

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPIGURI
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

The Hon'ble Justice Rajarshi Bharadwaj
And
The Hon'ble Justice Reetobroto Kumar Mitra

DR 4 of 2025

Haripada Roy

-Vs-

The State of West Bengal

For the State : *Mr. Aditi Shankar Chakraborty, Ld. APP*
Mr. Arjun Chowdhury.

For the Convict
appointed by Legal
Services Authority : *Mr. Aniruddha Biswas*
Mr. Subham Chanda
Ms. Kanak Mishra
Mr. Monoj Saha

Reserved On* : *02.03.2026.

Pronounced On* : *17.04.2026

Rajarshi Bharadwaj, J.:

1. The Death Reference emanates out of the impugned judgment and order dated September 29, 2023 passed by the Learned Additional District & Sessions Judge-cum-Special Court under the Protection of Children from

Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act') at Jalpaiguri in Sessions Case (POCSO) No. 92 of 2023.

2. At the trial, the case of the prosecution was that the 11-year-old victim girl went missing from in front of her house in Jalpaiguri at around 2:30 PM on September 29, 2023, while playing. This prompted a missing complaint to be lodged by her uncle at Dhupguri PS, leading to the registration of Dhupguri PS Case No. 492/2023 under Section 363 of the Indian Penal Code (hereinafter referred to as 'IPC') and the preparation of a formal FIR. The case was initially endorsed to PSI Mikma Tamang for investigation, who visited the police outpost, examined witnesses, recorded their statements and conducted searches in all possible places, including nearby ponds. On source information, a dead body packed in a sack was found on the bank of Dudua River; PSI Tamang, along with I/C Dhupguri PS, SI Sumit Moktan and other personnel, reached the spot, noted green apparel visible through a torn portion of the sack, recovered the body and sent it to Sadar Hospital, Jalpaiguri for post-mortem. Investigation was then handed over to I/C Dhupguri PS, who endorsed it to SI Sumit Moktan. He informed the victim's family, who identified the body as that of the missing girl at Jalpaiguri Multispecialty Hospital and prepared a rough sketch map of the recovery site. On October 2, 2023, the victim's father submitted written information suspecting his neighbour Haripada Roy, the convict, stating that local witnesses saw the girl entering the convict's house after he allegedly enticed her with money and that the convict was seen carrying a large sack on his bicycle toward the Dudua River area. The convict was arrested from his residence, following which Sections 376AB, 302 and 201 IPC read with Section 6 of the POCSO Act, 2012 were added. After completion of investigation, a charge sheet was filed under these sections. The trial

commenced with the framing of charges under the above sections, to which the convict pleaded not guilty.

3. At the trial, the prosecution examined 16 witnesses. The prosecution relied upon various documentary and material exhibits to bring home the charges as against the convict. On conclusion of the evidence of the prosecution, the convict was examined under Section 313 of the Criminal Procedure Code (hereinafter referred to as 'CrPC'). The convict during such examination claimed to be innocent and declined to adduce any defence witness.

4. Upon completion of the trial, the learned Additional Sessions Judge, by judgment and order dated September 29, 2023, convicted and sentenced the convict in accordance with law.

5. The respective Learned Counsel for the legal service authority defending the convict has challenged the findings of the Learned Trial Court on multiple grounds, primarily highlighting inconsistencies in the prosecution's case and procedural lapses during investigation and trial.

6. The Learned Counsel appearing for the legal service authority submits that the prosecution has woefully failed to establish a complete and unbroken chain of circumstances beyond all reasonable doubt in this purely circumstantial evidence case, warranting acquittal of the convict Haripada Roy from the charges under Section 5(m)(i)/(iv) of the POCSO Act (punishable under Section 6 thereof) r/w Section 376AB IPC and Section 201 IPC, as imposed by the trial court vide its aberrant death sentence. This matter stems from Dhupguri PS Case No. 492 of 2023, where the trial court convicted the accused without any direct ocular evidence linking him to the alleged aggravated penetrative sexual assault, murder or disposal of the minor victim's body, despite framing charges under Sections 376AB, 302 and 201 IPC r/w Section 6

POCSO Act. Notably, no conviction was recorded under Section 302 IPC, rendering the death sentence as procedurally flawed *ab initio*. The convict consistently maintained innocence, fully cooperating with investigation by furnishing blood samples, underscoring the absence of any inculpatory conduct.

