

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1053 of 2017**

Arising Out of PS. Case No.-207 Year-2014 Thana- PALASI District- Araria

Rajesh Kumar Bahardar @ Rajesh Bahardar @ Bokai Bahardar, son of Gholai Bahardar of Village - Belwa Ghat Tola Badhela, P.S. - Araria, District - Araria.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Chandra Maoleswar, Advocate Mr. Baleswar Kamat, Advocate Mr. Anamul Haque, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, Addl.PP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 24-01-2025

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. This appeal has been preferred for setting aside the judgment of conviction dated 03.01.2017 (hereinafter referred to as the ‘impugned judgment’) and the order of sentence dated 05.01.2017 (hereinafter referred to as the ‘impugned order’) passed by learned 3rd Additional District and Sessions Judge, Araria (hereinafter referred to as the ‘learned trial court’) in Sessions Case No. 30 of 2015/ Trial No. 52 of 2016 arising out of Palasi P.S. Case No. 207 of 2014.



3. By the impugned judgment, the appellant has been convicted for the offences punishable under Sections 364, 376, 379, 411, 302 and 201 of the Indian Penal Code (in short 'IPC') and by the impugned order, the appellant has been ordered to undergo life imprisonment for each of the offences under Sections 364, 376 and 302 IPC. He has also been ordered to undergo imprisonment for seven years under Section 201 IPC. Further, he has been ordered to undergo three years each for the offence under Sections 379 and 411 IPC. The appellant has to pay a fine of Rs.50,000/-. All the sentences are to run concurrently.

Prosecution Case

4. The prosecution story is based on the *fardbeyan* of Farindra Ranjan Kumar (PW-9) recorded by SI Dhananjay Kumar, SHO Palasi Police Station on 12.09.2014 at 20:30 hours. In his *fardbeyan* (Exhibit '3'), he has stated that on 08.09.2014 at about 18:30 hours his wife, who was working as a Warden at Kasturba Gandhi Balika Awasiya Vidyalaya, Palasi, District-Araria left for home from Palasi but did not come. In this regard, on 09.09.2014, the informant lodged a Sanha that his wife (hereinafter called 'victim/deceased') was coming from Palasi by tempo but despite five days having been passed, there is no trace of his wife.



5. On the basis of this *fardbeyan*, Palasi P.S. Case No. 2007 of 2014 dated 12.09.2014 was registered under Section 364/34 IPC against unknown persons. After investigation, Police submitted a chargesheet bearing No. 224 of 2014 dated 06.11.2014 against this appellant under Sections 364, 376(A), 302, 201, 379 and 411 IPC. On the basis of this chargesheet, learned Chief Judicial Magistrate, vide his order dated 02.12.2014 took cognizance of the offences under Sections 364, 376(A), 302, 201, 379 and 411 IPC and on 15.12.2014 committed the records to the court of sessions. After receiving the records, Sessions Case No. 30 of 2015/ Trial No. 52 of 2016 was registered. On 07.02.2015, charges were framed under Section 364, 376(A), 302, 201, 379 and 411 IPC. Charges were read over and explained to the appellant in Hindi which he denied and claimed to be tried.

6. In course of trial, the prosecution examined as many as eleven witnesses and exhibited several documents to prove the prosecution case. The names of the prosecution witnesses and the exhibits are being shown hereunder in tabular form:-

List of Prosecution Witnesses:-

PW-1	Rita Kumari Sadgi
PW-2	Md. Razzak
PW-3	Md. Sadik
PW-4	Bhedilal Chaudhary
PW-5	Ekhlague Ahmad



PW-6	Md. Mukhtar
PW-7	Dr. AG Hasan
PW-8	Md. Shahnawaz
PW-9	Fanindra Ranjan Kumar
PW-10	Sheo Nandan Prasad
PW-11	Prashant Shrivastav

