

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.55 of 2011

=====

Mohammad Qamrul, S/O Md. Hanif, Resident of Village Kamaldaba, P.S. &
Dist. Araria

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Pankaj Kumar Jha, Advocate
For the Respondent/s : Mr. Abhay Kumar, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 13-03-2026

Heard Pankaj Kumar Jha, learned counsel
appearing on behalf of the appellant and Abhay Kumar, learned
APP for the State.

2. Before entering into the merits of the case, I must
record that upon reading of the judgment, the learned trial Court
in most mechanical manner, without application of mind,
without examining the doctor and the Investigating Officer and
material evidence on record, has passed the order leading to
failure of justice.

3. The present appeal has been filed under Section
374 (2) and 389 (1) of the Code of Criminal Procedure
challenging the judgment of conviction dated 22.12.2010 and
order of sentence dated 28.12.2010 passed by the 1st Additional
Sessions Judge, Araria in S.T. No.462/2002/ 45/2005 arising out



of Araria P.S. Case No. 262/2001, whereby and whereunder the appellant has been convicted for the offence punishable under Section 364 of the Indian Penal Code and has been sentenced to undergo Rigorous Imprisonment for 10 years along with a fine of Rs.1000/- and in default of payment of fine to further undergo R.I. for three months.

4. Being aggrieved by and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellant has preferred the present appeal before this Court. The appellant has assailed the impugned judgment primarily on the ground that the learned trial court failed to appreciate the evidence available on record in its proper perspective and has wrongly recorded the conviction of the appellant despite the existence of serious contradictions and deficiencies in the prosecution case.

5. The prosecution case, in brief, is that the informant Bibi Jumedan had solemnized the marriage of her daughter Bibi Hasina with accused Md. Jamrul, son of Md. Hanst, resident of village Kamaldaha under Araria Police Station, about one and half years prior to the occurrence. About one and half months before 24.07.2001, her daughter was taken to her matrimonial home after Ruksadi. Thereafter, when the informant went to meet her at village Kamaldaha, she neither



found her daughter there nor could get any information about her whereabouts and returned to her village Kakorba. Subsequently, the informant deputed her sons-in-law, Mohammad and Nek Mohammad, husbands of her daughters Bibi Hamida and Bibi Hakina, to inquire into the matter, who came to know that accused Md. Qamrul (appellant) along with his brothers Alam, Asgar and Manjoor, in furtherance of criminal conspiracy, had murdered Bibi Hasina and caused disappearance of her dead body, and it was further alleged that Alam, the Bhaisur of Bibi Hasina, did not like her and therefore the accused persons committed the said offence.

6. On the basis of the written report of the Chaukidaar of the village Akhtiyarpur, the FIR being Banmankhi/sarsi P.S. Case 126 of 2001 in respect of unidentified dead body, which was floating in the river Gokhladhar adjacent to metal road leading from Raniganj to Sarsi was registered on 14.06.2001. Subsequent to that, after receiving knowledge about the death of daughter of P.W. 5 (informant), the informant lodged FIR being Araria P.S. Case No. 262 of 2001 on 24.07.2001 for the offences under sections 302, 201/34 of the I.P.C. and thereafter, Section 364 of the IPC was also added.

7. The post-mortem was conducted on 15.06.2001



by Dr. Indra Narayan at C.A.S. Sadar Hospital Purnea, which has been taken note of in paragraph no. 71 of the case diary relating to Banmankhi/Sarsi P.S. Case 126 of 2001 prepared by the Investigating Officer. As per the post mortem report, doctor has not given any definite opinion regarding cause of death in absence of viscera report. Viscera report has not been brought on record. In respect of Banmankhi/Sarsi P.S. Case 126 of 2001, investigation was conducted by C.S. Gupta (S.H.O.). After investigation, entire records relating to the investigation including post-mortem report and the FIR was transferred *vide* memo no. 23/2002 dated 22.07.2002 and amalgamated into Araria P.S. Case No. 262 of 2001. Charge-sheet was submitted in connection with the Araria Police Station under Section 364 of the I.P.C. Learned trial Court framed charge under Section 364 I.P.C. against the accused/appellant. Thereafter, the trial court took cognizance against the appellant and the case was committed to the Court of Sessions for trial.