7. It is submitted that the so-called "*last seen theory*" circumstance crumbles under scrutiny, as witnesses including child PWs 4 and 5, PW10 and PW11 claimed sighting the victim entering the convict's house around 2:00-2:30 PM on September 29, 2023 with a water bottle, yet contradictions vitiate their testimony as PW3 being the victim's father deposed that his younger daughter disclosed this fact to him prior to the missing diary (Ex-1, conspicuously silent thereon), demolishing the child witnesses' implausible "forgotten" excuse in cross-examination. PW11's Section 164 CrPC statement omitted the water bottle entirely, only to improvise it in court. Further, the IO being PW16 admitted no witness saw the convict present at home, nor were family members (occupying adjacent rooms in the shared premises) interrogated despite their availability at arrest. Critically, no prosecution witness placed the victim alive in the convict's company, and the three-day temporal chasm between disappearance and body recovery from Dudua River spawns innumerable intervening possibilities, eviscerating the "last seen together" doctrine which demands corroboration and requires proximate temporal nexus as held in ***Jabir v. State of Uttarakhand*** in **(2023) 16 SCC 111**.

8. Equally tenuous is the prosecution's narrative of the convict carrying a sack on his bicycle around 6:00 PM towards Bhandari, peddled by PW2 being the victim's mother, PW3 and PW11, riddled with material embellishments. PW2 omitted location, colour, size and convict's reply to the PW15, only to

embellish a "big white sack" and specific retort in court. PW11 confided to the IO being PW16 that she saw "Kalipada Roy" (not Haripada) with a polythene bag; the CCTV screenshot (Ex-A, from unexamined, allegedly dysfunctional footage) depicts a blurred, diminutive multi-hued bag, physically incapable of concealing the 4'8", 32 kg victim, clashing irreconcilably with the court-identified sack. These purposeful improvements betray prosecutorial overreach to fabricate guilt, snapping this link irreparably.

9. The alleged recoveries of the bicycle and water bottle on October 05, 2023 pursuant to disclosure are vitiated manifold, failing the Section 27 Evidence Act thresholds, the statement lacks exact words, voluntariness certification or independent attestation at the police station, PWs 8-9 (seizure witnesses) professed ignorance of seizure list contents/signatures, with PW9 witnessing only police extrication from afar, the items are ordinary objects commonly found in villages and there is no forensic or identification evidence linking them to the case; shared family habitation impugns exclusivity, while PW16 omitted disclosure narration in chief-examination. This goes against the well-established legal principles requiring proper recoveries and therefore does not result in any valid or admissible discovery.

10. The presumptions under Sections 29–30 of the POCSO Act are rebuttable and arise only after the prosecution establishes basic foundational facts such as last seen evidence, presence of the convict, injuries on the him, incriminating conduct under Section 8 of the Evidence Act and scientific linkage-like blood or DNA as held in ***Sanbhubhai v. State of Gujarat*** in **(2025) 2 SCC 399**. In the present case, these foundational facts remain unproven. The FSL report does not detect semen on the relevant exhibits and reveals DNA inconsistencies, including the presence of third-party female blood on the blanket unrelated to either the victim or the convict. There is also no

evidence of the convict's fingerprints or injuries. The post-mortem report is inconclusive regarding sexual assault and attributes the cause of death to strangulation, which weighs in favour of the convict. The convict's denial under Section 313 CrPC cannot give rise to any adverse inference, as there is no obligation to explain circumstances that have not been established as held in ***Premchand v. State of Maharashtra* in (2023) 5 SCC 522.**

11. Even arguendo assuming guilt, the death sentence is insupportable, flouting "rarest of rare" doctrine mandating aggravating-mitigating equilibrium as held in ***Bachan Singh v. State of Punjab, (1980) 2 SCC 684*** and in ***Machhi Singh v. State of Punjab, (1983) 3 SCC 470***. The trial court failed to consider important reformatory factors, including the absence of prior criminal record, the convict's age (33 years), his role as the sole breadwinner, good conduct in custody and psychiatric and prison reports indicating his capacity for reform thereby denying him a meaningful hearing on sentencing as held in ***Manoj v. State of Madhya Pradesh in (2022) 2 SCC 353*** and ***Swami Shraddhananda v. State of Karnataka in (2008) 13 SCC 767***. In the absence of a sustainable conviction under Section 302 IPC, the imposition of the death penalty is unjustified and perverse. At the very least, the sentence ought to be commuted to life imprisonment, with a minimum of 25 years without remission, in line with the approach adopted by the Calcutta High Court in ***Surjey Bhujel v. State of West Bengal in 2023 SCC OnLine Cal 1877***. It is, therefore, submitted by the learned Counsel that the impugned judgment be set aside and the convict be acquitted forthwith.

