IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.210 of 2023

CNR No. BRHC010204112023

Arising Out of PS. Case No.-33 Year-2016 Thana- SIMRI District- Darbhanga

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Md. Raja, Son of Md. Saikh Isa, R/o Village- Kansi, P.S.- Simri, District- Darbhanga ... ... Appellant

Versus

The State of Bihar

... ... Respondent

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Appearance :
For the Appellant/s : Mr. Iqbal Asif Niazi, Advocate
For the State : Ms. Shashi Bala Verma, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 29-10-2026

Heard Mr. Iqbal Asif Niazi, learned counsel for the appellant and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State as also perused the trial court's record.

2. The present appeal has been preferred for setting aside the judgment of conviction dated 28.01.2023 (hereinafter referred to as the ‘impugned judgment’) and the order of sentence dated 30.01.2023 (hereinafter referred to as the ‘impugned order’) passed by the learned Additional Sessions Judge-I, Darbhanga (hereinafter referred to as the ‘learned trial court’) in Sessions Trial No. 354 of 2016, arising out of Simri P.S. Case No. 33 of 2016. By the impugned judgment, the appellant has been convicted for the

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offences punishable under Sections 302, 364, 201 of the Indian Penal Code, 1860 (in short 'IPC'). By the impugned order, the appellant has been sentenced to undergo imprisonment for life for the offence under Section 302 IPC with a fine of Rs. 25,000/- and in default of payment of fine, to undergo further one year rigorous imprisonment (in short 'R.I.'). He has been sentenced to undergo rigorous imprisonment for ten years for the offence under Section 364 of the I.P.C. with fine of Rs. 10,000/- and in default of payment of fine, further R.I. for six months. Further, he has been sentenced to R.I. for 3 years with fine of Rs. 5,000/- under Section 201 of the IPC and in default of payment of fine, further R.I. for three months. It was further directed that the period undergone will be adjusted from total punishment and all the sentences were directed to run concurrently.

Prosecution Case

3. The prosecution case is based on the *fardbeyan* of Md. Gulzar (PW-4), who is maternal grandfather of the victim girl. In his *fardbeyan*, recorded by the S.H.O., Rajan Kumar of Simri Police Station on 04.04.2016 at the house of the informant, he has stated that his neighbour, namely, Md. Raja (appellant) kidnapped his maternal granddaughter, aged about 3 years. In spite of search made by the entire family, she could not be traced out. Thereafter,

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the police was informed. The informant alleged that he has firm belief that the accused Md. Raja has kidnapped his minor granddaughter for the purpose of ransom. He further alleged that his granddaughter might have been killed by Md. Raja.

4. On the basis of the aforesaid *fardbeyan*, Simri P.S. Case No. 33 of 2016 was registered against the appellant for the offences punishable under Sections 364 of the IPC. Upon completion of the investigation, police submitted a charge-sheet bearing Charge Sheet No. 64 of 2016 dated 13.05.2016 against the appellant Md. Raja for offences punishable under Sections 364, 302 and 201 of the IPC.

5. Vide order dated 15.07.2016, learned Judicial Magistrate, First Class, Darbhanga took cognizance of the offences punishable under Sections 364, 302 and 201 of the IPC and vide order dated 22.08.2016, committed the case to the Court of Sessions for trial. Charges were read over and explained in Hindi to the appellant, to which he pleaded not guilty and claimed to be tried. Accordingly, vide order dated 03.09.2016, charges were framed under Sections 364, 302 and 201 of the IPC.