ARGUMENT ON BEHALF OF THE APPELLANTS

8. Learned counsel appearing on behalf of the appellant submitted that the judgment and order of conviction and sentence passed by the learned Trial Court are unsustainable in law as well as on facts, being vitiated by non-consideration and erroneous appreciation of the materials on record. It was



contended that the Trial Court failed to account for the inherent improbabilities and inconsistencies in the prosecution case and did not draw any adverse inference from the non-examination of independent witnesses and the Investigating Officer, which, according to the learned counsel, entitles the appellant to acquittal. It was further submitted that the F.I.R. was not exhibited, thereby concealing contradictions with respect to the time and place of occurrence. Learned counsel also argued that the alleged marriage has not been established, as the Nikahnama was not exhibited, no eyewitnesses were examined to prove the marriage or the occurrence, the photographs and clothes of the deceased were not brought on record, and the Moulvi was not examined, while the defence has consistently denied the marriage. It was further contended that the prosecution has, on its own showing, rendered its case doubtful by advancing inconsistent theories of marriage and 'Rosgaddi' on one hand and kidnapping and murder on the other, and has also failed to establish any motive for the alleged offences. In the absence of any cogent material, the assertion that the deceased accompanied the appellant after 'Rosgaddi' remains unsubstantiated, particularly when the Nikahnama has not been exhibited and no independent witness has supported such a claim. It was also submitted that neither the post-mortem report



nor the clothes of the deceased were exhibited, and in the absence of any incriminating evidence against the appellant, the conviction under Section 364 of the I.P.C. is wholly erroneous, as the essential ingredients of the said offence, including motive, have not been established.

9. In such circumstances, the impugned judgment of conviction dated 22.12.2010 and order of sentence dated 28.12.2010 passed by the 1st Additional Sessions Judge, Araria in S.T. No.462/2002/ 45/2005 arising out of Araria P.S. Case No. 262/2001 is required to be interfered with and the appellant deserves to be acquitted.

ARGUMENT ON BEHALF OF THE STATE

10. Per contra, learned A.P.P. appearing on behalf of the State submitted that the witnesses had seen the deceased at the house of the appellant situated in village Kamaldah, and some of them, during the course of investigation, stated that the appellant along with his family members had disposed of the dead body of the deceased, as would appear from the case diary, though he fairly admitted that no independent witnesses were examined during the course of trial. It was further contended that merely because the trial was not conducted strictly in accordance with the prescribed procedure, it cannot be concluded that the appellant is not guilty. The materials



collected during investigation, according to the learned A.P.P., stand corroborated by the allegations made in the F.I.R. lodged by the Chaukidaar, who reported that a plastic rope was found around the neck of the deceased, clearly suggesting throttling by strangulation. It was also submitted that the appellant himself, in his statement recorded under Section 161 Cr.P.C., admitted that he was in a love relationship with the deceased, who had accompanied him to his village and stayed there for nearly one month, after which she was murdered by the appellant and his family members. It was further argued that although no independent witnesses were examined and the post-mortem report and medical opinion were not formally exhibited, such omissions by themselves do not justify interference with the impugned judgment. Referring to the post-mortem findings, it was submitted that the stomach of the deceased was found empty, thereby ruling out the possibility of drowning or suicide, and that the Chaukidaar, though not examined, had found a plastic rope around the neck of the deceased. In the absence of any plausible motive for suicide or accidental drowning, it was contended that the circumstances clearly establish that the appellant, along with his family members, had kidnapped the deceased and committed her murder.

ANALYSIS AND CONCLUSION



11. Heard the parties.

12. Before entering into the merits of the present case, I find it apt to reproduce the findings of the learned trial Court, which *inter alia* is as under:

"7. At the very outset, it is evident from the perusal of the case record that Md. Khan, Hakima, Bibi Hamida, Nek Mohammad and Bibi Jubedan have been produced and examined respectively as PW-1, PW-2, PW-3, PW-4 and PW-5 in support of the prosecution case.