12. The Learned Counsel for the State submits that the prosecution's case is firmly supported by the unimpeachable medical evidence of PW14, the Medical Officer who conducted the post-mortem examination. According to PW14, the death of the victim resulted from antemortem homicidal strangulation by

ligature, caused by the application of a cloth/ligature around the neck. The post-mortem report records a continuous ligature mark measuring 9" × 1", along with internal injuries to the soft tissues and structures of the neck and a subluxated hyoid bone, all of which are medically consistent with violent asphyxiation and are clearly inconsistent with any natural, accidental or self-inflicted cause of death. Further, it is the State's case that the medical evidence establishes that the minor victim was subjected to a brutal sexual assault prior to her death. The report notes fresh lacerations of the labia majora and vaginal wall, a ruptured hymen and active blood extravasation, which collectively indicate forceful penile or object penetration accompanied by violence. The advanced state of decomposition of the body, coupled with the fact that it was recovered wrapped in plastic sheets and placed inside a sack, lends strong corroboration to the prosecution's contention that the convict, after commission of the offence, made a conscious, deliberate and calculated attempt to conceal the crime by disposing of the corpse in the Dudua River. The Learned Counsel for the State further submits that the admissibility of the convict's disclosure statement under Section 27 of the Indian Evidence Act, 1872 is squarely attracted in the present case. The statement of the convict, recorded on October 02, 2023, to the effect that "I will help the Police to recover my cycle, the victim's water bottle...", led to the recovery of the plastic water bottle, which was identified by PW4, PW5 and PW10 as the bottle that the victim was carrying immediately before entering the convict's house. As per the settled law laid down in ***Geejaganda Somaiah v. State of Karnataka, (2007) 9 SCC 315***, information given to a police officer during investigation is admissible to the extent that it leads to the discovery of a fact and such information cannot be lightly discarded merely because it was furnished to a police officer. The portion of the information which in fact led to the recovery of

the article is admissible under Section 27, while the opinion or inference of the police officer thereon is not. The recovery of the plastic water bottle, which was the last object in the victim's possession at the time she entered the convict's house, creates a reliable, incriminating and significant link in the chain of circumstantial evidence and demonstrates the convict's special knowledge of the crime and the disposal of critical material evidence.

13. In view of the aforesaid submissions, the learned Counsel for the State prays that the death reference be dismissed and the judgment of conviction and order of sentence passed by the learned Trial Court be affirmed in its entirety.

14. We have heard learned Advocates for the parties and have gone through the evidence of record meticulously which reveals as follows:

- i.** PW-1 deposed that the victim girl was his niece, being the second daughter of his elder brother. The family resided jointly and the children of the household used to play together. On September 29, 2023, PW-1 stated that he, along with his elder brother, had gone to Gadeyar Kuthi Gram Panchayat in connection with the formation of a board. He returned home at about 3:00 p.m., when he was informed by the victim's mother that the victim girl had been missing since about 2:00 p.m. PW-1 immediately proceeded to Bhandari Bazar and informed his elder brother. Thereafter, they made efforts to search for the victim at all possible places but failed to trace her. Consequently, a missing diary was lodged at the police station at about 10:00 p.m. on the same day. PW-1 proved the said missing diary, which was marked as Exhibit 1, stating that it had been drafted as per his instruction and bore his signature. PW1 further deposed that after two days, the police from Dhupguri Police Station informed them that the dead body of a child had been found inside a sack in the Dudua river. Upon such information, PW-1 along with the victim's

