25 years visited there and offered 5 rupees to each

child and on the other hand her daughter was offered 50 rupees by the accused Indar Oraon.

Accused Indar Oraon wandered alongwith her daughter. At 4.35 O'clock when she returned home, her daughter was found to be missing. She inquired whereabout of her daughter from Indar Oraon accused.

She on suspicion apprehended accused but accused Indar Oraon strove hard to stifle her in the court yard of Fuldeo.

In the meanwhile, Sukhmaniya Oraon and Heeramuni Oraon rushed there and informed her that her daughter was lying dead. Then Indar Oraon started fleeing from the spot but he was apprehended by the people who divulged that he attempted to ravish the victim/deceased behind the house of Tewasi Oraon during which victim/deceased squealed and in the said course he stifled her neck causing her death.

It has been alleged that Indar Oraon killed the victim/deceased when he attempted to ravish her. It has been also alleged that Indar Oraon was having criminal history of killing her grand-mother and in this connection earlier a case was instituted in Bagru Police Station. Thereafter the matter was reported to the Bagru Police Station for institution of F.I.R.

26. On the basis of the written report of informant, this case was instituted for the offences u/s 302, 376(2)(f) of I.P.C. and

Section 6 POCSO Act and accordingly, the cognizance of the offences was taken against accused/appellant Indar Oraon charges were framed for the offences U/s 302, 376(2)(f) IPC and Section 6 POCSO Act and accordingly trial procedded.

27. In course of trial, the prosecution has examined altogether 17 witnesses. Their depositions are being referred herein :-

P.W. 1 is Mehrani Orain. She deposed that occurrence took place seven months ago on Saturday. It was 5.30 PM. At that time, she was bringing mud to her house from the field. In the meanwhile, she noticed that Indar Oraon dragged the victim inside the bathroom and bolted the bathroom. After sometime he rushed out from bathroom with having child (victim/deceased) in his hand and laid the said child beneath flowering plant. He also shrouded the said child by sack and eloped from the spot. Then she screamed. Villagers gathered there and it was traced out that the said child was dead. Villagers apprehended Indar Oraon. Prior to the alleged occurrence Indar Oraon had killed her grand-mother. She identified the accused Indar Oraon present in the court room through Video Conferencing.

In cross-examination, at paragraph-5 she has stated that when she was bringing mud at her house then she noticed that the accused was loitering with deceased/victim.

She did not notice as to what was done with the victim/deceased inside the bathroom.

P.W. 2 is Sukhmaniya Oraon. She deposed that alleged occurrence took place 6-7 months ago. At 4.00 PM Indar Oraon was seen loitering with the victim/deceased. Thereafter she heard the screaming sound of Mehrani (PW 1) and noticed that the said victim child was lying dead beneath the plant of Marigold. Indar Oraon had killed her. Police rushed there and seized rice sack and small piece of cement plaster from the alleged place of occurrence. Seizure list was prepared upon which she provided her thumb impression. She identified the accused Indar Oraon present in the court room through Video Conferencing.

During cross-examination she asserted that she has not witnessed the alleged occurrence.

P.W. 3 is Rajmuni Oraon. She deposed that alleged occurrence took place on 24.12.2022. In the evening when she rushed to bathroom to wash her legs then she noticed that the informant's daughter (victim/deceased) was lying dead there. Thereafter she raised alarm. The dead body was lying shrouded by sack beneath marigold plant situated outside the alleged said bathroom. On hulla Hiramuni and Sukhmaniya rushed there who informed the informant regarding the said matter. Police also rushed on the spot. Informant inquired the matter from the Indar then he started to elope. Sudhir and

Bablu apprehended him. Police seized bloodstained rice sack and cement plaster. Seizure list was prepared which bears her signature. She proved her signature thereon as Ext. P-1. She identified the accused Indar Oraon present in the court room through Video Conferencing.

During cross-examination she asserted that she noticed the dead body of child lying there. The dead body was shrouded with sack.

P.W. 4 is Mrs. X (victim's mother-cum-informant). She deposed that occurrence took place on 24.12.2022. Her daughter was playing with her friends. She was indulged in some cultivation work and when she returned home at 4.30 PM, her daughter was found to be missing. Then she inquired the whereabout of her daughter from her daughter's friends. They divulged to her that Indar Oraon provided them 20 rupees and he also provided 50 rupees to the deceased/victim. They also narrated to her that they rushed towards shop for biscuit and chocolate while Indar was loitering with the deceased/victim. Frantic search was made by her then she rushed towards chowk where she came across Indar Oraon who was eating chowmin there. When she inquired the matter from Indar then Indar Oraon started trembling and the chowmin plate fell down on ground. Sukhmaniya and Hiramani visited there who unfolded to her that her daughter was lying behind the bathroom of Dewasi Oraon. Indar Oraon

strove hard to elope from there but Sudhir Oraon and Bablu Oraon apprehended Indar after chase who confessed before the villagers that he stifled the deceased/victim after committing rape upon her in the bathroom of Dewasi Oraon. Police visited there. There was scratch mark over the cheek of deceased/victim. There was strangulation mark over the neck of the deceased/victim. Deceased/victim was of five years and two months at the time of alleged occurrence. Blood also exuded from the private part of deceased/victim. Then she instituted this case. She proved the said written report as Ext. P-2. Postmortem was done at RIMS Ranchi. Accused had also earlier committed the murder of his grand-mother. She identified the accused Indar Oraon present in the court room through Video Conferencing.

During cross-examination, at paragraph 16, she has stated that she did not notice Indar enticing her daughter away. Children playing along with her daughter narrated to her that Indar caused them to visit the shop and, in the meanwhile, he was seen to be loitering with her daughter. During para no. 17 of cross-examination, she asserted that she did not notice accused offering money to the children.

P.W. 5 is Bipasa Oraon. This witness is aged about 8 years. She deposed that she was the student of class IV and the alleged occurrence took place seven months ago. She had returned from her school at 3.00 PM. Thereafter she, Priti,

Khushboo and deceased/victim were playing in court yard. Indar rushed on the spot and he provided 20 rupees to them. He also provided 50 rupees to the deceased/victim. He also caused her and her friends to go outside to have some refreshment. He clasped the deceased/victim due to which deceased/victim could not accompany her. Thereafter she rushed to the shop to have chocolate and biscuit. When she returned from the shop then deceased/victim and accused Indar were not present there. When they were going home then the mother of deceased/victim asked whereabout of her daughter then she narrated that Indar was loitering with her. One lady visited towards her washroom then she noticed the dead body of deceased/victim was lying there shrouded with sack. She noticed that blood percolated from her mouth and 50 rupees note was lying in her hand. She came to have learnt that Indar slayed her. She identified the accused Indar Oraon present in the court room through Video Conferencing.

During cross-examination, she has stated at paragraph 11 that she took 20 rupees from Indar and rushed towards shop. After half an hour she returned from shop. In para no. 14 she has also stated that when she was going to the shop then deceased was along with Indar.

P.W. 6 is Khushboo Kumari. This witness is aged about 11 years old. She deposed that she was the student of class IV and the alleged occurrence took place seven months

ago. She had returned from her school at 3.00 PM. Thereafter she, Priti, Bipasa and deceased/victim were playing in court yard. Indar rushed on the spot and he provided 20 rupees to them. He also provided 50 rupees to the deceased/victim. He also caused her and her friends to go outside to have some sweets. He asked deceased/victim to stay with him and let her friends to visit the shop. Thereafter she along with her friends (except deceased/victim) rushed to the shop. When she along with her friends returned from the shop then they found deceased/victim and accused Indar missing from the said court yard. She narrated to the deceased's mother about loitering of deceased/victim with accused Indar. She came to have learnt that Indar slayed deceased/victim in the bathroom covering her dead body behind the bathroom by cement sack. She identified the accused Indar Oraon present in the court room through Video Conferencing.