8. PW-5, Bibi Jubedan, in paragraph-1 of her evidence has admitted herself to be the informant of the instant case and stated that her daughter Bibi Hasina was married to the accused Md. Marul (Quamrul) of village Kamaldaha. According to her evidence in paragraphs 2 to 4, her daughter Bibi Hasina was married about one and a half years prior to the present occurrence. She went to see her daughter at her matrimonial house in village Kamaldaha, where there was no trace of Bibi Hasina. Therefore, she asked her sons-in-law to search for Bibi Hasina. The informant along with her sons-in-law Nek Mohammad and Mohammad went to village Kamaldaha, the village of the accused, but again there was no trace of her daughter. The people of the Muslim community of village Kamaldaha told the informant that the accused Md. Marul had killed Bibi Hasina and thrown away her dead body with the intention of causing its disappearance. As a result, she returned to Araria Police Station and gave her Fard-bayan. The Daroga recorded her Fard-bayan at the police station, read over its contents to her and, having found them correct, she put her thumb impression on it. In paragraph-5 of her evidence, the informant identified the accused Md. Marul in the dock of the court and stated that her re-statement was recorded about one and a half months after the lodging of the case. During cross-examination, PW-5 admitted that she has four daughters and that the accused Md. Quamrul is her youngest son-in-law because Bibi Hasina was the youngest among her daughters. At the direction of Araria Police Station, the informant along with her two sons-in-law, Nek Mohammad and Mohammad, went to Sarsi Police Station, where the Daroga showed them a salwar, plain odhni, blue coloured kurti and a photograph, which they identified as belonging to Bibi Hasina. In paragraph-7 of her evidence, the informant admitted that her house is located in Kakorba Basti, about one and a half miles from Araria Police Station. She further stated that the accused Md. Marul and his brothers reside jointly, and she denied the defence suggestion that the accused resides separately from his brothers. The witness also stated that



Md. Marul and his brothers refused to tell anything about Bibi Hasina, while the members of their community disclosed that her daughter had been killed and her dead body thrown away. This witness again stated that she had gone to Sarsi Police Station and identified the photograph of her daughter Bibi Hasina. PW-5 denied the defence suggestion that her daughter was earlier married to one Alam of Madhepura and that she was a woman of cheap character. She also denied the suggestion that her daughter was never married to the accused and that, on his refusal to marry her, the informant falsely implicated him in this case.

9. The accused or the learned defence counsel has not brought anything on record in support of these suggestions, nor have they been able to prove that Bibi Hasina was a woman of easy virtue and cheap character who had fled away to Delhi.

10. PW-1 is the son-in-law of the informant (PW-5). This witness admitted at the beginning of his evidence that he is the son-in-law of Bibi Jubedan. According to his evidence, Bibi Hasina was married to the accused Md. Marul, a resident of village Kamaldaha, and she was living in the house of her in-laws at village Kamaldaha on the date of occurrence. His evidence further reveals that Bibi Jubedan went to village Kamaldaha to meet her daughter Bibi Hasina, but she was not present there. On enquiry, she was told that Bibi Hasina had fled away. On further search, certain people told them that Bibi Hasina had been killed. Thereafter, the informant returned to Araria and narrated the entire matter and lodged the case at the police station. This witness corroborated the informant's version and stated that he also went to search for Bibi Hasina at her matrimonial home at village Kamaldaha, but there was no trace of her and people told him that she had been killed. In paragraph-2, the witness stated that the Daroga recorded his statement at his residence during the course of investigation. The informant's version is further corroborated by this witness in paragraph-3, where he stated that at the direction of Sarsi Police, Daroga Ram Ayodhya Singh informed him and thereafter they went to Sarsi Police Station and identified the clothes of Bibi Hasina. In paragraph-4, PW-1 identified the accused Md. Marul in the dock of the court. In paragraphs-7 and 8, he stated that he had not seen the dead body with his own eyes, but had seen the photograph of the full body including the head of the deceased.

11. PW-2, Makima, is the daughter of the informant. In paragraph-1 of her evidence, she stated that the deceased Bibi Hasina was married to the accused Md. Quamrul about one and a half years prior to the occurrence and thereafter she started living with her husband in village Kamaldaha. Having learnt that the accused Md. Quamrul and his brothers Alam, Asgar and Manjeer had killed Bibi Hasina and caused the disappearance of her dead body, she



along with her mother (PW-5), her husband (PW-4) and her brother-in-law Mohammad (PW-1) went to the house of the accused at Kamaldaha to search for her, but she was not traceable. On enquiry, the accused Md. Quamrul kept silent and did not say anything about Bibi Hasina. However, the villagers narrated that after killing her, the accused and his family members had caused the disappearance of the dead body. Thereafter her mother came to Araria Police Station and lodged the case. Paragraph-2 of her evidence shows that on receiving information from Araria Police Station, she along with PW-1 and her sister went to Sarsi Police Station and, on the basis of the clothes and photographs, identified the deceased as Bibi Hasina. During cross-examination in paragraph-5, she stated that Moulvi Manjeer had prepared the Nikahnama of the marriage of Bibi Hasina with the accused Md. Quamrul.