father went to Sadar Hospital, Jalpaiguri, where they identified the dead body as that of the victim girl. He stated that an inquest was conducted in his presence, and he signed the inquest report as a witness, which was marked as Exhibit 2. PW1 further stated that after the post-mortem examination, they came to know that the victim had been subjected to rape and subsequently murdered, and that her body had been kept inside a sack. He also stated that the convict, Haripada Roy, who was their neighbour, had been arrested by the police, and he came to learn that the convict had committed the offence. He identified the convict in Court. In cross-examination, PW1 admitted that the convict was their neighbour, residing a few houses away, and was a day labourer with no permanent employment. He described the residential arrangements of both families and stated that the children of the locality used to play in the area. PW1 stated that he came to know about the involvement of the convict from the police. He further volunteered that prior to such information, they had suspected the convict because the victim girl was allegedly last seen going towards the house of the convict with a water bottle, as stated by some children playing with her. However, he admitted that he had not mentioned this fact in the missing diary, nor had he disclosed the same to the police during his examination. PW1 further admitted that he had never visited the place from where the dead body was recovered and that the said place was approximately 10 kilometres away from the house of the convict, with several houses and shops in between. He also stated that he could not recollect the exact date and time when he signed the inquest report. He confirmed that when he last saw the victim before leaving for the Panchayat office in the morning, she was at home and at the time of identification of the dead body, the victim was wearing a green

frock. He also stated that the body was found inside a white bag and sack, but he could not recall any specific markings on the same.

- ii.** PW-2 is the mother of the victim girl (since deceased) and the sister-in-law of the complainant. She deposed that the incident occurred more than a year prior to the date of her deposition, on a date she recalls as the 29th, though she could not recollect the month. On that day, which coincided with the formation of the board of their Anchal at Godeyarkuti, her husband had gone to the Anchal office, while she remained at home with her sister-in-law, nephew and her two daughters. At about 2:00 p.m., the victim girl, who had been playing on the road, was found missing. Despite an extensive search in the locality, she could not be traced. PW2 further stated that in the evening, while standing on the CC road near the cremation ground of one Jagadish, she saw the convict, Haripada Roy, proceeding on a bicycle carrying a white-coloured sack. Upon being questioned, the convict replied that he was going to his in-laws' house to bring back his family. Later that evening, her husband and brother-in-law reported the missing diary to the police station. Subsequently, on being informed by the police, they went to Sadar Hospital, Jalpaiguri, where the dead body of the victim was identified. She stated that she learnt from the police that the body had been recovered from the Dudua river and that the convict had allegedly committed rape and murder of her daughter. She identified the convict in Court. In cross-examination, PW-2 admitted the presence of several neighbouring houses and that she had searched them, including the houses of Sukumar Roy and Manik Roy, but to no avail. She reiterated that she had seen the convict with a large sack and identified the same in

Court. She denied the defence suggestions that she had not seen the convict with the sack or that she was deposing falsely.

- iii.** PW-3 is the father of the deceased victim girl and brother of the complainant. He deposed that on September 29, 2023, on account of a scheduled board formation at Godeyarkuti Anchal, he, along with his brother, had gone to the Anchal office. Upon returning home at about 2:00 p.m., he enquired about his elder daughter (the victim) from his younger daughter, who informed him that the victim had gone to the house of the convict, Haripada Roy, carrying a water bottle. PW3 stated that despite a thorough search by him and his family members, the victim could not be traced, whereafter his brother lodged a missing diary at the police station. He further deposed that on 01.10.2023, upon receiving a call from Dhupguri Police Station, he proceeded to Jalpaiguri Sadar Hospital, where he identified the dead body of his daughter. He stated that the post-mortem was conducted in his presence and that he subsequently came to know from the police and doctors that his daughter had been raped and murdered. PW3 also stated that his wife had seen the convict carrying a white sack on a bicycle and behaving suspiciously. He further deposed that the dead body was recovered from the Dudua River and that at the relevant time, the convict was alone at his residence. Thereafter, he lodged a written complaint against the convict. In cross-examination, PW3 admitted that the police had not disclosed the name of the convict as the culprit. He further admitted that his suspicion against the convict was based on what was told to him by his younger daughter and wife. He denied the defence suggestions that no such disclosures were made or that he had falsely implicated the convict.