List of Exhibits:-

Ext-1	साक्षी एखलाख अहमद का जब्ती सूची पर हस्ताक्षर
Ext- 2	साक्षी सं०— 7 डा० अली हसन पोस्टमार्टम का लिखावट एवं हस्ताक्षर का पहचानते हैं।
Ext- 3	साक्षी सं० —9 फनीन्द्र रंजन कुमार फर्दब्यान पर अपने हस्ताक्षर का पहचानते हैं।
Ext-3/1	साक्षी सं०— 9 फनीन्द्र रंजन कुमार ममिया ससुर विशेश्वर प्रसाद श्रीवास्तव हस्ताक्षर फर्दब्यान पर
Ext-3/2	साक्षी सं०— 10 शिव नन्दन प्रसाद राय तत्कालिन थाना प्रभारी धन्नजय कुमार का फर्दब्यान पर लेख एवं हस्ताक्षर
Ext- 1/A	Seizure List
Ext- 4	Sanha No- 180/14 dt 9.9.14
Ext- 5	Confessional statement of Rajesh Kumar Bahardar
Ext-6	Inquest Report
Ext-7	Mobile CDR total Nine Sheet
Ext-8	F.S.L. Report
Ext-No-Mo I	Black Nokia Mobile IMEI- No.351948/05/556302/2
Ext-No-Mo II	Black Carbon Mobile

Findings of the Learned Trial Court

7. Learned trial court after examining the evidence of the prosecution witnesses found that the case is based on the circumstantial evidence for which all the chains of the occurrence must be connected to each other. In that connection, the learned trial court examined the evidence of PW-1 and PW-2 who deposed that on 08.09.2014 they met the victim/deceased between 6-6:30 PM at the school gate while she was going to her home at Araria.



Thereafter, the learned trial court considered the evidence of PW-3 (Clerk of Tempo Stand) who deposed that he saw the deceased sitting in the tempo bearing No. BR11M-8931 at Palasi Bus/Auto Stand. The driver of the said tempo is Md. Shahnawaz (PW-8). Though the prosecution has declared PW-3 hostile but the learned trial court took note of his evidence with the evidence of other witnesses.

8. The learned trial court thereafter further considered the evidence of PW-8 to connect the chain of circumstances. In paragraph '1' of his deposition, PW-8 deposed that on the alleged date of occurrence at 6-6:30 PM, he was at Palasi Chowk with his tempo and the teacher of Kasturba Vidyalaya, Palasi was also sitting in his tempo. He has further deposed that one person had got seated another person, whose name is not known to him but he identified him as the fishmonger. PW-8 further identified that the another person who was in his tempo for Araria on the said date with the teacher of Kasturba Vidyalaya, Palasi was in the dock. The person who was identified by this witness disclosed his name as Rajesh Bahardar who is appellant in this case. This witness further deposed that the victim/deceased came to 'Bhebhra' Chowk by his tempo and thereafter she had gone in the tempo of Md. Mokhtar (PW-6) to Araria. The learned trial court thereafter



took the evidence of PW-4 to connect the chain of circumstance. PW-4 is the brother-in-law of the appellant who deposed that the appellant is his brother-in-law. He had gone to see off his brother-in-law (appellant) where the appellant sat in the tempo in which one woman was also sitting.

9. The learned trial court found that these evidences clearly establish that the appellant had come in the tempo of PW-8 to 'Bhebhra' Chowk in the evening on the date of occurrence. The learned trial court relied on the evidence of PW-6 who deposed that for coming Araria he was picking the passengers at 'Bhebhra' Chowk and in that course, one woman had come first at Bair Gachhi, some passengers also boarded his tempo. When he went to a *paan* shop, one person came to him and said that the lady who is sitting in the vehicle of PW-6 is his wife and she is not willing to accompany him due to annoyance and asked him to stop the vehicle at 'Panar Pul' where he stopped the vehicle and the women stepped down firstly and that person also stepped down there and he paid the fare and he asked him to proceed with the vehicle. The learned trial court found that this witness has categorically stated in his evidence that the woman who sat in his tempo had alighted from another tempo at 'Bhebhra' Chowk and as soon as he started his vehicle the another person sat in his tempo. The learned trial



court found that from the evidence of PW-8 (paragraph '1') and PW-6 (paragraph '6') and that of PW-4 that the person who sat in the tempo was the appellant and the evidences of PW-3, PW-6 and PW-8 clearly establish that the woman who was sitting in the tempo was the deceased wife of the informant.