In her cross-examination, she has stated at paragraph 13 that Indar on the alleged date of occurrence offered money to her.

P.W. 7 is Bablu Oraon. He deposed that occurrence took place on 24.12.2022. During that time, he was at his house then he heard some *hulla*. He rushed out and noticed the over crowd-ness near the Areya Chowmin Shop. Indar Oraon strove hard to elope from there but on the *hulla* of villagers he apprehended Indar Oraon. Villagers also thronged

there. Indar Oraon narrated to them that he stifled the deceased/victim after committing rape upon her and also unravelled to them that he shrouded the body of victim by sack near flower plant situated at the bathroom of Tewasi Oraon. On this disclosure he along with villagers rushed on the spot and found the dead body of victim lying there. He identified the accused Indar Oraon present in the court room through Video Conferencing.

In his cross-examination, he has stated at paragraph 5 that he had not witnessed the alleged occurrence rather he rushed to the spot after the completion of alleged occurrence. Indar was apprehended by him and Sudhir. Villagers also thronged there. The language used by the accused in course of disclosure was *Sadri*. No material contradictions could be extracted by the defence.

P.W. 8 is Sudhir Oraon. He deposed that occurrence took place on 24.12.2022. He heard some *hulla* emanating from Areya Chowk. He rushed towards there. People crowded at the *chowmin* shop. He noticed that informant was asking whereabout of her daughter from Indar Oraon. Indar Oraon was puzzled and *chowmin* plate fell down from his hand. In the meanwhile Hiramani and Sukhmaniya visited there, who narrated to the informant that her daughter was found to be dead near the bathroom of Tewasi Oraon. Indar Oraon strove hard to elope from there. Then he and Bablu Oraon

apprehended Indar Oraon after chase. Indar Oraon unravelled to them that he stifled the deceased/victim after committing rape upon her and also disclosed to them that he shrouded the body of victim by sack near flower plant situated at the bathroom of Tewasi Oraon. On this disclosure he along with villagers rushed on the spot and found the dead body of victim lying there. He also noticed nail and hand impression over the neck of deceased/victim. He identified the accused Indar Oraon present in the court room through Video Conferencing.

During cross-examination he has deposed that he has not witnessed the alleged occurrence. He and Bablu Oraon apprehended the accused Indar Oraon.

P.W. 9 is Priti Oraon. This witness is aged about 06 years. She deposed that she was the student of class II and asserted that on the alleged date of occurrence she along with Khushboo, Bipasa and deceased/victim was playing in court yard. Indar rushed on the spot and he provided 20 rupees to them. He also provided 50 rupees to the deceased/victim. He also caused her and her friends to go outside to have biscuit. He ushered deceased/victim along with him. Informant asked whereabout of her daughter then she narrated to her that the deceased/victim was with Indar. Indar took the deceased/victim towards the bathroom of Gabbar Oraon. Indar slayed the victim and concealed her body behind

bathroom. She identified the accused Indar Oraon present in the court room.

In her cross-examination, she has deposed that she was given 20 rupees and she rushed to the shop to have some biscuit. Her friend (deceased/victim) was along with Indar at that time. They returned back after having biscuit then she noticed that deceased/victim was not present there.

P.W. 10 is Sunil Oraon. He deposed that occurrence took place on 24.12.2022. In the evening the deceased/victim was found to be traceless to whom his sister-in-law was searching. After some time, he heard some *hulla*. He rushed there and noticed that the dead body of deceased/victim was lying beneath the marigold plant situated near the bathroom of Tewasi Oraon and the same was draped by sack. Indar Oraon killed the deceased/victim. He along with other apprehended Indar Oraon and consigned him to the Police. In this matter a Panchayati was also held in the village. He also proved his signature present over the resolution of the Panchayat as Ext. P-3. He identified the accused Indar Oraon present in the court room.

At paragraph 16 of cross-examination, he asserted that he has not noticed accused enticing away the deceased/victim.

P.W. 11 is Biyas Sahu. He deposed that occurrence took place on 24.12.2022. At that time, he was at Jogiya

Chowk. He heard *hulla* and noticed that informant was asking whereabout of her daughter from Indar. In the meanwhile, Hiramani and Sukhmaniya visited there, who narrated to the informant that her daughter was found to be dead near the bathroom of Tewasi Oraon. The matter was inquired from Indar Oraon then Indar Oraon unravelled to them that he stifled the deceased/victim after committing rape upon her and also disclosed to them that he shrouded the body of victim by sack near marigold flower. On this disclosure he rushed on the spot and found the dead body of victim lying there. In this matter a Panchayati was also held in the village. He also proved his signature present over the resolution of the Panchayat as Ext. P-4. He identified the accused Indar Oraon present in the court room.

During cross-examination he has deposed that he has not witnessed the alleged occurrence.

P.W. 12 is Sulendra Sahu. He deposed that occurrence took place on 24.12.2022. It was 5.00 O'clock in evening. He heard some *hulla* and rushed out from his house and visited towards *chowmin* shop at Jogiya Chowk. Accused Indar was taking *chowmin*. In the meanwhile, informant asked whereabout of her daughter from Indar. The *chowmin* plate fell down on the ground from the hands of Indar. In the meanwhile, Sukhmania and another lady visited there, who narrated to her that her daughter was lying dead near the

bathroom of Tewasi. In the meanwhile, accused strove hard to elope from there but he was apprehended by Sudhir and Bablu Oraon. Villagers also thronged there. Indar, on being inquired, unfolded that he stifled the deceased/victim after committing rape upon her and also disclosed to them that he shrouded the body of victim by sack near marigold flower. On this disclosure he rushed on the spot and found the dead body of victim lying there. He identified the accused Indar Oraon present in the court room.

During cross-examination, at paragraph 5 he has deposed that he has not witnessed the alleged occurrence of Murder and Rape of the deceased.

P.W. 13 - Dr. Anand Kumar. He conducted postmortem examination alongwith Dr. Ajay Kumar Bhagat on the dead body of victim on 25.12.2022 and as per postmortem report following observations were noticed by the P.W. 13 which are as follows:-

(i) The body was of average built.

(ii) Rigor mortise was present in eye lids, muscles of face, lower jaw, neck, upper limbs, fingers, muscles of chest and abdomen, lower limbs and toes. Abdomen was slightly distended.

(iii) Nails were cyanosed. Face was deeply congested. Facial petechial haemorrhages were present. Scleral haemorrhages and multiple petechial haemorrhages

were present in the bulbar as well as palpebral conjunctiva of both eyes. Froth was present at nostrils. Face and cloths were stained with dry blood. Inner thighs, vulva and perianal areas were also stained with dry blood.

Abrasions (bright red in colour/fresh)

(i) Multiple abrasions, 16 in number, varying in shape from being linear, semilunar and curvilinear, ranging in size from 0.5 cm x 0.25 cm to 4cm x 1 cm over middle part of anterior aspect of neck.

(ii) 2cm x 2cm over middle part of left cheek.

(iii) 2cm x 1cm over left side of chin.

(iv) 1.5cm x 1cm over anteromedial aspect of left elbow.

Bruises (reddish in colour/fresh)

(i) Multiple discoid bruises of size 1cm to 2cm, with several larger areas of confluent bruising over middle part of anterior aspect of neck

(ii) 5cm x 2cm over lower part of right cheek and adjacent chin

(iii) 2cm x 1.5cm over anterior aspect of upper part of neck.

(iv) Multiple discoid bruises of size 1cm to 2cm over inner side of thighs

Internal

(i) Diffuse areas of bruise on the inner surface of both lips.