- iv.** PW4 is a child witness aged about eight years. Upon preliminary examination, the Court found him capable of understanding questions and giving rational answers, and thus competent to testify. In his examination-in-chief, he stated that the victim girl was his relative and lived nearby. About one and a half years prior, at around 2:00–2:30 PM, after returning from school, he was playing outside when he saw the victim proceeding towards the house of the convict, carrying a water bottle. According to him, she entered the said house but did not return. He further stated that the convict later denied her presence. In cross-examination, he admitted that he did not disclose this fact earlier as he had forgotten, though he denied the suggestion that he had not seen the victim entering the convict's house.
- v.** PW5, a child witness aged about 10 years, was subjected to preliminary questioning to assess her competency. Upon satisfactory responses regarding her age, schooling, and daily routine, the Court found her capable of understanding and answering questions rationally. She deposed that on the date of occurrence, at about 2:00–2:30 p.m., while playing outside her house, she saw her elder sister go to the house of the convict carrying a water bottle and not return. Later, her family searched for the victim, and police informed them of the recovery of the dead body. She identified her statement recorded under Section 164 Cr.P.C. and the convict in Court. In cross-examination, she admitted delayed disclosure of the fact to her uncle.
- vi.** PW6 deposed that on 04.10.2023 he was attached to the Forensic Department of Jalpaiguri Medical College and Hospital. On that day, after medical examination of convict Haripada Roy by Dr. Vivek Kumar, three sealed brown envelopes containing urethral swab and blood sample were

handed over to the Investigating Officer, who seized them in his presence under a seizure list, bearing his signature (Exbt. 5). He was examined by police; cross-examination was declined.

vii. PW7, a constable attached to Dhupguri Police Station, deposed that on 04.10.2023 he accompanied the Investigating Officer in escorting the convict, Haripada Roy, to Jalpaiguri Medical College for capability examination. He stated that the attending doctor handed over sealed envelopes containing samples to the I/O, which were seized in his presence under a seizure list bearing his signature (Exbt. 5/1). The witness was not cross-examined.

viii. PW8 is a neighbour of both the complainant and the convict, Haripada Roy, and deposed that on September 29, 2023, the victim girl went missing at about 2:00 p.m. while her father and uncle had gone to attend the Anchal office. He stated that the siblings of the victim reportedly saw her entering the house of the convict carrying a water bottle. Despite search efforts, the victim could not be traced, and a missing diary was lodged. After two to three days, a female dead body was recovered from the Dudua River, which was subsequently identified by the family at Sadar Hospital, Jalpaiguri, as that of the victim. PW8 further deposed that the convict was arrested and later brought to his residence by the police, whereupon, in his presence, a water bottle was allegedly recovered from beneath a cot and a bicycle from behind the house. He signed the seizure lists marked as Exhibits 6 and 7 and identified the material exhibits in Court. In cross-examination, PW8 admitted that his knowledge regarding the victim entering the convict's house was based solely on what the victim's siblings had told him, and he had not witnessed the same himself. He also conceded that such water bottles

and bicycles are commonly available in the market and in households, and that no distinctive identification of the articles was made. He further stated that he is only able to sign his name and is unaware of the contents of the seizure lists. Thus, the testimony of PW8 is essentially hearsay in respect of the crucial circumstance of the last seen and does not conclusively establish any incriminating link against the convict.

ix. PW9 is a neighbour of both the complainant and the convict, Haripada Roy, and deposed that on September 29, 2023, the victim girl went missing at about 2:00 p.m. while her father and uncle had gone to attend the Anchal office. He stated that the siblings of the victim reportedly saw her entering the house of the convict carrying a water bottle. Despite search efforts, the victim could not be traced, and a missing diary was lodged. After two to three days, a female dead body was recovered from the Dudua River, which was subsequently identified by the family at Sadar Hospital, Jalpaiguri, as that of the victim. PW9 further deposed that the convict was arrested and later brought to his residence by the police, whereupon, in his presence, a water bottle was allegedly recovered from beneath a cot and a bicycle from behind the house. He signed the seizure lists marked as Exhibits 6 and 7 and identified the material exhibits in Court. In cross-examination, PW9 admitted that his knowledge regarding the victim entering the convict's house was based solely on what the victim's siblings had told him, and he had not witnessed the same himself. He also conceded that such water bottles and bicycles are commonly available in the market and in households, and that no distinctive identification of the articles was made. He further stated that he is only able to sign his name and is unaware of the contents of the seizure lists.