10. Learned trial court took note of the evidence of PW-6 (paragraph '9') in which he deposed that the man and woman who were sitting in his tempo were not talking to each other and in the opinion of the learned trial court, this indicates that the man (appellant) and woman (deceased) were not friends. Learned trial court found from the evidence of above-mentioned witnesses that on 08.09.2014 at about 7:00 PM, the deceased came up to 'Panar Pul' through the tempo of Md. Mokhtar (PW-6), thereafter she became traceless for which her husband lodged a *sanha* DE No. 180 of 2014 dated 09.09.2014. Learned trial court took the evidence of PW-3 and PW-8 together and did not find any reason to disbelieve the evidence of PW-3.

11. The learned trial court analysed the evidence of PW-10 who got the CDR of the mobile number of the deceased and after getting subscriber details and tower location, the I.O. found that the mobile of the deceased is being used through SIM No. 7250535937 which is in the name of Parmanand Bahardar who is



the brother of the appellant and thereafter the mobile was seized from Rajesh Bahardar (appellant). Learned trial court found from the evidence of I.O. (PW-10) that he arrested the appellant and during interrogation, he accepted that he committed rape with the victim and on giving threat for lodging the case killed her by pressing her neck and threw the dead body in Parmar River. Thereafter, the I.O. conducted search drive with swimmer in Parmar River keeping the appellant with himself and during search, found one dead body in the bush of river in the area of 'Khataghat' which was taken out and on seeing that the appellant identified the dead body saying that this is the body which was thrown by him in the river after commission of rape, the I.O. recorded the confessional statement. The learned trial court took note of Section 27 of the Indian Evidence Act and opined that the confessional statement of the appellant is being corroborated by the evidence of prosecution witness who had described the circumstances right from boarding of the deceased on the tempo on 08.09.2014 till her stepping down at 'Panar Pul' and observed that the confessional statement of the accused can be used against the appellant. Learned trial court took note of the evidence of Doctor (PW-7) who found abrasion mark in the private part of the



deceased which indicates about rape, though, the FSL report (exhibit '8') had not indicated about rape.

12. Finally, the learned trial court after close scrutiny of the evidences available on the record came to a conclusion that the prosecution has been able to prove it's case against the appellant beyond all reasonable doubts and held the appellant guilty for the offence committed under Sections 364, 376, 379, 411, 302 and 201 IPC.

Submissions on behalf of the appellant

13. Learned counsel for the appellant has assailed the impugned judgment on various grounds. It is submitted that there is no reliable evidence on the record to the effect that the appellant had travelled in the tempo of PW-6 and PW-8 together with the deceased lady and that he had alighted with the deceased lady from the tempo across the Panar Bridge.

14. Learned counsel submits that the seizure list showing the recovery of two mobile phones from the house of the appellant and that one of them belonged to the deceased is not worth reliable for the reason that the prosecution has failed to bring any cogent evidence to prove that the alleged recovered Nokia mobile belonged to the deceased. The seizure list witness



(PW-5) has denied that any mobile phone was recovered in his presence.

15. Learned counsel submits that PW-6 and PW-8, who are the two tempo drivers, were produced before the learned Magistrate for recording their statement under Section 164 CrPC only on 15.09.2014, i.e. after two days of the recovery of the dead body of the deceased lady. Both the witnesses have stated in their evidence that the appellant was shown to them by police in the Police Station and thereafter their statements were recorded under Section 164 CrPC.

16. Learned counsel submits that the learned trial court has convicted the appellant amongst others one under Section 376 IPC even as there is absolutely no evidence to frame charge under the said Section. This charge has been found proved by the learned trial court on the solitary basis of confessional statement of the accused which would not be admissible in evidence.

17. Learned counsel submits that the theory of the prosecution that dead body was recovered on the disclosure made by this appellant after his arrest in connection with this case would not inspire confidence inasmuch as it would appear that in the arrest memo which has been prepared on 13.09.2014, the time of arrest has not been mentioned by police. It is his further



submission that in this case, the parameters which are required to be satisfied to prove a case based on circumstantial evidence has not at all been satisfied by the prosecution. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra** reported in **(1984) 4 SCC 116** to submit that unless the criminological chain of events is duly established, it would not be safe and prudent to convict the appellant in this case.

18. It is ultimately submitted that the learned trial court has grossly erred in appreciation of evidences on the record hence the impugned judgment and order are liable to be set aside.