6. In course of trial, the prosecution examined as many as seven witnesses and got exhibited several documents. The lists

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of prosecution witnesses and the documents are given hereunder in tabular form:-

List of Prosecution witnesses

Prosecution Witness No.	**Name of the Witness**	**Description of the Witness**
PW-1	Rukhasana Praveen	Mother of Victim
PW-2	Nizamuddin Ansari	Other Witness
PW-3	Wazeer Ahmad	Other Witness
PW-4	Md. Gulzar Ansari	Informant (Grandfather of Victim)
PW-5	Shakina Khatoon	Other Witness
PW-6	Rajan Kumar	Investigating Officer
PW-7	Dr. Vedanand Jha	Doctor

List of Exhibits on behalf of Prosecution

Exts.	**Description of the Exhibits**	**Proved by**
‘P-1’	Signature of witness Md. Nazmuddin Ansari on the inquest report	PW-2
‘P-1/1’	Signature of witness Wazeer Ahmad on the inquest report	PW-3
‘P-2’	Signature of witness Md. Nizamuddin Ansari on the *fardbeyan*	PW-2
‘P-3’	Signature of witness Md. Guljar on the *fardbeyan*	PW-4
‘P-4’	*Fardbeyan*	PW-6
‘P-5’	Endorsement of SHO on the *fardbeyan*	PW-6
‘P-6’	Formal FIR	PW-6
‘P-7’	Arrest Memo of accused Md. Raja	PW-6
‘P-8’	Signature of witness Neyaz Ahmad on the Arrest Memo	PW-6
‘P-8/1’	Signature of witness Wazir Ahmad on the Arrest memo	PW-6
‘P-9’	Inquest Report	PW-6
‘P-10’	Letter No.-174/2017 dated 10.04.2017	PW-6
‘P-11’	Photo Copy of the postmortem report	PW-7

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7. Thereafter, the statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he pleaded innocence.

8. The defence has not adduced any oral or documentary evidence.

Findings of the Learned Trial Court

9. Learned trial court, upon appreciation of the oral and documentary evidences on record, held that the prosecution had successfully established the guilt of the accused, Md. Raja, for the offences punishable under Sections 302, 364 and 201 of the IPC. Learned trial court relied upon the testimonies of the prosecution witnesses, the medical evidence and the circumstances surrounding the kidnapping and subsequent recovery of the deceased's body to hold the charges proved beyond reasonable doubt. The motive for the commission of the offence was attributed to the grudge allegedly conspired by the accused against the victim's father.

10. On the question of sentence, learned trial court held that the case do not fall within the category of rarest of rare warranting capital punishment. Having regard to the age of the accused, his clean antecedents, background, period of incarceration and the possibility of reformation, learned trial court

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awarded him imprisonment for life under Section 302 IPC, besides sentences under Sections 364 and 201 IPC, with a direction that the sentences would run concurrently.

Submissions on behalf of the Appellant

11. Learned counsel for the appellant submits that the impugned judgment of conviction and the order of sentence passed by the learned trial court are not sustainable in the eyes of law, as the same are based on improper appreciation of the evidence on record. It is contended that the appellant is innocent and has been falsely implicated in the present case.

12. Learned counsel further submits that there is no eyewitness to the occurrence and the prosecution has failed to establish a complete chain of circumstances connecting the appellant with the alleged offence. The prosecution has also failed to establish the actual place of occurrence. It is pointed out that neither the alleged weapon of offence was recovered nor the clothes of the appellant, allegedly stained with blood, were produced before the court. It is also submitted that the original post-mortem report of the deceased is not available on the record.

13. It is further contended that the prosecution has failed to establish the alleged motive for the occurrence. The allegation regarding an illicit relationship between Md. Ali Ansari, father of

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the deceased, and the wife of the appellant is based on mere suspicion. Learned counsel also submits that Md. Ali Ansari has not been examined by the prosecution and that the evidence of the prosecution witnesses suffers from material contradictions and inconsistencies. It is argued that the prosecution witnesses are interested witnesses.

14. Learned counsel, accordingly, submits that the prosecution has failed to prove the charges against the appellant beyond reasonable doubt and that he is entitled to the benefit of doubt. On these grounds, learned counsel prays that the impugned judgment of conviction and order of sentence be set aside and the appellant be acquitted of the charges.