- x.** PW10 is a co-villager and neighbour of both the complainant's family and the convict. In his examination-in-chief, he deposed that approximately one and a half years prior to his testimony, at about 2:00 p.m., he was sitting on the road with his granddaughter when he noticed the minor victim girl proceeding towards the house of the convict, Haripada Roy, carrying a plastic water bottle. He stated that he saw the victim entering the said house. Thereafter, from around 3:00 p.m., the victim was found missing, and her family members began searching for her. PW10 also joined in the search but to no avail. He further stated that after three days, the dead body of the victim was recovered from the Dudua river. He admitted that he had "heard" that the convict had raped and murdered the victim and disposed of the body in the river. He proved his statement recorded under Section 164 of the Code of Criminal Procedure, which was marked as Exhibit 8, and identified the convict in Court through video conferencing. In cross-examination, PW10 reiterated that he had disclosed to the police that he had seen the victim going towards the house of the convict. He admitted that the bottle allegedly carried by the victim was of a common type available in most households and bore no specific identification marks. He further stated that he had not disclosed the name of his granddaughter to the police or the Magistrate. Notably, his assertion regarding the alleged rape and murder was based on hearsay. He denied the defence suggestion that he was deposing falsely.
- xi.** PW11 is the aunt of the victim girl and related to the complainant as his sister-in-law. She deposed that on September 29, 2023, at about 1:00–1:30 p.m., the victim was playing with other children and was later seen proceeding towards the house of the convict, Haripada Roy, carrying a water bottle. When the child went missing after 2:00 p.m., search efforts

were undertaken. PW11 stated that at about 6:00 p.m., while returning from the house of a Panchayat member, she saw the convict carrying a plastic sack on the carrier of his bicycle towards Bhandari. She further stated that after three days, the dead body of the victim was recovered from the Dudua river and that she had heard allegations of rape and murder against the convict. Her statement under Section 164 Cr.P.C. was duly proved and marked as Exhibit 9. In cross-examination, PW11 admitted that she had gone to the Panchayat member's house for personal reasons and did not disclose certain facts to him. She acknowledged that Bhandari is a crowded market and that items such as bicycles, plastic sacks, and water bottles are commonly used in the village. Her testimony, therefore, rests substantially on suspicion, subsequent information, and generalized circumstances rather than direct, cogent, and conclusive evidence connecting the convict to the crime.

- xii.** PW12 deposed that two CCTV cameras were installed at the entrance of his house. On October 07, 2023, police visited and, upon his permission, verified footage dated September 29, 2023. The said footage was extracted onto a pen drive in his presence by one Srinjoy and handed over to police. He proved the certificate under Section 65B of the Indian Evidence Act, marked Exhibit 90. In cross-examination, he admitted ignorance regarding technical details of the CCTV system, including its make, capacity, and DVR particulars, and stated he could not explain the contents of the certificate he signed, though he denied any false implication.
- xiii.** PW13 deposed that he runs a computer hardware business under the name "Munmun Computer Shop" at Thana Road, Dhupguri. On

07.10.2023, upon being called by Dhupguri Police Station, he visited the residence of Ranjita Ball at Surya Sen Colony and, as directed by the police, copied CCTV footage dated September 29, 2023 from a monitor into a pen drive and handed it over. In cross-examination, he admitted that he possessed no certification as a computer hardware expert and had not issued any certificate ensuring the integrity or non-tampering of the footage, thereby casting doubt on the reliability and procedural sanctity of the electronic evidence collected.

- xiv.** PW14, the Associate Professor and Head of the Department of Forensic Medicine at Jalpaiguri Medical College and Hospital, deposed that he conducted the post-mortem examination of the deceased on 02.10.2023 in connection with Kotwali UD Case No. 507/2023, along with Dr. Amitabha Basu. He found a ligature mark around the neck and other fresh injuries showing vital reaction. He opined that death was caused by ante-mortem homicidal strangulation. In cross-examination, he stated that death had occurred 24–36 hours prior, acknowledged non-mention of certain details like injury colour and video recording, and admitted he did not specifically opine on sexual assault.
- xv.** PW15 deposed that he was posted as Sub-Inspector of Police at Banarhat Police Station and, on September 29, 2023, was attached to Dhupguri Police Station as a probationary Sub-Inspector. On that day, one Ram Bhowmick, the second officer of Dhupguri Police Station, received a missing diary which was registered as Dhupguri P.S. Case No. 492/23 under Section 363 of the IPC. He identified the endorsement made by said officer, marked as Exhibit 1/1, and the formal FIR subsequently prepared by S.I. Sangey Sherpa, marked as Exhibit 12. The investigation was thereafter entrusted to him. He stated that during the course of