(ii) Diffuse contusion of subcutaneous tissues of neck, platysma, sternocleidomastoid, sternohyoid and omohyoid muscles of neck and thyroid capsules. These were torn at places with extravasation and infiltration of blood and blood clots at the site of injuries.

(iii) Fracture of left greater horn of hyoid bone with extravasation of blood in and around the margins of fracture.

(iv) Mucosal hemorrhages in the interior of larynx.

(v) Hematoma measuring 2.5cm x 0.5cm present over posterior surface of trachea.

(vi) Diffuse contusion of anterior and middle scalene muscles of neck with extravasation and infiltration of blood and blood clots in the muscles tissues.

(vii) Multiple subpleural and epicardial petechial hemorrhages.

(viii) Diffuse contusion of soft tissue of vulval labia, vaginal introitus, perianal and anus, that is over dilated.

(ix) Circumferential tear of hymen at multiple places and laceration of posterior fourchette, with presence of blood and blood clots in the vaginal introitus.

(x) Diffuse contusion of uterus with presence of blood and blood clots in the uterine cavity.

(xi) Laceration of margins of anus, with presence of longitudinal tear extending from right anal margin to the right lateral wall of anal canal, with presence of blood and blood clots in the anal canal and perianal areas.

(xii) There was evidence of vital reaction at the site of injuries

Opinion

(i) The above noted injuries were antemortem in nature caused by hard and blunt object(s).

(ii) Death was due to asphyxia as a result of manual strangulation.

(iii) Time elapse since death was 12 hours to 36 hours from the time of postmortem examination.

(iv) The deceased had been sexually assaulted by hard and blunt object(s), with evidence of forceful vaginal and anal penetration.

(v) The viscera had been kept preserved. The I.O. was directed to collect and submit the preserved viscera to SFSL for chemical analysis

P.W. 14 is Dr. Ajay Kumar Bhagat. He conducted postmortem examination alongwith Dr. Anand Kumar (PW 13) on the dead body of victim on 25.12.2022 and proved his signature and seal as Ext. P-6 on the same postmortem report of victim.

P.W. 15 is Kiran Pandit. She deposed that on 24.12.2022 he was posted as Officer-in-charge of Mahila Police Station, Lohardaga. On that day, an information of murder and ravishment of a child was received then she visited Areya village under Bagru Police Station and prepared inquest report. She proved carbon copy of inquest report as Ext. P-8. It also bears the signature and thumb impression of witnesses namely Tara Oraon and Sukhmaniya Oraon (P.W.2).

During cross examination she has deposed that there is no depiction of recovery of dead body from the vicinity of the house of Tewasi Oraon in inquest report. She did not record the statement of witnesses.

P.W. 16 is Vishwajit Kumar Singh, who is the I.O. of this case. He has deposed that on 24.12.2022 he received an information on 17.15 Hours of a murder of a child at village Areya within Bagru cemented plaster-floor. Blood stained rice sack was also recovered Police Station. On this information he

along with other Police Officials departed to the village Areya for the verification. He was also accompanied by then Mahila Police Station Officer-in-charge S.I. Kiran Pandit. Thereafter inquest report was prepared and the dead body was sent to the Sadar Hospital for postmortem. But postmortem could not be conducted at Sadar Hospital thereafter the dead body was sent to RIMS, Ranchi. He also collected the garments worn by the deceased in sealed condition provided by the doctors conducting postmortem. Thereafter on the written report of the informant, he registered this case as Bagru P.S. case no. 33/2022 and started investigation. He proved endorsement over written report as Ext. P-9. He also proved Formal FIR as Ext. P-10. He also recorded the re-statement of the informant and recorded the statements of Rajmuni Oraon, Sukhmaniya Oraon, Mehrani Oraon, Bablu Oraon, Sudhir Oraon, Sunil Oraon, Bipasa Oraon, Khushboo Kumari, Priti Kumari, Biyas Sahu, Sulendra Sahu in course of investigation. He also deposed whatever he did during investigation i.e. recording of statement of witnesses u/s 161 Cr.P.C. affirming the place of occurrence etc. *The alleged place of occurrence is the secluded place nearby Marigold Plant situated near the bathroom of Tewasi Oraon at village Areya, Bagru*. Blood stained mark was traced out over the from the alleged place of occurrence. He seized piece of Blood stained cemented plastered-floor and prepared seizure list. He proved the said seizure list as Ext. P-

11. He also procured the criminal history of accused and detected that the accused Indar Oraon was also an accused in Bagru P.S. 11/2021 with having indictment of killing his grand-mother. He also procured postmortem report. He also gleaned vaginal swab of deceased, nail clipping and dried blood sample in sealed condition. Thereafter he was transferred on 03.02.2023.

During cross examination he has deposed that accused was consigned by villagers into Police custody nearby the alleged place of occurrence. *The alleged place of occurrence is the area adjacent to the bathroom of the house of Tewasi Oraon situated in village Areya*. The dead body of the deceased was found 10 feet away from the house of Sumit Oraon. Para no. 29 of cross-examination of PW 16 stated that there was no ocular witness of alleged occurrence. He got the seized material sealed at the alleged place of occurrence.

P.W. 17 is Pankaj Kumar Sharma. On 03.02.2023 he was posted as Officer-in-charge of Bagru Police Station and took the charge of remaining investigation of Bagru P.S. case no. 33/2022. He sent seized exhibit materials and blood sample of accused to SFSL, Ranchi for examination. He also recorded the statement of S.I. Kiran Pandit. Thereafter he submitted charge-sheet no. 07/2023 dated 22.02.2023 against accused Indar Oraon.

During cross examination he has deposed that the seized materials were in sealed condition. He did not put any signature over the sealed materials.

28. The learned trial court has accepted the version of the prosecution and convicted the appellants under Section Sections 302 of the Indian Penal Code and Section 6 of the POCSO Act and sentenced him to the capital punishment of death, for the offence under Section 302 of the Indian Penal Code, directing him to be hanged by neck till his death. He is also sentenced to undergo R.I. for life for the offence under Section 6 of the POCSO Act, which is the subject matter of the present appeal.

29. Admittedly in this case as per the version of I.O. (PW 16), no ocular witness was traced out in course of investigation to vindicate the alleged occurrence of ravishment and murder of the deceased/victim by the hands of accused Indar Oraon. In such situation the prosecution case rests upon circumstantial evidence.

30. Thus, before venturing to the merit of the case it would be apt to discuss herein the settled proposition of law on the issue of circumstantial evidence based up the last seen theory.

31. The Hon'ble Apex Court in the year 1952, in the judgment rendered in **Hanumant Son of Govind Nargundkar vs. State of Madhya Pradesh [AIR 1952 SC 343]** has laid down the parameters under which, the case of circumstantial

evidence is to be evaluated, which suggests that: "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. ....."

32. The judgment referred in **Hanumant (supra)** has been consistently followed by Hon'ble Apex Court in the judgment rendered in **Tufail (Alias) Simmi Vs. State of Uttar Pradesh [(1969) 3 SCC 198]; Ram Gopal Vs. State of Maharashtra [(1972) 4 SCC 625]** and **Sharad Birdhichand Sarda Vs. State of Maharashtra [(1984) 4 SCC 116** and also in **Musheer Khan alias Badshah Khan & Anr. Vs. State of Madhya Pradesh [(2010) 2 SCC 748**.