12. PW-3, Bibi Hamida, is the wife of PW-1 and the sister of PW-2 as well as the daughter of PW-5. This witness has also corroborated the prosecution story. In paragraph-1 of her evidence, she stated that Bibi Hasina was her sister and she was married to the accused Md. Quamrul of village Kamaldaha about one and a half years before the occurrence. She identified the accused in the dock of the court. According to her evidence, after marriage Bibi Hasina started living with her husband in village Kamaldaha. When she along with her mother, sister and husband went to meet Bibi Hasina, they could not find her. On enquiry, the accused Md. Quamrul remained silent and did not say anything, but stated that she might have fled away. The villagers disclosed that all the accused had jointly caused the disappearance of Bibi Hasina and raised suspicion about her killing. Thereafter the mother of this witness lodged the present case. This witness further stated that after receiving information from Araria Police Station about the recovery of a girl's dead body at Sarsi, they went there and, on the basis of clothes and photographs, identified the dead body as that of Bibi Hasina. Paragraph-2 of her evidence reveals that she subsequently learnt that the accused Md. Quamrul had earlier married another girl at Bursa Tela within Sarsi Police Station and later married Bibi Hasina. During cross-examination, she admitted that a Nikahnama was prepared, but it was torn by Alam, the brother of the accused, as disclosed to her by her sister Bibi Hasina.

13. PW-4, Nek Mohammad, is the husband of PW-2 and the son-in-law of PW-5. This witness has also corroborated the prosecution case. In paragraph-1 of his evidence, he stated that Bibi Hasina was his youngest sister-in-law and she was married to the accused Md. Quamrul of village Kamaldaha. After marriage, she started living with her husband in that village. He further stated that he along with PW-1, his mother-in-law (PW-5) and PW-3 went to village Kamaldaha to meet Bibi Hasina, but



they could not find her there. The accused Md. Quamrul was present and stated that Bibi Hasina had fled away somewhere. Thereafter they met the people of the Muslim community who disclosed that Md. Quamrul and Manjeer had jointly killed Bibi Hasina and caused the disappearance of her dead body. According to this witness, they made a vigorous search for Bibi Hasina but could not find her and thereafter returned to Araria Police Station and lodged the case. On receiving information from the police about the recovery of a girl's dead body, he along with PW-1, PW-2 and PW-3 went to Sarsi Police Station and identified the dead body of Bibi Hasina on the basis of her clothes and photograph. He also identified the accused Md. Quamrul in the dock of the court. During cross-examination, nothing material was elicited by the defence to discredit the prosecution case.

14. The defence has taken the plea that Bibi Hasina was not married to the accused Md. Quamrul, and therefore there was no question of her living with him or any occurrence taking place in his custody.

15. However, the evidence of PW-1 to PW-5 is consistent and convincing on the point that Bibi Hasina was married to the accused Md. Quamrul and after marriage she started living with him in village Kamaldaha. It is also evident from their evidence that when they went to village Kamaldaha to see Bibi Hasina, she was missing and not traceable. On enquiry, the accused Md. Quamrul remained silent and only stated that she might have fled away from his house. This conduct of the accused is highly suspicious. He did not inform the informant or her relatives about the whereabouts of his wife. Being her husband, it was his responsibility to disclose the whereabouts of Bibi Hasina to the informant and her family members. His failure to do so under the circumstances indicates that he deliberately concealed the matter and caused the disappearance of his wife. It has been further stated by all the witnesses that after receiving information from Araria Police Station, they went to Sarsi Police Station and identified the dead body of Bibi Hasina. It has also been disclosed by PW-2, PW-3 and PW-4 that Md. Quamrul had earlier married another girl and that Bibi Hasina was his second wife. The informant had married Bibi Hasina to the accused due to her poverty.

16. Under these circumstances, the conduct of the accused Md. Quamrul, in light of the evidence of PW-1 to PW-5, shows that after the marriage he and his brothers remained dissatisfied with Bibi Hasina for one reason or another and by forcibly taking her from village Kamaldaha they kidnapped her with the intention of causing her murder. Therefore, the charge under Section 364 of the Indian Penal Code is well proved against the accused Md. Quamrul.