investigation, he visited the place of occurrence and prepared a rough sketch map with index, marked as Exhibits 13 and 13/1. He examined available witnesses and conducted search operations in nearby areas, including ponds, and also engaged a sniffer dog. Upon receiving source information regarding recovery of a body from the Dudua River, he informed the Officer-in-Charge and proceeded to the spot. Thereafter, he handed over the investigation to the Officer-in-Charge as he was then a probationary officer. In cross-examination, PW15 admitted that he did not collect extract copies of the General Diary entries nor mention the same in the case diary. He further admitted that the missing diary did not contain any allegation or suspicion against the convict, nor any reference to the victim being last seen with him. He acknowledged that although he visited the house of the convict on the night of lodging the diary, one room was found locked, yet no steps were taken to open it, nor was this fact recorded in the case diary. He also conceded discrepancies in recording witness statements and omissions regarding material particulars. He admitted that certain statements attributed to witnesses during trial were not stated before him during investigation.

- xvi.** PW16, the Investigating Officer, deposed that on 01.10.2023, while posted as Sub-Inspector at Dhupguri Police Station, he took over investigation of the instant case. Acting on information regarding a dead body found near the Dudua river, he, along with other police personnel, proceeded to the spot and found the body concealed in a torn sack, with green apparel visible. The body was sent for post-mortem at Sadar Hospital, Jalpaiguri, and inquest was conducted by another officer, whose report he collected and proved. He prepared a sketch map of the place of recovery and examined witnesses under Section 161 Cr.P.C. He

further stated that on the following day, a written complaint was lodged by the victim's father naming the convict, whereupon he arrested the convict from his residence. During police remand, certain articles, including a bicycle and water bottle, were allegedly recovered at the instance of the convict and a statement leading to such recovery was recorded. He also collected various seizure lists relating to materials recovered during inquest, including wearing apparel of the deceased. He conducted reconstruction of the crime and collected CCTV footage purportedly showing the convict carrying a bag on a bicycle. He obtained medical and forensic reports, including capability test and FSL report, and ultimately submitted charge-sheet against the convict under relevant provisions. However, in cross-examination, PW16 admitted to several material deficiencies in the investigation. He did not examine the previous Investigating Officer and failed to seize or produce the original CCTV device or its hard disk. The footage collected was not sent for forensic examination, and the certificate under Section 65B of the Evidence Act was admittedly prepared at the police station without necessary particulars. He conceded that the screenshot produced (Exbt.A) did not conclusively identify the convict, nor did it establish the nature of the bag allegedly carried. Significantly, he acknowledged that no witness stated that the convict was present in his house when the victim allegedly went there, and key witnesses did not disclose such facts to police at the earliest opportunity. No fingerprints were collected, no Test Identification Parade was conducted for seized articles, and no marks of struggle were found at the alleged place of occurrence. These admissions substantially impair the evidentiary value of the investigation conducted by PW16.

15. Upon a comprehensive appraisal of the evidence on record, this Court is of the considered view that in a prosecution resting wholly on circumstantial evidence, the burden lies upon the State to establish a cogent and unbroken chain of circumstances which unerringly points to the guilt of the convict and excludes every hypothesis consistent with innocence. The prosecution has failed to establish a complete chain of circumstances beyond reasonable doubt, necessitating the striking down of the trial court's aberrant death sentence under Sections 5(m)(i)/(iv) of the POCSO Act punishable under Section 6, read with Section 376AB IPC and Section 201 IPC. The failure to satisfy this foundational requirement necessarily entitles the convict to the benefit of doubt and consequent acquittal.

16. Applying this settled principle, this Court holds that the prosecution had failed to discharge its burden. At the outset, the “last seen together” theory, which constitutes the foundational circumstance of the prosecution case, is rendered wholly unreliable. The testimonies of child witnesses PW4, PW5, PW10 and PW11 suffer from material inconsistencies and lack independent corroboration. While these witnesses deposed that the victim was seen entering the convict’s house carrying a water bottle at approximately 2:00–2:30 PM on September 29, 2023, such a crucial fact finds no mention in the missing diary (Exhibit-1). The explanation subsequently offered during cross-examination, attributing such omission to forgetfulness, does not inspire confidence, particularly when PW3, the father of the victim, claimed prior disclosure of the same by his younger daughter. Further, PW11’s statement under Section 164 CrPC omits reference to the water bottle altogether, thereby indicating material improvement in court. Significantly, no witness has testified to the presence of the convict in the house at the relevant time and other occupants of the house were not examined. The gap of three days between the alleged “last seen” and

the recovery of the body introduces multiple intervening possibilities, thereby breaking the chain of proximity required in law, as emphasized in ***Jabir and others v. State of Uttarakhand*** in (2023) 16 SCC 111.