33. The Hon'ble Apex Court in Musheer Khan (Supra) while discussing the nature of circumstantial evidence and the

burden of proof of prosecution has held as under paragraph nos. 39 to 46 as under:

> "39. In a case of circumstantial evidence, one must look for complete chain of circumstances and not on snapped and scattered links which do not make a complete sequence. This Court finds that this case is entirely based on circumstantial evidence. While appreciating circumstantial evidence, the Court must adopt a cautious approach as circumstantial evidence is "inferential evidence" and proof in such a case is derivable by inference from circumstances.
>
> 40.Chief Justice Fletcher Moulton once observed that "proof does not mean rigid mathematical formula" since "that is impossible". However, proof must mean such evidence as would induce a reasonable man to come to a definite conclusion. Circumstantial evidence, on the other hand, has been compared by Lord Coleridge "like a gossamer thread, light and as unsubstantial as the air itself and may vanish with the merest of touches". The learned Judge also observed that such evidence may be strong in parts but it may also leave great gaps and rents through which the accused may escape. Therefore, certain rules have been judicially evolved for appreciation of circumstantial evidence.
>
> 41. To my mind, the first rule is that the facts alleged as the basis of any legal inference from circumstantial evidence must be clearly proved beyond any reasonable doubt. If conviction rests solely on circumstantial evidence, it must create a network from which there is no escape for the accused. The facts evolving out of such circumstantial evidence must be such as not to admit of any inference except that of guilt of the accused. (See Raghav Prapanna Tripathi v. State of U.P. [AIR 1963 SC 74 : (1963) 1 Cri LJ 70])
>
> 42. The second principle is that all the links in the chain of evidence must be proved beyond reasonable doubt and they must exclude the evidence of guilt of any other person than the accused. (See State of U.P. v. Dr.

Ravindra Prakash Mittal [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : 1992 Cri LJ 3693] , SCC p. 309, para 20.)

43. While appreciating circumstantial evidence, we must remember the principle laid down in Ashraf Ali v. King Emperor [21 CWN 1152 : 43 IC 241] (IC at para 14) that when in a criminal case there is conflict between presumption of innocence and any other presumption, the former must prevail.

44. The next principle is that in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and are incapable of explanation upon any other reasonable hypothesis except his guilt.

45. When a murder charge is to be proved solely on circumstantial evidence, as in this case, presumption of innocence of the accused must have a dominant role. In Nibaran Chandra Roy v. King Emperor [11 CWN 1085] it was held that the fact that an accused person was found with a gun in his hand immediately after a gun was fired and a man was killed on the spot from which the gun was fired may be strong circumstantial evidence against the accused, but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circumstances. It seems, therefore, to follow that whatever force a presumption arising under Section 106 of the Evidence Act may have in civil or in less serious criminal cases, in a trial for murder it is extremely weak in comparison with the dominant presumption of innocence.

46. The same principles have been followed by the Constitution Bench of this Court in Govinda Reddy v. State of Mysore [AIR 1960 SC 29 : 1960 Cri LJ 137] where the learned Judges quoted the principles laid down in Hanumant Govind Nargundkar v. State of M.P. [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1953 Cri LJ 129] The ratio in Govind [(1952) 2 SCC 71 : AIR 1952 SC 343 :1953 Cri LJ 129] quoted in AIR para 5, p. 30 of the Report in Govinda Reddy [AIR 1960 SC 29 : 1960 Cri LJ 137] are:

> "5. ... „10. ... in cases where the evidence is of a circumstantial nature, the circumstances [which lead to the conclusion of guilt should be in the first instance] fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be [shown] that within all human probability the act must have been [committed] by the accused." [As observed in Hanumant Govind Nargundkar v. State of M.P., (1952) 2 SCC 71 : AIR 1952 SC 343 at pp. 345-46, para 10.] " The same principle has also been followed by this Court in Mohan Lal Pangasa v. State of U.P. [(1974) 4 SCC 607 : 1974 SCC (Cri) 643 : AIR 1974 SC 1144] "

34. Thus, it is evident that for proving the charge on the basis of circumstantial evidence, it would be necessary that evidence so available must induce a reasonable man to come to a definite conclusion of proving of guilt; meaning thereby there must be a chain of evidence so far it is complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

35. There is no dispute regarding the settled position of law that in the case of circumstantial evidence, the chain is to be complete then only there will be conviction of the concerned accused person but, the circumstances should be of a

conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

36. The same view has been taken by the Hon'ble Apex Court in Bakhshish Singh vs. State of Punjab, (1971) 3 SCC 182 wherein the Hon'ble Apex Court has observed that the principle in a case resting on circumstantial evidence is well settled that the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. These circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

37. The Hon'ble Apex Court while laying down such proposition in the said case has considered the factual aspect revolving around therein and while considering the fact has

only found the incriminating evidence against the appellant was his pointing the place where the dead body of the deceased had been thrown which the Hon'ble Apex Court has not considered to be circumstantial evidence though undoubtedly it raises a strong suspicion against the appellant. the Hon'ble Apex Court while coming to such conclusion has observed that even if he was not a party to the murder, the appellant could have come to know the place where the dead body of the deceased had been thrown. Hence anyone who saw those parts could have inferred that the dead body must have been thrown into the river near about that place. In that pretext, the law has been laid down at paragraph-9 thereof, which reads as under:

> "9. The law relating to circumstantial evidence has been stated by this Court in numerous decisions. It is needless to refer to them as the law on the point is well-settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

38. Further, in this regard, reference is required to be made of the judgments rendered by Hon'ble Apex Court in ***Anwar Ali Vs. State of Himachal Pradesh (2020) 10 SCC 166*** and

Mohd. Yonus Ali Tarafdar Vs. State of West Bengal, (2020) 3 SCC 747 wherein the Hon'ble Apex Court has laid down the following propositions to be taken into consideration in a case based on *circumstantial evidences :-*

(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established;

(ii) The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(iii) The circumstances taken cumulatively should form a chain so far complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused;

(iv) The circumstances should be consistent only with the hypothesis regarding the guilt of the accused; and

(v) They must exclude every possible hypothesis except the one which is sought to be proved.

39. The authoritative judgment in the aforesaid context is the Sharad **Birdhichand Sarda vs. State of Maharashtra, (supra)** wherein the Hon'ble Apex Court has held all the above five principles to be the golden principles which constitute the "panchsheel" of the proof of a case based on circumstantial evidence. The Hon'ble Apex Court in the said case as under paragraph-155, 156, 157, 158 and 159 has been pleased to hold that if these conditions are fulfilled only then a Court can use a false explanation or a false defence as an additional link

to lend an assurance to the court and not otherwise. Paragraphs-155, 156, 157, 158 and 159 of the said judgment read as under:

> "155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in King v. Horry [1952 NZLR 111] thus: "Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for." 156. Lord Goddard slightly modified the expression "morally certain" by "such circumstances as render the commission of the crime certain". 157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry case [1952 NZLR 111] was approved by this Court in Anant Chintaman Lagu v. State of Bombay [AIR 1960 SC 500] Lagu case [AIR 1960 SC 500] as also the principles enunciated by this Court in Hanumant case [(1952) 2 SCC 71] have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — Tufail case [(1969) 3 SCC 198] , Ramgopal case [(1972) 4 SCC 625] , Chandrakant Nyalchand Seth v. State of Bombay [Criminal Appeal No 120 of 1957,], Dharambir Singh v. State of Punjab [Criminal Appeal No 98 of 1958,]. There are a number of other cases where although Hanumant case [(1952) 2 SCC] has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration [(1974) 3

> SCC 668, 670] , Mohan Lal Pangasa v. State of U.P. [(1974) 4 SCC 607,] , Shankarlal Gyarasilal Dixit v. State of Maharashtra [(1981) 2 SCC 35, 39] and M.G. Agarwal v. State of Maharashtra [AIR 1963 SC 200 : (1963) 2 SCR 405,] — a five-Judge Bench decision. 158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in Deonandan Mishra v. State of Bihar [AIR 1955 SC 801] to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus: "But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation. such absence of explanation or false explanation would itself be an additional link which completes the chain."
>
> 159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied: (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved, (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and (3) the circumstance is in proximity to the time and situation."