Submissions on behalf of the State

19. On the other hand, learned Additional Public Prosecutor for the State has defended the impugned judgment and order of the learned trial court. It is submitted that on a cumulative reading of the deposition of the prosecution witnesses it would appear that the chain of criminological events is complete in this case and there would be no iota of doubt that the appellant is guilty of committing the offences for which he has been charged.

20. Learned Additional Public Prosecutor has drawn the attention of this Court towards the evidence of the prosecution witnesses who have proved the fact that on the date of occurrence



i.e., on 08.09.2014, the victim lady had left her school premises at about 6:00 PM. PW-1 and PW-2 had met her while leaving the school and proceeding towards the main gate of the school to take a vehicle for her home.

21. Learned counsel submits that PW-6 and PW-8 are the two tempo drivers who have proved the fact that the victim lady and this appellant both had been sitting in their tempo and lastly, he had given PW-6 to understand that the victim lady was his wife who was not happy with him for some reason and did not want to accompany him so he had requested the tempo driver (PW-6) to stop the vehicle at Panar Bridge, he had also paid the fare on behalf of the victim lady and as soon as she alighted from the tempo, the appellant told PW-6 to proceed ahead with the tempo. It is submitted that PW-6 is an independent witness and there is no reason to disbelieve him.

22. Learned Additional Public Prosecutor has further submitted that from the evidence of the I.O. (PW-10) it would appear that he had obtained tower location of the mobile phone of the victim who was using mobile number 7764967103. He has recorded in course of investigation in paragraph '12' of the case diary the mobile number of the deceased lady and that he had obtained the Call Detail Record (CDR) of the same. He had found



that the said SIM was being used from a mobile bearing IMEI Number 351948055563020. PW-10 has also stated that in course of investigation he had found that on 10.09.2014 mobile number 7250535937 was being used at the said location which was in the name of one Parmanand Bahardar who happened to be the brother of the appellant. PW-10 had seized the said mobile and had prepared the seizure list (Exhibit '1/A'). He had arrested the appellant and on his disclosure, the dead body was recovered from Khata Ghat.

23. Learned Additional Public Prosecutor submits that this is a well proved case by the prosecution and the learned trial court has rightly appreciated the whole evidences on the record.

Consideration

24. After hearing learned counsel for the appellant and learned Additional Public Prosecutor for the State as also upon perusal of the trial court records, I find that the whole prosecution case is based on circumstantial evidences, therefore, in view of the settled propositions of law as enunciated by the Hon'ble Constitution Bench of the Supreme Court in the case of **Sharad Birdhichand Sarda** (*supra*), it would be essential to see as to whether the prosecution has been able to establish the



circumstances which had a connection with the transaction which ended up in death of the victim.

25. A perusal of the evidence of PW-1, who is a teacher in the same school and PW-2, the night guard of the school would show that the deceased/victim was working as a Hostel Warden in Kasturba Gandhi Residential School, Palasi within the Palasi Police Station in the District of Araria. On 08.09.2014, she had given charge of the hostel to PW-1 and told her that she would go to her home at Araria. She left the school in the evening at about 6:00 PM. PW-1 has stated that the *pakki* road from where the deceased used to take vehicle is at a distance of about 100 steps only from the school and she had gone to leave the deceased/victim upto the gate of the school whereafter she returned and the victim proceeded to take vehicle. The evidence of PW-2 fully corroborates the version of PW-1. Thus it is established from the evidence of these two witnesses that the victim lady had left her school at about 6:00 PM on 08.09.2014 for her home at Araria.

26. Md. Sadik (PW-3) is a Tempo Stand Clerk at Tempo Stand, Palasi. In his examination-in-chief, he has stated that he was at the Palasi Tempo Stand where he had seen the victim in Tempo No. BR-11M-8931 which belong to Shahnawaz Tempo Driver.