Submissions on behalf of the State

15. Learned Additional Public Prosecutor for the State submits that the impugned judgment of conviction and the order of sentence passed by the learned trial court are based on a proper appreciation of the evidences available on record and warrant no interference by this Court. It is contended that the prosecution has examined seven witnesses in support of it's case, whose testimonies, particularly those of the witnesses claiming to have witnessed the occurrence, support the prosecution version. It is further submitted that the medical evidence, including the post-

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mortem report, corroborates the prosecution case regarding the cause of death. Learned Additional Public Prosecutor, accordingly, submits that the prosecution has successfully established the guilt of the appellant beyond all reasonable doubts and prays for dismissal of the appeal.

Consideration

16. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also perused the trial court's record.

17. From Ext.-7, which is the arrest memo, it appears that the appellant, Md. Raja, was arrested by Police on the same day at 10.30 A.M. from the place near village Sobhan, Mohanipul.

18. It appears from the evidence of the S.H.O., Rajan Kumar (PW-6) that after arrest of the accused, he had recorded the confessional statement of the accused-appellant in paragraph '6' of the case diary. When we went through the statements recorded in paragraph '6' of the case diary, it is found that the same has been recorded in 'third person', moreover, confessional statement in which the accused-appellant is said to have disclosed the place where the dead body was concealed, has not been brought in evidence in terms of Section 27 of the Indian Evidence Act, 1872 (now Section 23 of the Bharatiya Sakshya Adhiniyam, 2023).

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There is nothing on the record to show that the confessional statement was recorded in accordance with law, particularly, by following the procedural requirements as laid down by the Hon'ble Supreme Court in the case of **Venkatesh @ Chandra & Another Vs. State of Karnataka** reported in **(2022) 16 SCC 797.**

> "**22.** We must observe that we have repeatedly found a tendency on the part of the prosecuting agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. In the process, a confession of an accused which is otherwise hit by the principles of the Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the court. This practice must immediately be stopped. In the present case, the trial court not only extracted the entire statements but also relied upon them.
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> **23.** The other disturbing feature that we have noticed is that voluntary statements of the appellants were recorded on a DVD which was played in court and formed the basis of the judgment of the trial court as is noticeable from paras 34 and 35 of its judgment. Such a statement is again in the nature of a confession to a police officer and is completely hit by the principles of the Evidence Act. If at all the accused were desirous of making confessions, the

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> investigating machinery could have facilitated recording of confession by producing them before a Magistrate for appropriate action in terms of Section 164 of the Code. Any departure from that course is not acceptable and cannot be recognised and taken on record as evidence. The trial court erred in exhibiting those DVD statements Exts. P-25 to 28. As a matter of fact, it went further in relying upon them while concluding the matter on the issue of conviction."

19. We have noticed on perusal of the deposition of the I.O. (PW-6) that he had not found any witness on the point of illicit relationship of the father of the victim girl with the wife of accused-appellant. The I.O. had not recorded the statement of the residents living in the boundary of the first place of occurrence. The house of the informant and that of the victim are situated in front of each other.

20. On perusal of the evidence of the informant (PW-4), we find that Md. Raja (appellant) came to the house of the informant at about 6:00 A.M., at that time, the informant was in the courtyard of his house and the victim girl was playing there. This witness found that the appellant and the victim were playing, thereafter, this witness had left. His daughter Ruksana Khatoon

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(PW-1) came to convey him that Guriya was playing and she had been taken away by Raja somewhere. Thereafter, this witness went in search of her but the victim girl could not be found. Thereafter, this witness informed the Police. Police came, then he told about the appellant to Daroga jee. This witness has stated that Daroga Jee, he and other co-villagers went in search of the victim and in course of the search, they reached near the 'Sobhan' River where they found that Md. Raja (appellant) was washing the blood. At this point of time, he was arrested by Daroga Jee and in course of interrogation, the dead body was found concealed in a *Gachi* (orchard) near Sobhan River.