40. The foremost requirement in the case of circumstantial evidence is that the chain is to be completed. In **Padala Veera Reddy v. State of A.P. [1989 Supp. (2) SCC 706],** the

Hon'ble Apex Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

> "10. ... (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

41. Thus, it is evident that for proving the charge on the basis of circumstantial evidence, it would be necessary that evidence so available must induce a reasonable man to come to a definite conclusion of proving of guilt; meaning thereby there must be a chain of evidence so far it is complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

42. A theory of "accused last seen in the company of the deceased" is a strong circumstance against the accused while appreciating the circumstantial evidence. In such cases, unless the accused is able to explain properly the material

circumstances appearing against him, he can be held guilty for commission of offence for which he is charged.

43. The Hon'ble Apex Court in the case of Satpal v. State of Haryana, (2018) 6 SCC 610 has observed that when there is no eyewitness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant, the Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. For ready reference the relevant paragraph is being quoted as under:

> "6. We have considered the respective submissions and the evidence on record. There is no eyewitness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise

> forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

44. In the backdrop of the aforesaid discussed settled legal position this Court is now adverting to the factual aspect of the instant case in order to find that whether charges against the present appellant have been proved beyond reasonable doubt.

45. The evidences adduced by PW 1, PW 2, PW 5, PW 6 and PW 9 support the case of prosecution in palpable way in respect of "l*ast seen circumstances* ".

46. P.W. 5, PW 6 and PW 9 are the child witnesses who are said to be playing with the victim/deceased at 3.00 PM on 24.12.2022 at village Areya, Bagru, Lohardaga.

47. P.W. 5 is Bipasa Oraon. This witness is aged about 8 years. She deposed that she is the student of class IV and the alleged occurrence took place seven months ago. She had returned from her school at 3.00 PM. Thereafter she, Priti, Khushboo and deceased/victim were playing in court yard. Indar rushed on the spot and he provided 20 rupees to them. He also provided 50 rupees to the deceased/victim. He also asked her and her friends to go outside to have some refreshment. He grasped the deceased victim due to which victim did not accompany her. Thereafter she rushed to the

shop to have chocolate and biscuit. When she returned from the shop then deceased and accused Indar were not present there. When they were going home then the mother of deceased asked whereabout of her daughter then she narrated that Indar was loitering with her. One lady visited towards her washroom then she noticed the dead body of deceased was lying there shrouded with sack. She noticed that blood percolated from her mouth and 50 rupees note was lying in her hand. She came to have learnt that Indar slayed her. In cross-examination she reiterated that she took 20 rupees from Indar and rushed towards shop. After half an hour she returned from shop. She Has also asserted that when she was going to the shop then deceased/victim was along with Indar.

48. From the aforesaid deposition, no vital contradiction is originating which could cast doubt over her veracity and her version that the accused was last seen with victim/deceased when she was dispelled by the accused Indar Oraon from the place where she was playing with victim/deceased remained unassailed.

49. P.W. 6 is Khushboo Kumari. This witness is aged about 11 years. She deposed that she is the student of class IV and the alleged occurrence took place seven months ago. She had returned from her school at 3.00 PM. Thereafter she, Priti, Bipasa and deceased/victim were playing in court yard. Indar rushed on the spot and he provided 20 rupees to them. He

also provided 50 rupees to the deceased. He also caused her and her friends to go outside to have some sweets. He asked deceased/victim to stay with him and let her friends to visit the shop. Thereafter she along with her friends (except deceased) rushed to the shop. When she along with her friends returned from the shop then they found deceased and accused Indar missing from the said court yard. She narrated to the deceased's mother about loitering of deceased with accused Indar. She came to have learnt that Indar slayed deceased in the bathroom covering her dead body behind the bathroom by cement sack. During para no. 13 of cross-examination she asserted that Indar coaxed her and her friends by providing money. No vital contradiction is emanating from her cross-examination which could cast doubt over her veracity and her version that the accused was last seen with victim/deceased when she was dispelled by the accused Indar Oraon from the place where she was playing with victim/deceased remained intact.

50. Another material witness is PW 9 Priti Oraon who is said to have been playing with PW 5 and PW 6 and victim/deceased on the alleged date and time of occurrence. This witness is aged about 06 years. She has deposed that she was the student of class II and asserted that on the alleged date of occurrence she alongwith Khushboo, Bipasa and deceased/victim was playing in court yard. Indar rushed on

the spot and he provided 20 rupees to them. He also provided 50 rupees to the deceased. He also caused her and her friends to go outside to have biscuit. He ushered deceased/victim along with him. Informant asked whereabout of her daughter then she narrated to her that the deceased victim was with Indar. Indar took the deceased/victim towards the bathroom of Gabbar Oraon. Indar slayed the victim and concealed her body behind bathroom. During cross-examination she asserted that she was provided 20 rupees and she rushed to the shop to have some biscuit. Her friend (deceased/victim) was along with Indar at that time. They returned back after having biscuit then she noticed that deceased victim was not present there. No vital contradiction is emanating from her cross-examination which could cast doubt over her veracity and her version that the accused was last seen with victim/deceased when she was dispelled by the accused Indar Oraon from the place where she was playing with victim/deceased remained unassailed.

51. Herein the learned counsel for the appellant has raised the issue that the learned Trial Court did not record proper satisfaction that P.W. 5,6 and 9 being child witnesses were competent to understand the facts and circumstances of the matter.

52. In the aforesaid context it needs to refer herein that a child of tender age can be allowed to testify if he or she has

intellectual capacity to understand questions and give rational answers thereto. A provision has been made in the Indian Evidence as under Section 118 of the Indian Evidence Act wherein it has been provided that the testimony of the tender witness can be accepted subject to verification of the intellectual capacity of such witness. For, ready reference the section 118 is being quoted as under:

> *118. Who may testify. --All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.*
>
> *Explanation.-- A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understandingthe questions put to him and giving rational answers to them.*

53. Further, the evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. Reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of **Virendra alias Buddhu & Anr. Vs. State of Uttat Pradesh [(2008) 16 582],** relevant paragraph of which is quoted as under:

> 19. A child of tender age can be allowed to testify if he or she has intellectual capacity to understand questions and give rational answers thereto. The evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with

close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon.

20. In Dattu Ramrao Sakhare v. State of Maharashtra [(1997) 5 SCC 341 : 1997 SCC (Cri) 685] it was held as follows : (SCC p. 343, para 5) "5. ... A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

21. Subsequently, in Ratansinh Dalsukhbhai Nayak v. State of Gujarat [(2004) 1 SCC 64 : 2004 SCC (Cri) 7] wherein one of us (Dr. Arijit Pasayat) was a member the Bench held that (SCC p. 67, para 7) though "[t]he decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath."

but "[t]he decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous".

The Bench further held as under : (Ratansinh case [(2004) 1 SCC 64 : 2004 SCC (Cri) 7] , SCC p. 67, para 7) "7. ... This precaution is necessary because child

witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

54. The Hon'ble Apex Court further in the case judgment rendered in the case of **Nivrutti Pandurang Kokate & Ors Vs. State of Maharashtra [(2008) 12 SCC 565],** wherein at paragraph 10 it has been held as under:

10. "6. ... The Evidence Act, 1872 (in short „the Evidence Act") does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease--whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by Brewer, J. in Wheeler v. United States [40 L Ed 244 : 159 US 523 (1895)] . The evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability

can record conviction, based thereon. (See Suryanarayana v. State of Karnataka [(2001) 9 SCC 129 : 2002 SCC (Cri) 413] .)