17. Equally infirm is the prosecution's reliance on the alleged "sack and bicycle" circumstance. The testimonies of PW2, PW3 and PW11 in this regard are replete with embellishments and contradictions. PW2's initial version was devoid of material particulars such as the colour or size of the sack and the alleged response of the convict. PW11, in her statement to the Investigating Officer being PW16, attributed the act to one "Kalipada Roy" carrying a polythene bag, thereby introducing a material contradiction as to identity. The CCTV screenshot in exhibit-A, relied upon by the prosecution, depicts only a blurred image of a small, indistinct, multi-coloured bag, wholly inconsistent with the description of a large sack capable of containing the body of a child of considerable height and weight. The alleged recoveries of the bicycle and water bottle on October 05, 2023 fail to meet the statutory requirements under Section 27 of the Evidence Act. There is no clear or recorded voluntary disclosure attributable to the convict, independent witnesses being PW8 and 9 were unaware of the contents of the seizure lists and the articles recovered were commonplace objects lacking forensic linkage or identification. The fact that the premises were shared further negates the element of exclusive possession. The Investigating Officer has also failed to depose to the exact contents of the disclosure statement, thereby rendering the recovery evidence legally untenable.

18. The statutory presumptions under Sections 29 and 30 of the POCSO Act also do not come to the aid of the prosecution in the absence of foundational facts. There is no credible last seen evidence, no injuries on the convict and no scientific evidence linking him to the crime. The FSL report does not indicate

the presence of seminal material, instead, it records the presence of blood of a third-party on the blanket. The medical evidence, as deposed by PW14, attributes death to strangulation, while the extent of decomposition casts doubts on the precise cause and timing of injuries. No fingerprints, DNA evidence or incriminating conduct within the meaning of Section 8 of the Evidence Act has been established against the convict. His denial under Section 313 CrPC cannot, in the absence of a prima facie case, be used to draw adverse inference. The investigation itself suffers from serious lapses, including failure to examine the CCTV hard disk, absence of fingerprint analysis or Test Identification Parade and reliance on hearsay testimony of witnesses such as PW8, PW9, PW10 and PW11. These deficiencies cumulatively erode the credibility of the prosecution case.

19. Apart from the evidentiary infirmities, the imposition of the death penalty is vitiated by procedural irregularities. In the absence of a conviction under Section 302 IPC, the sentence of death is rendered wholly unsustainable. Even assuming arguendo that the conviction could be sustained, the case does not meet the threshold of the “rarest of rare” doctrine as laid down in **Bachan Singh (supra)** and elaborated in **Machhi Singh (supra)**. The learned trial court has failed to consider relevant mitigating circumstances, including the age of the convict (33 years), absence of prior criminal antecedents, his status as the sole breadwinner of the family, satisfactory custodial conduct and the potential for reformation. Further, the mandate of a meaningful and effective sentencing hearing, as emphasized in **Manoj v. State of Madhya Pradesh** in **2022 SCC OnLine SC 677** and **Swami Shraddhananda v. State of Karnataka** in **(2008) 13 SCC 767**, has not been complied with.

20. For the foregoing reasons, this Court holds that the cumulative effect of these infirmities shattered the prosecution’s case, rendering the conviction

unsustainable in law. The judgment of conviction and sentence dated September 29, 2023, imposing death penalty upon the convict, is set aside. The sentence of death is quashed as being perverse, unsupported by evidence and procedurally flawed. The convict was therefore acquitted of all charges, with the benefit of doubt and the impugned judgment of conviction and sentence, including the death penalty, is set aside. The Death Reference is accordingly answered in the negative.

21. A copy of this judgment along with the Trial Court records be remitted to the appropriate Trial Court forthwith. In view of the acquittal of the convict of all charges, any warrant issued by the appropriate Court in respect of the convict stands discharged and rendered inoperative. The Department shall communicate this judgment and order to the Correctional Home, where the convict is presently lodged. The said Correctional Home is directed to record the acquittal of the convict in its official records and to take immediate steps for his release, if not required in connection with any other case.

22. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[Rajarshi Bharadwaj, J.]

[Reetobroto Kumar Mitra, J]

Kolkata

17.04.2026

PA (BS)