21. This Court finds that in his examination-in-chief, even as this witness (PW-4) has stated that the accused-appellant was arrested while he was washing the blood, the cloth of the accused-appellant was not seized and sent to the Forensic Science Laboratory (FSL). The blood sample of the victim was not collected for matching with the blood, if any, found on the cloth of the accused-appellant. In paragraph '16' of his deposition, the informant (PW-4) has stated that he had not told to Daroga Jee in his statement that Raja was washing the blood in Sobhan River, he had not stated to Daroga Jee that he had gone to the place of occurrence with Daroga Jee and further he had not made any

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statement that when interrogation was made from Md. Raja (appellant), then he told about the dead body.

22. On perusal of the evidence of the informant (PW-4), it is evident that he is not a witness on the point of taking away the victim girl from the house of PW-1. This witness has, though, stated that he had gone in search of the victim girl with the Police and the other co-villagers and had found the accused-appellant washing the blood in the Sobhan River but there is no tangible evidence on the record to accept that the accused-appellant was arrested while washing blood. The statement of PW-4 in paragraph '16' takes away the credibility of the prosecution evidence on the point of recovery of the dead body of the victim on the basis of the disclosure made by the accused-appellant. PW-4 had not stated in his statement to Daroga Jee that when interrogation was made from Md. Raja then he had disclosed about the dead body. We have already noticed the evidence of (PW-6) that the confessional statement disclosing the concealment of the dead body and the place where the dead body was concealed, has not been proved in course of trial.

23. It is evident that the whole prosecution case is based upon the circumstantial evidence. The mother of the victim, namely, Ruksana Praveen (PW-1) has stated that on the date of

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occurrence at about 6:00 A.M., she was with her *Gotni* at the v*erandah* and the victim girl was playing there. She has stated that Raja, who is her neighbour, came and took away the victim. She went in search of the victim, but the victim was not found then she informed her father Md. Gulzar (PW-4), who informed the Police and then Police came. This witness has, though, stated that the victim girl was playing at the *verandah* from where she was taken away, in course of her cross-examination, she has stated in paragraph '5' that she had not seen any occurrence by her own eyes. People told her that her daughter had been killed by Raja by cutting her neck. She had seen the dead body of her daughter at 4 O'clock in the evening. She has stated that at the place of occurrence, no weapon was seized in her presence. She could not say about the boundary of the place of occurrence. She has stated that who told her father Gulzar about the dead body, was not known to her. In paragraph '11' of her deposition, she had stated that her daughter had been taken away from the courtyard.

24. Thus, we find that in the examination-in-chief, this witness (PW-1) says that the victim was in the *verandah* from where she was taken away, in course of her cross-examination, she has changed the place and this time she says that her daughter was taken away from the courtyard of her house. In paragraph '13' of

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her cross-examination, she has stated about the previous statement made before the Police in which she has admitted that before Police she had made a statement that her *Gotni* Sakina came and told her that her daughter had been snatched away forcibly by Md. Raja and on this information, she had gone in search of her daughter. It is evident from the statement of PW-1 in paragraph '13' of her deposition that the victim girl was not taken away in her presence. It is her *Gotni* Sakina who came and told her that the victim girl had been forcibly taken away, thus, in course of trial, we find a material deviation in the statement of this witness (PW-1).

25. Sakina Khatoon has been examined as PW-5. She has stated on the same pattern as stated by PW-1. PW-5 does not say that the appellant had forcibly taken away the victim girl. She has stated that the victim was playing in her courtyard and Bibi Ruksana (PW-1) was also in the courtyard when the appellant came and took away the victim girl for playing and thereafter, he committed her murder. In her cross-examination, an attention was drawn towards her previous statements made before the Police in which she had not stated that Guriya was murdered by Raja and that she had seen the dead body of Guriya. In paragraph '7' of her deposition, this witness has admitted that she had not stated before

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Police that there was an injury on the neck of Guriya. In paragraph '9', she has stated that her *Gotni* Ruksana Khatoon had come in the Court and she has further stated that she had deposed exactly as told to her by Ruksana Khatoon.