55. It is, thus, evident from the consideration made hereinabove in the context of Section 118 of the Evidence Act that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the question put to them or from giving rationale answers to the questions, because of tender years, extreme old age, disease whether of mind, or any other cause of the same kind. It further appears that a child of tender age can be allowed to testify if he has intellectual capacity to understand questions and given rationale thereto. It further appears that the evidence of a child witness is not required to be rejected per so, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction.

56. In the instant case the evidence adduced by PW 5, PW 6 and PW 9 on the point that the victim/deceased was last seen with the accused on 24.12.2022 at 3.00 PM and thereafter she was found dead nearby the washroom of Tewasi Oraon remained unshaken and these versions of PW 5, PW 6 and PW 9 have been also corroborated by evidences propounded by PW 1 and PW 2.

57. P.W. 1 is Mehrani Orain. She deposed that occurrence took place seven months ago on Saturday. It was 5.30 PM. At

that time, she was bringing mud to her house from the field. In the meanwhile, she noticed that Indar Oraon dragged the victim inside the bathroom and bolted the bathroom. After some time, he rushed out from bathroom with having child (victim) in his hand and laid the said child beneath flowering plant. He also shrouded the said child by sack and eloped from the spot.

58. P.W. 2 is Sukhmaniya Oraon. She deposed that alleged occurrence took place 6-7 months ago. At 4.00 PM Indar Oraon was seen loitering with the victim/deceased. Thereafter she heard the screaming sound of Mehrani (PW 1) and noticed that the said victim child was lying dead beneath the plant of Marigold. Indar Oraon had killed her.

59. Thus, from the aforesaid evidences it is established that the accused Indar Oraon was last seen with victim/deceased and there after in vey short interval of time the victim was found to be dead near the bathroom and deceased body was shrouded with sack.

60. The Inquest Report (Ext. P-8) is the document to reveal that the dead body of the deceased/victim was recovered by the Police after preparing inquest report at 17.45 hours on 24.12.2022 and it was also depicted in the Ext. P-8 that the victim/deceased was strangulated to death after being raped. Moreover prosecution witnesses PW 1, PW 2, PW 3, PW 4, PW 5, PW 6, PW 7, PW 10 and PW 11 have testified in their

evidences that the deceased/victim was found to be dead near the washroom of Tewasi Oraon.

61. PW 13 is Dr. Anand Kumar who conducted postmortem examination alongwith Dr. Ajay Kumar Bhagat (PW 14) on the dead body of victim on 25.12.2022 and as per postmortem report (Ext. P5) the injuries were antemortem in nature caused by hard and blunt object and death was due to asphyxia as a result of physical strangulation. Further, it has been opined that the deceased had been sexually assaulted by hard and blunt object(s), with evidence of forceful vaginal and anal penetration.

62. No explanation has been given in the statement of accused Indar Oraon u/s 313 Cr.P.C. as to when he parted the company of victim/deceased. Also, no explanation is there as to what happened inside the bathroom of Tewasi Oraon with the victim. Accused remained silent when he was examined u/s 313 Cr.P.C. and it was a mere denial by the accused of all the incriminating circumstances which were put to him u/s 313 Cr.P.C. The silence on the part of the accused, in such a matter wherein he is expected to come out with an explanation, leads to an adverse inference against the accused.

63. The circumstance of deceased being last seen alive in the company of the deceased is a vital link in the chain of other circumstances but on its own strength it is insufficient

to sustain conviction unless the time-gap between the deceased being last seen alive with the accused and recovery of dead body of the deceased is so small that possibility of any other person being the author of the crime is just about impossible. Last seen theory is considered to be a weak basis for conviction. However, when the same is coupled with other factors such as when the deceased was last seen with the accused, proximity of time to the recovery of the body of deceased etc.

64. The accused is bound to give an explanation under section 106 of the Evidence Act, 1872. If he does not do so, or furnishes what may be termed as wrong explanation or it a motive is established-pleading securely to the conviction of the accused closing out the possibility of any other hypothesis, then a conviction can be based thereon. This opinion of this court is fortified from the ratio laid down in ***Satpal Singh Vs State of Haryana (supra)*** .

65. As per Ext. P-10, the alleged time span of the occurrence is from 15.00 Hours to 16.35 Hours on 24.12.2022. As per Ext. P-8 the inquest report regarding recovery of the dead body of victim was prepared by the Police (PW 15) at 17.45 Hours on 24.12.2022. The time-gap between deceased being last seen with accused and recovery of dead body of deceased is small and no plausible explanation as to how the victim was strangulated to death after being raped

was adduced by the accused u/s 313 Cr.P.C. as well as Section 106 of Evidence Act. Chapter – VII under Part – III of the Indian Evidence Act, 1872 deals with "Burden of Proof" Section 101 provides that when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. However, there may be a case in which it is not known to the prosecution how the death of a person has occurred. Wherever it is found that a fact which is relevant is within the special knowledge of the accused and such fact cannot be unearthed by the investigating officer by any amount of enquiry and investigation by operation of section 106 of the Indian Evidence Act the burden would shift upon the person who has special knowledge of such fact. Section 106 Indian Evidence Act incorporates the principle of reverse burden. Hence adverse inference can be drawn against the accused u/s 106 Evidence Act. Fact so established are incessant and consistent to evince that the act of strangulation and ravishment of deceased/victim has been done by the accused Indar Oraon.

66. PW 4 (victim/deceased mother-cum-informant) deposed that occurrence took place on 24.12.2022. Her daughter was playing with her friends. She was indulged in some cultivation work and when she returned home at 4.30 PM, her daughter was found to be missing. Then she inquired the whereabout of her daughter from her daughter's friends. They divulged to her

that Indar Oraon provided them 20 rupees and he also provided 50 rupees to the deceased victim. They also narrated to her that they rushed towards shop for biscuit and chocolate while Indar was loitering with the deceased victim. Frantic search was made by her then she rushed towards chowk where she came across Indar Oraon who was eating chowmin there. When she inquired the matter from Indar then Indar Oraon started trembling and the chowmin plate fell down on ground. Sukhmaniya and Hiramani visited there who unfolded to her that her daughter was lying behind the bathroom of Dewasi Oraon. Indar Oraon strove hard to elope from there but Sudhir Oraon and Bablu Oraon apprehended Indar after chase who confessed before the village that he stifled the deceased/victim after committing rape upon her in the bathroom of Dewasi Oraon. Police visited there. There were scratch mark over the cheek of deceased. There was strangulation mark over the neck of the deceased. Deceased was of five years and two months at the time of alleged occurrence. Blood also exuded from the private part of deceased victim. No vital contradictions or paradoxical statement is emanating during her cross-examination which could cast doubt over her veracity as PW 7, PW 8, PW 10, PW 11 and PW 12 have also countenanced the version of PW 4 in candid and limpid manner. The version of PW 4 has been corroborated and invigorated by other prosecution witnesses

as mentioned above. Moreover stringent documents i.e. Ext. P-2, Ext. P5, Ext. P-8 also go to vindicate the flawless evidence of PW 4.

67. PW 7, PW 8, PW 10, PW 11 and PW 12 have asserted in their evidences that accused Indar Oraon was taking chowmin at shop situated Jogiya Chowk and in the meanwhile informant (PW 4) asked accused Indar Oraon regarding whereabout of her daughter (victim/deceased) then the chowmin plate slipped down from the hands of the accused and he strove hard to elope from there but he was apprehended by PW 7 and PW 8 on the spot. PW 7, PW 8, PW 10, PW 11 and PW 12 are reliable and trustworthy witnesses because their evidences are devoid of paradoxical and inconsistent statements. The incessant and flawless evidences of PW 7, PW 8, PW 10, PW 11 and PW 12 go to evince that the accused Indar Oraon confessed before them and villagers that he after committing rape upon the victim/deceased inside the bathroom of Tewasi Oraon strangulated her to death and also shrouded her dead body with a sack beneath the Marigold Flower Plant. The stringent, consistent and corroborative versions of PW 4, PW 7, PW 8, PW 10, PW 11 and PW 12 go to depict that the accused Indar Oraon strove hard to elope from the chowmin shop when he was asked about deceased/victim and his chowmin plate also slipped down to earth. These circumstances and the conduct of the accused in front of

reliable prosecution witnesses are well relevant u/s 6 and 8 of Indian Evidence Act.