17. Thus, keeping in view the facts and



circumstances of the case, the evidence of PW-1 to PW-5 and the discussions made above, I find and hold that the accused Md. Quamrul is guilty of the charge under Section 364 of the Indian Penal Code. Accordingly, the bail bond of the accused is cancelled. He is taken into custody and convicted thereunder. The accused is remanded to District Jail, Araria, for his production before this court on 28.12.2010 for hearing on the point of sentence. Issue C/W against the convict."

13. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

14. The learned trial court, on the basis of materials as collected during the course of investigation, passed the Judgment of conviction dated 22.12.2010 and order of sentence dated 28.12.2010 for the offences under Section 364 of the IPC.

15. During the trial, the prosecution has examined altogether five witnesses, namely:

- (i) (P.W.-1),- Md. Khan (Son-in-law of the informant)
- (ii) (P.W.-2),- Bibi Hakima (daughter of the informant)
- (iii) (P.W.-3),- Bibi Aamida (daughter of the informant)
- (iv) (P.W.-4) ,- Nek Mohammad (son-in-law of the informant)
- (v) (P.W.-5),- Bibi Zubaidan (informant)



16. Before examining the evidences on record, I find it apt to reproduce the provisions of Sections 109, 364 and 365 of the Indian Penal Code, which *inter alia* are as follows:

"109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

364. Kidnapping or abducting in order to murder.—

whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

365. Kidnapping or abducting with intent secretly and wrongfully to confine person.—

Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

17. From the perusal of the records the statements of the prosecution witnesses are as under:

(i) P.W.1- (Md. Khan Son in law of informant):

This witness has identified the accused Md. Quamrul in the dock of the Court (para-4 of his evidence). In paragraphs 7 and 8, he has stated that he did not see the dead body with his own eyes, but had seen the photograph of the full body, including the head, of the deceased.



(ii)P.W.2 (BibiHakima – daughter of the informant):

This witness has deposed that the deceased Bibi Hasina was married to accused Md. Quamrul about one and a half years prior to the occurrence and was residing at her matrimonial home at village Kamaldaha. She stated that upon receiving information that the accused persons had killed Bibi Hasina and caused disappearance of her dead body, she along with her family members went to the accused's house but could not find her. On enquiry, the accused remained silent, while villagers disclosed that the accused persons had committed the murder and disposed of the body. She further stated that on receiving information from police, she went to Sarsi P.S. and identified the deceased on the basis of clothes and photographs. In cross-examination (para-5), she stated that a Nikahnama was prepared at the time of marriage.

(iii)P.W.3 (Bibi Aamida – sister of the deceased):This witness has corroborated the prosecution case and deposed that the deceased was her sister and was married to accused Md. Quamrul about one and a half years prior to the occurrence. She identified the accused in Court and stated that when she visited the matrimonial home of the deceased, she could not find her, and the accused remained silent, which created suspicion. She



further stated that villagers disclosed that the accused persons had jointly caused her death and disappearance of the body. She also deposed that she identified the dead body at Sarsi P.S. on the basis of clothes and photographs. She further stated that the accused had earlier married another woman prior to marrying the deceased. In cross-examination, she admitted that the Nikahnama was prepared but was torn by the brother of the accused.

(iv) P.W.4 (Md. Nek Mohammad—husband of P.W.2):

This witness has supported the prosecution case and stated that the deceased was his sister-in-law and was married to accused Md. Quamrul. He deposed that when he, along with other family members, visited the matrimonial home, the deceased was not found and the accused stated that she had fled away. He further stated that members of the local community informed them that the accused persons had killed her and disposed of the dead body. He also participated in the search and subsequently went to the police station to lodge the case. On receiving information regarding recovery of a dead body, he went to Sarsi P.S. and identified the deceased on the basis of clothes and photographs. He has also identified the accused in Court.

(v) P.W.5 (Mother of the deceased/informant's wife): This witness, being the mother of the deceased, has also



supported the prosecution case. She deposed that her daughter Bibi Hasina was married to accused Md. Quamrul and was living at her matrimonial home. On receiving information regarding her disappearance, she along with other family members went to the accused's house but could not find her. The accused did not give any satisfactory reply, and the villagers disclosed that the accused persons had killed her and disposed of the dead body. She subsequently went to the police station and lodged the case. She also went to Sarsi P.S. and identified the deceased on the basis of clothes and photographs. Her evidence remains consistent and nothing material has been elicited in cross-examination to discredit her testimony.