PW-3 identified the victim. The said vehicle was on the way to Jokihat and he had seen that some other passengers were also there in the vehicle but he did not know them. He has stated that he knows Bhedva but at that time he had not seen Bhedva in the tempo. The prosecution declared PW-3 a hostile witness and cross-examined him. His attention was drawn towards his previous statements made before police in which he had stated that on the said tempo, one Bhedi Lal Chaudhary had got boarded his relative and had paid the tempo fare for him. At that very time madam arrived and had occupied the seat beside him whereafter the driver Shahnawaz proceeded with the vehicle towards Jokihat. PW-3 denied the fact that he had made such a statement before the I.O. but the I.O. (PW-10) has stated in course of his evidence (paragraph '7') that in paragraph '39' of the case diary he had recorded the statement of Bhedi Lal Chaudhary who had told him that in the same tempo, on the middle seat, the deceased teacher of Kasturba Gandhi Residential School was sitting and he had also said that Rajesh Kumar Bahardar @ Bokai (the appellant) was a person of immoral character.

27. Bhedi Lal Chaudhary (PW-4) is the brother-in-law (*bahnoi*) of the appellant. In his examination-in-chief, he has stated that Rajesh Bahardar @ Bokai had come to his village to visit the



fair and had stayed in the night. PW-4 has stated that he had got him boarded in a Tempo at Palasi Chowk at about 5-6 PM. He has confirmed in his deposition that tempo was of Shahnawaz and he had paid the tempo fare for Jokihat. This witness has stated that in the tempo other passengers were also sitting. He has stated that ladies were also sitting. This witness has also been declared hostile by the prosecution. The prosecution cross-examined him and drew his attention towards his previous statement made before police in which he had stated that in the said tempo, on the middle seat, the victim lady was sitting and his attention was further drawn towards his previous statement made before police that Rajesh Bahardar @ Bokai was a person of immoral character. Though PW-4 denied to have made such statements before the I.O. but as discussed above, the I.O. has contradicted PW-4 by proving his statements recorded in paragraph '39' of the case diary.

28. Ekhlaque Ahmed (PW-5) is one of the seizure list witnesses. He has proved his signature on the seizure list which has been marked Exhibit '1' but has stated that police had not seized any mobile in his presence. In course of his cross-examination, he has stated that police had obtained his signature on blank paper by threatening him and he had not put his signature on his own will and volition. In his cross-examination, he has



stated that he had not made any complaint in this regard to the S.P. because he was not aware that for what purpose Daroga had obtained his signature.

29. Md. Mukhtar (PW-6) is a very important witness. He is the last tempo driver with whom the deceased and the appellant both were travelling in his tempo bearing Number BR11M8616 from Jokihat to Araria. In his examination-in-chief, PW-6 has stated that at about 7:00 PM, he was waiting for the passengers for his tempo at 'Bhebhra' Chowk for going to Araria. According to him, first of all, one lady came and sat in the tempo for Araria. PW-6 started the tempo, in the meantime, one person came and sat for going to Belwa. At Bairgachhi Chowk, the tempo stopped expecting some more passengers. PW-10 has stated that he went to take '*paan*' where the person who was sitting in the tempo came to him and said that the lady who was sitting in the tempo is his wife and she had become angry with him so she is not willing to go with him. The said person disclosed to PW-6 that he is a resident of Belwa so PW-6 should stop the tempo near the Panar Pul. He paid the tempo fare for himself and the said lady. According to PW-6, he stopped the vehicle near Panar Pul. The lady was sitting at the left side of the vehicle and the said person was sitting at the right side. First of all, the lady got down and



thereafter the said person came down from the vehicle. Both alighted from the vehicle from the left side whereafter that person told PW-6 to move ahead with the vehicle. On this, PW-6 proceeded and reached Zero Mile, Araria.

30. PW-6 has stated that after two days, the tempo driver Shahnawaz (PW-8) told him that the lady who was sitting in his tempo has been murdered. At that time, he was at 'Bhebhra' Chowk. On the same day, at 2:00 PM, the *Bara Babu* of the police station came to him and inquired from him on which he told him that one lady and one male had travelled in his tempo and both had alighted from the tempo near Panar Bridge. After five days, *Bara Babu* had called him at Araria Police Station, inquired from him, took his statement and then produced him for his statement before a Magistrate. PW-6 identified the person who was sitting in his tempo, was present in court. In course of trial, in dock two persons were standing out of whom, the appellant was identified by PW-6. In course of his cross-examination, this witness has stated that the lady who sat in his tempo had alighted from another tempo and as soon as he started the vehicle, the said person who sat in his vehicle came but he cannot say that from where he arrived. In paragraph '11', this witness has stated that near Panar Pul, both the person and the lady came down and proceeded willfully as wife