68. From the cogent evidences of prosecution, it is well established that the accused Indar Oraon, on 24.12.2022, who was familiar to the deceased/victim as being the dweller of the same village that of informant, enticed away the deceased/victim towards the bathroom of Tewasi Oraon while victim/deceased was playing with other children.

69. It is also well established and proved through the circumstantial chain that accused Indar Oraon caused other children to have some refreshment and thereafter enticed the deceased/victim towards secluded place inside the bathroom of Tewasi Oraon. It has been also proved by cogent prosecution evidences that the victim/deceased was last seen with the accused Indar Oraon on 24.12.2022 during evening-period and accused was also seen covering the body of deceased beneath the flower plant situated near the bathroom of Tewasi Oraon. In this case the alleged place of occurrence was affirmed by the I.O. which is the secluded place nearby the marigold flower plant situated near bathroom of Tewasi Oraon. It is also well established that the being salacious accused Indar Oraon raped the victim/deceased who was minor and aged about 5 years and was also well acquainted with the accused. Ext. P8 is a stringent and rattling document to unfold that the deceased/victim was manually strangulated

after being raped and antemortem injuries were also found to be present on her person.

70. The learned counsel for the appellant has contended that SFSL report negates the involvement of the accused/ appellant in the alleged occurrence.

71. It needs to refer herein that in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra, 2005 CrLJ 2533** the Hon'ble Apex Court by referring to the U.S. Supreme Court decision rendered in the case of **R. vs. Watters, (2000) All.E.R. (D) 1469,** has ruled that the DNA evidence may have a great significance where there is supporting evidence, dependent of course, on the strength of that evidence. In every case one has to put the DNA evidence in the context of the rest of the evidence and decide whether taken as a whole, it does amount to a prima facie case.

72. Further the DNA evidence is like any other expert opinion u/s 45 of Evidence Act and its probative value may vary from case to case. If DNA evidence is not properly documented, collected, packaged and preserved, it will not meet the legal and scientific requirements for admissibility in a court of law.

73. Herein, it needs to refer herein that Ext. P-7 is the SFSL report and as per the said report DNA profiling could not be extracted from the materials seized by the Police in course of investigation as per seizure list (Ext. P-11). Further Non-

generation of DNA profiling can't be a ground to negate the involvement of the accused in the alleged occurrence as Ext. P-5 (post-mortem report) has substantiated the fact that the victim was manually strangulated to death after being raped and further just before the said gruesome act the victim was seen with the accused/appellant and this fact has been substantiated by the cogent evidence led by P.W. 5, 6 and 9, therefore the contention of the learned counsel for the appellant is not tenable.

74. Further the dead body of the deceased was found beneath flowering plant shrouded by sack, which clearly shows that after committing rape and murder, the dead body was thrown away in order to conceal the dead body, in an attempt to cause the disappearance of the evidence.

75. The evidences of witnesses, clearly show that the deceased girl was last seen with the accused, near the bathroom of Tewasi Oraon and short proximity of time the dead body of the victim is found and the entire alleged occurrence has been fully substantiated by the medical evidence.

76. Thus, on the basis of discussion made hereinabove it is considered view of this Court that there is no illegality in the findings of the Trial Court below, in convicting the present appellants for the offence under Sections 302 of the Indian Penal Code and Section 6 of the POCSO Act.

77. We have heard learned counsel for both the sides in detail on the point of sentence.

78. Learned counsel for the State, supporting the death reference, has placed reliance upon the decisions of the Hon'ble Apex Court in **Bachan Singh Vs. State of Punjab**, reported in ***(1980) 2 SCC 684*** and **Machi Singh & Ors. Vs. State of Punjab**, reported in ***(1983) 3 SCC 470***, giving the necessary guidelines for awarding the death sentence, and submitted that in **Machi Singh's** case *(supra),* it has been held that when the victim of murder is *an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder,* the case comes within the rarest of the rare category, and it is a fit case for imposing the death sentence.

79. Learned counsel has further placed reliance upon the decision of the Hon'ble Apex Court in **Bantu Vs. State of U.P.,** reported in ***(2008) 11 SCC 113***, which related to the rape and murder of a child, aged about five years, wherein the Apex Court held that the case fell within the category of rarest of rare cases, affirming the death sentence.

80. Similarly, in **Shivaji Vs. State of Maharashtra**, reported in ***(2008) 15 SCC 269,*** which related to rape and murder of a child aged about nine years, it was held that the plea that in cases of circumstantial evidence, the death sentence should not be awarded, is without any logic. This

case was also found to be falling within the category of rarest of rare cases, and the death sentence to the accused was affirmed.

81. In **Mohd. Mannan Vs. State of Bihar,** reported in ***(2011) 5 SCC 317***, which related to rape and murder of a child aged about eight years, again it was held to be falling within the rarest of rare category, and death sentence was affirmed by the Supreme Court, re-iterating the guidelines for imposing death sentence, as follows :-

> *"**24.** Further, crime being brutal and heinous itself does not turn the scale towards the death sentence. When the crime is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community and when collective conscience of the community is petrified, one has to lean towards the death sentence. But this is not the end. If these factors are present the court has to see as to whether the accused is a menace to the society and would continue to be so, threatening its peaceful and harmonious coexistence. The court has to further enquire and believe that the accused condemned cannot be reformed or rehabilitated and shall continue with the criminal acts. In this way a balance sheet is to be prepared while considering the imposition of penalty of death of aggravating and mitigating circumstances and a just balance is to be struck. So long the death sentence is provided in the statute and when collective conscience of the community is petrified, it is expected that the holders of judicial power do not stammer dehors their personal opinion and inflict death penalty. These are the broad guidelines which this Court has laid down for imposition of the death penalty."*

82. In **Vasanta Sampat Dupare Vs. State of Maharashtra**, reported in ***(2015) 1 SCC 253***, which related to rape and

murder of a child aged about four years, who, after the rape was committed upon her, was crushed to death by stone, the Hon'ble Supreme Court affirmed the death sentence, finding the case to be one under the category of rarest of rare cases. In this case, the accused-appellant had also filed the Review Petition in the Supreme Court, which was again dismissed by the Judgment, reported in ***(2017) 6 SCC 631.***

83. Placing reliance on these decisions, learned counsel for the State submitted that the case in hand relates to murder of the victim girl after commission of rape upon her by the accused and the case comes within the category of rarest of rare cases, and as such it is a fit case in which the death sentence awarded to the accused by the Trial Court below be confirmed, irrespective of his age, family background or lack of criminal antecedents, which cannot be considered as mitigating circumstances.

84. On the other hand, learned counsel for the appellant has submitted that simply because the case relates to rape and murder of a child, it does not come under the category of rarest of rare cases.

85. Learned counsel has placed reliance upon the decisions of the Supreme Court in ***Sebastian Vs. State of Kerela***, reported in ***(2010) 1 SCC 58***, ***Ram Deo Prasad Vs. State of Bihar***, reported in ***(2013) 7 SCC 725***, ***Tattu Lodhi Vs. State of M.P.***, reported in ***(2016) 9 SCC 675***, and in all these cases,

the child aged between 2 to 7 years were murdered after committing rape upon them. The Supreme Court, in the facts of these cases, held that they do not come within the category of rarest of rare cases, and the death sentence awarded by the Trial Court below, and confirmed by the High Court, were commuted to life imprisonment.