26. This Court has, therefore, no hesitation in recording that PW-5 is a tutored witness. The manner in which the victim girl was taken away from the house of PW-1 is not getting corroborated by independent material particulars. In this regard, the evidence of PW-1 and that of PW-5 are at much variance. We have further examined the evidence of Wajir Ahmad (PW-3), who claimed in his examination-in-chief that on 04.04.2016 at about 6 A.M. when he was at the Keshi Chowk, he had seen Raja (appellant) taking away Guriya, aged about 3 years. We find that this statement of PW-3 cannot be given much weightage for the reason that PW-3 came to be examined by the I.O. after ten days of the occurrence. He did not disclose it to the victim's family and the Police that he had seen the appellant, taking away the victim on 04.04.2016 at 6 A.M. It would rather appear from the evidence of PW-3 (paragraph "8") that at the time when he was standing at the Chowk, one person, namely, Salam Ansari was also standing there. This witness returned after half an hour to his home and then, he came to know about the occurrence. He claims that he had gone in

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search of Guriya in the eastern side of the village, along with him, Salam Ansari and 2-4 persons of the village, whose names he did not remember, were also present. This Court finds that this witness claims that he had returned home from Chowk at 8 A.M. and he had come to know about the missing of the victim but he did not disclose the fact that he had seen the appellant taking away the victim girl, otherwise, in the *fardbeyan* of the informant, recorded at 8:30 A.M., at least this material fact that the appellant was seen taking away the victim girl must have been mentioned. We are of the considered opinion that the evidence of PW-3 cannot be put in the category of the wholly reliable witness.

27. The postmortem report of the victim has been, though, proved as Exhibit-11 by the Doctor Vedanand Jha (PW-7) but that shows that the time elapsed since death was within 24 to 36 hours. The postmortem was done on 05.04.2016 at 10.45 A.M. The dead body was brought and identified by Choukidar, 5/5 Devendra Paswan of P.S. Simri (not examined). The Doctor found as many as three injuries on her body of different size and according to the Doctor, the underlying soft tissues, muscles, blood vessels, nerves, trachea and esophagus showed concomitants cuts which were infiltrated with blood and blood clots. All the injuries were ante-mortem in nature and were grievous and

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dangerous to life in ordinary course of nature which were caused by sharp cutting weapon. We have noticed that the Doctor had found three injuries over the neck of the deceased, however, the prosecution, in this case, has failed to prove that the victim was taken away by the appellant and that the dead body of the victim was recovered at the instance of this appellant. Even the motive behind the occurrence as propounded by the prosecution has not been proved. The I.O. has clearly stated that no witness had told him during investigation about the illicit relationship between the wife of appellant and the father of the victim. It is well settled that the prosecution must stand on its own leg to prove the guilt of the accused beyond all reasonable doubts. In a case, based on circumstantial evidence unless the chain of chronological events is duly proved and established, it would not be safe to sustain the conviction of the appellant.

28. We are, thus, of the considered opinion that the prosecution is not able to prove it's case beyond all reasonable doubts. The appellant, in this case, would deserve acquittal giving him benefit of doubt.

29. In result, we set aside the impugned judgment dated 28.01.2023 and the order of sentence dated 30.01.2023 passed by learned Additional Sessions Judge-I, Darbhanga in Sessions Trial

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No. 354 of 2016, arising out of Simri P.S. Case No. 33 of 2016. The accused-appellant is acquitted of all the charges, giving him benefit of doubt. The appellant is said to be in jail, he shall be released forthwith, if not wanted in any other case.

30. This appeal stands allowed.

31. Let a copy of this judgment together with the records of Trial Court be sent down to the learned Trial Court.

(Rajeev Ranjan Prasad, J)

(Sunil Dutta Mishra, J)

Rakhi/ Koustav

AFR/NAFR	NAFR
CAV DATE	N.A.
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