18. On the basis of materials surfaced during the trial, the appellants/accused was examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against him, which he has denied and has shown his complete innocence.

19. It would be apposite to discuss the oral/documentary evidences as available on record to re-appreciate the evidences for just and proper disposal of the present appeal.

20. Based on the arguments advanced and the evidences produced by the prosecution, the present appeal is



required to be discussed on following heads:

(i) Prior relationship of the accused/appellant with the deceased.

(ii) Abduction of the deceased.

(iii) Examining of offences under Section 364/302 of the Indian Penal Code.

(iv) Removal of the dead body from the house of the accused/appellant.

(v) Confession of the accused/appellant under Section 161 of the Cr.P.C.

(vi) Statement of accused/appellant recorded under Section 313 of the Cr.P.C.

21. The accused/appellant in his statement recorded under Section 161 Cr.P.C., in course of investigation, has admitted before the police while he was taken into custody on 04.09.2011 that he was in love relationship and the deceased had accompanied him to his house and she had left the house on her own, however, he has admitted that he had not lodged any FIR, nor he had informed the family members of the deceased with regard to missing of the deceased. The accused/appellant in his statement recorded under Section 313 of CrPc, has denied that he was ever in relationship with the deceased. All the prosecution witnesses, on the other hand, have stated that the



deceased was married to the appellant and after *rosgaddi* was performed, the appellant had taken the deceased to his house. P.W.-3 Bibi Aamida (daughter of the informant) has stated that the deceased had informed that her father-in-law used to abuse and torture her, which is supported by the other prosecution witnesses. All the prosecution witnesses are family members. In course of investigation, all the witnesses among whom some of them are the villagers have stated that the deceased had left her house on her own, while some have stated that after committing murder the accused/appellant and his family members disposed her dead body in clandestine manner. Prior relationship of the deceased with the accused/appellant has not been established, nor the learned trial Court has taken up the said issue to decide the case in absence of *Nikahnama* and the denial made by the accused/appellant in any manner that he was married with the deceased.

22. In absence of the factum of marriage having not been established between the accused/appellant and the deceased, now the question remains whether the accused/appellant had really abducted the deceased? In this regard, there is no clear findings of the learned trial Court nor any evidence has been brought on record by way of any exhibit. Although based on the version of the prosecution witnesses that



the *Nikah* of the deceased was performed with the accused/appellant and the accused/appellant had taken the deceased after *rosgaddi* to his house having not been supported by any evidence, therefore, the story of abduction is demolished.

23. On examination of the entire records and the statement of the prosecution witnesses, I find that there is only hearsay witness and no eye witness. In absence of any eyewitnesses to the commission of murder and disposing of the dead body in the river by the appellant for the aforesaid reason is not established. The FIR was lodged by the *Chaukidaar* and the *Chaukidaar* has not been examined. The dead body was recovered from the river and post-mortem was conducted at Sadar Hospital, Purnea. The medical evidence indicates that the stomach of the deceased was empty, which is inconsistent with the theory of death by strangulation. In such circumstances, the allegation that the appellant committed the murder of the deceased becomes untenable. Furthermore, in the absence of the viscera report, the opinion of the doctor regarding the cause of death remains inconclusive and lacks definitive evidentiary value.

24. Now I proceed to find out whether prosecution has been able to make out a case under Section 364 of the I.P.C.

25. The Apex Court in the case of *State of M.P. v.*



Lattora reported in **(2003) 11 SCC 761** has held *inter alia* as under:

“4. Learned counsel for the appellant State contended that the High Court, while rendering the impugned judgment, did not follow the correct legal position. This Court in *State of W.B. v. Mir Mohd. Omar* (2000) 8 SCC 382 held that if the deceased was proved to have been abducted by the accused and was found murdered soon thereafter it is for the abductors to satisfy the court as to how else the abducted victim was dealt with by them. In the absence of any such explanation it is open to the court to draw the presumption that the abductor is the murderer also. The said view of this Court was reconsidered subsequently in *Sucha Singh v. State of Punjab* (2001) 4 SCC 375 and the legal position has been reiterated by this Court.