86. Learned counsel has also placed reliance upon the decision of ***Rameshbhai Chandubhai Rathod (2) Vs. State of Gujarat***, reported in ***(2011) 2 SCC 764***, which also related to rape and murder of a child by the guard of the building. The Hon'ble Supreme Court laid down the law that it was obligatory upon the Trial Court to have given the finding as to a possible rehabilitation and reformation and the possibility that the accused could still be a useful member of the society, in case, he was given a chance to do so, and in absence of such finding, the death sentence awarded by the Trial Court and confirmed by the High Court, was commuted to the sentence for whole life, but subject to any remission or commutation of sentence by the State Government for good and social reasons.

87. Similar view was taken by the Apex Court in ***Amit Vs. State of U.P,*** reported in ***(2012) 4 SCC 107***, which also related to rape and murder of a three years old child. In the said case also, the ratio of ***Rameshbhai Chandhubhai Rathod's*** case (supra), was applied by the Supreme Court and

the death sentence was commuted to the sentence of life in the same terms.

88. Placing reliance on these decisions, learned counsel for the accused/appellant submitted that the present case also, does not come within the purview of rarest of rare cases, and it is a fit case in which the death sentence passed by the Trial Court below be set aside for the offence under Section 302 of the Indian Penal Code.

89. It is also submitted that the Trial Court has not given any finding as to a possible rehabilitation and reformation and the possibility that the accused could still be a useful member of the society, in case, he is given a chance to do so, and in absence of such finding, the death sentence awarded by the Trial Court cannot be sustained in the eyes of law.

90. We cannot loose sight of some landmark Judgements on the issue of awarding death sentence, rendered by the Hon'ble Apex Court. In the case of ***Rajendra Pralhadrao Wasnik Vs. State of Maharashtra***, reported in ***AIR 2019 SC 1***, which related to rape and murder of a child aged about three years, and the appellant was found guilty and convicted for the offences under Sections 376(2)(f), 377 and 302 of the Indian Penal Code, in which, the death sentence was awarded by the Trial Court for the offence under Section 302 of the Indian Penal Code, which was confirmed by the High Court. Criminal Appeal filed by the appellant also stood dismissed by the

Supreme Court, as reported in ***(2012) 4 SCC 37***. The review petitions were then filed by the appellant, which also stood dismissed by the Supreme Court. Thereafter, in a completely different case, the Constitution Bench of the Supreme Court in ***Mohd. Arif Vs. Registrar, Supreme Court of India***, reported in ***(2014) 9 SCC 737***, considered two basic issues in the cases where death sentence was pronounced by the High Court: (1) whether the hearing of such cases should be by a Bench of at least three if not five Judges of the Supreme Court and (2) whether the hearing of review petitions in death sentence cases should not be by circulation, but should only be in open Court. Though the Supreme Court was not persuaded to accept the submission that the appeal should be heard by five Judges of the Court, but it decided that in every appeal pending in the Court in which the death sentence had been awarded by the High Court, only a Bench of three Judges shall hear the appeal. As regards the oral hearing of the review petitions in the open Court, it was held that a limited oral hearing ought to be given, and it was held that this direction would also apply where the review petition is already dismissed, but the death sentence was not executed. This gave an opportunity of consideration of the matter of the accused Rajendra Pralhadrao Wasnik again by the Supreme Court. As regards the said accused, it was found by the Supreme Court that the High Court as well as the Hon'ble Supreme Court had

not taken into consideration the probability of reformation, rehabilitation and social integrity of the appellant into the society. The Court, however, found that the appellant was accused in other three similar nature of cases. The Hon'ble Supreme Court in the backdrop of these facts laid down the law as follows :-

> "75. ----------. It must be appreciated that a sentence of death should be awarded only in the rarest of rare cases, only if an alternative option is unquestionably foreclosed and only after full consideration of all factors keeping in mind that a sentence of death is irrevocable and irretrievable upon execution. It should always be remembered that while the crime is important, the criminal is equally important in so far as the sentencing process is concerned. In other words, courts must "make assurance double sure"." (Emphasis supplied).

91. Even in the backdrop of the fact that the accused was found to be accused in three similar nature of cases, and the case related to the gruesome rape and murder of a girl child aged about three years, the Hon'ble Apex Court, laying down the law that in absence of any consideration about the probability of reformation, rehabilitation and social re-integration of the appellant into the society, the death sentence awarded upon the appellant, could not be maintained, commuted the death sentence of the accused, which was earlier affirmed up to the Supreme Court, to the life imprisonment with direction that the accused should not be released from the custody for the rest of his normal life.

92. Again in the case of ***Sachin Kumar Singhraha Vs. State of M.P.***, reported in ***2019 SCC On Line SC 363***, a school going girl was subjected to rape, and her school bag and dead body were recovered at the instance of the accused, pursuant to his disclosure statement, it was not found to be a case of such category, where the death sentence was necessarily to be imposed, and the death sentence imposed upon the accused was commuted to the sentence of life imprisonment, with no remission for 25 years. In the facts of the case, the Hon'ble Apex Court was not convinced that the probability of reform of the accused was low, in absence of any criminal antecedent and keeping in mind his overall conduct.

93. Taking cues from the decisions of the Hon'ble Apex Court in ***Rajendra Pralhadrao Wasnik's*** case and ***Sachin Kumar Singhraha's*** case (supra), we are of the view that the principles laid down therein, would squarely cover the case of the appellant in the present case also. The probability of reformation, rehabilitation and social re-integration of the appellant, also cannot be ruled out. But at the same time, we just cannot lose sight of the manner in which the deceased was murdered after committing rape upon her.

94. In the facts of this case, we are of the considered view, that though the extreme penalty of death was not warranted in the facts of this case, but the accused does not deserve any major leniency in the matter of remission of the sentence. As

such, the impugned order of sentence, awarding the capital punishment of death to the appellant, Indar Oraon, for the offence under Section 302 of the Indian Penal Code, is hereby, commuted to the life sentence.

95. In our considered view, this alternative option shall serve the interest of justice. The sentence passed against the appellant Indar Oraon for the offence under Section 6 of the POCSO Act shall also run concurrently. We also hereby, affirm the sentence of the appellant Indar Oraon for the offence under Section 6 of the POCSO Act.

96. Accordingly, the impugned Judgment of conviction dated 09.01.2025 and Order of sentence dated 10.01.2025 passed by learned Additional and Sessions Judge-I-cum-Special Judge (POCSO Act), Lohardaga, in Special POCSO Case No.09/2023, stand affirmed, with the modification in the sentence of the appellant Indar Oraon, as aforesaid.

97. Before parting with this Judgment, we find that the parents of the deceased are the victims of crime in this case and they are required to be duly compensated under the 'Victim Compensation Scheme' under Section 357-A of the Cr.P.C./Section 396 of the BNSS, 2023.

98. We accordingly, direct the Member Secretary, Jharkhand State Legal Services Authority, Ranchi, to take up the matter with the concerned District Legal Services

Authority, so that these victims of crime may be duly compensated at an early date.

99. Let a copy of this Judgment be sent to the Member Secretary, Jharkhand State Legal Services Authority, Ranchi, for the needful.

100. The aforesaid Criminal Appeal is accordingly, dismissed with the modification of the sentence of the appellant Indar Oraon for the offence under Section 302 of the Indian Penal Code.

101. The Death Reference is also answered, accordingly.

102. Let the Lower Court Records be sent back to the Court concerned forthwith, along with a copy of this Judgment.

I agree **(Sujit Narayan Prasad, J.)**

(Arun Kumar Rai, J.) **(Arun Kumar Rai, J.)**

Date : 06/01/2026

Birendra /**A.F.R.**

Uploaded on 06.01.2026.