and husband. In paragraph '12' of his deposition, PW-6 has stated that the place where he had stopped the tempo was a lonely place. He had got recorded his statement before the Magistrate after five days and had made the same statement which he had made before police. He has stated in paragraph '18' of his cross-examination that he was not shown the photograph of the dead body of the victim and police had shown him the accused who has been identified by him in court, in the police station. In the police station also he had identified the appellant and had stated that he had been sitting in his vehicle. This witness was suggested by the defence that he had become witness under pressure of the local police and the person who has been identified by him was not sitting in his tempo and at the instance of police, he had identified the appellant. The suggestion was denied by the witness.

31. On appreciation of the evidence of PW-4, who is the brother-in-law of the appellant and has been declared hostile, there would be no difficulty in recording an opinion that the appellant had gone to the house of his brother-in-law (PW-4) to visit the local *mela* and on 08.09.2014 at about 6:00 PM, he had boarded the tempo of Shahnawaz (PW-8) for Jokihat. Though PW-4 has stated that ladies were sitting in the tempo but he deviated from his earlier statement made before police that the victim lady was



sitting in the said tempo on the middle seat. The evidence of I.O. (PW-10) proves that PW-4 had made a statement before police that he had seen the victim sitting in the tempo of Shahnawaz on the middle seat. It is evident from the evidence of Md. Sadik (PW-3) that he had seen the victim lady in the tempo of Shahnawaz. Though Md. Sadik (PW-3) did not confirm presence of the appellant in the said tempo but his statement has been proved by the I.O. (PW-10) that he had stated before the I.O. in course of investigation that Bhedi Lal Chaudhary (PW-4) had got boarded his relative in the tempo of Shahnawaz. Thus, there is no iota of doubt that the victim lady as well as the appellant both were travelling at first instance in the tempo of Shahnawaz (PW-8) and after leaving the said tempo at Jokihat, both of them had again boarded the tempo of Md. Mukhtar (PW-6). While the victim lady had sat in the tempo for going to Araria, the appellant told PW-6 that he is resident of Belwa and sat in the tempo. On perusal of the evidence of PW-6 it appears that he had either gone in collusion with the appellant or had not exercised due diligence and care while carrying the passenger and he accepted the tempo fare of the lady from the appellant and allowed the appellant to get down at Panar Bridge from the left side of the tempo after the lady seems to have got down from the tempo to give way to the appellant who



was sitting to her right side and wanted to get down from the left side of the vehicle. PW-6 seems to be saving himself when he says in course of his cross-examination that the lady had got down from the vehicle on her own and both of them had moved ahead as husband and wife. So far as this part of his deposition is concerned, the same is not believable. It is evident that only two passengers were sitting in the vehicle lastly. The lady was sitting in the left side and this appellant was sitting right to her. He had already given a wrong picture to the tempo driver (PW-6) at Bair Gachhi Chowk at the *paan* shop that the lady is his wife and he had persuaded PW-6 to stop the vehicle at Panar Bridge. The manner in which PW-6 agreed with the request of the appellant gives rise to a suspicion as to the conduct of PW-6 but there is no iota of doubt that it was this appellant who had made the victim lady to get down from the vehicle at Panar Bridge from left side to facilitate him in getting down from the vehicle but once he got down and before the victim lady would have boarded the tempo again, the appellant asked the tempo driver (PW-6) to leave the place and proceed ahead with his tempo. PW-6 left the victim lady and proceeded with his tempo. It was a lonely place.

32. Dr. Ali Hassan (PW-7) is the Doctor who was posted as Medical Officer in Araria Sadar Hospital. After recovery of the



dead body, he had conducted the autopsy on the same and had found the following injuries.

“Underneath ligature mark hyoid bone fracture cervical vertebra dislocated and blood and blood clot found and opening the cranial cavity, thoracic cavity, abdominal cavity the corresponding viscerases were intact and in Situ. Swabs taken from vagina for presence of spermatozoa, swab handed over to the police for needful at same time S.H.O. Palasi Dhananjay Kumar. Time elapsed since death within 7 days. Death in our opinion due to asphyxia a result of above mentioned injuries caused by strangulation.”