5. In the light of the legal position so adumbrated by this Court, we deem it necessary, in the interest of justice, that the High Court should consider the appeal filed by the respondent all over again. This is to enable the respondent to canvass regarding the conviction under Section 364 of the Indian Penal Code also. If the conviction is to be maintained the High Court has to consider how far the presumption mentioned above will apply to the situation of this case. For enabling the High Court to reconsider the appeal afresh we set aside the impugned judgment. The appeal filed before the High Court shall stand remitted to the High Court.”

26. In the case of **Ram Gulam Chaudhary & Ors.**

v. State of Bihar reported in **(2001) 8 SCC 311**, the Apex Court considered a situation where the accused persons had assaulted the victim and thereafter carried away the body. The victim was not seen alive thereafter, and no explanation was offered by the accused regarding the disposal of the victim. The Court observed that where the accused, having special knowledge in the matter, withhold such information, an inference can properly be drawn that they had committed the murder of the victim. The



Apex Court in paragraph no. 24 has held *inter alia* as under:

“24. Even otherwise, in our view, this is a case where Section 106 of the Evidence Act would apply. Krishnanand Chaudhary was brutally assaulted and then a chhura-blow was given on the chest. Thus chhura-blow was given after Bijoy Chaudhary had said “he is still alive and should be killed”. The appellants then carried away the body. What happened thereafter to Krishnanand Chaudhary is especially within the knowledge of the appellants. The appellants have given no explanation as to what they did after they took away the body. Krishnanand Chaudhary has not been since seen alive. In the absence of an explanation, and considering the fact that the appellants were suspecting the boy to have kidnapped and killed the child of the family of the appellants, it was for the appellants to have explained what they did with him after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference. We, therefore, see no substance in this submission of Mr Mishra.” In re: Removal of dead body from factory premises”

27. Based on the above evidence, even if it is assumed that the deceased was last seen in the company of the appellant at the time of the *Rosgaddi*, the same is not conclusively established.

28. The theory of last seen is not of universal application and may not always be sufficient to sustain a conviction unless supported by other link to the chain of circumstances.



29. The Apex Court in the case of ***Mohibur Rahman & Anr. Vs. the State of Assam*** reported in (2002) 6 SCC 715 has held that "*the circumstance of last seen together does not by itself and necessarily lead to the interference that it was the accused/appellant, who committed the crime.*"

30. Similarly, in the case of ***Arjun Marik & Ors. vs. State of Bihar*** reported in (1994) Supp. 2 SCC 372, it was reiterated by the Apex Court by holding that "*the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused*"

31. Bearing in mind the ingredient of Section 364 of the I.P.C., when I revert back to the facts of the present case, it appears that there is no evidence to prove that there was abduction or kidnapping of the deceased. Kidnapping from lawful guardianship is defined under Section 361 of the I.P.C., which is not applicable in this case as the deceased was not minor, rather, the P.W-5 Bibi Zubaidan (informant) has given statement that *Nikah* of the deceased was performed with the accused/appellant and upon *Rosgaddi*, she had accompanied the accused/appellant to his house. As per the prosecution version, the father-in-law of the deceased used to misbehave with the deceased and in absence of any allegation against the appellant



that he had ever tortured the deceased or had misbehaved with her, upon scrutiny of evidences, I find that there is no evidence that the deceased was compelled by the appellant to go with him from her home and she was induced by any deceitful means to go with him. All the prosecution witnesses are family members and they have not stated that the deceased was abducted or kidnapped by the appellant. The prosecution could only know about the death of the deceased after Banmankhi/Sarsi P.S. Case 126 of 2001 was lodged and the allegation contained there in can only be said to be based on conjectural summarises. Though it is clear that it was a case of murder and not of kidnapping. In course of post-mortem, the doctor has found the stomach of the deceased to be empty.

32. Accordingly, the present appeal is allowed.

33. The impugned judgment of conviction dated 22.12.2010 and order of sentence dated 28.12.2010 passed by the 1st Additional Sessions Judge, Araria in S.T. No.462/2002/ 45/2005 arising out of Araria P.S. Case No. 262/2001 is hereby set aside. Consequently, the above-named appellant is acquitted from all the charges levelled against him. Since the appellant is on bail, he is discharged from the liability of his bail bond. The fine deposited by the appellant, if any, shall be refunded to them.



34. Office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	20.03.2026
Transmission Date	20.03.2026