From the kind of injuries noticed by the Doctor (PW-7) it is evident that the victim had been subjected to sexual assault and then she was killed.

33. Md. Shahnawaz (PW-8) is the tempo driver who was present at Palasi Chowk on 08.09.2014 at about 6:00 PM with his Tempo Number BR11M8931. In his examination-in-chief, he has stated that 5-7 passengers were sitting in his tempo and among them one teacher of Kasturba Vidyalaya, Palasi was also sitting. PW-8 has further stated that one person came with another person and he identified the person who had come with another person as a fishmonger but did not know his name. PW-8 did not know the another person who identified him in the court. The said identified person is the appellant. PW-8 has stated that he had proceeded from Palasi to ‘Bhebhra’ Chowk. At ‘Bhebhra’ Chowk, two



passengers who had been going to Araria went to the tempo of Mukhtar (PW-6). He has stated that in his tempo, one passenger who had been going to Araria was the teacher of the Kasturba School, Palasi and the another person was the appellant who was present in dock. On the next day this witness came to know at tempo stand that the said teacher had been murdered. His statement was recorded by Palasi Police after a week, one day thereafter his statement was taken in Araria Police Station and then his statement was recorded before the Magistrate. The defence cross-examined this witness. In his cross-examination, PW-6 has stated that he had identified the appellant in the police station but he had not seen police causing any assault or beating upon the accused. He reiterated his statements made before the learned Magistrate and before the police. This witness denied the suggestion of the defence that he had not made any statement before police that one person had come with another person to leave him in the tempo and that the person who had come to see off the another person is a fishmonger. He denied the suggestion that he was making statement under police pressure and had identified the appellant at the instance of police.

34. Fanindra Ranjan Kumar (PW-9) is the husband of the deceased who has stated that on 08.09.2014 at 8:30 PM he



received a call on his mobile from the school Administrator Kasim Hussain who requested him to connect him with the deceased/victim as he wanted to inquire from her about the keys of the school. This witness told him that the victim had not reached her house whereafter he started making call on the mobile phone of the victim from his mobile number 9955938337 to the mobile number of the victim 7764967103 but phone was coming switched off. On the next day he went to Palasi in search of the victim then he came to know that the victim had left her house by tempo of Shahnawaz. On 09.09.2014, he got entered a Sanha in Palasi Police Station. On 13.09.2014, he got a phone on his mobile from Palasi Police that a dead body of a lady has been found at Jataghat so he should come for identification. Jataghat is the place at the bank of Panar river. After receiving information from police PW-9 had gone to Jataghat and had seen the dead body.

35. PW-9 has stated that his statement was recorded by police at his residence on 12.09.2014 at 8:30 PM. He identified his signature thereon and also the signature of his cousin father-in-law namely Visheshwar Prasad Shrivastava. Both the signatures were marked Exhibit '3' and '3/1' respectively. On 13.09.2014 his restatement was recorded by police but till that time there was no information available with regard to his wife. PW-9 identified the accused-appellant in the dock. In his cross-examination, this witness



has stated that Jataghat is at a distance of 15-20 kilometer from Panar Bridge and there are several routes from Araria to Jataghat. He had gone to Jataghat with his younger Mukund Madhav and some people of Mohalla and they reached there by evening. He had seen this appellant at Jataghat in police custody. He had seen the appellant for the first time there. In his cross-examination, PW-9 has stated that he cannot produce any paper of the mobile of his wife and he cannot say that in whose name the SIM was obtained. He, however, disclosed that the SIM was of Airtel and he had purchased the mobile phone from Purnia but cannot say the name of the shop from where he purchased the mobile phone.

36. Shiv Nandan Prasad (PW-10) is the Sub-Inspector of Police who was posted in Palasi Police Station in September 2014. He has proved the *fardbeyan* of Fanindra Ranjan Kumar which was recorded by the then Officer-in-Charge Dhananjaya Kumar. The *fardbeyan* has been marked Exhibit '3/2'. On the basis of the said *fardbeyan*, Palasi P.S. Case No. 207 of 2014 was registered and he had started investigation on 12.09.2014 whereafter he had visited the first place of occurrence which is the Kasturba Gandhi Balika Residential School, Palasi. PW-10 has proved the Sanha No. 180 of 2014 dated 09.09.2014 given by Fanindra Ranjan Kumar (PW-9) in his handwriting and under his signature. It has been marked Exhibit '4' and the same has been mentioned in paragraph '12'. PW-10 has



recorded the tower location of mobile number 7250535937 as on 10.09.2014 in paragraph '13' of the case diary. PW-10 has stated in his deposition that in paragraph '14' of the case diary he has recorded that on 11.09.2014 the mobile phone of victim was being used with SIM number 7250535937. He had obtained the CDR and subscriber details as also tower location for which he had submitted the prescribed proforma *vide* Memo No. 861/14 dated 11.09.2014 to the Confidential Section of Araria Superintendent of Police Office. PW-10 had obtained the CDR and subscriber details of mobile number 7250535937 from which came to know that the said SIM is in the name of Parmanand Bahardar, son of Dholahi Bahardar, Resident of Village-Majgaon, Harijan Tola PS and District Araria, House No. 1112 and he is the brother of the accused. PW-10 seized two mobiles one of which is of Nokia black color with IMEI number 351948/05/556302/2, Model 1200, Type RM647 Material Object-1 (MO-1) the another mobile was Karbon mobile of black color which has been marked Material Object-2 (MO-2). It is this Nokia mobile about whom it is stated by PW-10 that the same belonged to the victim. PW-10 has proved the seizure list of the mobile which has been marked as Exhibit '1/A'.

37. PW-10 has stated that he had taken Rajesh Bahardar (the appellant) into custody and interrogated him who made the confessional statement in which he stated about the manner in which



the crime was committed. I find that the learned trial court has marked the whole confessional statement as Exhibit '5' but I have no iota of doubt that the whole confessional statement would not be admissible in evidence and it would only be that part of the statement which led to discovery of the dead body would be admissible under Section 27 of the Indian Evidence Act. PW-10 has stated that on the basis of the disclosure made by the accused-appellant, the police team along with appellant had gone in search of the dead body and found the same at Khataghat lying in a bush. This appellant is said to have identified the dead body. Mahalgaon Police had done the formalities with respect to the recovered dead body and after arrival of Mahalgaon Police at the bank of the river, inquest report was prepared by ASI Hira Prasad Singh. PW-10 has proved the inquest report which he claimed to have been prepared in his presence. The same has been marked Exhibit '6'. The I.O. has been cross-examined by the defence and I find that the defence has mainly cross-examined the I.O. on the point of ownership of the mobile. The I.O. has stated in paragraph '14' of his deposition that he cannot say that the mobile with the said IMEI was sold to whom as he had not found about this. PW-10 was also cross-examined on the point that he had not recorded in the case diary the time when the appellant was arrested on 13.09.2014 and the seizure list of the mobile did not mention the name of the accused.



38. When I scrutinise the entire materials on the record particularly the evidence of PW-8, PW-9 and PW-10, it is found that all these witnesses are consistent to the fact that this appellant was travelling with the deceased throughout from Palasi to ‘Bhebhra’ and again from ‘Bhebhra’ to Araria and it was this appellant who had persuaded PW-6 to stop the tempo at Panar Bridge. The arrest of the appellant by PW-10 on 13.09.2014 and then recovery of the dead body has been duly proved by the prosecution.

39. In the case of **Sharad Birdhichand Sarda** (*supra*) the Hon’ble Supreme Court has observed as under:-

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh*¹. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh*¹⁷ and *Ramgopal v. State of Maharashtra*¹⁸. It may be useful to extract what Mahajan, J. has laid down in *Hanumant* case¹ :

“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.”

1. 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129

17. (1969) 3 SCC 198 : 1970 SCC (Cri) 55

18. AIR 1972 SC 656 : (1972) 4 SCC 625



40. In the light of the aforementioned discussions when I examine the judgment of the learned trial court, it is found that the learned trial court has duly appreciated the evidences available on the record and no fault may be found with the same. I would, thus, dismiss the appeal.

41. Let the trial court’s records be sent to the learned court below.

(Rajeev Ranjan Prasad, J)

I agree
Jitendra Kumar, J:-

(Jitendra Kumar, J)

SUSHMA2/Rishi-

AFR/NAFR	
CAV DATE	14.11.2024
Uploading Date	24.01.2025
Transmission Date	24.01.2025

